

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

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| IN RE: XARELTO (RIVAROXABAN) |) | MDL 2592 |
| PRODUCT LIABILITY LITIGATION |) | |
| ----- |) | SECTION L |
| |) | HONORABLE ELDON E. FALLON |
| This Document Relates to: |) | |
| ALL CASES |) | MAG. JUDGE NORTH |
| |) | |
| |) | CASE MANAGEMENT ORDER NO. 10 |
| |) | ORDER REGARDING THE |
| |) | REGISTRATION OF XARELTO- |
| |) | RELATED CASES AND CLAIMS |
| _____ |) | |

In order for this Court and the cooperating state court jurisdictions with coordinated proceedings pending in Pennsylvania (*In Re Xarelto Litigation*, No. 2349, Philadelphia County Court of Common Pleas), and in California (*Xarelto Cases*, Judicial Council Coordinated Proceeding No. 4862, Superior Court of the State of California, County of Los Angeles) to cooperatively manage this litigation and to assist the Parties to effectuate the provisions of the private Final Settlement Agreement entered into between, *inter alia*, the MDL Plaintiffs’ Steering Committee (“PSC”), and Defendants Janssen and Bayer (“Defendants”), it is necessary to identify all filed and unfiled Xarelto®-related claims:

IT IS HEREBY ORDERED AND DECREED THAT:

1. All counsel for any Xarelto®-related claim pending in this Court and/or counsel who have any clients who have claims, filed or unfiled, related to Xarelto® shall (i) identify all clients with filed and unfiled Xarelto®-related claims regardless of where the case is filed or where the claimant is located and regardless of the client’s eligibility to join the settlement or

ultimate decision whether to join the settlement or not by enrolling in the Settlement Program, (ii) provide the required information set forth below within the prescribed deadlines, including identifying all Interested Counsel in each filed case or unfiled claim wherever located, and (iii) designate the Primary Law Firm and contacts as set forth below. The Registration Declaration, the forms of Registration Lists, and the *Pro Se* Affidavit will be made available through the Claims Administrator in a form materially similar to Exhibit A to this Order.

2. Obligations of Counsel:

A. *Service Of Registration List:* Counsel representing clients with claims related to Xarelto® must prepare a Registration Declaration and Registration Lists, identifying all such clients, whether with filed or unfiled claims, as set out below in 2.B. and 2.C, using the steps identified at <https://www.mdlcentrality.com/mdl2592>. To comply with this Order, go to that website, click on “Registration” and follow the instructions. The completed Registration Declaration and Registration Lists shall be submitted to the Claims Administrator (as formatted, for the accurate and efficient transfer of the required information) no later than the deadlines prescribed below.

UPLOADING THE REGISTRATION DECLARATION AND REGISTRATION LIST ON THE WEBSITE IN NO WAY SIGNIFIES A CLAIMANT’S COMMITMENT OR INTENT TO ENROLL IN THE SETTLEMENT PROGRAM.

B. *Information to be Provided Regarding Unfiled Claims and Filed Cases Within 3 or 15 Days of the Entry of This Registration Order, As Specified:*

1. Within three (3) days of the issuance of this Registration Order (*i.e.*, March 28, 2019), Counsel shall set forth on the Registration List: (i) the

identity of every Xarelto®-related claim, wherever situated, in which counsel has any Interest that was not filed in court before March 11, 2019; (ii) the identity of the Primary Law Firm and Principal Responsible Attorney for such claims, and (iii) the following information about each such claim: (a) the Xarelto-user plaintiff's or claimant's name (and that of a representative or executor plaintiff if applicable), (b) state of residence, (c) unique individual identifying information as required by MDL Centrality, including date of birth and social security number, and (d) the date of the written retainer agreement with the claimant relating to a potential Xarelto-related claim.

2. Within fifteen (15) days of the issuance of this Registration Order (*i.e.*, April 9, 2019), Counsel shall set forth on the Registration List: (i) the identity of all filed Xarelto®-related cases wherever filed and all unfiled Xarelto®-related claims in which counsel has any Interest; (ii) the identity of the Primary Law Firm, Principal Responsible Attorney and all Interested Counsel for such filed and unfiled claims, and (iii) the following information about each filed and unfiled claim: (a) the Xarelto-user plaintiff's or claimant's name (and that of a representative or executor plaintiff if applicable), (b) state of residence, (c) the current court, venue and case number, if filed, and (d) unique individual identifying information as required by MDL Centrality, including date of birth and social security number..

