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	1	UNITE	ED STATES DISTRICT COURT
	2	EASTE	RN DISTRICT OF LOUISIANA
	3	*****	* * * * * * * * * * * * * * * * * * * *
	4	IN RE: XARELTO (RIVAR	
	5	PRODUCTS LIABILITY LIT	
	6		CIVIL ACTION NO. 14-MD-2592 "L" NEW ORLEANS, LOUISIANA
08:50:47	7	THIS DOCUMENT RELATES	THURSDAY, JULY 9, 2015, 9:00 A.M.
	8	ALL CASES	
	9	*****	***************
1	LO	TRANSCRIPT O	F STATUS CONFERENCE PROCEEDINGS
1	L1		E THE HONORABLE ELDON E. FALLON ED STATES DISTRICT JUDGE
	L2		
	L3	APPEARANCES:	
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1 P-R-O-C-E-E-D-I-N-G-S 2 MORNING SESSION THURSDAY, JULY 9, 2015 3 08:50:47 (COURT CALLED TO ORDER) 08:50:47 4 08:50:47 5 09:13:13 6 THE DEPUTY CLERK: All rise. 09:13:14 7 09:13:14 8 THE COURT: Be seated, please. Good morning, ladies 09:13:33 9 and gentlemen. Call the case, please. THE DEPUTY CLERK: MDL 2592, In re: Xarelto Products 09:13:35 10 09:13:40 11 Liability Litigation. 09:13:42 12 THE COURT: Would counsel make their appearances for 09:13:44 13 the record. Liaison. 09:13:44 14 MR. DAVIS: Good morning, Your Honor. Leonard Davis, Herman Herman Katz, plaintiffs' coliaison. 09:13:46 15 MR. IRWIN: Jim Irwin for defendants. Good morning. 09:13:50 16 THE COURT: We're a little late getting started because 09:13:52 17 09:13:55 18 unfortunately we had a problem with the call-in number, so 09:13:58 19 people hopefully now have the right number, and they will be 09:14:02 20 getting some more as they call in. 09:14:04 21 We're at the stage in this litigation now where 09:14:10 22 our infrastructure for the litigation is established. We've 09:14:14 23 got protocols in place, and the methodology of the litigation 09:14:21 24 is pretty well established, and now the parties are proposing 09:14:26 25 and I've worked with them this morning on an agenda for cutoff

09:14:31 1 dates for production of documents.

09:14:342As you can imagine in these cases, there are a09:14:383lot of documents. Millions of documents have to be looked at09:14:414first by the defendants and then produced, and then the09:14:465plaintiffs have to look at them and get them in order, and then09:14:496the depositions start.

09:14:517We've talked about the numbers of depositions.09:14:558We've also set trial dates for four cases for bellwether trials09:15:009to begin, and we're at that stage now.

09:15:0610Let's take them in the order. The pretrial09:15:1011orders.

09:15:11 12MR. DAVIS: Good morning, Your Honor. Since the last09:15:17 13status conference, there have been a few pretrial orders. And,09:15:21 14again, I refer those that are on the phone to the Court's09:15:25 15website that's located at www.laed.uscourts.gov/Xarelto so they09:15:37 16can view joint reports, pretrial orders, and other matters that09:15:41 17the Court posts on its website.

09:15:4318Since the last status conference, the Court09:15:4819issued Pretrial Order No. 13(a) and 14(a), which was on09:15:5420June 23. The Court also issued Pretrial Order No. 19 and09:15:5821Pretrial Order No. 20. All of those are outlined on the09:16:0322Court's -- are available, rather, on the Court's website, and09:16:0623they are outlined in Section 1 of the Joint Report.

09:16:09 24With respect to Item No. 2, Case Management09:16:15 25Orders, there is nothing new to report.

