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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO * Docket No. MDL-2592
(RIVAROXABAN) PRODUCTS * Section L
LIABILITY LITIGATION *
* New Orleans, Louisiana
* January 29, 2015
* * * * *

MONTHLY STATUS CONFERENCE BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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7 Proceedings recorded by mechanical stenography, transcript
8 produced by computer.
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PROCEEDINGS

(January 29, 2015)

(OPEN COURT.)

THE COURT: Be seated, please.

Good morning, ladies and gentlemen.

Would you call the case, please?

THE DEPUTY CLERK: MDL No. 2592, *In re: Xarelto Products Liability Litigation.*

THE COURT: Will liaison counsel make their appearance for the record, please?

MR. MEUNIER: Gerry Meunier with the firm of Gainsburg Benjamin, co-liaison counsel for plaintiffs, Your Honor.

MR. DAVIS: Good morning, Your Honor. I'm Leonard Davis with the firm of Herman, Herman & Katz, co-liaison plaintiffs counsel.

MR. IRWIN: Good morning, Your Honor. Jim Irwin, Irwin Fritchie, defense liaison counsel, and my colleague.

MR. OLINDE: Is John Olinde, Chaffe McCall here in New Orleans.

THE COURT: Okay. Thank you.

Let me make a few comments. First, I'd like to welcome all of you all to the first meeting. I appreciate you

9:00AM 1 being here. I'm glad the weather permitted some of our friends
9:00AM 2 from New York and New Jersey and the other places to come in.

9:00AM 3 As you know, I've appointed liaison counsel.
9:00AM 4 Let me mention, too, those of you who are not from here, we
9:00AM 5 have an attorney conference center in the building. It's on
9:00AM 6 the second floor in the Hale Boggs building. There are
9:00AM 7 conference rooms, there are lounges. There's places for
9:01AM 8 copying, Internet service, and there's no charge for the use of
9:01AM 9 the room. So if you need to use those facilities, please feel
9:01AM 10 free to do so. If you need anything else, get to chambers and
9:01AM 11 we'll see if we can accommodate you.

9:01AM 12 As I was saying, I've appointed liaison counsel
9:01AM 13 to be of assistance, particularly in the early stages of the
9:01AM 14 case, with notice and things of that sort. I will be
9:01AM 15 appointing the Plaintiffs' Steering Committee and the
9:01AM 16 Defendants' Steering Committee.

9:01AM 17 With regard to the Plaintiffs' Steering
9:01AM 18 Committee, I've received a number of applications. I suspect
9:01AM 19 I'll be receiving more. Let me remind you, those of you who
9:01AM 20 have applied, and are applying, that it's quite a commitment in
9:01AM 21 time and, unfortunately, it's quite a commitment in resources
9:02AM 22 also.

9:02AM 23 I mention that to you because this is not my
9:02AM 24 first case, and I try to move these cases relatively fast. So
9:02AM 25 it takes some time and you have to put things on the back

9:02AM 1 burner and some of your other clients may be suffering. So be
9:02AM 2 aware of that. It takes a lot of commitment, both in time as
9:02AM 3 well as resources.

9:02AM 4 I look to you to participate in the litigation,
9:02AM 5 and I look to you to devote whatever time is necessary. To
9:02AM 6 help you in that regard, I make the appointments for one year
9:02AM 7 at a time. There are no term limits. But the second year, I'm
9:02AM 8 interested in hearing from you as to what you did in the past
9:02AM 9 year: How many depositions you've participated in, or
9:03AM 10 discovery, or briefs, or whatever it takes. That helps me
9:03AM 11 decide on the next year's slate.

9:03AM 12 I also try to open the matter, as much as I can
9:03AM 13 open it, to people even who are not on the Plaintiffs' Steering
9:03AM 14 Committee. I expect the Plaintiffs' Steering Committee -- and
9:03AM 15 I'll be talking to the committee after I appoint them to make
9:03AM 16 sure that my communication has set in -- I look to them to form
9:03AM 17 subcommittees.

9:03AM 18 Anybody, any plaintiff lawyer, who's interested
9:03AM 19 in participating in the case, who's interested in working on
9:03AM 20 the case, even if you're not on the steering committee, you
9:03AM 21 should feel you have a right to participate if you have
9:03AM 22 something to give and something to offer.

9:04AM 23 It needs to be coordinated, and I look to lead
9:04AM 24 counsel to help coordinate it. But if you can't get on that
9:04AM 25 work detail, then I have a provision that you can talk to the

9:04AM 1 Court and I'll make sure your work is accommodated.

9:04AM 2 With regard to the defense committee, it's
9:04AM 3 somewhat self-appointed. I'll be talking to defense liaison
9:04AM 4 and getting your requests at that time.

9:04AM 5 Next, let me make some comments about some
9:04AM 6 infrastructure. Because a case of this sort, numbers, MDLs in
9:04AM 7 general, not all of them, but most of our MDLs are about 9 to
9:04AM 8 10, 12 cases. But, unfortunately, I've had the detail of
9:04AM 9 having a couple more cases than 9 or 10.

9:05AM 10 In those larger MDLs -- and I might say by way
9:05AM 11 of just statistics, the latest statistics indicate that between
9:05AM 12 30 and 35 percent of all civil cases in the United States are
9:05AM 13 in MDLs. So it's a significant commitment, but it takes some
9:05AM 14 infrastructure, particularly the larger MDLs.

9:05AM 15 One of the things I'll be doing shortly is
9:05AM 16 confirming the appointment of a CPA. I'll be putting out the
9:05AM 17 pretrial orders talking about the type of work that is common
9:05AM 18 benefit work and the type of expense that is common benefit
9:05AM 19 expense. But anybody doing that from the plaintiffs' side on
9:06AM 20 the common benefit expense and hope for fees has to submit the
9:06AM 21 time and expense to the court-affirmed CPA, and it has to be
9:06AM 22 done relatively soon. I'll give you a month or so to get to
9:06AM 23 him.

