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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN) * Docket 14-MD-2592
PRODUCTS LIABILITY LITIGATION * Section L
 *
Relates to: All Cases * New Orleans, Louisiana
 *
 * October 21, 2015
* * * * *

MONTHLY STATUS CONFERENCE
BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

Appearances:

For the Plaintiffs: Herman Herman & Katz, LLC
 BY: LEONARD A. DAVIS, ESQ.
 820 O'Keefe Avenue
 New Orleans, Louisiana 70113

For the Defendants: Irwin Fritchie Urquhart
 & Moore, LLC
 BY: JAMES B. IRWIN, ESQ.
 400 Poydras Street, Suite 2700
 New Orleans, Louisiana 70130

Official Court Reporter: Toni Doyle Tusa, CCR, FCRR
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 New Orleans, Louisiana 70130
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Proceedings recorded by mechanical stenography using
computer-aided transcription software.

09:04 1 some confusion by individuals with respect to No. 15A, and we
09:04 2 have attempted to clarify that by submitting a proposed order
09:04 3 to the Court to address the preservation of those materials.

09:04 4 **THE COURT:** It looks to me like it's appropriate.
09:04 5 Let's keep an eye on it, though, because if something does come
09:05 6 up and we need to massage it again, let's do it. Sometimes, in
09:05 7 the development of that information, you find some things that
09:05 8 really don't fit and you are going to have to include them.

09:05 9 **MR. DAVIS:** We have listed in Section 1 of the joint
09:05 10 report, Joint Report No. 9, a listing of the pretrial orders
09:05 11 that have been issued by the Court. Those who want to look at
09:05 12 it can see when they were issued and the rec. doc. number as
09:05 13 well as a brief description. The only new order since the last
09:05 14 was Pretrial Order No. 21, which was entered September 17.

09:05 15 **THE COURT:** I put all these on my website so that
09:05 16 they are available on the website. You can pull them out and
09:05 17 take a look at them if you need to.

09:05 18 **MR. DAVIS:** Moving on, Your Honor, with respect to
09:05 19 Case Management Order No. 2, there's nothing new to report.
09:05 20 That was issued on September 17 and we -- "we" being the
09:06 21 parties -- are continuing to address Case Management Order
09:06 22 No. 3. We expect to address that further at the November
09:06 23 status conference.

09:06 24 **THE COURT:** If you can agree on it, that's fine. If
09:06 25 you can't, then give me what each of you feel, and I will come

09:06 1 up with the one that we are going to be dealing with.

09:06 2 **MR. DAVIS:** With respect to the counsel contact
09:06 3 information form, I repeat what I have said at prior status
09:06 4 conferences, and it's really for those who are participating by
09:06 5 phone. They should turn that information in; and also be sure
09:06 6 that they get registered for MDL Centrality, which is the
09:06 7 housing location for pleadings on the plaintiffs' side as well
09:06 8 as both plaintiff and defendant profile forms or fact sheets,
09:06 9 which are being submitted through MDL Centrality. In order to
10 do that, you need to register for MDL Centrality.

09:07 11 **THE COURT:** That's the next item on the agenda, MDL
12 Centrality. With this program, what we are trying to do is to
13 utilize it in a number of ways. One way is to get service so
14 that everybody who is registered in MDL Centrality will get all
15 of the documents that have been filed in court. They will just
16 automatically be uploaded to Centrality and then sent to you.
17 Anybody filing documents simply needs to file in court. Then
18 once they file in court, Centrality will grab it and mail it
19 out to everybody.

09:07 20 Secondly, it's an opportunity for you to fill
21 out fact sheets, both sides' fact sheets. The parties met and
22 constructed fact sheets and attachments to fact sheets that
23 they feel are necessary for their information. That is being
24 done digitally now. The reason for that is that it's able then
25 to be searched. It's the next step in trying to get our hands

09:08 1 around the litigation, to see whether or not it can be
09:08 2 categorized in various areas, and then from those categories
09:08 3 create a discovery pool fixed. Each side will get a number of
09:08 4 selections and that will form the discovery pool. Those cases
09:08 5 will be discovered in depth, and from the discovery pool the
09:08 6 parties will select the bellwether cases.

09:08 7 Just for your information, there's been 1,886
09:08 8 final fact sheets that Centrality has collected. There's
09:08 9 another 1,064 in process. Every state in the union now has
09:08 10 cases, so there are claims from all states in the union at this
09:08 11 point. There's 174 Louisiana cases, 160 Texas cases, and 41
09:09 12 Mississippi cases so far.

