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P R O C E E D I N G S

(WEDNESDAY, JUNE 10, 2015)

(MONTHLY STATUS CONFERENCE PROCEEDINGS)

09:01:40 4
09:01:41 5 (OPEN COURT.)

09:01:41 6 THE COURT: Be seated, please. Good morning, ladies and
09:01:43 7 gentlemen. Let's call the case.

09:01:44 8 THE DEPUTY CLERK: MDL No. 2592, *in re: Xarelto Products*
09:01:48 9 *Liability Litigation.*

09:01:49 10 THE COURT: Liaison counsel make their appearance for the
09:01:51 11 record, please.

09:01:51 12 MR. MEUNIER: Good morning, your Honor. Jerry Meunier,
09:01:52 13 co-liaison counsel for plaintiffs.

09:01:55 14 MR. IRWIN: Jim Irwin for defendants, your Honor. Good
09:01:57 15 morning.

09:01:57 16 THE COURT: We're here today for our monthly status
09:02:01 17 conference. I met with liaison and lead counsel a moment ago to
09:02:05 18 discuss the proposed agenda.

09:02:09 19 I mentioned to them that I am going to need their input in
09:02:15 20 the near future on a couple of areas: One is discovery. I see
09:02:22 21 discovery proceeding from the standpoint of general causation.

09:02:27 22 I also think that some initial culling is important at
09:02:32 23 this stage in the case. I say initial, underlining initial. We
09:02:38 24 find that in these cases sometimes for various reasons individuals
09:02:46 25 sometimes show up in a pleading that probably they should be in a

09:02:53 1 different case. They often times haven't taken the medication; or
09:02:58 2 if they have, they've taken the medication five years before. It
09:03:01 3 just happens that way. When you're dealing with 20, 30,000 people
09:03:07 4 that's what happens. So I don't think it's good for -- certainly
09:03:13 5 not good for the litigation, not good for the system, but it's not
09:03:16 6 good for either side. So an initial culling protocol is necessary
09:03:23 7 to deal with that.

09:03:24 8 Then with the help of Centrality, MDL Centrality, we
09:03:34 9 ought to be able to get our hands around this litigation, see
09:03:37 10 whether or not we can divide it into various categories. And then
09:03:41 11 I'll give each side an opportunity to pick ten or 15 cases,
09:03:48 12 whichever, and we'll form a discovery pool that represents that
09:03:52 13 whole census of the litigation, 30, 40 cases; and then the parties
09:03:57 14 can drill down and discover that pool rather than have to use the
09:04:02 15 resources for discovering 26,000 people if that's the census of this
09:04:08 16 litigation.

09:04:08 17 So that discovery pool will be able to then be
09:04:13 18 discovered, and then from that we'll be able to pick bellwether
09:04:17 19 cases and both sides will have an opportunity to know a little bit
09:04:22 20 more about the cases when they get down to picking the cases.

09:04:26 21 So those are the three areas that I don't need any
09:04:31 22 information on it now, but I want the parties to begin focussing on
09:04:35 23 those.

09:04:36 24 We'll take the proposed agenda in order. Pre-Trial
09:04:40 25 Orders, anything?

09:04:42 1 MR. MEUNIER: Thank you, your Honor. The first item is a
09:04:45 2 review of the pretrial orders, and since the last status conference
09:04:48 3 of May 13, the court has entered: Pre-Trial Order No. 17, Record
09:04:52 4 Document 924, dealing with electronic service through MDL Centrality
09:04:57 5 for plaintiffs; Pre-Trial Order 18, Record Document 925, which deals
09:05:02 6 with Science Day; and Pre-Trial Order 19, Record Document 951, which
09:05:08 7 deals with the protocol for the treatment of privileged and work
09:05:11 8 product materials.

09:05:13 9 Your Honor has also entered Case Management Order No. 1,
09:05:17 10 which dealt with a number of important issues, and which, among
09:05:20 11 other things, required the parties to meet and confer by the middle
09:05:24 12 of this month and report to the court no later than the end of this
09:05:28 13 month on CMO No. 2; and CMO No. 2, which will address the discovery
09:05:36 14 plaintiff schedule and the bellwether selection and trial schedule.

