

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN)
PRODUCTS LIABILITY LITIGATION

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MDL 2592 "L"

February 23, 2016

Judge Eldon E. Fallon

THIS DOCUMENT RELATES TO
ALL CASES

Mag. Judge Michael North

**REPORTER'S OFFICIAL TRANSCRIPT OF THE STATUS CONFERENCE
BEFORE THE HONORABLE ELDON E. FALLON,
UNITED STATES JUDGE.**

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1 P R O C E E D I N G S

2 (Call to order of the court.)

3 THE COURT: Be seated, please.

4 Good morning, ladies and gentlemen.

5 19:05:39 Let's call the case, please.

6 THE CASE MANAGER: MDL 2592, *In Re: Xarelto Products*
7 *Liability Litigation*.8 THE COURT: Ladies and gentlemen, make your appearances
9 for the record, please.10 19:05:52 MR. DAVIS: Good morning, Your Honor. Leonard Davis on
11 behalf of plaintiffs.

12 MR. IRWIN: And Jim Irwin for Bayer and Janssen.

13 THE COURT: We're here today for our monthly status
14 conference. We have a number of people on the phone so please
15 19:06:08 use the microphone.16 I met a moment ago with the liaison lead counsel to
17 discuss the proposed agenda. Let's take it in the order it's
18 given.

19 Anything on pretrial order, No. 1?

20 19:06:21 MR. DAVIS: Yes, Your Honor. Since the last status
21 conference, there have been a couple new pretrial orders that
22 have been issued. Specifically, Pretrial Order 11-D, which
23 updates the exemplar joint complaint.24 And I'll speak more about that when we get to that in
25 19:06:42 the joint report with respect to bundling of matters.

1 In addition to that, Pretrial Order No. 23 was entered
2 on February 17th, which sets forth deposition guidelines.

3 And I'll talk about depositions later in the discovery
4 section.

19:06:59

5 THE COURT: Anything on case management orders?

6 MR. DAVIS: There is nothing new to report, Your Honor.

7 THE COURT: And bellwether selection, how is that
8 going?

19:07:10

9 MR. DAVIS: Your Honor, we are moving forward with the
10 bellwether pool that has been selected.

11 As the Court's aware, there was a pool that was
12 prepared, and the parties have suggested and proposed to the
13 Court that a notification be provided to all who are in the pool.
14 And we understand that Your Honor desires for that to occur.

19:07:28

15 THE COURT: Right. What we're trying to do in this
16 matter is that, in the bellwether process and the selection, the
17 problem in the past has been that the defendants legitimately
18 indicate that they don't know much about the cases, so it's very
19 difficult for them to pick the bellwether cases.

19:07:50

20 Also the plaintiffs may not know about the case -- at
21 least the PSC may not know about the cases.

19:08:12

22 So what we are trying to do is to get a grouping of
23 about 40 cases, which hopefully mirror the census of the
24 litigation. That can be done a little bit better than you can do
25 by taking six cases.

1 So we take this pool of about 40 cases. Hopefully,
2 they will mirror the litigation -- or at least do a better job of
3 that.

4 Then the parties drill down on those cases. They
5 discover those cases. Those are the cases that are subjected to
6 rigorous discovery.

7 After that process is finished, then the bellwether
8 cases come from those cases.

9 But individuals ought to know whether or not their
10 cases have been involved in the bellwether pool, because many of
11 them are calling and trying to find out. It's important for
12 everybody to know, this is the bellwether pool. And they can see
13 whose attorney is in the bellwether pool and whose is not.

14 Of course, I'm told that it's a broader base. It's not
15 just the PSC members' cases. It's more than those cases. It's a
16 whole grouping of the cases, both inside and outside of the PSC,
17 so that everybody has a shot at it, and we'll deal with it in
18 that form.