09:16:17 1 Item No. 3 is Proposed Case Management Order No. 2. As Your Honor mentioned earlier, we moved on to areas 09:16:21 2 09:16:28 3 other than the infrastructure, including setting document productions for certain dates and the like. 09:16:34 4 09:16:37 5 The parties met with Your Honor, and we will be 09:16:40 6 reporting back to you within a week with respect to a proposed CMO that we hope will get in shape that the Court will approve, 09:16:44 7 09:16:51 8 and it will lay out items such as document production, deposition dates, trial dates, various issues regarding 09:16:59 9 selection of bellwethers and the like. 09:17:03 10 09:17:07 11 THE COURT: What we've done with regard to the 09:17:11 12 bellwethers, thus far in this litigation in this court, we have 09:17:21 13 about 1,200 cases. Every state is represented. It looks like 09:17:26 14 that the projection is that we'll have between six and 7,000 cases. We have about 1,200 now in this litigation. 09:17:30 15 09:17:34 16 I received reports from liaison, our state 09:17:39 17 liaison counsel that there are about a couple hundred cases in 09:17:43 18 the various states, primarily in Pennsylvania; although, there 09:17:49 19 are a few in New Jersey and some in Michigan. 09:17:55 20 We're trying to, at this point, develop what we 09:18:01 21 call a *discovery pool* because if you've got six or 7,000 cases, 09:18:08 22 you can't begin picking bellwether cases until you know what's 09:18:13 23 in that discovery. There is no sense in taking 6,000 plaintiffs and 6,000 treaters before you're able to pick the 09:18:16 24 09:18:20 25 bellwether cases.

09:18:211So, we're going to pick a discovery pool of about09:18:27240 cases. We'll have 10 picked by the plaintiffs, 10 picked by09:18:323the defendants, and 20 picked randomly. Hopefully that will09:18:394mirror the census of the litigation.

09:18:435Those cases then will be discovered. The09:18:466plaintiffs will be taken, the treater, the prescriber, the09:18:517agent, and things of that sort for each of those cases. Then09:18:578once that is finished, then the parties will be able then to09:19:029realistically and intelligently pick the bellwether cases from09:19:0710that pool.

09:19:0711We'll try approximately four cases, and we'll try09:19:1612two in Louisiana, one in Mississippi, and one in Texas.09:19:2213Potentially one in other states, too, but we'll see where we go09:19:2514with those. That's the methodology that we're working on. Of09:19:3215course, before the depositions can be taken, the document09:19:3916discovery has to be produced, and that's where we are at this09:19:4217point.

MDL Centrality is the next item.

09:19:42 18

09:20:05 25

09:19:4619MR. DAVIS: Yes, Your Honor. If I may, just right09:19:4820before that, as a counsel contact information point, if might09:19:5121remind counsel we have gotten some additional ones in since the09:19:5522last status conference. I just remind counsel if they haven't09:19:5823filled out the form, please do so so that they can get09:20:0124information and be included in Centrality and the like.

No. 5, MDL Centrality, there is nothing to report

09:20:09 1 at this time. As the Court is aware, Jake Woody is present in 09:20:13 2 the courtroom.

09:20:143THE COURT: Jake, you've got a report. Do you want to09:20:164come forward?

09:20:175MR. DAVIS: MDL Centrality is in place and the profile09:20:226forms are being uploaded. We've had a number of communications09:20:277with Jake over the last few weeks and advised him of certain09:20:318kinks that are being addressed, and if folks do have kinks,09:20:359please let us know with MDL Centrality. Jake has been09:20:4110available and he is here to present to the Court.

09:20:43 11

THE COURT: Okay.

09:20:4612MR. WOODY: Good morning, Your Honor. My name is09:21:0513Jake Woody from BrownGreer. I have a very brief presentation09:21:1014on the status of MDL Centrality and the faction process.

09:21:1315To date we have 1,084 fact sheets in the system.09:21:1816Of those, 550 have been submitted to the defendants. Another09:21:2217534 are in progress. This number changes every day as people09:21:2718begin the process with new fact sheets and also submit fact09:21:3119sheets through the system.