3. For each filed case registered pursuant to the preceding two paragraphs, Counsel shall identify on the Registration List all Xarelto®-related cases that are pending in this MDL proceeding or in any other federal or state court or tribunal in the United States in which they serve as the Primary Law Firm as of the date of this Order, the identity of the Principal Responsible Attorney for each filed case and all Interested Counsel for each filed case, the date of all signed written retainer agreements relating to a potential Xarelto claim between any client who is an unfiled claimant or one whose case was filed on or after March 11, 2019 and the attorney or firm with whom the agreement was entered, and the case and claim related information on the form Registration List.

C. *Information to be Provided Regarding Filed Cases and Unfiled Claims Within 75 Days of the Entry of This Registration Order:*

Within 75 days of the entry of this Registration Order, each Primary Law Firm shall supplement its Registration List with the following additional claim-related information for each previously registered Xarelto-related claim, whether filed or unfiled:

- (i) the date of the Xarelto®-user plaintiff's or claimant's first prescription of Xarelto®;
- (ii) the date of the first alleged injury or bleeding event claimed to be due to Xarelto® use as prescribed;
- (iii) whether the plaintiff or claimant at the time of injury or bleeding event was taking two other anti-coagulation medicines (prescription and/or OTC) in addition to Xarelto® (including but not limited to aspirin, Plavix (clopidogrel) or another P2Y12 platelet inhibitor (*e.g.*, prasugrel (Efient, Effient), ticagrelor (Brilinta), and cangrelor (Kengreal)) regardless of the indication for which they were taking Xarelto®;
- (iv)

whether the plaintiff or claimant was on 20 mg of Xarelto for VTE prevention for longer than six (6) months; (v) the number of consecutive days of hospitalization the plaintiff or claimant incurred allegedly due to Xarelto® use, (vi) whether the claim pertains to a Xarelto®-user who suffered a CVA (*i.e.*, stroke) while taking Xarelto®; and (vii) whether the claim pertains to a Xarelto-user who died allegedly as a result of taking Xarelto®. In providing this additional information pursuant to the Registration Order, no additional claimants may be identified or registered beyond those Plaintiffs and Claimants disclosed initially in response to the Registration Order unless agreed in advance by Defendants.

D. The Primary Law Firm shall declare on the Registration Declaration under oath that (i) all filed cases and unfiled claims relating to Xarelto® in which they are the Primary Law Firm are identified on the Registration List, (ii) all Interested Counsel are identified, and (iii) that the claim-related information, including retention date, is accurate and complete. The Primary Law Firm shall make the same declaration under oath with respect to the supplemental claim-related information provided pursuant to Paragraph 2.

C. Counsel shall further certify under oath that they have verified that all cases in which they have an Interest are, or will be, identified on other Registration Lists submitted by another Primary Law Firm. If there is any Xarelto®-related claim for any plaintiff or claimant, whether filed or unfiled in which an attorney bound by this Order has an Interest and believes is not, or will not be, listed on any Registration List submitted by any other Primary Law Firm, then such attorney shall include the plaintiff or unfiled claimant on his or her Registration Lists with the information specified in paragraph 2.B.

above, and shall state “No Primary Law Firm Designated.” Further, retention agreements will be subject to inspection and review by the private Special Master and/or the Court.

E. *Due Date For Service Of Registration List:* The Registration Declarations and Registration Lists shall be completed in the manner provided by the Claims Administrator as specified above.

F. *Updates Regarding Change in Status:* The Primary Law Firm shall serve an updated Report regarding any change in status or representation of any Plaintiff or Unfiled Claimant identified on their Registration List. The updated Report shall be in the form set by the Claims Administrator. The Report shall be updated on September 1, 2019 and further updates as may be required by the Court, and shall be served on the Claims Administrator who will promptly distribute to Defendants and the PSC.