09:05:38 15 And, your Honor, that meet and confer process has begun.
09:05:43 16 We will be meeting again tomorrow with leadership from the defendant
09:05:46 17 side, and we will be discussing some currently submitted to one
09:05:52 18 another competing versions of CMO 2 dealing with the trial schedule
09:05:56 19 and the discovery pool.

09:05:57 20 THE COURT: Well, keep me in the loop on that. If you
09:06:00 21 have some difficulties, bring it to my attention immediately. I'll
09:06:04 22 resolve it. I will get everybody on the line, I will hear from each
09:06:08 23 side, I'll have a court reporter with me, and I will deal with it
09:06:12 24 immediately so we can keep going.

09:06:14 25 I think the thrust of the litigation, of this type of

09:06:16 1 litigation initially, and we're just about finished with that aspect
09:06:21 2 of it, but I find it helpful to put some infrastructure in place so
09:06:28 3 that parties can move faster in it; things like discovery protocol,
09:06:34 4 who comes to depositions, how many people have the right to ask
09:06:38 5 questions, how long are the depositions, where they take place,
09:06:42 6 what's the proper notice, things of that sort. We will have that
09:06:47 7 taken care of in the protocol so that everybody knows it. Privilege
09:06:51 8 protocol, we ought to have that taken care of. And the various
09:06:56 9 issues.

09:06:57 10 It's sort of like building a subdivision, you don't build
09:07:00 11 houses first and then try to figure out where to put the sewage
09:07:03 12 lines in or the electrical lines in, you put all of that in first
09:07:08 13 and then you begin the houses. So it just works better and that's
09:07:13 14 what we're trying to do in this particular case. So we are about
09:07:16 15 over that stage and now discovery will be taking place.

09:07:20 16 MR. MEUNIER: And, your Honor, the next item is Counsel
09:07:23 17 Contact Information. Your Pre-Trial Order 4 and 4A set forth
09:07:27 18 information and a form for that. And as liaison counsel, we just
09:07:33 19 want to emphasize to all plaintiffs counsel the importance of
09:07:36 20 completing the counsel contact information. Even among some counsel
09:07:40 21 who have expressed to us an interest in serving on subcommittees to
09:07:44 22 do work in the case, we found that some are not being diligent with
09:07:49 23 that; and so we hope that all counsel will take seriously the
09:07:52 24 requirement to fill that form out and keep the contact information
09:07:56 25 current for us.

09:07:57 1 THE COURT: Good. And I do urge anybody who is interested
09:08:00 2 in participating in the case, if you're not on the Plaintiff
09:08:07 3 Steering Committee, you still have a role but it's a role that you
09:08:10 4 have to work at, if you're going to assume that role. But you have
09:08:15 5 a role on a subcommittee. And talk to liaison counsel; if for some
09:08:20 6 reason you can't get their attention, get to me and we'll get you on
09:08:24 7 a subcommittee. But it has to be coordinated and worked through the
09:08:29 8 PSC, but there's a role for you to play in it.

09:08:34 9 MR. MEUNIER: Your Honor, the next item is MDL Centrality,
09:08:37 10 and as you know it's been set up for a twofold purpose: First, as
09:08:42 11 discussed in item five on the agenda for the purpose of service of
09:08:46 12 pleadings for the plaintiffs counsel. The defendants have not
09:08:49 13 agreed to use the MDL Centrality system for pleadings or discovery
09:08:53 14 documents.

09:08:54 15 And then as the next item discusses for Plaintiff Fact
09:08:57 16 Sheets and under PTO 13 there is a schedule set forth. We, again,
09:09:03 17 as liaison want to emphasize to all plaintiffs counsel the
09:09:06 18 importance of becoming familiar with the deadline and being diligent
09:09:11 19 about compliance with the deadline to the extent possible. And the
09:09:14 20 plaintiff fact sheet form is attached as an exhibit to PTO 13.

09:09:18 21 And I believe Jake Woody from BrownGreer is here to
09:09:21 22 briefly report on MDL Centrality for those purposes, Judge.

09:09:26 23 THE COURT: Okay. Jake.