09:21:31 20The first deadline to submit fact sheets was09:21:37 21July 3rd. As you can see from this chart of the submission09:21:42 22activity over time, we received the bulk of fact sheets09:21:45 23beginning on July 1st and continuing on the 2nd and 3rd. On09:21:51 24the 2nd alone we received 166, which is a significant portion09:21:55 25of the total fact sheets submitted.

09:21:571As you can also see, the volume has returned to a09:22:012lower level. The deadlines are now rolling based on when09:22:043people came into the MDL either through a direct file or a09:22:084transfer. Not everybody has the same deadline any longer, and09:22:115we expect the submissions to be a fairly low volume but09:22:166occurring very frequently over the next few months and years.

09:22:197Just a few quick statistics for you. There09:22:258are -- 214 firms are registered with us, and from those firms09:22:319527 unique users of the system. 115 firms have submitted at09:22:3610least one fact sheet. We have 7,504 documents uploaded by09:22:4211plaintiffs' medical records, HIPAA authorizations, things of09:22:4612that nature.

09:22:48 13 The largest file we have in the system is 09:22:51 14 382 megabytes. I mention that because we receive questions 09:22:54 15 fairly often about whether there is a size limit on what people 09:22:58 16 can upload. There is a limit. It is about 3 gigabytes, which 09:23:03 17 is about 10 times the size of the largest document we have in 09:23:06 18 the system, so there shouldn't be any problem uploading documents. Medical records and things of that sort can get 09:23:08 19 09:23:11 20 fairly large, but the system can accommodate almost any 09:23:14 21 document.

09:23:14 22Finally, we have distributed 258 pleadings and09:23:19 23orders through MDL Centrality to plaintiff users. We are able09:23:22 24to download those from the ECF notifications that the Court09:23:27 25enters and distribute them by e-mail to all the plaintiff

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09:23:30 1 users. We have been able to attach the documents to each 09:23:33 2 e-mail so far.

09:23:343I do want to mention, now that we have a number09:23:404of fact sheets submitted, the procedure to revise a fact sheet09:23:445that has already been submitted. To do that you can simply09:23:486search for the plaintiff and go to the fact sheet as you would09:23:517if you were filling it out. You have to unlock the fact sheet.

09:23:548I've provided a screen shot here. There is an09:23:569unlock button at the bottom of the screen. If you click that09:24:0310button, you'll be able to revise any answer you've already09:24:0611provided.

All the data you've already provided will be available, so you can revise it, amend it, and simply submit it again through the normal process, and we will save it as version two of the fact sheet so that we have a history of the fact sheets that have been submitted.

09:24:20 17If you simply need to upload a new document that09:24:23 18wasn't previously available, you do not need to unlock it. You09:24:26 19can just use the upload feature and upload that document09:24:28 20through normal system.

09:24:30 21Finally, I want to give our contact information.09:24:34 22The website for MDL Centrality is09:24:43 23www.MDLCentrality.com/MDL2592. You can e-mail us at09:24:46 24MDLCentrality@browngreer.com. And our telephone number is09:24:49 25(804) 521-7200.

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I do also want to mention that Judge New in 09:24:53 1 Pennsylvania entered a Case management Order yesterday that 09:24:55 2 requires the use of MDL Centrality for the Pennsylvania state 3 cases. The system will be identical, the fact sheet is 09:25:01 4 identical, and the authorizations are the same, and we will 09:25:04 5 have that up for anybody who needs to use it very shortly. 6 09:25:09 7

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THE COURT: Okay. Fine. Thank you very much.

We're trying this for the first time in an MDL, 09:25:12 8 and so far it's working. It's still, to some extent, a work in 09:25:15 9 progress. We're tweaking it. We worked with Jake and his 09:25:23 10 09:25:27 11 group initially to get the format, and this Centrality does two 09:25:37 12 things:

09:25:37 13 One, it gives us the opportunity to have the fact 09:25:40 14 sheets digitized, and with that we are able to look at various 09:25:48 15 categories or potential categories, and that's helpful both in 09:25:53 16 the selection of the discovery cases, discovery pool cases, as 09:25:56 17 well as the bellwether cases. So that's a big benefit.