19 But I will get out an order listing the cases that are
20 in bellwether.

21 MR. DAVIS: The PSC has met and had a number of
22 discussions. And in particular, Co-Lead Counsel Andy Birchfield,
23 is heading up, for the PSC, the coordination and organization of
24 the plaintiff bellwether selections and is meeting and has
25 ongoing meetings with counsel to address the various issues.

1 So there is a coordinated effort on the plaintiffs'
2 side for this process, and if anyone has questions, they should
3 feel free to contact Andy Birchfield or anyone on the executive
4 committee.

09:10:10 5 But we are reviewing the various cases, and as
6 Your Honor just mentioned, the discovery process is going to
7 embark upon us. We're looking at profile forms -- and I know
8 defendants are looking at profile forms -- and as issues come up
9 with those, whether they be deficiencies or the like, those
10 issues will have the meet-and-confer process. And then we will,
11 if necessary, bring any issues to the attention of the Court.

12 THE COURT: Okay.

13 MR. DAVIS: Counsel contact information forms, I bring
14 that really for the attention of those who haven't turned in
09:10:47 15 their contact form. We continue to get them. But it's very
16 helpful for folks, especially those on the phone who aren't
17 familiar with it, to visit the Court's website and send in the
18 contact information form and register at Centrality so that they
19 can get pleadings and other information regarding filings.

09:11:08 20 On plaintiff fact sheets, which is Section 5 of the
21 joint report, we encourage, as the Court has done in the past,
22 that fact sheets get submitted timely. Those are important for
23 keeping track of the various cases that are in this MDL. And as
24 the Court has addressed in prior status conferences, and as both
09:11:41 25 plaintiffs and defendants have addressed, we've gone through the

1 process of looking at deficiencies that are claimed by the
2 defendants, specifically, with respect to two areas. One is the
3 Xarelto use, and the second being failure to submit a profile
4 form.

09:12:02 5 We have had ongoing meet-and-confers with the
6 defendants, and we have attempted to address the alleged
7 deficiencies with defendants and also assist the Court in getting
8 plaintiffs, who defendants claim haven't complied, to the table
9 so that they can address these alleged deficiencies.

09:12:28 10 After a time period, we have gone through various names
11 that defendants have provided, and most recently defendants have
12 filed rules to show cause on Xarelto use and failure to submit
13 profile forms.

09:12:52 14 There are 193 cases that are subject to a recent motion
15 that was filed, and 115 of those deal with Xarelto use and 78 of
16 those are failure to submit profile forms.

09:13:20 17 Those motions, or rules to show cause, were filed, and
18 I expect that we will have noticed shortly the actual date of
19 those, which are going to be set on March 16th so that all of the
20 claimants and the counsel, who are in those 193 cases, have
21 sufficient notice that the intent is for them to come to court
22 and show cause as to why the issue should or should not be dealt
23 with by the Court. And we encourage those lawyers to address
24 those issues and reach out to deal with the issues.

09:13:52 25 Sindhu Daniel from our side has been involved with many

1 of the lawyers in an attempt to try to get the responses in; and
2 I encourage folks that, if they have any questions on the
3 plaintiffs' side, to reach out to leadership and see if we can
4 assist in some way to try to get these matters resolved before
5 the hearing on March 16th.

09:14:12

6 THE COURT: They need to know that if they're not
7 resolved, then the cases may well be dismissed. So it's
8 important to comply with the fact sheet requirements. If you
9 don't want to comply, then you shouldn't be in the litigation.

09:14:31

10 MR. DAVIS: We will continue to help and try to assist
11 with those matters, Your Honor.

12 THE COURT: All right. Good.

13 MR. DAVIS: In addition to that, we've had discussions
14 with defendants regarding various extensions that have been filed
15 with the Court for providing a plaintiff fact sheet. Defendants
16 have asked that if, in fact, a request is made, that a prior
17 reaching out or meet-and-confer occur in particular with
18 Jim Irwin, defense liaison counsel, so that they can address the
19 time frames and either consent or provide some type of response
20 to that.