3. *Pro Se Plaintiffs:* All persons who represent themselves *pro se* in these proceedings with Xarelto®-related claims who wish to participate in the Settlement Program voluntarily (collectively “*Pro Se Plaintiffs*” shall complete the *Pro Se* Registration form which can be obtained by going to the Claims Administrator website, <https://www.mdlcentrality.com/mdl2592>, clicking on “Registration” and following the instructions. The completed *Pro Se* Registration form shall be submitted to the Claims Administrator (as formatted, for the accurate and efficient transfer of the required information) no later than thirty (30) days after the date this Order is entered. To submit these materials, go to <https://www.mdlcentrality.com/mdl2592>, click on “Registration” and follow the upload instructions.

UPLOADING THE *PRO SE* REGISTRATION FORM ON THE WEBSITE IN NO WAY SIGNIFIES A *PRO SE* PLAINTIFF'S COMMITMENT OR INTENT TO ENROLL IN THE SETTLEMENT PROGRAM.

If the *Pro Se* Plaintiff is not able to submit the forms electronically, the *Pro Se* Plaintiff shall send the Registration Affidavit via U.S. mail postmarked no later than thirty (30) days after the date this Order is entered to:

Claims Administrator
XR Settlement
P.O. Box 85006
Richmond, VA 23285-5006

A. *Updates Regarding Change in Status:* All *Pro Se* Plaintiffs shall serve an updated Report regarding any change in status of their Xarelto-related claim, and shall include changes in status and in any required information previously provided. The updated Report shall be in the form set by the Claims Administrator, and shall be served on September 1, 2019 and February 1, 2020. The updated Report shall be served on the Claims Administrator in the manner previously described

B. *Assistance:* The PSC will be available to provide assistance with registration to *Pro Se* Plaintiffs. The assistance provided by the PSC does not create an attorney-client relationship and any *Pro Se* Plaintiffs who obtain this assistance remain *pro se*.

4. Definitions:

A. *"Primary Law Firm" Defined:* "Primary Law Firm" as used herein shall mean a single designated law firm primarily responsible for obligations relating to the

Final Settlement Agreement and compliance with any of the Court Orders entered in the jurisdiction in which the case is pending. Such designation shall be included on the Registration Declaration and the Registration List. The Registration Declaration shall also include the law firm telephone number, business address, and names and emails of the Principal Responsible Attorney and an administrative contact at the law firm who will be handling the case.

B. *“Principal Responsible Attorney” Defined:* The Principal Responsible Attorney is the single attorney jointly identified by the Primary Law Firm and Interested Counsel by name, state bar number, business address, telephone number, and email address, who will be primarily responsible to provide notice to the Court and for day to day communications and activities related to the obligations of those cases identified on the Registration List submitted with each Registration Declaration of the Primary Law Firm relating to the Final Settlement Agreement and compliance with any of the Court Orders entered in the jurisdiction in which the case is pending.¹

C. *“Interested Counsel” Defined:* “Interested Counsel” means any Counsel (as defined) with an Interest (as defined) in a Person, or in a claim or case of a Person who has a Claim, filed or unfiled, relating to Xarelto® (as defined). Interested Counsel and the Primary Law Firm shall jointly be responsible for compliance with any Court Orders.

¹ The designation of a Principal Responsible Attorney is not intended to impact in any way the rights or obligations of all counsel who represent a client, including all counsel who have any financial interest in the client’s claim. (“Interested Counsel”), nor shall such designation alter the relationship among counsel. For any filed case or unfiled claim in which multiple firms have been designated as the Primary Law Firm, any dispute over representation that cannot be resolved by the law firms may be submitted to the private and independent Special Master under the settlement and affected claims will be stayed pending review and resolution .

D. The term “Interest” as used herein shall mean any interest in any case or claim relating to Xarelto®, whether filed or unfiled, in which counsel: (a) has an engagement or retainer agreement with such claimant; (b) is listed as the counsel of record for a Plaintiff in any filed pleadings related to the Xarelto®-related claims, (c) has entered an appearance for such Plaintiff, or (d) would benefit directly or indirectly from any payment to settle any claim of such Plaintiff or Claimant related to Xarelto®; or (e) otherwise has any financial interest of any kind whatsoever in any Xarelto®-related case or claim.

E. “Counsel” means, with respect to any particular Person, a lawyer and/or law firm who represents such Person pursuant to a written agreement, or who has an Interest in such Person’s Xarelto®-related claim.