09:26:01 18 Secondly, it's also helpful in the service of 09:26:05 19 documents. A document is filed here in federal court, and it's 09:26:11 20 immediately uploaded to Centrality and e-mailed to everybody so that the documents can be given to anybody who is registered in 09:26:18 21 09:26:25 22 the litigation. That's why it's important that the lawyers who 09:26:30 23 have cases in this litigation register so that they can get all 09:26:32 24 of that information.

I talked to Judge New about it on several

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09:26:38 1 09:26:41 2

occasions, and he indicated that he was going to utilize it also, so that, I think, would be helpful.

09:26:45 3 MR. DAVIS: Your Honor, on Plaintiff Fact Sheets, I want to remind counsel, because we have received some fact 09:26:48 4 sheets that have been mailed in, I believe, or e-mailed in to 09:26:53 5 Jim Irwin's office and our office, and I want to remind all 09:26:57 6 counsel that Centrality is the place, and there is a pretrial 09:27:01 7 order specifically on that, Pretrial Orders 13(a) or 13 on 09:27:05 8 uploading profile forms to Centrality. That's the location 09:27:11 9 09:27:15 10 where they go, specifically for the reasons as Your Honor outlined a moment ago. 09:27:19 11

09:27:2212THE COURT: If anybody on the phone has any difficulty09:27:2413with that, call the number that Jake just gave us, and they09:27:3114will walk you through it, and you'll get familiar with it very09:27:3515quickly.

09:27:36 16 MR. DAVIS: There have been recent, since the filing of 09:27:41 17 some of the profile forms, a number of counsel who have made 09:27:45 18 requests for extensions. As the PSC mentioned before at the 09:27:51 19 last status conference, we will continue to monitor profile 09:27:55 20 forms and will assist counsel if they need some assistance, but we do encourage counsel to get their profile forms in timely, 09:27:58 21 09:28:05 22 and if they need an extension they should reach out to 09:28:09 23 Jim Irwin, who is liaison counsel.

09:28:12 24There is a grace period in there if there is a09:28:16 25problem, but we encourage counsel to submit what they can in a

09:28:21 1 profile form as complete as they have it. They can always
09:28:24 2 supplement it, and if, in fact, they need an extension beyond
09:28:29 3 the grace period that's provided for in the pretrial order,
09:28:33 4 then, as Your Honor has directed us in the earlier conference,
09:28:39 5 we will tell individuals that they should be filing a motion to
09:28:42 6 the Court.

09:28:427THE COURT: Right. It's important that the profile09:28:458forms be filed because we're working on a very tight schedule.09:28:489We have our first trial in this case, September 12, 2016, our09:28:5410next one October 17, 2016, our third one December 5, 2016, and09:28:5811the last one January 16, 2017.

We're working on that type schedule with these 09:29:03 12 09:29:07 13 selection of cases. Usually, in addition to the general 09:29:15 14 discovery which takes a lot of depositions and a lot of discovery, the depositions of those cases that are set for 09:29:18 15 09:29:24 16 trial that are even in the discovery pool, it will take four 09:29:31 17 for each case primarily, and so if you're dealing with 40 cases 09:29:36 18 you can you can see how many depositions that need to be taken 09:29:39 19 before those cases can be selected. In order to get in on that 09:29:43 20 mix, you're going to have to give your document so that you can 09:29:47 21 get into that pool.

09:29:50 22MR. DAVIS: The next item on the agenda is Defendant09:29:53 23Fact Sheets. Thus far we have not received any Defendant Fact09:29:57 24Sheets but now that Plaintiff Fact Sheets have been provided,09:29:59 25we expect that defendants will be submitting their fact sheets

on a timely basis, as that's critical toward these trial dates
that Your Honor has identified. So we'll be looking for those.
The next item on the agenda is Bundling of
Complaints. The proposed PTO 11(b) was submitted to the Court.
We know that the Court has that under advisement, and we know
that a number of bundled complaints have been provided to the
Court.