9:06AM 24 We've created some software for that. You need
9:06AM 25 to know that I meet with the CPA every month and go over all of

9:06AM 1 those documents. He gives me a summary and I'm able to see
9:06AM 2 who's doing the work and who's putting up the costs and things
9:06AM 3 of that sort. It's essential that you follow those rules.
9:06AM 4 I'll be setting some protocols that will be of assistance to
9:06AM 5 you in that regard.

9:07AM 6 Next, by way of logistics and infrastructure, I
9:07AM 7 think the traditional meet and confer regarding getting
9:07AM 8 information, initial disclosure, as we call it, and also
9:07AM 9 interrogatories, particularly interrogatories, a weak discovery
9:07AM 10 device. It's questions asked by attorneys and generally
9:07AM 11 answered by attorneys; and the attorneys asking the questions
9:07AM 12 want everything from day one in the world, and the person
9:07AM 13 answering wants to give nothing. So as a result it causes a
9:07AM 14 lot of motion practice and a lot of wasted time.

9:07AM 15 So I try to shortcut that and we don't have many
9:07AM 16 interrogatories. I don't want to discourage it if you need
9:07AM 17 them. But, hopefully, we have some vehicle to take that place,
9:08AM 18 and we call it profile or we call it fact sheets. After I
9:08AM 19 appoint the committees, I'm looking for the committees to get
9:08AM 20 together and see whether or not they can come up with a fact
9:08AM 21 sheet calling on each of them to give certain information and
9:08AM 22 certain documents that we can shortcut this process.

9:08AM 23 In that regard, I've been meeting with Orran
9:08AM 24 Brown to try to come up with some way of dealing with this
9:08AM 25 issue that has a broader purpose. I think fact sheets not only

9:08AM 1 give you the information, but we have to make them searchable,
9:08AM 2 and we have to make them retrievable, and we have to do
9:08AM 3 something with them to assist us in selecting bellwether cases,
9:09AM 4 and to assist us in getting a handle on the litigation.

9:09AM 5 We have to know whether or not we can categorize
9:09AM 6 this litigation into four or five different categories and then
9:09AM 7 pick from those categories cases for bellwether to give the
9:09AM 8 lawyers for both sides an opportunity to at least look at the
9:09AM 9 case and see what the whole census of the case offers.

9:09AM 10 In that regard, I've talked a bit with Orran
9:09AM 11 Brown.

9:09AM 12 Orran, are you here today?

9:09AM 13 **MR. BROWN:** Yes, Your Honor.

9:09AM 14 **THE COURT:** I'd like a quick demonstration of what
9:09AM 15 we've been talking about just to give everybody a heads-up on
9:09AM 16 it.

9:09AM 17 **MR. BROWN:** Thank you, Your Honor.

9:09AM 18 I'm Orran Brown from BrownGreer in Richmond.
9:09AM 19 It's a pleasure to be here. I have Jake Woody and Roma
9:09AM 20 Petkauskas. Jake is from our Richmond office; Roma is from our
9:09AM 21 New Orleans office. I'm happy to have this chance to show this
9:10AM 22 to the Court and the parties, recognizing that none of this is
9:10AM 23 etched in stone. This is all customizable and can be made to
9:10AM 24 fit whatever the parties and the Court would want to use in
9:10AM 25 this program.

9:10AM 1 This is just a way to update the manner in which
9:10AM 2 fact sheets, or profile forms, are filled out and served on
9:10AM 3 each other, and tracked and stored and accessed, and then
9:10AM 4 analyzed as you go forward in this litigation. We're calling
9:10AM 5 this "MDL Centrality." We wanted to quickly compare what this
9:10AM 6 application can do to what we see parties doing in the world
9:10AM 7 out there now.

9:10AM 8 For example, this is from the Testosterone MDL
9:10AM 9 from last fall. Kind of current, state-of-the-art about how
9:10AM 10 these fact sheets, or profile forms, are done. They're done on
9:10AM 11 paper with a long form of questions that people write on or
9:10AM 12 fill out by hand, and then they end up serving them on each
9:10AM 13 other.

9:10AM 14 In that program, the order -- the case
9:10AM 15 management order directed that the people -- the plaintiffs
9:11AM 16 serve them on 12 different defense counsel. So you're sending
9:11AM 17 12 e-mails. So this is doing it on paper, PDFs, e-mails and
9:11AM 18 sending 12 of them out to serve them.

9:11AM 19 Now, this MDL Centrality program allows you to
9:11AM 20 do that all in one place online and in an automated way without
9:11AM 21 having to do it piecemeal. And it also gives you live data
9:11AM 22 that you can analyze and survey.

9:11AM 23 Basically, what we want to show here is that as
9:11AM 24 we understand -- and I've done litigation. I did it for 15
9:11AM 25 years. I know interrogatories. I know how this process works.

9:11AM 1 But in this world, we can update from the sort of stagecoach
9:11AM 2 technology that's being used to being in a hybrid electric that
9:11AM 3 parks itself. This is using the technology to make this easier
9:11AM 4 and faster.

9:11AM 5 If we go through the steps or the functions that
9:12AM 6 you need out of these fact sheets, first is just completing
9:12AM 7 them, filling them out, serving them on each other. This
9:12AM 8 system allows you to do that online in one place in an
9:12AM 9 automated way: Fill it out online -- the claimants can fill
9:12AM 10 them out or the lawyers for the claimants can fill them out; if
9:12AM 11 there's a defendant fact sheet, the defense counsel can fill
9:12AM 12 them out -- all online -- and store them and then submit them
9:12AM 13 and serve them online.

9:12AM 14 It also allows uploading records. If there's
9:12AM 15 medical records that are required with the fact sheet, then
9:12AM 16 they get uploaded to this system instead of served around on
9:12AM 17 people, and they're stored in the system. It also allows if
9:12AM 18 there's a medical authorization or medical records
9:12AM 19 authorization form, the claimant can sign that online, or sign
9:12AM 20 it in hard copy, if that's what people wish, and it gets stored
9:12AM 21 online.

