

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. 30 OF PLAINTIFFS’
AND DEFENDANTS’ LIAISON COUNSEL**

Plaintiffs' Liaison Counsel ("PLC") and Defendants' Liaison Counsel ("DLC") respectfully submit this Joint Report No. 30. 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

Since the filing of Joint Report No. 29 on May 23, 2018, the Court has issued the following new Pre-Trial Orders.:

Pre-Trial Order no. 14C (Amending Pre-Trial Order No. 14), was entered May 23, 2018 [Rec. Doc. 9619]. The Janssen Defendants license information and data responsive to Section IV and VII.5 of the Defendant Fact Sheet from Source Healthcare Analytics LLC (“SHA”), a wholly-owned subsidiary of Symphony Health Solutions Corporation (“SHS”). SHA has authorized the Janssen Defendants to provide a copy of the responsive data to the Plaintiffs, with no fee, upon execution of the Third Party Data Use Agreement attached to PTO 14C by the individual Plaintiff’s counsel to whom the data will be produced.

2. CASE MANAGEMENT ORDERS:

Since the filing of Joint Report No. 30 on May 23, 2018, the Court has not issued any new Case Management Orders.

On April 16, 2018, pursuant to CMO 6 [Rec. Doc. 8717] Plaintiffs and Defendants each selected 200 cases for inclusion in Wave 1 of individual case discovery. The Court made its random selection of an additional 200 cases on April 30, 2018. CMO 6 provides that all of the cases selected for discovery must complete all sections of the Plaintiff Fact Sheet pursuant to Pre-Trial Order No. 13 within thirty (30) days of selection. Subject to Paragraph 6 of CMO 6, Defendants must serve an updated and completed Defendant Fact Sheet for each case selected in Wave 1 and Wave 2. Pre-Trial Order No. 27 shall no longer apply to those cases selected in Wave 1 and Wave 2, but shall continue to govern cases not selected in either Wave 1 or Wave 2.

On June 8, 2018, Defendants filed an Order to Show Cause Motion for plaintiffs Defendants allege have failed to submit an updated fully complete PFS in accordance with CMO 6 [Rec. Doc. 9847]. After meeting and conferring with the PSC, on June 21, 2018, Defendants filed an Amended Order to Show Cause Motion [Rec. Doc. 9945] with attached Exhibit Lists, narrowing the list of cases subject to the Order to Show Cause. The Amended Order to Show Cause Motion will be set for hearing on July 17, 2018.

3. 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.

4. 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 (“PFSs”), 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.

Prior to filing a Motion for Extension of PFS Deadlines, plaintiff’s counsel should contact Defendants’ Liaison Counsel to determine whether there is any opposition.

On April 21, 2016, the Court entered Pre-Trial Order No. 27, which modifies PTO Nos. 13, 13A, 14 and 14A. Plaintiffs’ counsel in any filed cases as to which the PFS would be due after March 30, 2016 should consult Pre-Trial Order No. 27.

On January 25, 2017, the Court entered Pre-Trial Order No. 31, a Protocol to Assist in Addressing Plaintiff Fact Sheets Which Defendants Contend Are Not in Compliance with Court Orders. [Rec. Doc. 5183].

On February 27, 2018, the Court entered CMO No. 6. Pre-Trial Order No. 27 shall no longer apply to those cases selected in Wave 1 and Wave 2, but shall remain in effect with respect to cases not selected in either Wave 1 or Wave 2.

5. 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 defendant in all individual cases. Pre-Trial Orders No. 13A, 14A, and 14B [Rec. Docs. 1040, 1221, & 1847] provide the procedure for the online submission and service of Fact Sheets and Authorization

forms through the BrownGreer MDL Centrality System, as well as for the release of information and data from IMS Health, Inc. Pursuant to paragraph 3 of PTO 14 [Rec. Doc. 896], it is the responsibility of the Plaintiffs' Liaison Counsel to send written notices of DFS deficiencies to counsel for Defendants. However, any needed follow-up addressing such deficiencies remains the responsibility of individual counsel for plaintiff (a responsibility which the PSC is coordinating with individual plaintiffs' counsel only as to the 40 selected discovery pool plaintiffs).

On April 21, 2016, the Court entered Pre-Trial Order No. 27, which modifies PTO Nos. 13, 13A, 14 and 14A. Defendants will complete a DFS for completed PFSs served as of March 30, 2016 and at this time Defendants have no obligation to serve a DFS for any PFS served after March 30, 2016.