Just remember, and I'll put this in an 09:30:37 8 THE COURT: 09:30:41 9 order also, that the filing of the amended complaint, if you 09:30:47 10 file for an amendment, the time for filing amendments starts, 09:30:52 11 as we know, without court approval, you can amend it within 30 days. Well, the 30-day period starts when you file a 09:30:56 12 09:31:00 13 bundled complaint, not when you break it out into individual complaints. On the other hand, summons should be filed with 09:31:06 14 09:31:09 15 the severed case so that you don't have to -- you issue a 09:31:17 16 summons in each of those cases. I'll put this out in a minute 09:31:21 17 entry so that you all have that.

Anything on Preservation Order?

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MR. DAVIS: No, Your Honor. There is nothing on be preservation order. However, there will be a deposition of J&J and Bayer going forward on July 15th and 16th. These are what I call *IT depositions*.

09:31:40 23Bayer and J&J has advised us this morning that09:31:44 24they will be providing to us today the names of the individuals09:31:47 25who will be the corporate representatives as well as what I've

09:31:51 1 called standard operating procedure documents. We'll get those
09:31:57 2 today in advance of the deposition. That deposition will be
09:32:01 3 taken by the PSC or its designee.

09:32:054The notice that was filed does have a provision09:32:095in it for a call-in number, but based upon the discussions that09:32:136we had earlier today, we will not be having a call-in for that09:32:177deposition, and I just wanted the Court to be aware of that.

THE COURT: Right.

09:32:21 8

09:32:229MR. DAVIS: The next item, No. 10, Discovery. We have09:32:33 10received documents from the defendants. Defendants have09:32:35 11advised that they will be providing additional documents. We09:32:39 12are anxiously awaiting them, and we are reviewing these09:32:41 13documents as they come in.

09:32:43 14Obviously, Your Honor, we will need to review09:32:46 15those documents in order to meet a trial date. We appreciate09:32:50 16the Court giving us the opportunity to have biweekly status09:32:56 17conferences with respect to documents and discovery items and09:33:00 18will address those as the need arises going forward.

09:33:04 19THE COURT: All right. So far the documents that have09:33:07 20been produced are 5 million a month. You're probably going to09:33:10 21have to step that up a bit. I'm not going to put any document09:33:14 22limit on it, but at least 5 million a month should be produced,09:33:19 23and those documents are forthcoming now.

09:33:23 24MR. DAVIS: We will address those with Your Honor in09:33:25 25the upcoming conferences.

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THE COURT: Okay.

MR. DAVIS: No. 11, Deposition Guidelines. That's
being worked on. I don't envision any problem with the
upcoming deposition, even though there isn't a deposition
guideline in this case. I think counsel know how to take a
deposition professionally, and you'll not have a problem with
that.

09:33:468No. 12, Discovery Issued to Third Parties. There09:33:539are two matters on this. One is the FDA and we spoke about09:33:5710that in the early meeting with Your Honor. The FDA has asked09:34:0211for Jansen or Bayer to consent to the production of their09:34:0712documents.

09:34:0713We spoke about that and I'm told that within a09:34:1214week we'll have something on that. We'll report back to the09:34:1515Court because we are anxious to have the FDA production09:34:1916provided. If there is an issue within a week, we'll get back09:34:2417to Your Honor, but hopefully we can avoid having an order.

Jim.

MR. IRWIN: Yes. Thank you, Mr. Davis.

09:34:31 20We are in consultation with the FDA about this,09:34:34 21Your Honor, and I will be getting back to Mr. Davis within a09:34:38 22week. I think Your Honor knows sometimes it's hard to move the09:34:42 23FDA along, and we're going to do our best, but I will be09:34:45 24talking to Lennie within the week.

THE COURT: All right. Fine.

09:34:481MR. DAVIS: The other third-party issue that's out09:34:512there is Duke, and Duke has communicated with us, and we've09:34:573advised defendants that they are in the process of determining09:35:014what the universe is of documents. We expect to hear back from09:35:065them, and hopefully they'll make a meaningful production, and09:35:106we'll go forward with that third-party discovery that's issued09:35:157to Duke.