9:12AM 22 So then everything is in one place, centralized,
9:12AM 23 filled out, put in one place that's accessible to the parties
9:12AM 24 who are authorized to see it.

9:12AM 25 The second thing is tracking the deadlines.

9:13AM 1 These all have periods of time when they're supposed to be due
9:13AM 2 after the order or after the transfer order that sends the case
9:13AM 3 here. This allows everybody to track when they're due. It
9:13AM 4 allows claimants' counsel to keep track of when they have them
9:13AM 5 due. You can run reports. It shows you the deadlines. And
9:13AM 6 users of this -- the authorized users of this can see who's
9:13AM 7 done it and who hasn't.

9:13AM 8 The signing of these documents can be done
9:13AM 9 online electronically. Under the Federal Esign Act and the
9:13AM 10 state equivalence, these are as binding as hard copy
9:13AM 11 signatures, or actual signatures. Though, if the parties want
9:13AM 12 an actual signature, that can be signed, uploaded, and is
9:13AM 13 placed in along with the records as well. It all is a matter
9:13AM 14 of what the parties want and the Court wants. This can evolve
9:13AM 15 to do whatever you want to do.

9:13AM 16 The last thing on this page is tracking: Who's
9:13AM 17 done it; what answers are filled out; who's in the middle of
9:13AM 18 it. This allows you immediately, the claimants, their counsel,
9:13AM 19 and the defense counsel, and the Court, if it wishes, to see
9:14AM 20 where those things stand and keep up with them.

9:14AM 21 As you look ahead, as the Court mentioned, using
9:14AM 22 this information, it's now live information. It's not
9:14AM 23 statistic or dead data; it's live data that you can query, and
9:14AM 24 you can slice and dice and analyze. And it helps you review
9:14AM 25 what you have in terms of injuries or use or duration of use or

9:14AM 1 treaters or prescribers. And it allows, I think, easier access
9:14AM 2 for counsel and the Court then to pick the sample cases and
9:14AM 3 pick test cases or bellwether cases.

9:14AM 4 If there's going to be an end game, if there's
9:14AM 5 going to be some settlement program or some resolution later,
9:14AM 6 that data is all there to categorize the injuries and how many
9:14AM 7 there are and how many of a certain type or age of the
9:14AM 8 claimants. It's all there and can be accessed and analyzed.

9:14AM 9 And if there is an end game, and if there is a
9:14AM 10 claims program, then all that data is already there live to
9:15AM 11 pre-fill those claim forms, and even pull the records over, if
9:15AM 12 that's what the parties want, to be able to make that process
9:15AM 13 work faster and smoother.

9:15AM 14 Then, of course, we want this to be able to keep
9:15AM 15 up with the cases: What's been filed; what's been transferred;
9:15AM 16 what's been remanded. And down the road, end game issues, when
9:15AM 17 those cases have to be dismissed or taken care of, this allows
9:15AM 18 immediate access to that information.

9:15AM 19 Some questions we get about this, because we've
9:15AM 20 talked about it with a lot of people, these are just a few of
9:15AM 21 them -- and we're open to meet any time with any of the lawyers
9:15AM 22 who want to see this or learn more about it or have questions
9:15AM 23 about it, we can show it to them at any time that their
9:15AM 24 schedule allows -- how are these fact sheets signed?

9:15AM 25 They can be signed electronically. If the

9:15AM 1 parties agree, the lawyer can sign them. If the claimant has
9:15AM 2 to sign them, then the claimant has to sign them. They can
9:15AM 3 sign them electronically, that's binding. But as I said, they
9:15AM 4 can sign them, print the hard copy, sign it in actual
9:15AM 5 signature, upload it, it gets placed with that plaintiff in the
9:16AM 6 record.

9:16AM 7 Who has access to it? Well, that depends on
9:16AM 8 what the parties want. That's going to be agreed upon and
9:16AM 9 ordered by the Court as to lead counsel. Each law firm that
9:16AM 10 represents one, or any number, of these plaintiffs can only see
9:16AM 11 his or her own claimants on this system. Lead counsel, liaison
9:16AM 12 counsel, PSC can have more general access if the parties agree
9:16AM 13 and the Court allows.

9:16AM 14 What you can see on this is entirely a function
9:16AM 15 of the credentials you get when you log on. You get a user
9:16AM 16 name and a password that is unique to you that allows you to
9:16AM 17 see what you're permitted to see.

9:16AM 18 This system has work spaces in it for
9:16AM 19 plaintiffs' counsel to work with their clients in filling them
9:16AM 20 out. It has work spaces where any counsel, defense counsel or
9:16AM 21 other, can look at documents, tag them, make comments, come
9:16AM 22 back to them later, I'm going to use it in this deposition or
9:17AM 23 not. That's all private. It's secure to each side. Nobody
9:17AM 24 can see your metadata or thought processes.

9:17AM 25 And we think that the case management order, if

9:17AM 1 there is one that directs use of this or authorizes use of
9:17AM 2 this, would say that that area is subject to work product
9:17AM 3 privileges and it's not going to alter the privilege or work
9:17AM 4 product protection that would otherwise apply to it.

9:17AM 5 If there is a plaintiff without a computer or
9:17AM 6 access to the Internet, they can fill it out in hard copy, send
9:17AM 7 it to their counsel, they can fill it out online or they can
9:17AM 8 send it to us.

9:17AM 9 What does it cost? This is a new program. This
9:17AM 10 is a brand-new, cutting-edge program. We have not established
9:17AM 11 what it would cost. We were thinking that a fair cost is
9:17AM 12 around \$50 per fact sheet. But that's a matter that we can
9:17AM 13 discuss with counsel and the Court because we're not in this to
9:17AM 14 gouge people for costs. We want this to be much more
9:18AM 15 affordable and efficient and cost-effective than what people
9:18AM 16 are doing now. So this is open for discussion.