On February 27, 2018, the Court entered CMO No.6, which provides in part that for those Plaintiffs selected in Wave 1 and Wave 2 who timely complete the Plaintiff Fact Sheet in compliance with Pre-Trial Order No. 13 within 30 days of selection, Defendants must serve a completed Defendant Fact Sheet pursuant to Pre-Trial Order 14 within 60 days of selection as to any selected plaintiff who timely submitted a complete PFS. Pre-Trial Order No. 27 shall no longer apply to those cases selected in Wave 1 and Wave 2, but shall remain in effect for cases not selected in either Wave 1 or Wave 2

6. SERVICE OF PROCESS ON DEFENDANTS

On March 16, 2018, the Court entered an Order [Rec. Doc. 8926] vacating and replacing the March 24, 2015 Order [Rec. Doc. 4217] and the February 15, 2018 Order [Rec. Doc. 8628] and relates to service of process, and addresses a filing backlog in the MDL over the last three months. For these backlogged cases, the March 16, 2018 Order extends the deadline for service of process, allowing the plaintiff-s, for that defendant to whom the summons was addressed, sixty

(60) days from the date on which the Court issues the summons to serve that defendant. This extension only applies when the plaintiff presents or has presented the properly addressed summons to the clerk for signature and seal at the time of the filing of the complaint. The parties will be prepared to discuss this matter at the April 24, 2018 status conference.

7. 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. Further, the Court issued Pre-Trial Order No. 15B on October 21, 2015 [Rec. Doc. 1477] 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. Pre-Trial Order 15B vacated previously entered Pre-Trial Order 15A. [Rec. Doc. 1301].

8. ORDER GOVERNING THE PARTIES' INTERACTIONS WITH MDL PLAINTIFFS' PRESCRIBING AND TREATING PHYSICIANS

On April 28, 2016, the Court entered Pre-Trial Order No. 28 [Rec. Doc. 3156] Regarding Contact with Physicians. On January 10, 2017, the Court entered Pre-Trial Order No. 28A [Rec. Doc. 5018] regarding the parties' interactions with MDL Plaintiff's prescribing and treating physicians for the four bellwether cases through end of trial and regarding the maintaining of a record by Plaintiffs' counsel of their contacts *ex parte* with physicians for each of the other 36 discovery pool cases.

On February 27, 2018, the Court entered CMO No. 6, which modifies Pre-Trial Order No. 28 to require, for those Plaintiffs selected in Wave 1 and Wave 2, joint scheduling of physician depositions, i.e. both parties will contact physician's office together for purpose of scheduling a

date for deposition. Pre-Trial Order No. 28's record-keeping and disclosure provisions are extended to all Wave 1 and Wave 2 selected cases.

9. BELLWETHER CASES

The following bellwether trials took place in the MDL:

- a. ***Joseph J. Boudreaux, Jr., et al. v. Janssen et al., Case No. 2:14-cv-02720***, which commenced in the Eastern District of Louisiana on April 24, 2017 and concluded on May 3, 2017, resulted in a verdict for the Defendants. Plaintiffs' Motion for New Trial was denied on September 20, 2017 (Rec. Doc. 7644). Plaintiffs' filed a Notice of Appeal on October 18, 2017 (Rec. Doc. 7830). A Notice of Conditional Cross Appeal was filed by the Defendants on November 1, 2017 (Rec. Doc. 7911).
- b. ***Joseph Orr, Jr., et al. v. Janssen et al., Case No. 2:15-cv-03708***, which commenced in the Eastern District of Louisiana on May 30, 2017 and concluded on June 9, 2017, resulted in a verdict for the Defendants. Plaintiffs' Motion for New Trial was denied on September 20, 2017 (Rec. Doc. 7644). Plaintiffs' filed a Notice of Appeal on October 18, 2017 (Rec. Doc. 7829). A Notice of Conditional Cross Appeal was filed by the Defendants on November 1, 2017 (Rec. Doc. 7912).
- c. ***Mingo v. Janssen Research & Development, LLC, et al., Case No. 2:15-cv-03367***, which commenced in the Southern District of Mississippi on August 7, 2017 and concluded on August 18, 2017, resulted in a verdict for the Defendants. Plaintiff's Motion for New Trial was denied on December 14, 2017 (Rec. Doc. 8145). Plaintiff filed a Notice of Appeal on January 12, 2018 (Rec. Doc. 8307). A Notice of Conditional Cross Appeal was filed by the Defendants on January 26, 2018 (Rec. Doc.8502).