09:14:44

09:15:14

21 But it is helpful to get the fact sheet in on a timely
22 basis, and we encourage that. And if folks have an issue with
23 respect to submitting a plaintiff fact sheet, that they do their
24 best to submit it now. You can always supplement it, but get the
25 thing submitted as soon as possible. You have a time frame under

09:15:36

1 the Court's order. And if you have problems with that, submit
2 what you can now, and it can always be supplemented as you get
3 more materials.

4 I think, Your Honor --

09:15:52 5 THE COURT: How about defendant fact sheets?

6 MR. DAVIS: With respect to defendant fact sheets,
7 we've addressed those issues with the defendants; and if there
8 are deficiencies, we'll raise those with the defendants and meet
9 and confer. And if we feel that issues need to be brought to the
10 Court's attention, we will do that.

09:16:12

11 But there is an ongoing dialogue right now regarding
12 defendant fact sheets.

13 THE COURT: Next item, bundling.

09:16:24

14 MR. DAVIS: We have had ongoing discussions with the
15 defendants regarding the template, which has been posted on the
16 Court's website.

17 And I said I would come back to this earlier when I
18 spoke about the new pretrial orders.

09:16:43

19 Specifically, Pretrial Order No. 11-D, which was
20 entered January 27th, allowed for a new exemplar joint complaint
21 to be posted on the Court's website. That is really to be used
22 as a guidepost and is not intended to provide any type of legal
23 advice, Your Honor. It's just an exemplar, which the Court,
24 quite frankly, asked that we provide so that folks could use it.

09:17:11

25 But there are ongoing activities with respect to

1 defendants and their jurisdiction that we're mindful of, and we
2 want all counsel to be aware of. Specifically, the citizenship
3 of some of the Bayer, LLCs are at issue, so reliance on that
4 exemplar should be done with caution. And we are continuing to
5 have discussions with defendants regarding jurisdiction issues.

09:17:38

6 THE COURT: Yeah. That's important to reinforce, and
7 that is that the attorneys, who are going to use this exemplar,
8 can't just routinely adopt it. They have to tailor it to their
9 facts and their case. And it's up to them to make sure that
10 whatever they file is consistent with their case and not just
11 utilize the exemplar blindly.

09:18:04

12 It's your responsibility, as attorneys, to design the
13 form that best fits your case. You can have forms, but you can't
14 just rely on those forms. You have to make a decision on your
15 particular case before filing it.

09:18:27

16 What about the preservation order?

17 MR. DAVIS: There is nothing new to report, Your Honor.

18 THE COURT: Nine is the woodshed motion? Is that --

19 MR. DAVIS: Yes, Your Honor. That's to be argued after
20 this status conference.

09:18:44

21 THE COURT: Right.

22 And discovery?

23 MR. DAVIS: With respect to discovery, we have
24 addressed, in the earlier conference, the new personnel file
25 issue, and we'll defer that matter at this time.

09:18:55

1 THE COURT: Deposition guidelines, have y'all been able
2 to --

3 MR. DAVIS: Deposition guidelines, as I mentioned
4 earlier, Pretrial Order No. 23 was issued on December 17th, and
5 so that's now in place.

6 THE COURT: And the depositions are ongoing, and I
7 think you have one coming up tomorrow in Germany?

8 MR. DAVIS: We have depositions of German witnesses.
9 They are being taken in Amsterdam, Your Honor. Those depositions
10 are proceeding.

11 We've also had depositions up in New Jersey going
12 forward, and we have more that are scheduled. And I expect that
13 those depositions will continue as we had expected. And if
14 issues arise, we'll address those in the biweekly conferences
15 that we have with the Court, which have been very helpful.

16 THE COURT: And the scheduling, as I understand it, is
17 to take the depositions of the -- on issues of general causation
18 and then go into the plaintiffs. Is that correct?