9:18AM 17 We've built it to where if there's a law firm
9:18AM 18 that has 100 claimants/clients, or a thousand clients, they can
9:18AM 19 upload it in an Excel in a bulk upload instead of doing it one
9:18AM 20 at a time. We're trying to make that easier. We've build it
9:18AM 21 to where we can establish links with record retrieval companies
9:18AM 22 that will allow those records to come over directly to us.
9:18AM 23 We're trying to make that process smooth and easy.

9:18AM 24 This is the last part of this, Your Honor. It's
9:18AM 25 just some screenshots. This is kind of what it would look like

9:18AM 1 online. This is your welcome page, you log in and you start
9:18AM 2 the process. This is the central place where everybody goes to
9:18AM 3 work on profile forms, to fill them out, see them, serve them,
9:18AM 4 and analyze them.

9:18AM 5 And this, for example, is the first start for
9:18AM 6 registering a plaintiff. You fill in basic information: Date
9:18AM 7 of birth; social security number is nice to have to be able to
9:19AM 8 distinguish people. Again, it's all secure. This is much more
9:19AM 9 secure than e-mail. That process in Testosterone of e-mailing
9:19AM 10 those things around is really not a secure way to transfer
9:19AM 11 personal information.

9:19AM 12 This is a registration page, basic information.
9:19AM 13 This is like a fact sheet. These are some of the questions
9:19AM 14 that people would fill out. Again, this is interactive so that
9:19AM 15 you only fill out the ones that apply. If you answer no to a
9:19AM 16 question, you don't have to worry about all the rest of the
9:19AM 17 sections about filling out things that you see on a hard copy
9:19AM 18 claim form or a profile form.

9:19AM 19 Now, this is customizable to this program.
9:19AM 20 Whatever the fact sheet that the parties agree on, if there is
9:19AM 21 one, it's built into this system with the questions that show
9:19AM 22 up. If you run searches, you can see, you can query it to see
9:19AM 23 who's done it, who's complete, who's not. This allows either
9:19AM 24 side, or whoever's got access -- permitted access to see where
9:19AM 25 people stand, have they done it or not. It allows you

9:19AM 1 immediately to see all the data points that relate to whether
9:20AM 2 somebody has done it or not and when you can export this into
9:20AM 3 Excel if you want to keep it on your own system.

9:20AM 4 This is keeping up with the cases. You want to
9:20AM 5 be able to track where the cases are so that you have that
9:20AM 6 information later about dismissals or remands.

9:20AM 7 We've heard some firms talk about having kind of
9:20AM 8 a bulk upload feature where you basically register all your
9:20AM 9 claimants. Even if they're not participating in the MDL yet,
9:20AM 10 you can register them all to keep track of how many there are.
9:20AM 11 This feature allows that, to import hundreds of names at a time
9:20AM 12 and then tell you how many were successful or what was missing
9:20AM 13 about them. It's all interactive and designed to make it
9:20AM 14 easier for people to do this.

9:20AM 15 If there's a defendant fact sheet, it's done the
9:20AM 16 same way. It can be filled out online. For example, in cases
9:20AM 17 where a defendant has to provide information about sales reps'
9:20AM 18 contacts with prescribing physicians, this would automatically
9:20AM 19 pull the plaintiffs' physicians and then ask the defendant to
9:21AM 20 fill in as to those contacts and to provide records for them.
9:21AM 21 So it's all interactive and relates to the information that's
9:21AM 22 already in there.

9:21AM 23 This is allowing claimants -- or counsel,
9:21AM 24 defense counsel, to upload documents and flag them and mark
9:21AM 25 them for later use. You can run sophisticated reports from the

9:21AM 1 data on your own, or have us run them for you. This is a way
9:21AM 2 to see how many you have, where they are, the dates, and
9:21AM 3 everything else can be done automatically. And it allows you
9:21AM 4 to keep track of all the cases, the injuries and the live data.

9:21AM 5 And we're thinking that this is better utility
9:21AM 6 and functionality than what's being done now, much more
9:21AM 7 convenient and easier to use, much more secure than what's
9:21AM 8 being done today to protect this information. We think it will
9:21AM 9 save time. And we think it will save money for everybody over
9:21AM 10 the methods that are being done by hand now.

9:21AM 11 **THE COURT:** Okay.

9:21AM 12 **MR. BROWN:** So thank you, Your Honor, for this time.
9:22AM 13 We're available to answer questions or show this to anybody at
9:22AM 14 any time.

9:22AM 15 **THE COURT:** Okay. Thank you, Orran.

9:22AM 16 I'm interested in this process because the fact
9:22AM 17 sheets, I think, have been limited in use in the past. This is
9:22AM 18 the first time any case has been trying to use this type of
9:22AM 19 information; but I think with your help and your input, I think
9:22AM 20 we can make this work, and work to the benefit of everybody.

9:22AM 21 **MR. BROWN:** Thank you, Your Honor.

9:22AM 22 **THE COURT:** Thank you.

9:22AM 23 **MR. BROWN:** We also have some draft case management
9:22AM 24 order language if people would like to see it that would enact
9:22AM 25 this, if that would help.

9:22AM 1 Thank you, Your Honor.

9:22AM 2 **THE COURT:** Yes. Thank you.

9:22AM 3 One last thing on that, a problem that has
9:22AM 4 developed in MDLs in general is with the clerks' offices
9:22AM 5 finding out which cases are still open, which cases are not
9:22AM 6 open, which cases need to be closed, and things of that sort.
9:22AM 7 So, hopefully, this can remedy some of those issues, too. So I
9:23AM 8 am interested in this and I'll be talking with you more about
9:23AM 9 it.

