

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN) * MDL 2592
PRODUCTS LIABILITY LITIGATION *
 * SECTION L
THIS DOCUMENT RELATES TO *
ALL CASES * JUDGE ELDON E. FALLON
 *
 * MAG. JUDGE NORTH

**JOINT REPORT NO. 7 OF PLAINTIFFS’
AND DEFENDANTS’ LIAISON COUNSEL**

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC") respectfully submit this Joint Report No. 7. All Pre-Trial Orders are posted on the court's website located at www.laed.uscourts.gov/Xarelto. The Court's website also includes other postings relevant to the litigation.

1. PRE-TRIAL ORDERS

The Court has issued the following Pre-Trial Orders:

Pre-Trial Order No. 1 [Rec. Doc. 2] entered December 17, 2014 – Setting initial conference;

Pre-Trial Order No. 2 [Rec. Doc. 38] entered January 16, 2015 – Appointing Plaintiffs' Liaison Counsel;

Pre-Trial Order No. 3 [Rec. Doc. 39] entered January 16, 2015 – Appointing Defendants' Liaison Counsel;

Pre-Trial Order No. 4 [Rec. Doc. 61] entered January 26, 2015 – Requiring Counsel to provide contact information to Liaison Counsel, and amending PTO No. 1 regarding docketing procedure;

Pre-Trial Order No. 4A [Rec. Doc. 62] entered January 26, 2015 – Approving and attaching Counsel Contact Information Form;

Pre-Trial Order No. 5 [Rec. Doc. 63] entered January 26, 2015 – Clarifying duties of transferor court under MDL Rule 1.6;

Pre-Trial Order No. 5A [Rec. Doc. 149] entered February 3, 2015 – Amending PTO No. 5 to allow transferor court to retain original file;

Pre-Trial Order No. 6 [Rec. Doc. 150] entered February 3, 2015 – Appointing Defendants' Co-Lead Counsel;

Pre-Trial Order No. 7 [Rec. Doc. 169] entered February 9, 2015 – Appointing Plaintiffs' Steering Committee (PSC); Appointing Plaintiffs' Co-Lead Counsel; Ordering that PLC and Plaintiffs' Co-Lead Counsel shall comprise PSC Executive Committee; Appointing Chair of the State Liaison Committee, to be *ex-officio* member of PSC; and Listing responsibilities of PSC;

Pre-Trial Order No. 7A [Rec. Doc. 830] entered April 29, 2015 – Appointing Michael Weinkowitz, Daniel Gallucci, and Gibson Vance to serve on the State Liaison Committee;

Pre-Trial Order No. 8 [Rec. Doc. 183] entered February 13, 2015 – Establishing standards and procedures for counsel seeking reimbursement for common benefit fees and costs;

Pre-Trial Order No. 9 [Rec. Doc. 356] entered March 24, 2015 – Providing for the Direct Filing of Complaints in the MDL;

Pre-Trial Order No. 10 [Rec. Doc. 357] entered March 24, 2015 – Providing for the Streamlined Service on Certain Bayer Defendants;

Pre-Trial Order No. 11 [Rec. Doc. 893] entered May 4, 2015 – Providing for Bundling of Complaints, Answers and Responsive Pleadings, with attached Attorney Instructions for Filing Individual Severed Xarelto Cases [Rec. Doc. 893-1];

Pre-Trial Order No. 11A [Rec. Doc. 923] entered May 20, 2015 – Providing exemplar Joint Complaint and exemplar Short Form Complaint.

Pre-Trial Order No. 11B [Rec. Doc. 1117] entered July 14, 2015 – Governing a Joined Plaintiff's responsibility for a filing fee and modifies second sentence of paragraph 1(a) of Pre-Trial Order No. 11.

Pre-Trial Order No. 11C [Rec. Doc. 1118] entered July 14, 2015 – Clarification for some issues that have arisen since the Court issued Pre-Trial Order No. 11.

Pre-Trial Order No. 12 [Rec. Doc. 894] entered May 4, 2015 – Stipulated Protective Order;

Pre-Trial Order No. 13 [Rec. Doc. 895] entered May 4, 2015 – Governing the Form and Schedule for Service of Plaintiff Fact Sheets and Executed Authorizations for Release of Records;

Pre-Trial Order No. 14 [Rec. Doc. 896] entered May 4, 2015 – Governing the Form and Schedule for Service of Defendant Fact Sheets;

Pre-Trial Order No. 13A & 14A [Rec. Doc. 1040] entered June 23, 2015 – Regarding Plaintiff Fact Sheets and Authorizations and Defendant Fact Sheets.

Pre-Trial Order No. 15 [Rec. Doc. 897] entered May 4, 2015 – Consent Order Regarding the Preservation of Documents and Electronically Stored Information;

Pre-Trial Order No. 16 [Rec. Doc. 898] entered May 4, 2015 – Filing Requests for Summons and Summons Returns.