09:09:27 24 MR. DAVIS: And, your Honor, I just want to point out one
09:09:30 25 thing with respect to MDL Centrality just so folks on the phone know

09:09:35 1 and the rest of counsel know. Plaintiffs liaison counsel is no
09:09:39 2 longer distributing filings, and, in fact, we're relying upon MDL
09:09:46 3 Centrality so that plaintiffs counsel does get notice of various
09:09:51 4 filings and the like. And so it's even more important that folks
09:09:56 5 register under the Pre-Trial Order 4 and Pre-Trial Order 17 so that
09:10:03 6 they can get the information from Centrality, because they are not
09:10:08 7 getting it from us any longer.

09:10:10 8 THE COURT: Okay. Fine. When you start this litigation
09:10:12 9 what we do is appoint liaison counsel and give them the role, among
09:10:16 10 other things, to notify all of the plaintiff counsel. But after a
09:10:21 11 certain period of time, with technology's help, we're able to get
09:10:26 12 them out of that role, and one of the ways of doing it now is with
09:10:32 13 MDL Centrality. When something is filed in the federal clerk's
09:10:36 14 office here, it's uploaded to Centrality and it goes out, e-mail
09:10:41 15 blasts to all of the attorneys. But you'll only get it if you
09:10:47 16 register, put in your information so that you can get that
09:10:51 17 information. But you'll automatically get everything that's been
09:10:55 18 filed in the federal court.

09:10:57 19 In addition to that, it allows us to digitize the
09:11:02 20 plaintiff profile forms or the plaintiff fact sheets. That's
09:11:06 21 helpful because you'll be able to, once we get all of those fact
09:11:12 22 sheets in, we will be able to get a census of the litigation a
09:11:16 23 little bit more, be a valid census. We will be able to figure out
09:11:25 24 how many death cases, how many stroke cases, how many heart attack
09:11:29 25 cases, how many other types of cases, and that will be where we'll

09:11:35 1 pick the discovery pool from. And that will be where you pick your
09:11:40 2 bellwether cases from. Rather than just go in blind, you'll have a
09:11:44 3 lot more information and you'll be able to pull that information and
09:11:49 4 massage that information a little bit.

09:11:51 5 Jake, do you want to give us an update?

09:11:55 6 MR. WOODY: Yes, your Honor. My name is Jake Woody from
09:11:58 7 BrownGreer. I just have a very brief report on MDL Centrality. To
09:12:02 8 date we have 176 firms registered with the program, with a total of
09:12:05 9 402 separate users.

09:12:08 10 As you mentioned, when documents, pleadings are filed
09:12:12 11 through ECF, we receive those and transmit them to all registered
09:12:16 12 users. We send an e-mail and attach the pleading to the e-mail. We
09:12:21 13 also store the pleading and the supportive order in MDL Centrality,
09:12:26 14 you can log in and search for them and view all of the pleadings
09:12:30 15 that we've received so far.

09:12:31 16 THE COURT: Now, when the attorney gets the information,
09:12:34 17 the e-mail from you that something has been filed, it's attached to
09:12:40 18 the e-mail?

09:12:40 19 MR. WOODY: Yes.

09:12:41 20 THE COURT: And they can click on the attachment and pull
09:12:43 21 up the document?

09:12:44 22 MR. WOODY: Yes. We put in the body of the e-mail the
09:12:47 23 name of the document, all of the pertinent information about it, and
09:12:49 24 also attach the actual document as a PDF to the e-mail along with
09:12:53 25 any exhibits. We do have a size limitation of one megabyte;

09:12:59 1 however, every pleading so far has been under that number.

09:13:03 2 THE COURT: I wouldn't anticipate pleadings to go over one
09:13:07 3 megabyte. You might find that there's some briefs and some things
09:13:10 4 of that sort that might create a problem, but we'll remedy that.

09:13:16 5 MR. WOODY: Yes. And if that does happen, we will tell
09:13:19 6 the recipients that they need to log in to view it. It hasn't
09:13:23 7 happened yet though.

09:13:24 8 THE COURT: Right.

09:13:25 9 MR. WOODY: Turning to fact sheets very quickly, we have
09:13:27 10 176 fact sheets in progress. Two submitted so far. I expect those
09:13:31 11 numbers to drastically increase as we approach the first deadline,
09:13:36 12 which I believe is in early July.