9:23AM 10 Another logistical aspect to the case is the Web
9:23AM 11 site. As many of you know who worked with me in the past, I
9:23AM 12 prepare a Web site for these cases. The Web site for this
9:23AM 13 case, you'll go to www.laed.uscourts.gov and click on the MDL
9:23AM 14 class action, and then from there you can click on "Xarelto"
9:23AM 15 and pull up everything.

9:23AM 16 On the Web site, I put a calendar so everybody
9:23AM 17 knows what's coming up. I put all of the recent developments.
9:23AM 18 I put transcripts of all of the meetings. A transcript of this
9:23AM 19 meeting will go on it so that anybody who is not able to be
9:23AM 20 present can pull that up and see what happened during the
9:24AM 21 meetings. So it's accessible to everybody.

9:24AM 22 One problem that MDLs have traditionally had is
9:24AM 23 a complaint that the litigants don't know what's happening to
9:24AM 24 their case. They filed it in Arizona and all of a sudden it's
9:24AM 25 been transferred to New Orleans, and nobody's been in New

9:24AM 1 Orleans, why is it there, what's happening to the case? Well,
9:24AM 2 they can click on the Web site and see what's happening. If
9:24AM 3 they have any questions, they can, hopefully, get them
9:24AM 4 answered.

9:24AM 5 Another thing that I do that I found helpful is
9:24AM 6 monthly meetings. I'll be meeting monthly on this case, and my
9:24AM 7 monthly meetings are in open court. A half an hour or so
9:24AM 8 before the monthly meeting, I meet with liaison and lead
9:24AM 9 counsel to discuss the agenda to tell them what I'm going to be
9:25AM 10 covering so that they know what the agenda will be and better
9:25AM 11 able to work with it. Then I meet in open court.

9:25AM 12 Anybody's welcome, litigants as well as lawyers.
9:25AM 13 I also have access and open up the phone lines. We have a
9:25AM 14 couple hundred people online today, and we'll keep that
9:25AM 15 throughout the meetings.

9:25AM 16 Finally, after the committees are appointed, and
9:25AM 17 I'll be doing that before the next meeting, I need them to get
9:25AM 18 together and talk about a protocol for direct filing, a
9:25AM 19 protocol for depositions, a protocol for a preservation order,
9:25AM 20 protective orders, a protocol for document production.

9:25AM 21 Also, I'll be looking to liaison counsel to give
9:25AM 22 me a listing of the cases in state court and the judges who are
9:25AM 23 handling those cases in state court. I work closely with the
9:26AM 24 state judges and try to be of assistance to them; and,
9:26AM 25 hopefully, they'll reciprocate and be of assistance to me in

9:26AM 1 our mutually handling these cases.

9:26AM 2 I've been very fortunate to have great state
9:26AM 3 court judges in the cases that I've worked with, and it
9:26AM 4 certainly made my life easier; and, hopefully, I've contributed
9:26AM 5 a little bit to theirs.

9:26AM 6 Those are just the general comments that I
9:26AM 7 wanted to make. I'll hear from liaison counsel now on their
9:26AM 8 proposed agenda.

9:26AM 9 **MR. MEUNIER:** Thank you, Your Honor. Gerry Meunier,
9:26AM 10 co-liaison counsel for plaintiffs.

9:26AM 11 Your Honor, Mr. Davis and I, first of all, of
9:26AM 12 course, appreciate the opportunity the Court has given us to
9:26AM 13 serve as co-liaison. We're especially appreciative for the
9:26AM 14 early cooperation and dialogue we've had with Mr. Irwin and his
9:26AM 15 group.

9:26AM 16 We met with those interests, counsel, last
9:27AM 17 night, went through the agenda for today. And I can just say
9:27AM 18 that so far there's been a high level of professionalism, as we
9:27AM 19 would expect, a high level of courtesy and cooperation. I
9:27AM 20 would look forward to more of that.

9:27AM 21 I would also be remiss if we didn't thank at the
9:27AM 22 outset our plaintiff friends and colleagues who have come
9:27AM 23 forward to ask for opportunities to be of assistance.

9:27AM 24 And, of course, once the committee's appointed,
9:27AM 25 we will do whatever we can as liaison to implement Your Honor's

9:27AM 1 concept of the full use of subcommittees to give all interested
9:27AM 2 counsel an opportunity to do common benefit work.

9:27AM 3 **THE COURT:** I might say that in these cases, it's
9:27AM 4 been my experience that they work, and they work well; but they
9:27AM 5 work well, not necessarily because of the judge, but because of
9:27AM 6 the quality of the lawyers who are handling these cases. We're
9:27AM 7 very fortunate in this type of litigation to get the best of
9:27AM 8 the best. I'm looking in the room, I can see that that's the
9:28AM 9 case here.

9:28AM 10 But because of the quality of the lawyers in
9:28AM 11 cases of this sort, the cases are able to be handled and the
9:28AM 12 system works well.

9:28AM 13 **MR. MEUNIER:** Your Honor, the first item on the
9:28AM 14 agenda was just review of pretrial orders. Since the Joint
9:28AM 15 Report was filed, a couple -- a few additional orders have been
9:28AM 16 issued. So Pretrial Order 1, which is Document 2, set forth a
9:28AM 17 number of initial and important matters, including the setting
9:28AM 18 of this conference, of course, as well as some broad provisions
9:28AM 19 for preservation of evidence, et cetera.

9:28AM 20 Pretrial Order 2, which is Document 38, provided
9:28AM 21 for the appointment of liaison counsel, Mr. Davis and I.

9:28AM 22 Pretrial Order 3, Document 39, appointed
9:28AM 23 Mr. Irwin as defense liaison.

9:28AM 24 And then since the Joint Report, Pretrial
9:28AM 25 Order 4, which is Document 61, set forth the requirement for

9:28AM 1 counsel to provide contact information to Mr. Davis and me as
9:29AM 2 liaison.