09:09 13 **MR. DAVIS:** Your Honor, with respect to MDL
09:09 14 Centrality and plaintiff fact sheets, I just want to encourage
09:09 15 plaintiffs' counsel to get the fact sheets turned in timely.
09:09 16 There's a pretrial order, specifically Pretrial Order No. 13A
09:09 17 and No. 14A, that provides the procedures for the online
09:09 18 submission.

09:09 19 Please note that those profile forms should be
09:09 20 turned in timely. If there are problems with that, if they
09:09 21 will reach out to liaison counsel, we will try to assist with
09:09 22 individuals so there are not delays. We encourage that the
09:09 23 profile forms be submitted so that that process that Your Honor
09:09 24 was just speaking about, for the culling down and vetting of
09:09 25 cases for bellwethers, can take place.

09:10 1 **THE COURT:** I'm going to give enough time for you to
09:10 2 do it. But after enough time has gone by, then I will be
09:10 3 issuing orders to show cause why the case should not be
09:10 4 dismissed. So it's important that you file the fact sheets in
09:10 5 MDL Centrality so that we can get into that case. If not, I
09:10 6 will be dismissing the cases.

09:10 7 Plaintiff fact sheets, anything?

09:10 8 **MR. DAVIS:** I think I have addressed that and
09:10 9 defendant fact sheets. They are coming in.

09:10 10 **THE COURT:** Preservation orders, anything on that?

09:10 11 **MR. DAVIS:** I'm sorry. Pretrial Order No. 15B I have
09:10 12 spoken about already. There's nothing further on preservation
09:10 13 orders.

09:10 14 On discovery, there are a couple of issues. The
09:10 15 PSC has issued 30(b)(6) notices to the defendants for the
09:10 16 corporate structure depositions of both the Janssen/J&J
09:10 17 defendants and the Bayer defendants. We will be selecting
09:11 18 dates, and those depositions will be taking place in the near
09:11 19 future.

09:11 20 We also will continue to have our privilege
09:11 21 biweekly meetings. We expect that that will happen on an
09:11 22 ongoing basis, and we will report more to the Court at the next
09:11 23 status conference on those issues.

09:11 24 **THE COURT:** I have been meeting with lead liaison
09:11 25 counsel for the parties, talking every second week on the

09:11 1 discovery matters. Any things that have come up, we deal with
09:11 2 them at that time. If it's urgent before then, we meet and
09:11 3 confer on a weekly basis. We are now down to every two weeks,
09:11 4 and hopefully some of this will be over. I think it's
09:11 5 important to have regular meetings so that we can deal with any
09:11 6 issues that have come up at the early stage rather than when
09:12 7 they are crisis issues.

09:12 8 **MR. DAVIS:** Yesterday or the day before we got
09:12 9 another privilege log from defendants. We are in the process
09:12 10 of reviewing that, and I expect that we will be addressing
09:12 11 matters in the near future on that.

09:12 12 Deposition guidelines, the parties are working
09:12 13 on a protocol. We expect to present something to the Court
09:12 14 soon on that. We have already had one deposition in this case,
09:12 15 as the Court is well aware.

09:12 16 **THE COURT:** Right. I have asked the parties to be
09:12 17 also alert to the fact that we make them admissible and useful
09:12 18 for states also. So the introduction of the depositions ought
09:12 19 to make clear that the depositions can be used for state
09:12 20 purposes.

09:12 21 Also, I mention that sometimes, maybe not every
09:12 22 deposition, if you need to facilitate particularly the experts,
09:12 23 we have found in the past that sometimes you can take the
09:13 24 depositions online. The parties will go with a laptop and a
09:13 25 questioner, and the other experts don't need to be in those

09:13 1 depositions. They can log onto that deposition, pull up the
09:13 2 transcript on the right-hand side and a voice and image on the
09:13 3 left-hand side. If they need to, they can get information to
09:13 4 the laptop person and ask more questions on this area and that
09:13 5 area. It can be done that way a little bit easier.

09:13 6 In a problematic deposition, I will log on and I
09:13 7 will be able to rule on the objections immediately to
09:13 8 facilitate counsel. So keep that in mind. If you need to do
09:13 9 it, that's available.

09:13 10 **MR. DAVIS:** With respect to discovery issued to third
09:13 11 parties, we have had several meet-and-confers with third
09:14 12 parties, in particular with the Duke Clinical Research
09:14 13 Institute. We had a joint meeting, meaning a representative of
09:14 14 defendants and plaintiffs met with DCRI to discuss the subpoena
09:14 15 that was issued. I believe that we have had some productive
09:14 16 responses, and we are hopefully streamlining those issues with
09:14 17 Duke and will be able to report further to the Court if there
09:14 18 are any issues.