F. “Person” means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, Governmental Authority, custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

G. “Xarelto®-related Claim” or “related to Xarelto®” means to any extent, or in any way, arising out of, relating to, resulting from and/or connected with the prescription and use of Xarelto® and/or any personal injury, wrongful death, losses, or damages caused or claimed to have been caused, in whole or in part, by any such prescription and use of Xarelto®.

5. Changes In Information:

A. Attorney Obligations. The Primary Law Firm shall serve written notice of any changes to the information provided on the Registration List, including but not limited to the acquisition or loss of Primary Law Firm status for the case, any change in information for the Primary Law Firm, the Principal Responsible Attorney, or administrative contact for the case, any change in designation of Primary Law Firm status for any case previously listed as “No Primary Law Firm Designated,” and any other change of any information verified under oath. If the change is a loss of Primary Law Firm status or loss of an Interest in the case, the notice shall also identify name of the attorney and/or law firm, telephone number, email, business address of the new representative for the Plaintiff or Unfiled Claimant or, if none, an affirmation of the Plaintiff or Unfiled Claimant’s *pro se* status and the telephone number, email and address for the Plaintiff or Unfiled Claimant. Such written notice must specify the changed circumstances and be served within 30 days of such change upon the Claims Administrator. This obligation shall terminate on February 1, 2020.

B. *Pro Se* Plaintiffs. All *Pro Se* Plaintiffs shall serve written notice of any changes to the information provided on the Registration List, including but not limited to any change regarding contact information or the subsequent retention of counsel. If the change of information is the retention of counsel, the *Pro Se* Plaintiff shall provide the attorney name, address, telephone number and email address for counsel. Such written notice must specify the changed circumstances and be served with 30 days of such change upon the Claims Administrator. This obligation shall terminate on February 1, 2020.

6. Enforcement: All Counsel and *Pro Se* Plaintiffs are required to comply with this Order.

- a. FILED CASES. Failure to meet the requirements of this Order will subject the non-compliant plaintiff's action to dismissal with prejudice after adequate due process notice and a show cause hearing as to the reason for such failure to register cases and otherwise comply with this Order and may subject such party or counsel to other penalties at the Court's discretion.
- b. UNFILED CLAIMS. Unfiled claims that are required to be registered under this Order that are not registered will be subject to dismissal with prejudice if later filed.

7. Joint Database: The Claims Administrator shall maintain a database of all cases and claims identified pursuant to this Order which will be available to Defendants, the PSC, other counsel as agreed to by the Defendants and the PSC, and the Court, if requested.


8. Cooperation With Other Jurisdictions: This Order is entered in conjunction with cooperating state court jurisdictions with coordinated proceedings pending in Pennsylvania (In Re Xarelto Litigation, No. 2349, Philadelphia County Court of Common Pleas), and California (*Xarelto Cases*, Judicial Council Coordinated Proceeding No. 4862, Superior Court of the State of California, County of Los Angeles) It is the intention of this Court to work in cooperation with these courts in a manner that promotes judicial economy and that secures as complete registration of all claims, filed and unfiled, as possible, and to share all information obtained in the registration process amongst the cooperating courts and their leadership counsel. It is also the intention of this Court to work in cooperation with any other federal or state court or tribunal

in which Xarelto®-related claims are pending. If there is any dispute concerning the implementation of this Order, this Court will coordinate conferral among the Courts for resolution of the issue, consistent with the law of the various jurisdictions.

THIS ORDER REQUIRES COUNSEL TO REGISTER ALL FILED CASES AND UNFILED CLAIMS ON BEHALF OF THEIR CLIENTS WITH XARELTO-RELATED CLAIMS. COMPLYING WITH THIS ORDER DOES NOT MEAN THAT A GIVEN CASE OR CLAIM IS ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT PROGRAM OR THAT AN ELIGIBLE PLAINTIFF HAS DECIDED TO PARTICIPATE. A SEPARATE ENROLLMENT PROCESS WILL BE ESTABLISHED FOR ELIGIBLE PLAINTIFFS TO INDICATE THEIR INTENT TO PARTICIPATE.

IT IS SO ORDERED.

Dated: 3/25/19



Hon. Eldon E. Fallon

Judge, United States District Court