9:29AM 3 Pretrial Order 4-A actually provided a form for
9:29AM 4 contact information, and that attachment is important for
9:29AM 5 counsel to refer to and utilize. We understand from the
9:29AM 6 Court's order that all counsel in this case are expected to
9:29AM 7 keep their contact information on that form current and up to
9:29AM 8 date, with the understanding that Mr. Davis and I, as liaison,
9:29AM 9 will be relying fully on that form for purposes of notification
9:29AM 10 and service in the matter.

9:29AM 11 And then Pretrial Order 5, which is Document 63,
9:29AM 12 modified Rule 1.6 of the Rules of Procedure for MDLs to allow
9:29AM 13 for the transferor court to send a copy -- an electronic copy
9:29AM 14 of the file of the case being transferred.

9:29AM 15 So those are the orders, Your Honor. Beyond our
9:29AM 16 wishing to emphasize the importance of the contact information
9:30AM 17 form, the other matter to be covered on the agenda under Item 2
9:30AM 18 has to do with File & Serve, which I understand to be the new
9:30AM 19 title, if you will, of LexisNexis, which is familiar to this
9:30AM 20 Court --

9:30AM 21 **THE COURT:** Right.

9:30AM 22 **MR. MEUNIER:** -- and to many others in this room.

9:30AM 23 We understand the Court is interested in a
9:30AM 24 uniform, consistent system for electronic filing and service.
9:30AM 25 We, Mr. Davis and I, as liaison, have asked File & Serve to

9:30AM 1 provide a proposal for the implementation of that system.

9:30AM 2 And yesterday, in meeting with defendants'
9:30AM 3 liaison and defense counsel, it was understood that that
9:30AM 4 proposal, obviously, would be presented to both sides through
9:30AM 5 liaison. And we'll have an opportunity then to report back to
9:30AM 6 the Court after we've discussed issues like cost and security
9:30AM 7 and those kinds of important details.

9:30AM 8 **THE COURT:** Yes. Let me know if I can be of
9:30AM 9 assistance there. I'm concerned about costs, always. I think
9:30AM 10 that that has to be taken into consideration in all cases, in
9:31AM 11 particularly MDLs. So I am interested in that.

9:31AM 12 File & Serve, the only thing that I mention in
9:31AM 13 File & Serve, who are outside providers, is that that doesn't
9:31AM 14 mean that you don't have to file in court. That simply means
9:31AM 15 that it's easier if you're going to have to serve lawyers, they
9:31AM 16 do that rather than your doing it. So they upload what's been
9:31AM 17 filed, and then they actually conduct the service. It's very
9:31AM 18 efficient and it's very helpful in doing that.

9:31AM 19 So I'd urge the parties to consider some outside
9:31AM 20 provider and pick the one that you're most comfortable with.

9:31AM 21 **MR. MEUNIER:** Your Honor, Item 3 on the agenda is the
9:31AM 22 Plaintiffs' Steering Committee. Of course, pursuant to PTO
9:31AM 23 No. 1, applications for appointment to the PSC are to be filed
9:32AM 24 with the Court no later than February 2nd, 2015. Objections to
9:32AM 25 be filed by February 5th. Mr. Davis and I will be prepared to

9:32AM 1 convene a meeting of the PSC immediately upon this Court's
9:32AM 2 appointment of those members.

9:32AM 3 **THE COURT:** Okay.

9:32AM 4 **MR. MEUNIER:** Item 4 is direct filing and master
9:32AM 5 complaint. We understand, obviously, the need to address early
9:32AM 6 on in this MDL the filing and the coordination of allegations
9:32AM 7 by plaintiffs, et cetera. We have agreed to report to Your
9:32AM 8 Honor following the appointment of the PSC whether the Court
9:32AM 9 should be asked to enter orders dealing with, for example, the
9:32AM 10 direct filing in the MDL, the filing of a master complaint, et
9:32AM 11 cetera.

9:32AM 12 We have been furnished -- Mr. Davis and I have
9:32AM 13 been furnished a proposed direct filing order by the defendants
9:32AM 14 through Mr. Irwin. We have advised that that will be reviewed
9:33AM 15 and we will provide immediate feedback immediately on the
9:33AM 16 creation of the PSC. That we, as liaison, don't feel like we
9:33AM 17 have authority, except to set up the predicate, for decision
9:33AM 18 making on something like the direct filing order.

9:33AM 19 I think Mr. Davis will now cover the remaining
9:33AM 20 items on the agenda, Your Honor.

9:33AM 21 **THE COURT:** Okay.

9:33AM 22 **MR. DAVIS:** Thank you, Your Honor. It was a pleasure
9:33AM 23 to serve the Court and assist with all the counsel that have
9:33AM 24 shown up today. I do appreciate that. And to work with Gerry
9:33AM 25 Meunier, as well as opposing counsel.

9:33AM 1 As Gerry mentioned earlier, we did have a
9:33AM 2 meeting last night. We spoke with all counsel for the
9:33AM 3 defendants, and it was a very productive meeting. We did get
9:33AM 4 to talk about a number of the issues, including the agenda.

9:33AM 5 Item 5 on the agenda was discussed in detail,
9:33AM 6 profile disclosure forms. And counsel opposite understands
9:33AM 7 that when a steering committee is put in place, we can discuss
9:34AM 8 this further.

9:34AM 9 I appreciate BrownGreer's presenting their
9:34AM 10 computer program today. I can assure BrownGreer that we are
9:34AM 11 mindful of Your Honor's desire, and we will discuss with them
9:34AM 12 items that they've brought up. Some of the items in particular
9:34AM 13 that I know we've heard from various people are, how will
9:34AM 14 revisions be done before the final gets up there, and we'll
9:34AM 15 talk to BrownGreer about that. But cost, obviously, is an
9:34AM 16 issue.