09:13:39 13 We also under PTO 17 were required to meet and confer
09:13:44 14 with the clerk regarding the case list. We've done that. We are
09:13:48 15 receiving counsel contact forms from plaintiffs firms, and we did
09:13:53 16 meet and confer with liaison counsel regarding the contact list.

09:13:53 17 THE COURT: Okay.

09:14:00 18 MR. WOODY: I'll be in the courtroom for anybody here who
09:14:02 19 has questions about MDL Centrality. For anyone on the phone who
09:14:06 20 needs to contact us, you can e-mail us at
09:14:09 21 mdlcentrality@browngreer.com or you can call us at (804) 521-7200.
09:14:16 22 Since the last status conference I've done a number of online
09:14:20 23 Web-Ex's, tutorials, we've answered many, many questions by e-mail,
09:14:24 24 and will continue to do so.

09:14:25 25 THE COURT: Okay. Thank you very much. This is a new

09:14:27 1 approach that we've used in this case for the first time, and
09:14:32 2 hopefully we will be able to work some of the -- if there are any
09:14:34 3 bugs, we will get the bugs out, and hopefully it will be able to be
09:14:39 4 used by my colleagues in the future.

09:14:41 5 MR. IRWIN: Your Honor, with the court's permission, I
09:14:45 6 think the court knows that we're working on a supplemented PFS and
09:14:50 7 the DFS, and we expect -- we're basically in agreement. When did we
09:14:57 8 think we could get that to the judge?

09:14:59 9 MR. DAVIS: Your Honor, we should have that to you this
09:15:01 10 coming week. What that deals with are some really HIPAA-type issues
09:15:05 11 and the like, and we will be submitting a joint order.

09:15:08 12 THE COURT: Okay.

09:15:09 13 MR. IRWIN: It's PTO's 13 and 14, your Honor.

09:15:14 14 THE COURT: Okay. Thank you.

09:15:14 15 MR. MEUNIER: So it would be 13A and 14A dealing,
09:15:17 16 respectively, with PFS and DFS issues.

09:15:20 17 THE COURT: Okay.

09:15:22 18 MR. MEUNIER: So, your Honor, that covers the defendant
09:15:22 19 fact sheets.

09:15:23 20 The next item is the Bundling of Complaints and Responsive
09:15:27 21 Pleadings. Some bundled complaints now have been filed. We, as the
09:15:30 22 court knows, have received a proposal from defense counsel to
09:15:34 23 address certain end of case issues for the payment of filing fees
09:15:39 24 that are deferred under the bundling complaint order, and we will be
09:15:43 25 including that in our meet and confer discussions and reporting back

09:15:45 1 to the court.

09:15:47 2 We recognize that it's ultimately for your Honor to
09:15:50 3 approve any resolution of those concerns.

09:15:52 4 THE COURT: Do we have a feel for how many cases are in
09:15:56 5 the MDL at this time? Andy, do you have anything?

09:16:00 6 MR. BIRCHFIELD: I have not received the updated numbers.

09:16:03 7 THE COURT: Lenny? Dawn, do you want to report?

09:16:05 8 MS. BARRIOS: I believe Dean told me this morning it's
09:16:07 9 about 700; is that correct, Dean?

09:16:09 10 THE DEPUTY CLERK: Yes.

09:16:10 11 THE COURT: All right.

09:16:13 12 MR. MEUNIER: Your Honor, the next item on the agenda is
09:16:15 13 the Preservation Order, and you entered PTO 15 for the preservation
09:16:19 14 of documents and electronically stored information. There are
09:16:24 15 continuing issues dealing with the preservation of voicemail,
09:16:28 16 instant messaging, text messages, et cetera, and the PSC has
09:16:32 17 provided a 30(b)(6) notice related to ESI preservation, and we
09:16:38 18 expect that testimony to facilitate the resolution of those
09:16:41 19 remaining issues on preservation.

09:16:44 20 THE COURT: Okay.

09:16:45 21 MR. MEUNIER: The next item is Document Production
09:16:47 22 Protocol, and there is agreement now on that protocol among the
09:16:51 23 parties, and I believe an order, a pre-trial order dealing with the
09:16:54 24 document production protocol will be submitted shortly.