19 MR. DAVIS: At this point, we are taking depositions
20 that involve the totality of the case. So they are general in
21 nature; they are not specific as to individual plaintiffs or
22 individual causation.

23 THE COURT: All right.

24 MR. DAVIS: But defendants have been producing
25 documents. We have been going through those through our

1 depository. We have a discovery committee that has gone through
2 the documents with a number of folks who are working to review
3 documents in order to prep for these depositions and in order to
4 take the various documents that have been produced and put them
5 in a package so that we can utilize them through this case.

09:20:31

6 THE COURT: All right. The depositions that are being
7 taken, they can be utilized in state court litigation also; is
8 that right?

9 MR. DAVIS: The deposition --

09:20:43

10 THE COURT: Is anybody from the state court liaison
11 here?

12 MS. BARRIOS: Your Honor, I believe Philadelphia is
13 participating in those depositions.

14 THE COURT: Okay.

09:20:51

15 MR. DAVIS: There is a coordination effort with the
16 state liaison, who has been involved in the depositions, is aware
17 of the depositions that are being set, and, in fact, they have
18 had representatives at the depositions. And I'm sure that they
19 are reporting back to their judge, wherever they are, whether it
20 be Philadelphia or the like. But they have been active, and they
21 have been participating in the depositions, Your Honor.

09:21:12

22 THE COURT: Okay.

23 MR. DAVIS: With respect to Item No. 12, discovery
24 issue to third parties, there are ongoing discussions with the
25 FDA as well as DCRI, Duke Clinic. And we expect to be receiving

09:21:26

1 additional documents that are responsive to the subpoena from
2 those third parties.

3 With respect to state/federal coordination, Ms. Barrios
4 is here.

09:21:45

5 MS. BARRIOS: Thank you, Mr. Davis.

6 Pardon me, Your Honor.

7 (A pause in the proceedings.)

8 MS. BARRIOS: Good morning, Your Honor. Dawn Barrios
9 for the federal/state committee.

09:22:05

10 I provided your law clerk with the Xarelto state court
11 stats as of yesterday. And if you'll note, going through the
12 four pages, there's been a total of 112 Xarelto users added
13 throughout the other states.

09:22:30

14 We have a change in the number of cases filed in state
15 court by 89.

16 So as you can see, the cases continue to go through
17 state court.

09:22:46

18 As of Pennsylvania, they had a status conference
19 yesterday before Judge New. Everything was moving along swiftly
20 just as Lenny reported to you.

21 Mr. Weinkowitz and Mr. Gallucci reported to Judge New,
22 and no trial date has yet been set in Pennsylvania.

09:23:08

23 I've been alerted by one of our PSC members,
24 Ms. Relkin, that there is a petition for a JCCP filing in
25 California, and I have a copy of that petition for you,

1 Your Honor. And there will be a hearing on March 25th. The
2 petition and it's attachments have a total, I think, of eight
3 cases, but I understand that many more will be filed shortly.

09:23:30

4 THE COURT: Okay. Before a court or several courts in
5 California?

6 MS. BARRIOS: It's before one court. Sort of like the
7 JPML.

8 THE COURT: Okay.

9 MS. BARRIOS: Thank you, Your Honor.

09:23:38

10 THE COURT: Thank you.

11 MR. DAVIS: Your Honor, I failed to mention earlier
12 when I talked about fact sheets that BrownGreer is present and
13 able to give a report. They're here, and I know that the Court
14 wants a report from BrownGreer.

09:23:53

15 THE COURT: Yes, right.

16 (A pause in the proceedings.)

17 MR. WOODY: Thank you, Your Honor. My name is
18 Jake Woody from BrownGreer here to give just a brief report on
19 the MDL Centrality in the Xarelto matter.