09:35:158The next item on the agenda is State/Federal09:35:209Coordination, and Ms. Barrios is here.

09:35:22 10

MS. BARRIOS: Thank you, Mr. Davis.

09:35:3211Good morning, Your Honor. Dawn Barrios for the09:35:3412state/federal committee. I've handed your law clerk the court09:35:3813status in state court that we put together, and again, I would09:35:4214like to thank the defense for so timely providing us with the09:35:4515information that we've requested.

09:35:46 16For the record, there is one case in Illinois,09:35:49 17one case in Indiana -- I'm sorry, two cases in Indiana, one in09:35:54 18Missouri, three -- 6 in New Jersey, and the bulk is in09:36:02 19Pennsylvania at 263. That brings the total to 273. The change09:36:08 20from the last status conference is really 36 in Pennsylvania09:36:13 21and one in Illinois.

09:36:15 22As Mr. Woody said, Judge New entered the Case09:36:21 23Management Order, and he specifically ordered the parties to09:36:24 24cooperate in discovery with the MDL. They are doing so. The09:36:30 25depositions referred to by Mr. Davis about the IT systems have

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been cross-noticed in Pennsylvania, so those are going forward. Everything looks like it's going smoothly, Your Honor.

09:36:423THE COURT: Okay. Keep an eye on the coordination09:36:444because there is no sense in having the lawyers have to take09:36:485the same deposition in two or three different states, so we09:36:526really ought to take it with the understanding that it can be09:36:547used in those states so that we don't have to redo the09:36:588depositions. That's one advantage of working with the states.

09:37:019MS. BARRIOS: Yes, Your Honor. What I'll do is I'll09:37:0410contact the plaintiffs' lawyers in the various states.

09:37:0711MR. DAVIS: We have spoken to plaintiffs' liaison from09:37:1112Pennsylvania on a regular basis. We have told them that we09:37:1513will cooperate with them, and we expect that cooperation will09:37:2014go forward.

THE COURT: Okay. All right. Thank you very much.

09:37:2816MR. DAVIS: Your Honor, I think the next item is the09:37:3117next status conference.

09:37:33 18THE COURT: August 4th, 2015, does that work for you09:37:34 19guys? August 4th?

09:37:36 20MR. DAVIS: Mr. Meunier will be here for that. I know09:37:40 21that's a change, just so folks know, that's a change from where09:37:43 22it was before. August 4th is okay with us.

09:37:48 23THE COURT: Anything from anybody in the --09:37:51 24MR. DAVIS: Your Honor, you had mentioned a September09:37:54 25also, I believe.

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09:37:56 1	THE COURT: September 17th.
09:37:59 2	MR. IRWIN: Good for us, Your Honor.
09:38:01 3	THE COURT: Will that work?
09:38:02 4	MR. DAVIS: That's good for us, Your Honor.
09:38:04 5	THE COURT: Okay. Folks, thank you very much. Court
09:38:08 6	will stand in recess.
09:38:10 7	THE DEPUTY CLERK: All rise.
8	(WHEREUPON, at 9:39 a.m. the proceedings were
9	concluded.)
10	* * *
11	
12	
13	REPORTER'S CERTIFICATE
14	
15	I, Cathy Pepper, Certified Realtime Reporter, Registered Merit Reporter, Certified Court Reporter in and for the State
16	of Louisiana, Official Court Reporter for the United States District Court, Eastern District of Louisiana, do hereby
17	certify that the foregoing is a true and correct transcript to the best of my ability and understanding from the record of the
18	proceedings in the above-entitled and numbered matter.
19	s/Cathy Pepper
20	Cathy Pepper, CRR, RMR, CCR Certified Realtime Reporter
21	Registered Merit Reporter Official Court Reporter
22	United States District Court Cathy_Pepper@laed.uscourts.gov
23	
24	
25	
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