9:34AM 17 **THE COURT:** Right. If I can be of any assistance
9:34AM 18 there. I'm looking to counsel for both sides to really take
9:34AM 19 the lead on this and decide what information you need. I'd
9:34AM 20 like you all to get together and see if you can come up with
9:34AM 21 one fact sheet, proposed fact sheet, or a disclosure form. If
9:35AM 22 you can't, then each of you give it to me and I'll come up with
9:35AM 23 it. If you have any discussion that needs me in the meantime,
9:35AM 24 get to me and I'll work with you on it.

9:35AM 25 But it's a way of streamlining some of this.

9:35AM 1 The material is going to be produced one way or the other, so
9:35AM 2 it's helpful to get it up front so that each of you then can
9:35AM 3 concentrate on significant matters as opposed to just discovery
9:35AM 4 matters.

9:35AM 5 **MR. DAVIS:** We are mindful of Rule 26 and how Rule 26
9:35AM 6 frames the entirety of a profile form, and Your Honor's earlier
9:35AM 7 comments about interrogatories and trying to short-circuit some
9:35AM 8 of these through meet and confers, and how profile forms can
9:35AM 9 really be utilized with Rule 26. We've spoken briefly about
9:35AM 10 that. So we will utilize that.

9:35AM 11 **THE COURT:** Keep in mind that usually in the past in
9:36AM 12 MDLs, we used the profile forms just for information gathering.
9:36AM 13 But I'm trying to use it this time, and I think MDLs around the
9:36AM 14 country are trying to focus a little bit on this aspect of it,
9:36AM 15 whether we can use the profile forms, or the fact sheets, for a
9:36AM 16 broader purpose, to get a feel for the litigation.

9:36AM 17 That's a big problem oftentimes when we're
9:36AM 18 thinking about bellwether cases and also discovery cases. I
9:36AM 19 don't know how many cases there are going to be in this case.
9:36AM 20 But you can't discover all of the cases, it doesn't make any
9:36AM 21 sense to me, before you begin picking bellwether cases.

9:36AM 22 So we've got to, first of all, get together and
9:36AM 23 talk about whether or not we can have a discovery pool. That
9:36AM 24 discovery pool may be 30, 40 cases instead of thousands and
9:36AM 25 thousands of cases. But those 30 or 40 cases have to represent

9:37AM 1 the entire census to make it make sense. But then you drill
9:37AM 2 down and discover those cases, and from that discovery pool
9:37AM 3 pick your bellwethers. That's a way of doing it, and it's a
9:37AM 4 cost-effective way.

9:37AM 5 Because if you spend tons of money discovering
9:37AM 6 50,000 cases, not that in this case, but other cases that I've
9:37AM 7 handled, it takes ten years, you haven't done anything. So
9:37AM 8 these fact forms will help us move that along quite well, I
9:37AM 9 think.

9:37AM 10 **MR. DAVIS:** We are mindful, Your Honor, of the desire
9:37AM 11 to get the census. Then, as Your Honor mentioned earlier,
9:37AM 12 maybe to bucket cases. We are mindful of that. We will have
9:37AM 13 meet and confers and discuss those issues.

9:37AM 14 Item 6 on the agenda is preservation order,
9:37AM 15 document production protocol, and protective order. Defense
9:37AM 16 counsel has provided to us some draft orders that we have
9:38AM 17 looked at. We did briefly discuss that when we met yesterday.
9:38AM 18 Counsel is aware that the process needs to begin. We have
9:38AM 19 advised counsel that in order to start that process, we need
9:38AM 20 some basic information so that when the committee is in place,
9:38AM 21 we can have some meaningful discussions.

9:38AM 22 For instance, just the basics of what systems
9:38AM 23 are out there, how is information stored, so we can get into
9:38AM 24 those types of discussions. But once the committee is in
9:38AM 25 place, we will have further discussions and we'll meet and

9:38AM 1 confer. We expect that defendants will be getting us the
9:38AM 2 information so we can have those meet and confers.

9:38AM 3 Item 7 on the agenda is the Court's Web site. I
9:38AM 4 know the Court's already spoken about that. I might just
9:38AM 5 repeat that for people on the phone just so they have that. We
9:39AM 6 will in the Joint Report post that information so that folks
9:39AM 7 can get access to the Web site. I know the Court relies upon
9:39AM 8 that. And folks can go to www.laed.uscourts.gov and tab on
9:39AM 9 "Xarelto."

9:39AM 10 Your Honor, I failed to mention something on the
9:39AM 11 prior, and I just looked at my notes and noticed that I did.
9:39AM 12 We are mindful of the Court's preservation order that's already
9:39AM 13 in place in Pretrial Order No. 1. We've also had a discussion
9:39AM 14 about that last night with defense counsel. We're mindful of
9:39AM 15 their awareness of it and their requests with respect to their
9:39AM 16 orders.

9:39AM 17 Once the steering committee is in place, we will
9:39AM 18 address that further, and we've told counsel that. And I
9:39AM 19 failed to mention it, and I apologize.

9:39AM 20 On No. 8, state/federal coordination, there are
9:40AM 21 a number of cases that are in Pennsylvania. I think folks are
9:40AM 22 aware of that. I don't have a census to report to the Court.
9:40AM 23 But we are mindful of the Court's desire for coordination and
9:40AM 24 we heard what Your Honor said earlier. We also addressed that
9:40AM 25 with opposing counsel, Gerry and myself did, yesterday. We

9:40AM 1 will work with counsel and get you the information at the next
9:40AM 2 status conference that you asked for and we'll be able to
9:40AM 3 report to the Court on that.

9:40AM 4 Item 9 is position papers. I know that both
9:40AM 5 sides did submit, pursuant to your order, on January 20th what
9:40AM 6 I'll call in camera, or under seal, or however the Court wants
9:40AM 7 to frame it, the position paper of the respective sides. They
9:40AM 8 were not exchanged by the parties. Our appreciation is is that
9:41AM 9 they're solely for the Court's review as a preliminary
9:41AM 10 statement of the legal and factual issues.