09:17:00 25 The next item is Discovery. And, your Honor, early May

09:17:05 1 we propounded to the defendants, the PSC propounded a first request
09:17:09 2 for production. We've had meet and confers about it, and the
09:17:13 3 agreement was that by June 8 the defendants were to begin with the
09:17:19 4 expression of any objections and also a rolling production. And
09:17:22 5 we've discussed with the court issues regarding the prioritization
09:17:28 6 of custodial files and our concern on the PSC's side that the
09:17:32 7 quality of the initial production is obviously going to have a great
09:17:35 8 impact on the discovery plaintiff schedule, the bellwether trial
09:17:38 9 schedule.

09:17:39 10 But we appreciate your Honor's willingness to stand by as
09:17:43 11 we meet and confer, and we will report to you on the production
09:17:45 12 issues as well as we go forward.

09:17:48 13 THE COURT: Let me hear from you all after you meet and
09:17:51 14 confer so that you can tell me whether or not there's any
09:17:55 15 outstanding issues. If there are, I'll resolve them.

09:17:58 16 MR. MEUNIER: The other thing to report on the subject of
09:18:01 17 discovery, Judge, is that we have provided draft 30(b)(6) notices to
09:18:07 18 the defendants regarding both the cooperate structure of Bayer and
09:18:12 19 the Bayer insurance issues, and we will again await further response
09:18:17 20 and continue to try to finalize those notices.

09:18:21 21 THE COURT: Okay.

09:18:22 22 MR. MEUNIER: On Deposition Guidelines, we are in the
09:18:26 23 process with defendants in preparing a PTO that will address
09:18:31 24 deposition guidelines. If necessary, we'll submit competing
09:18:35 25 versions or confer with the court on those differences if they

09:18:38 1 exist.

09:18:38 2 THE COURT: Okay.

09:18:39 3 MR. MEUNIER: Discovery Issued to Third Parties, two
09:18:43 4 things there, your Honor: One, is that we did issue a subpoena
09:18:47 5 duces tecum to the FDA. We did receive a response, certain records.
09:18:52 6 We have provided those to the defendants. We have had some
09:18:54 7 follow-up discussion with the FDA about further responsiveness, and
09:18:59 8 we appreciate the court's help if we need it on addressing that.

09:19:02 9 THE COURT: Sometimes there's a little bureaucracy
09:19:05 10 involved. Keep me advised on that because I'll get with the U.S.
09:19:10 11 Attorney's Office here and hopefully somebody will be assigned to
09:19:13 12 work with the FDA on those productions.

09:19:17 13 With regard to depositions, too, keep in mind that there
09:19:22 14 may be an opportunity or availability to take online depositions,
09:19:28 15 particularly with regard to Bayer because they're out of the
09:19:33 16 country; and oftentimes it's easier to do that than it is to have
09:19:38 17 everybody fly to Europe to do it, to participate in it.

09:19:45 18 What I've done in the past with online depositions is the
09:19:50 19 people from each side go or one from each side and another person
09:19:55 20 with a laptop, and you're able to pull up the depositions at your
09:20:01 21 office or home or wherever. On the right-hand side is the
09:20:08 22 transcript, on the left-hand side is voice and image, you log in
09:20:12 23 with your Social Security number, and if you have any questions you
09:20:15 24 type it in and it goes to the person next to the questioner; and at
09:20:19 25 the appropriate time he elbows the questioner and asks him "New

09:20:24 1 Orleans wants this" or "Montana wants that," or whatever it is and
09:20:29 2 the question is asked. So it's easier to be done.

09:20:32 3 If it's a problematic deposition, let me know and I'll log
09:20:35 4 in and I'll rule immediately with the objections.

09:20:41 5 It can be costly but with the numbers that we're dealing
09:20:44 6 with in this particular case, the number of attorneys, the costs is
09:20:51 7 well within a manageable area.

09:20:53 8 MR. MEUNIER: Thank you, Judge. The other item on third
09:20:56 9 party discovery was that the PSC has issued a subpoena to the Duke
09:21:01 10 Clinical Research Institute, and we will be following up on that
09:21:04 11 discovery as well.