Pre-Trial Order No. 17 [Rec. Doc. 924] entered May 20, 2015 – Electronic Service/MDL Centrality for Plaintiffs Only.

Pre-Trial Order No. 18 [Rec. Doc. 925] entered May 20, 2015 – Science Day.

Pre-Trial Order No. 19 [Rec. Doc. 951] entered June 4, 2015 – Protocol for Treatment of Privileged and Work Product Materials.

Pre-Trial Order No. 20 [Rec. Doc. 1007] entered June 15, 2015 – Regarding the Format for Production of Hardcopy Documents and Electronically Stored Information.

2. **CASE MANAGEMENT ORDERS**

The Court has issued the following Case Management Orders:

Case Management Order No. 1 [Rec. Doc. 891] entered May 4, 2015 – Addressing Voluntary Disclosure and Production by Defendants, Plaintiffs’ Master Set of Requests for Production, Depositions and Subpoenas to Non-Parties, Plaintiff Fact Sheet and Defendants Fact Sheet, Science Day, State and Federal Liaison, Proposed Case Management Order No. 2, and Bundling of Complaints and Answers and Responsive Pleadings.

3. **PROPOSED CASE MANAGEMENT ORDER NO. 2**

Lead Plaintiff Counsel and Lead Defense Counsel have had numerous meetings and ongoing discussions, as well as conferences with the Court, regarding Case Management Order No. 2. The PSC and counsel for Defendants each submitted letter

briefs and proposed Case Management Orders to the Court on July 21, 2015. Further, on July 21, 2015 Defendants filed with the Court a Memorandum in Support of Their Position on Document Production Issues [Rec.Doc. 1137], which is also discussed in ¶ 9, *infra*. The parties will be prepared to discuss the matters further with the Court at the scheduled Status Conference on August 4, 2015.

4. COUNSEL CONTACT INFORMATION FORM

All counsel in the MDL are required to complete the Counsel Contact Information Form attached to PTO No. 4A, and forward it to the appropriate Liaison Counsel. This information must be kept current by counsel providing the information, and will be relied upon throughout the litigation.

5. PLAINTIFF FACT SHEETS

On May 4, 2015, the Court issued Pre-Trial Order No. 13 [Rec Doc. 895], which governs the form and schedule for service of Plaintiff Fact Sheets, as well as executed Authorizations for the release of records to be completed by plaintiffs in all individual cases. Pre-Trial Order No. 13A and 14A [Rec. Doc. 1040] provides the procedure for the online submission and service of Fact Sheets and Authorization forms through the BrownGreer MDL Centrality System. The Defendants will report to the Court on the responsiveness of the Plaintiff Fact Sheets that have been received. The Defendants have received many informal requests for extensions of the deadline set forth in Pre-Trial Order 13 to submit Plaintiff Fact Sheets, and both the PLC and DLC will report to the Court on the general status of these requests at the August 4, 2015 Status Conference.

6. DEFENDANT FACT SHEETS

On May 4, 2015, the Court issued Pre-Trial Order No. 14 [Rec. Doc. 896], which governs the form and schedule for service of Defendant Fact Sheets to be completed by defendants in all individual cases. Pre-Trial Order No. 13A and 14A [Rec. Doc. 1040] provides the procedure for the online submission and service of Fact Sheets and Authorization forms through the BrownGreer MDL Centrality System. The PLC and DLC will report to the Court on the status of these matters at the August 4, 2015 Status Conference.

7. BUNDLING OF COMPLAINTS/ANSWERS/RESPONSIVE PLEADINGS

On May 4, 2015, the Court issued Pre-Trial Order No. 11 [Rec. Doc. 893], which addresses Bundling of Complaints, Answers, and Responsive Pleadings and on May 20, 2015, the Court issued Pre-Trial Order 11A [Rec. Doc. 923], which provided an exemplar Joint Complaint and an exemplar Short Form Complaint. On June 18, 2015, in accordance with PTO 11 [Rec. Doc. 893], Omnibus Answers with Jury Demands were filed by the following defendants: Bayer Healthcare Pharmaceuticals, Inc.; Bayer Pharma AG; and Janssen Pharmaceuticals, Inc., Janssen Research & Development, LLC, Janssen Ortho, LLC (collectively, “the Janssen Defendants”), and Johnson & Johnson.