9:41AM 11 From the plaintiffs' side, we have not shared
9:41AM 12 that with others. Although, I will tell you, there was an
9:41AM 13 organizational meeting early on, weeks ago, where about 150
9:41AM 14 people did show up from the plaintiffs' side. The ideas and
9:41AM 15 the concepts that were in that position paper were discussed,
9:41AM 16 and we did invite the input of folks to give us their
9:41AM 17 information, and we received quite a lot of input which was
9:41AM 18 incorporated in.

9:41AM 19 I do appreciate the input that was given by
9:41AM 20 counsel who attended that and through e-mails and the like. I
9:41AM 21 know Gerry and I spent a lot of time looking at that and
9:41AM 22 putting that together.

9:41AM 23 **THE COURT:** Yes. This information is just for my
9:41AM 24 purposes. It allows me to get up to speed as quickly as I can
9:41AM 25 on the information that's involved in the case because I'm

9:41AM 1 making certain judgments on selecting of people. When I look
9:42AM 2 at the Plaintiffs' Steering Committee, I'm, in effect, creating
9:42AM 3 a law firm.

9:42AM 4 So I have to look at people who write well; I
9:42AM 5 have to look at people who discover well; I have to look at
9:42AM 6 people who try well; I have to look at people who settle well;
9:42AM 7 I have to look at people who organize well. And all of those
9:42AM 8 things, I take into consideration when I'm trying to form a
9:42AM 9 Plaintiffs' Steering Committee and this information helps me
9:42AM 10 make some of those decisions.

9:42AM 11 **MR. DAVIS:** We have not shared that position paper
9:42AM 12 with anyone else, Your Honor.

9:42AM 13 The last item on the agenda is the next status
9:42AM 14 conference.

9:42AM 15 **THE COURT:** Yes. The next status conference will be
9:42AM 16 February 27th at 9:00 in open Court. I'll meet with liaison
9:42AM 17 and lead counsel at 8:30. By then I will have the committees
9:43AM 18 appointed and I'll be meeting with the committees.

9:43AM 19 One thing I will be talking to them about is
9:43AM 20 whether or not I need some information on the chemistry or the
9:43AM 21 science of the particular drug. It's not unusual for me to
9:43AM 22 have each side give me a bibliography and then to put on some
9:43AM 23 experts to just teach me the basics of it. We call it a
9:43AM 24 "science day." It can get me up to speed so that I'm better
9:43AM 25 able to follow the case as it proceeds. But I'll look to you

9:43AM 1 for guidance on that, whether I need it or not.

9:43AM 2 Also, in the past in some instances where we
9:43AM 3 have a lot of lawyers -- one case I have 1400 lawyers on the
9:44AM 4 case and oftentimes discovery gets a little difficult,
9:44AM 5 particularly in the beginning where everybody wants to
9:44AM 6 participate in depositions. You obviously can't do that or
9:44AM 7 we'd have to have every deposition in the Superdome.

9:44AM 8 So we've used in the past TV depositions, online
9:44AM 9 depositions, that two people from each side go, one asks the
9:44AM 10 questions, the other has a laptop, and anybody who wants to log
9:44AM 11 into the deposition can do so with their social security number
9:44AM 12 and pull up the deposition on their laptop or computer at home
9:44AM 13 or wherever and watch the deposition.

9:44AM 14 On the left-hand side is the transcript, and on
9:44AM 15 the right-hand side is voice and image. And if you have a
9:44AM 16 question, you type it in and it goes to the person next to the
9:44AM 17 questioner and it appears; and at the appropriate time that
9:45AM 18 person is able to nudge the individual and say, Arizona wants
9:45AM 19 this, New Orleans wants this, Hawaii wants this, and so forth.

9:45AM 20 It's helpful. With this many people,
9:45AM 21 oftentimes, it makes it economically good, too. The good thing
9:45AM 22 about it is sometimes if there's a contentious deposition, I
9:45AM 23 can log on and I'll rule immediately on it so that you can move
9:45AM 24 forward in the case. The concept is to do it efficiently and
9:45AM 25 effectively and as cheaply as we possibly can in matters of

9:45AM 1 this sort.

9:45AM 2 Okay. Anything from defense liaison?

9:45AM 3 **MR. IRWIN:** Your Honor, I would only add -- this is
9:45AM 4 Jim Irwin. I would only add my appreciation to Mr. Davis and
9:45AM 5 Mr. Meunier. As I think the Court already knows, they've
9:45AM 6 already provided courtesies to our side arising out of some of
9:45AM 7 our travel issues that thankfully did not come to pass.

9:45AM 8 **THE COURT:** I'm glad my colleague in charge of the
9:45AM 9 weather was able to move that storm a little further.

9:45AM 10 **MR. IRWIN:** We thought you might have had a hand in
9:46AM 11 that.

9:46AM 12 Also, we were grateful for them coming over to
9:46AM 13 our office last night because of some of our travel plans. I
9:46AM 14 believe that the very measured handling that both Mr. Meunier
9:46AM 15 and Mr. Davis have done this morning in presenting and
9:46AM 16 reviewing the agenda is a product of that work yesterday.

9:46AM 17 I would only add that I want to express my
9:46AM 18 thanks to Mr. Olinde, my colleague, Mr. Olinde, in helping me
9:46AM 19 fulfill the responsibilities as the defense liaison counsel.

9:46AM 20 **THE COURT:** Okay. Folks, I'll see you all then at
9:46AM 21 the next status conference. Thank you again for your input. I
9:46AM 22 appreciate you all being here.

9:46AM 23 Court will stand in recess.

9:46AM 24 **THE DEPUTY CLERK:** All rise.

9:46AM 25 (WHEREUPON, the proceedings were concluded.)

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CERTIFICATE

I, Jodi Simcox, RMR, FCRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

s/Jodi Simcox, RMR, FCRR
Jodi Simcox, RMR, FCRR
Official Court Reporter