On March 14, 2018, the United States Court of Appeals for the Fifth Circuit issued a Briefing Notice. Appellants Cross-Appellees Joseph J. Boudreaux, Jr., Loretta Boudreaux, Kim Deagano, Joseph Orr, III, Joseph Orr, Jr., Kelli Walker and Dora Mingo filed their brief on April 23, 2018. Appellees Cross-Appellants Bayer HealthCare Pharmaceuticals Inc., and Bayer Pharma AG, Janssen Research & Development LLC, and Janssen Pharmaceuticals, Inc. filed their brief on June 7, 2018. Appellants Cross-Appellees Joseph J. Boudreaux, Jr., Loretta Boudreaux, Kim Deagano, Joseph Orr, III, Joseph Orr, Jr., Kelli Walker and Dora Mingo's Reply briefing and Response to the contingent Cross-Appeal is due July 9, 2018. Appellees Cross-Appellants Bayer

HealthCare Pharmaceuticals Inc., and Bayer Pharma AG, Janssen Research & Development LLC, and Janssen Pharmaceuticals, Inc.'s Reply briefing to the Appellants Cross-Appellees' Response to the contingent Cross-Appeal is due July 23, 2018.

The following bellwether case was voluntarily dismissed with prejudice:

Henry v. Janssen Research & Development, LLC et al., Case No. 2:15-cv-00224, Order signed on November 2, 2017 (Rec. Doc. 7943).

10. CMO 6 CASES.

The parties will report to the Court on the status of the cases selected for work up under CMO 6. Thus far the Defendants advise that the data show that 113 of the 600 have been or are represented will be dismissed.

11. 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. The parties will report to the Court on recent developments in state court cases.

PLC and DLC will report to the Court on this matter at the June 27, 2018 Status Conference, as well as the trial status of matters in the Pennsylvania consolidated proceedings.

12. MATTERS SET FOR HEARING FOLLOWING STATUS CONFERENCE

Defendants' pending Motions for Summary Judgment on preemption grounds as to plaintiffs' design defect and failure-to-warn claims in Case No. 2:14-cv-02669, *Harriet Ibanez, et al. v. Janssen Research & Development, LLC f/k/a Johnson & Johnson Pharmaceutical Research & Development, LLC, et al.* [Rec. Docs. 7653 and 7660], both filed on September 21, 2017, will be decided without oral argument. Plaintiffs filed Responses to said Motions on November 6,

2017 [Rec. Docs. 7954 & 7962] and May 23, 2018 [Rec. Docs. 9594]. Defendants filed Replies in support of said Motions on June 4, 2018 [Rec. Docs. 9776 & 9779].

Defendants' pending Motion to Certify for Interlocutory Appeal Under 28 U.S.C. § 1292(b) in Case No. 2:14-cv-02669, *Harriet Ibanez, et al. v. Janssen Research & Development, LLC f/k/a Johnson & Johnson Pharmaceutical Research & Development, LLC, et al.* [Rec. Doc. 9778], filed on June 4, 2018, is set for hearing immediately following the status conference on June 27, 2018. Plaintiffs filed a Response to said Motion on June 14, 2018 [Rec. Doc. 9908]. Defendants filed a Reply in support of said Motion on June 21, 2018 [Rec. Doc. 9952].

13. NEXT STATUS CONFERENCE

The next monthly status conference is scheduled for August 6, 2018 at 9:00 o'clock a.m.

Dated: June 25, 2018

Respectfully Submitted,

/s/ Leonard A. Davis
Leonard A. Davis (Bar No. 14190)
ldavis@hhklawfirm.com
HERMAN, HERMAN & KATZ, LLC
820 O'Keefe Avenue
New Orleans, LA 70113
PH: (504) 581-4892
FAX: (504) 561-6024

Co-Plaintiffs' Liaison Counsel

/s/ Gerald E. Meunier
Gerald E. Meunier (Bar No. 9471)
gmeunier@gainsben.com
**GAINSBURGH BENJAMIN DAVID MEUNIER
& WARSHAUER, LLC**
2800 Energy Centre, 1100 Poydras Street
New Orleans, LA 70163-2800
PH: (504) 522-2304
FAX: (504) 528-9973

Co-Plaintiffs' Liaison Counsel

/s/ James B. Irwin
James B. Irwin (Bar No. 7172)
jirwin@irwinllc.com
IRWIN FRITCHIE URQUHART & MOORE LLC
400 Poydras Street, Suite 2700
New Orleans, LA 70130
PH: (504) 310-2100
FAX: (504) 310-2120
Defendants' Liaison Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 25, 2018, 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/ James B. Irwin

James B. Irwin

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PROPOSED AGENDA FOR
JUNE 27, 2018 STATUS CONFERENCE

1. Pre-Trial Orders
2. Case Management Orders
3. Counsel Contact Information Form
4. Plaintiff Fact Sheets
5. Defendant Fact Sheets
6. Service of Process on Certain Bayer Defendants
7. Preservation Order
8. Order Governing the Parties' Interactions with MDL Plaintiffs' Prescribing and Treating Physicians
9. Bellwether Cases
10. CMO 6 Cases
11. State/Federal Coordination
12. Matters Set for Hearing Following the Status Conference
13. Next Status Conference