Under paragraph 2(c) of PTO 11 [Rec. Doc. 893], the voluntary dismissal of cases in which Omnibus Answers are operative can occur only by stipulation of the parties or a Court order following a properly-noticed motion. Due to this requirement, the Court issued an Order on July 22, 2015 [Rec. Doc. 1143] vacating prior Orders of voluntary dismissal without prejudice which had been granted *ex parte*, and further ordered that the motions to voluntarily dismiss these cases be scheduled for submission on August 6, 2015, with any opposition briefs filed on or before July 29, 2015. Defendants will report to and discuss with the Court certain

other instances in which attempts to voluntarily dismiss cases without prejudice have not complied with Pre-Trial Order No. 11.

On July 14, 2015, the Court issued Pre-Trial Order 11(B), which addresses Joined Plaintiff's responsibility for a filing fee and modifies the second sentence of Paragraph 1(a) of Pre-Trial Order No. 11 [Rec. Doc. 1117]. The PLC and DLC will report to the Court on the status of these matters at the August 4, 2015 Status Conference.

8. PRESERVATION ORDER

On May 4, 2015, the Court issued Pre-Trial Order No. 15 [Rec. Doc. 897], a Consent Order Regarding the Preservation of Documents and Electronically Stored Information. Pre-Trial Order No. 15 modifies paragraph 13 of Pre-Trial Order No. 1 relating to preservation of evidence. The parties continue to meet and confer regarding the obligation of all parties to preserve voicemail, instant messages sent or received on an instant messaging system, or text messages sent or received on a cellular phone, smartphone, tablet or other mobile device. On July 15 and 16, 2015, the PSC took the 30(b)(6) Depositions of Defendants Janssen and Bayer relating to the ESI/Preservation matters.

9. DISCOVERY

On July 15, 2015, the Court issued an Order [Rec. Doc. 1119] setting telephone status conferences with Lead and Liaison Counsel of the parties on a bi-weekly basis. The purpose of these conferences is to report to the Court on discovery matters after the parties have met and conferred on these matters and have provided notice to the Court and to one another of the issues which remain to be addressed with the Court.

A telephone status conference took place on July 23, 2015, and the Court issued a Minute Entry [Rec. Doc. 1148] which states "Plaintiffs shall oppose Defendants' Memorandum in

Support of their Position on Document Production Issues (Rec. Doc. 1137), which the Court construes as a motion, on or before August 3, 2015.” The PLC and DLC will report to the Court on the status of this matter at the August 4, 2015 Status Conference.

10. DEPOSITION GUIDELINES

The Plaintiffs’ Steering Committee and Defendants continue to negotiate and prepare a proposed Pre-Trial Order governing the conduct of depositions in the Multidistrict Litigation. PLC and DLC will report to the Court on the status of this matter at the August 4, 2015 Status Conference.

11. DISCOVERY ISSUED TO THIRD PARTIES

On April 22, 2015, the Plaintiffs’ Steering Committee (“PSC”) issued a Subpoena Duces Tecum to the United States Food and Drug Administration (“FDA”). The PSC and counsel for Janssen continue to meet and confer with regard to the production of responsive materials and to avoid unnecessary duplication.

On June 4, 2015, the Plaintiffs’ Steering Committee (“PSC”) issued a Subpoena to Testify at Deposition to Duke Clinical Research Institute (“DCRI”). DCRI has communicated with Plaintiffs’ Liaison Counsel and advised that they are in the process of gathering documents and will communicate further regarding production.

The parties will be prepared to discuss both of these matters further with the Court at the August 4, 2015 Status Conference.

12. STATE/FEDERAL COORDINATION

In accordance with Pre-Trial Orders No. 7 and 7A, as well as Case Management Order No. 1, PLC and DLC have had, and will continue to have, communications regarding the State Liaison Committee, as well as the status of coordination of MDL and state court actions.

PLC and DLC will report to the Court on this matter at the August 4, 2015 Status Conference.

13. NEXT STATUS CONFERENCE

The Court has announced that the next status conference will be on September 17, 2015, at 9:00 a.m.

Dated: July 30, 2015

Respectfully Submitted,

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Defendants' Liaison Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 30, 2015, the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to Liaison Counsel for Plaintiffs and Defendants by operation of the court's electronic filing system and served on all other plaintiff counsel via MDL Centrality, which will send notice of electronic filing in accordance with the procedures established in MDL 2592 pursuant to Pre-Trial Order No. 17.

/s/ Gerald E. Meunier

_____ **Gerald E. Meunier**

UNITED STATES DISTRICT COURT
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PROPOSED AGENDA FOR
August 4, 2015 STATUS CONFERENCE

1. Pre-Trial Orders
2. Case Management Orders
3. Proposed Case Management Order No. 2
4. Counsel Contact Information Form
5. Plaintiff Fact Sheets
6. Defendant Fact Sheets
7. Bundling of Complaints/Answers/Responsive Pleadings
8. Preservation Order
9. Discovery
10. Deposition Guidelines
11. Discovery Issued to Third Parties
12. State/Federal Coordination
13. Next Status Conference