09:14 19 With respect to the FDA, a subpoena was issued
09:14 20 some time ago, back in April, and we have had ongoing
09:14 21 discussions with the FDA in an attempt to promote efficiency
09:14 22 and avoid redundancy. We have gotten an index from the FDA.
09:14 23 We intend on having some further discussions hopefully to move
09:14 24 that process along in a quicker fashion, which we really would
09:14 25 like to do.

09:15 1 **THE COURT:** With the FDA, let's try it that way. If
09:15 2 there's any particular issues involved, get me on the line with
09:15 3 them and we will talk it through.

09:15 4 **MR. DAVIS:** We will do that, Your Honor.

09:15 5 State/federal coordination, Ms. Barrios is here.

09:15 6 **MS. BARRIOS:** Thank you, Mr. Davis.

09:15 7 Good morning, Your Honor. Dawn Barrios for the
09:15 8 state/federal committee. Before I get into my report, I wanted
09:15 9 to comment on something that you had said about notifying all
09:15 10 the states that they could participate in the depositions.

09:15 11 At the last status conference, I had raised the
09:15 12 issue of writing a letter myself to the judges, of course
09:15 13 passing it by both parties. I passed it by the PEC, and we
09:15 14 were wondering if it would be more appropriate for you to
09:15 15 contact the state court judges. If you feel that I should, I'm
09:15 16 happy to do so, with approval of the language by both parties,
09:16 17 but I wanted to raise that issue with you.

09:16 18 **THE COURT:** Either way. If you give me their
09:16 19 addresses, I will write them. Either way.

09:16 20 **MS. BARRIOS:** I have, Your Honor. I have passed it
09:16 21 to your law clerk and provided it to the parties with the
09:16 22 statistics. It has the judges' contact information on there.
09:16 23 I am stealing one of BrownGreer's moves to show you the
09:16 24 difference between what happened last month to this month.

09:16 25 In Delaware we have a total of nine cases;

09:16 1 Georgia, we have a total of one; Illinois, one; Missouri,
09:16 2 three; New Jersey, five, and note that one in New Jersey has
09:16 3 been dismissed; Pennsylvania, 409; and Texas, one.

09:16 4 You will note there's a total of 101 additional
09:16 5 cases filed since the last status conference. We also added a
09:17 6 column of the number of current Xarelto users as opposed to the
09:17 7 number of suits to provide us with information on the number of
09:17 8 claimants. Now in the state courts we have 484 claimants.

09:17 9 Dan Gallucci, on the state/federal committee,
09:17 10 was here yesterday at the PSC meeting. He met with myself and
09:17 11 with the PEC. We are continuing to work forward, dealing with
09:17 12 Judge New. Because there's been an influx of new cases there,
09:17 13 we don't anticipate any problems with that. We will continue
09:17 14 to coordinate and cooperate, as we have done in the past.
09:17 15 Thank you, Your Honor.

09:17 16 **THE COURT:** Thank you very much. I appreciate it.
09:17 17 It's important that the MDL and the states work together on
09:17 18 this. I have been very fortunate in the past to work with some
09:17 19 very talented and hardworking state judges, so I look forward
09:17 20 to doing the same this time.

09:17 21 **MR. DAVIS:** Your Honor, we have had ongoing
09:18 22 communications with both Michael Weinkowitz and Dan Gallucci in
09:18 23 particular in an attempt to coordinate, and we appreciate their
09:18 24 efforts.

09:18 25 With respect to the Plaintiffs' Steering

09:18 1 Committee, as the Court is well aware, Sindhu Daniel resigned
09:18 2 from the PSC. She has been a very valuable member of the PSC,
09:18 3 and we appreciate all the efforts and all the hard work that
09:18 4 Sindhu has done. The Court replaced Sindhu with Jeff Grand of
09:18 5 Seeger Weiss, who isn't here because he is getting married.

09:18 6 **THE COURT:** I guess that's an excuse.