09:25:31

20 So far we have 3,978 plaintiff fact sheets submitted.

21 We have another 1,639 in progress.

22 That gives us a total of 5,617 plaintiffs in the
23 system.

09:25:50

24 We do have another 1,320 plaintiffs who have amended
25 their fact sheet.

1 As Lenny mentioned earlier, you can amend a fact sheet
2 at any time through the system by following the same procedure
3 that you followed when you submitted the original fact sheet.

4 In terms of our time frame of receiving fact sheets,
5 the first deadline to submit a fact sheet was in July of last
6 year. Ever since that time, we've received a really consistent
7 number of fact sheets every month.

8 The average is about 480 plaintiff fact sheets every
9 month. That has been very consistent, and I expect -- based on
10 the number of cases filed, I expect that to continue for the
11 foreseeable future.

12 Defendant fact sheets are very similar. And as you can
13 see, the pace of submission matches the pace of submission of the
14 plaintiff fact sheets.

15 We have a total of 4,009 defendant fact sheets
16 submitted, split fairly evenly among the two defendants. And so
17 far in February alone, we had 1,041 defendant fact sheets
18 submitted.

19 Defendants submit those through MDL Centrality. To
20 view those, you can log in, and they're available in the
21 documents associated with the file along with any documents
22 uploaded in support of the defendant fact sheet.

23 I wanted to talk briefly about the demographics that we
24 can pull from MDL Centrality.

25 We have 51 percent of all the plaintiff fact sheets are

1 from men and 49 percent are from women.

2 I've broken the age of injury into several categories.

3 I wanted to mention in particular the fact that three
4 quarters of all plaintiffs have injuries when they're between 60
5 and 89.

09:27:39

6 And I think that's indicative of this particular
7 product.

8 And I think these facts are important, because, if you
9 take the bellwether pool, the 40 cases, 21 are from men and 19
10 are from women, so that matches our overall pool very well.

09:27:54

11 And likewise, 30 of the 40 allege an injury between 60
12 and 89, so that matches the three quarters that you see in the
13 overall population as well.

14 So I think that's indicative of a fairly good start to
15 the bellwether pool. I wanted to mention -- because this is the
16 whole reason for the system, is to be able to match important
17 things like the bellwether pool, the demographics, to the overall
18 MDL.

09:28:13

19 THE COURT: Yes, that's what we're trying to do in this
20 case and in other cases, in MDLs, is to get out front immediately
21 and see whether or not we can get information that first
22 determines whether or not somebody is even taking the drug.
23 That's key.

09:28:26

24 And you would think that that would be a no-brainer,
25 but you find that a lot of people think they took the drug, and

09:28:46

1 when they have to fill out a form, they find out they didn't take
2 the drug. Or they did, but it's been two, three, four, five or
3 ten years ago.

4 So at least it gives you an opportunity to look at
5 those cases, scrutinize those cases a little bit more quickly to
6 determine whether or not they should or should not be in the
7 litigation.

8 But then when you get through with that grouping, it's
9 helpful to be able to look at the census. And we've got enough
10 cases now in here that probably this is going to be indicative of
11 the census as it continues because there's enough cases.

12 And when you are dealing with bellwethers, there's no
13 sense in picking all of the bellwether cases from age 17 to 39,
14 because that's only 3 percent of the whole litigation. That
15 won't give you any information that you need.

16 So this will help you pick the bellwether cases, the
17 pool, a little bit better. And then you'll be able to pick your
18 bellwether cases from that pool. The pool will be more
19 representative of the litigation, and this will help you do that.

20 I think we're moving in that direction with MDLs. We
21 probably have to figure out a little bit more about the fact
22 sheets and put sections in it so you can get a quick view of the
23 scope of the litigation immediately. And then if it has to be
24 supplemented, they can supplement it, but it won't change the
25 census data. You'll be able to know what you're dealing with as

1 a litigant; put your hands around it a little bit more quickly.