09:21:05 12 The next item is the Science Day, which will be held
09:21:09 13 tomorrow in this courtroom starting at 9:00 A.M. We have Pre-Trial
09:21:14 14 Order 18 which sets forth the protocol and the procedure for Science
09:21:19 15 Day. And I know that both sides are prepared to conduct not an
09:21:22 16 adversarial event but one that is meant for the court's instruction.

09:21:27 17 THE COURT: It is very helpful to me to have a feel for
09:21:30 18 what the science is involved in this particular case. I've asked
09:21:35 19 the parties to give me a bibliography, they've done so, and each of
09:21:40 20 them has given me about ten articles, I've read all of the articles
09:21:44 21 on it; and tomorrow I'll hear from the experts who will go into
09:21:48 22 Science 101 and explain to me what the science is involving this
09:21:54 23 particular drug.

09:21:55 24 Everybody's invited. You can come but we're not going to
09:22:00 25 have facilities for recording or anything of that sort because it's

09:22:05 1 not on the record, it's simply -- the purpose is to educate the
09:22:10 2 judges involved. I'll have my state court colleagues on the line,
09:22:15 3 they'll be able to participate, and they'll also have websites that
09:22:23 4 they're able to look at the overheads that are presented.

09:22:32 5 So the whole purpose of it is just to educate the judges
09:22:36 6 so that we're better able to handle Daubert or Frye issues and
09:22:40 7 follow-up with the technical aspects and the science aspects of the
09:22:44 8 litigation.

09:22:46 9 MR. MEUNIER: The next item, your Honor, is State/Federal
09:22:49 10 Coordination, and the chair of the State Liaison Committee
09:22:54 11 Ms. Barrios is here to make a report.

09:22:56 12 MS. BARRIOS: Thank you, Mr. Meunier. Good morning, your
09:22:58 13 Honor. I make this report on behalf of the State/Federal Committee.
09:23:02 14 I would like to thank all of the defendants for complying so quickly
09:23:06 15 with your order to provide us with all of the state court cases and
09:23:10 16 the census, and they've been terrific in handling that for us.

09:23:14 17 I'd also like to thank the committee because our committee
09:23:17 18 has been incredibly responsive to any questions that we have. And
09:23:22 19 I'd also like to point out to the court that Dan Gallucci, who is
09:23:27 20 co-lead counsel in Philadelphia, is here today; and generally either
09:23:30 21 he or Mr. Yankowitz will appear before your Honor at every status
09:23:36 22 conference.

09:23:36 23 THE COURT: Okay.

09:23:37 24 MS. BARRIOS: For the record, we have provided or co-lead
09:23:40 25 counsel in Philadelphia has provided Judge New with all of the

09:23:43 1 relevant documents for Science Day.

09:23:46 2 We are working with the PSC on the deposition protocol to
09:23:49 3 insure that there is some input from the states' counsel on that.

09:23:55 4 As far as the state court stats of today, your Honor, we
09:24:02 5 have two cases filed in Indiana, one in Missouri, six in New Jersey,
09:24:09 6 and Pennsylvania has 261 by the plaintiffs' count. The defendant's
09:24:15 7 count was different, but obviously it's because of service and
09:24:18 8 filing. So that would be a total of 270 cases outside of your
09:24:21 9 jurisdiction.

09:24:22 10 THE COURT: Okay.

09:24:23 11 MS. BARRIOS: Thank you, your Honor.

09:24:24 12 THE COURT: I've been in communication with Judge New. I
09:24:29 13 haven't touched base with the other judges, so if they do get a
09:24:34 14 number of cases there, get me the names and the addresses and
09:24:38 15 telephone numbers and I'll coordinate with them.

09:24:40 16 MS. BARRIOS: Sure.

09:24:41 17 THE COURT: We've been able to coordinate with Judge New
09:24:44 18 very well. He is going to be terrific in the state aspect of the
09:24:53 19 case, and I look forward to working with him.

09:24:57 20 The next item proposed? Anything?

09:24:59 21 MR. MEUNIER: Yes. Unless there's something else to be
09:25:02 22 discussed with counsel present, your Honor, the only other item is
09:25:05 23 the next status conference. You scheduled July 9.

09:25:08 24 THE COURT: Right. July 9 and then August the 6th is the
09:25:11 25 following one, August the 6th. July 9 is the next one.