09:18 7 **MR. DAVIS:** I expect that Jeff will be in the court,
09:18 8 but he has been very active as well. Sindhu continues to work
09:18 9 with us, and we appreciate all of her efforts. She certainly
09:18 10 serves on committees. She may not be on the steering
09:18 11 committee, but she's an active participant. I just wanted the
09:19 12 Court and counsel to know. We have explained that to
09:19 13 defendants, so they are aware that there will not be any
09:19 14 hiccups going forward with respect to the work that Sindhu has
09:19 15 been doing. I believe that defense counsel know Jeff Grand and
09:19 16 are familiar with Jeff Grand, and I expect that we will
09:19 17 continue on.

09:19 18 **THE COURT:** Yes. In that regard, as you know, I
09:19 19 appoint a steering committee but also ask the steering
09:19 20 committee to run the case, from the standpoint of steering
09:19 21 committee, through subcommittees. So I have asked them to
09:19 22 create subcommittees. Anybody out in the audience who is
09:19 23 representing a plaintiff and wants to participate in the
09:19 24 litigation, there's room for you. Get on a subcommittee. If
09:19 25 you contact liaison counsel, if somehow or another you can't

09:19 1 get through, get to me and I will make sure you are on a
09:20 2 subcommittee. You need to work on it and you need to deal with
09:20 3 it in a coordinated effort. You're invited. I'm anxious to
09:20 4 get as many people interested as can be, so I urge you to do
09:20 5 that.

09:20 6 **MR. DAVIS:** Your Honor, I think that's it for this
09:20 7 month's report.

09:20 8 **THE COURT:** The next meeting is November 16 in the
09:20 9 afternoon at 2:00. The following one is December 21 in the
10 morning. I will post this on my website.

11 Anything from anyone?

09:20 12 **MR. DAVIS:** Your Honor, just to follow up on the
09:20 13 November 16 status conference, I just wanted the folks to be
09:20 14 aware that there may be hearings after that conference with
09:20 15 respect to CMO No. 3 if there are issues that remain in
16 dispute.

09:20 17 **THE COURT:** We will take those after the conference.

09:20 18 Anything from anybody in the audience?

09:20 19 **MR. IRWIN:** Your Honor, did you say 9:00 on the 16th?

09:21 20 **THE COURT:** No. 2:00. 2:00 on the 16th. It's in
21 the afternoon. What was it? 3:00?

09:21 22 **MR. DAVIS:** I think it's 3:00.

09:21 23 **THE COURT:** Excuse me. 3:00 on the 16th. The
24 regular meeting is at 9:00 on the 21st. I will meet with lead
25 liaison half an hour before then. Thank you very much. Court

09:21 1 will stand in recess.

09:21 2 **THE DEPUTY CLERK:** All rise.

09:21 3 (Proceedings adjourned.)

09:21 4 * * *

5 **CERTIFICATE**

6 I, Toni Doyle Tusa, CCR, FCRR, Official Court
7 Reporter for the United States District Court, Eastern District
8 of Louisiana, certify that the foregoing is a true and correct
9 transcript, to the best of my ability and understanding, from
10 the record of proceedings in the above-entitled matter.

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13 s/ Toni Doyle Tusa
14 Toni Doyle Tusa, CCR, FCRR
15 Official Court Reporter
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<p>T</p> <p>take [5] 2/18 3/17 5/25 7/23 12/17</p>	<p>U</p> <p>understand [1] 2/23</p> <p>understanding [1] 13/9</p> <p>union [2] 5/9 5/10</p> <p>UNITED [3] 1/1 1/11 13/7</p> <p>up [6] 3/6 4/1 7/1 7/6 8/1 12/12</p> <p>uploaded [1] 4/16</p> <p>urge [1] 12/4</p> <p>urgent [1] 7/2</p> <p>Urquhart [1] 1/17</p> <p>us [2] 10/7 11/9</p> <p>use [1] 2/16</p> <p>used [1] 7/19</p> <p>useful [1] 7/17</p> <p>users [1] 10/6</p> <p>using [1] 1/24</p> <p>utilize [1] 4/13</p> <p>V</p> <p>valuable [1] 11/2</p> <p>various [1] 5/2</p> <p>very [6] 10/16 10/18 10/19 11/2 11/8 12/25</p> <p>vetting [1] 5/24</p> <p>voice [2] 2/25 8/2</p>	<p>X</p> <p>XARELTO [3] 1/4 2/6 10/6</p> <p>Y</p> <p>Yes [2] 2/21 11/18</p> <p>yesterday [2] 7/8 10/10</p> <p>you [35]</p> <p>You're [1] 12/3</p> <p>your [15]</p> <p>Your Honor [12] 2/10 2/21 5/13 5/23 9/4 9/7 9/20 10/15 10/21 12/6 12/12 12/19</p>