2 It's been very difficult before we had this technology,
3 because you had to put in various groupings, a hard copy, and it
4 was just very difficult to deal with. It's becoming easier with
5 the technology. And we're learning from this process, but I
6 think that we're onto something with the future MDLs.

7 MR. WOODY: I would also like to mention the states
8 where people are from, where the plaintiffs are from. I haven't
9 listed all 50 states here; although we do have PFSs from all 50
10 states. I've listed the top 20.

11 And you can see that Texas has the most with 349, which
12 is about 10 percent of the entire fact sheet population.

13 Louisiana is second with 282.

14 And California is third with 237.

15 I won't go through the whole list, but, again, this is
16 another piece of information that we're able to easily pull from
17 the fact sheets for use in whatever purpose the parties and the
18 Court would like.

19 I wanted to talk briefly about the system, who's using
20 it.

21 We have 321 firms, plaintiff firms, registered with MDL
22 Centrality in Xarelto.

23 1,120 people have access to the system and use it
24 regularly.

25 We have 47,982 documents uploaded. Those are medical

1 records, HIPAA authorizations, miscellaneous records. That's a
2 pretty significant number of documents. And, obviously, with
3 every fact sheet, there are about a dozen documents, so that
4 increases exponentially with fact sheet submissions.

09:32:15 5 The largest file we have in the system is
6 883 megabytes. I mention that because people ask whether we have
7 a limitation on files. When you talk about medical records,
8 obviously, those can be very large files. We do not have a
9 limit. And you can see that the largest file is pretty large.

09:32:31 10 That's about the size of a movie. If you were to download a
11 movie, that's how much that would be. That's a pretty big file.

12 And I just wanted to mention we do distribute pleadings
13 and orders through MDL Centrality. We save them in the database,
14 and e-mail them individually to people along with a summary at
09:32:48 15 the end of the day.

16 We have 2,464 pleadings served through MDL Centrality.

17 There have been, over the last few days, a lot of
18 documents coming through, and I wanted to remind people that you
19 don't want to receive notification of every individual pleading.

09:33:02 20 You can opt out of that process, and we can just send you a
21 summary at the end of the day. That's a chart that shows
22 everything.

23 If you want to opt out of the individual pleadings, you
24 can let us know by e-mailing us at MDLcentrality@BrownGreer.com.

09:33:16 25 If you change your mind later, we can always opt you

1 back in. That's an easy process for us.

2 And the portal is available at
3 www.MDLcentrality.com/MDL2592.

4 Again, you can e-mail us with questions about anything,
5 including those pleadings that I mentioned, at
6 MDLcentrality@BrownGreer.com.

7 And if you need to call us, we're at (804)521-7200.

8 I will send this presentation to Thomas, who can post
9 it on the Court's website, if anybody needs it.

10 THE COURT: Thank you very much.

11 MR. WOODY: Thank you, Your Honor.

12 THE COURT: That's very helpful.

13 MR. DAVIS: Your Honor, Item 14 on the joint report is
14 matters set for hearing following status conference. There is
15 one matter that's set, which is the motion for entry of proposed
16 order regarding contact with physicians.

17 And then the next status conference.

18 THE COURT: The next status conference is -- we have
19 one in March, but the following one is April 20th.

20 What is the one in March?

21 THE LAW CLERK: The 16th at 2:00.

22 THE COURT: March 16th at 2:00.

23 And the April 20th is at 9:00.

24 Anything from anyone before we move on?

25 (No response.)

1 THE COURT: We'll take a five-minute break and come
2 back and hear the motion.

3 Court will stand in recess.

4 (Proceedings adjourned.)

5

6

* * * *

7

CERTIFICATE

8

9 I hereby certify this 24th day of February, 2016, that
10 the foregoing is, to the best of my ability and understanding, a
11 true and correct transcript of the proceedings in the
12 above-entitled matter.

13

14

/s/ Mary V. Thompson

15

Official Court Reporter

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