

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**IN RE: XARELTO (RIVAROXABAN)
PRODUCTS LIABILITY LITIGATION**

MDL No. 2592

SECTION L

THIS DOCUMENT RELATES TO ALL ACTIONS

JUDGE ELDON E FALLON

MAG. JUDGE NORTH

CASE MANAGEMENT ORDER NO. 3

The Court entered Case Management Order 2, on consent of the parties, which addressed the course of the proceedings in this litigation through the first four bellwether trials. The parties were unable to resolve their differences concerning the method of selecting discovery pool plaintiffs and bellwether trial plaintiffs, and have accordingly submitted their dispute to the Court. After fully considering each party's position, the Court hereby Orders as follows:

1. Process for Selection into the Bellwether Discovery Pool

- a. Forty individual plaintiff cases will be selected for the discovery pool.
- b. The parties shall continue to meet and confer to reach consensus on the appropriate eligibility criteria for inclusion into the initial plaintiff bellwether discovery pool and the appropriate case categories based upon a census of the docket using data maintained by BrownGreer through MDL Centrality. The eligibility criteria and case categories shall be subject to a later order of this Court.
- c. Plaintiffs will select 10 individual plaintiff cases, and Defendants (collectively) will select 10 individual plaintiff cases to be included in the discovery pool.

Plaintiffs and Defendants shall be allowed to select any eligible plaintiff from any category with the understanding that the purpose of the bellwether process is to identify representative plaintiffs for discovery and trial.

- d. Cases will be selected for the discovery pool as follows:
 - i) 20 individual plaintiff cases where venue is proper in the United States District Court, Eastern District of Louisiana;
 - ii) 4 individual plaintiff cases where venue is proper in a federal district in the State of Mississippi;
 - iii) 2 individual plaintiff cases where venue is proper in a federal district in the State of Texas;
 - iv) 7 individual plaintiff cases where venue is proper in a federal district in any of seven states chosen by Plaintiffs ; and
 - v) 7 individual plaintiff cases where venue is proper in a federal district in any of seven states chosen by Defendants.

Each of the states selected by Plaintiffs or Defendants must have at least 20 properly venued plaintiffs. For the purpose of determining where a plaintiff is properly venued, non-Louisiana plaintiffs who direct filed in the Eastern District of Louisiana pursuant to Pretrial Order 9 shall be considered properly venued in the district determined by Paragraph 2(D) of that consent order.

e. Method for Determining Discovery Pool

Using the criteria determined pursuant to the preceding paragraph, and consistent with same, and the categories to be agreed upon by the parties, each side will pick 10 individual plaintiff cases to be included in the discovery pool as described in Paragraph 1(c) above, and the remaining 20 individual plaintiff cases will be selected randomly. These selections will be made proportionately by state as follows:

- i) Eastern District of Louisiana: 5 plaintiffs selected by Plaintiffs, 5 plaintiffs selected by Defendants, and 10 plaintiffs selected randomly;
- ii) Mississippi: 1 plaintiff selected by Plaintiffs, 1 plaintiff selected by Defendants, and 2 plaintiffs selected randomly;
- iii) Texas: 1 plaintiff selected by Plaintiffs, 1 plaintiff selected by Defendants;
- iv) Plaintiffs' seven chosen states: 5 plaintiffs selected by Plaintiffs, and 2 plaintiffs selected randomly; and
- v) Defendants' seven chosen states: 5 plaintiffs selected by Defendants, and 2 plaintiffs selected randomly.

Plaintiffs and Defendants may each strike one randomly selected plaintiff without cause. If a strike is exercised, it will be replaced by a randomly selected plaintiff properly venued in the same district. Challenges to party selections or additional challenges to random selections will be permitted only by agreement of the parties or on motion to the Court for cause.

f. Substantive Categories:

All party selections and all random selections must come from representative categories utilizing data generated from MDL Centrality. Pursuant to Case Management Order 2 the parties will advise the Court prior to the December 21, 2015 status conference whether they have agreed upon eligibility requirements and substantive categories for the 40 discovery pool plaintiffs. If there is agreement, the parties shall submit a proposed joint order for consideration by the Court at the December 21, 2015 status conference. If there is no agreement, the parties shall each submit their proposed orders, and a letter brief in support, by December 15, 2015 so that the issue may be considered by the Court at the December 21, 2015 status conference.

g. Dismissals:

If a randomly selected discovery pool plaintiff is dismissed for any reason other than a disposition on the merits, the dismissed plaintiff will be replaced by another plaintiff from the same district; whether the replacement is selected randomly or by the party not initiating the dismissal will be in the discretion of the Court and will depend on the circumstances of the dismissal. If a party selected discovery pool plaintiff is dismissed for any reason other than a disposition on the merits, the dismissed plaintiff will be replaced by another plaintiff from the same district; whether the replacement is selected by the party initially making the selection or by the opposing party will be in the discretion of the Court and will depend on the circumstances of the dismissal.

2. Bellwether Plaintiff Cases

a. Number of bellwether Plaintiffs

Four individual plaintiffs' cases will be selected as bellwethers. The process for selecting the bellwether trial cases will be addressed in a separate order.

b. Selection Method.

The parties are to meet and confer before **June 10, 2016** to propose a Case Management Order to address the selection method for bellwether plaintiff cases for trial. The parties will submit the proposed Case Management Order to the Court by **July 1, 2016**.

NEW ORLEANS, LOUISIANA this 20th day of November, 2015.


UNITED STATES DISTRICT JUDGE