

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

IN RE: ABILIFY (ARIPRAZOLE)
PRODUCTS LIABILITY
LITIGATION

Case No. 3:16-md-2734

Chief Judge M. Casey Rodgers
Magistrate Judge Gary Jones

This Document Relates to All Cases

DISCOVERY CONFERENCE ORDER NO. 4

The Court held a discovery conference call on January 11, 2017. This Order serves to memorialize the key topics of discussion during the call, including any agreements of counsel and orders of the Court.

Core Discovery Document Production

Plaintiff raised a concern about the Defendants' approach to core discovery.¹ Defendants have produced to Plaintiffs a chart that details how the individual Defendants are dividing up the core discovery document production. Defendants explained that they have divided the categories of documents so that each category is only produced by one company, as opposed to each company independently producing all responsive documents in its possession. Plaintiffs raised an evidentiary concern that using a document with a witness of a non-producing Defendant would

¹ Plaintiffs also raised an issue regarding safety-related correspondence, but informed the Court that this matter was resolved when Defendant agreed to produce documents from the Joint Medical Surveillance Team on or before the deadline to complete core discovery.

provide a basis for an authentication or foundation objection. Plaintiffs are also concerned with ensuring full compliance with discovery obligations if one Defendant argues that a responsive document was already produced by a different Defendant.

Defendants explained that these core discovery materials are primarily regulatory documents and that no Defendant should have a document that is different from that held by another Defendant. Defendants also assured that they will not, at the upcoming 30(b)(6) deposition or any other point in this litigation, raise an authenticity or foundation objection solely based on which Defendant produced the documents. The parties are directed to continue conferring on this issue in an effort to resolve it without Court intervention, if possible. However, if an agreement cannot be reached, the parties should file their respective positions in writing in the Master Docket no later than January 18, 2017.²

Jurisdictional Discovery and OPC's Motion to Dismiss

The parties have scheduled the deposition of OPC's 30(b)(6) witness for January 26 and 27, 2017, in coordination with the New Jersey litigation. In order to accommodate this deposition, the parties jointly request a week continuance of the Jurisdictional Motion to Dismiss deadlines. These extensions are granted, but all other deadlines remain in effect. The new deadlines are as follows:

² Defendants should include in their filings the chart detailing which Defendant is producing which category of documents.

- Deadline to complete depositions: January 27, 2017
- Deadline for OPC to file an omnibus motion to dismiss: January 30, 2017
- Deadline to file any response in opposition: February 13, 2017
- Deadline to reply: February 20, 2017

Oral argument on this motion and/or an evidentiary hearing if the Court finds it necessary, remain scheduled during the Case Management Conference on March 1, 2017.

Contact with Dr. Eric Hollander

Plaintiffs retained Dr. Eric Hollander as an expert witness for this case. Prior to his retention, Dr. Hollander had contact with the Defendants, including as a compensated speaker for Bristol-Myers Squibb Co. and Otsuka America Pharmaceutical Inc. Pursuant to a stipulation entered into in the New Jersey litigation on September 12, 2016, Defendants confirmed that prior contacts with Dr. Hollander had ended. However, according to Plaintiffs, twice since this stipulation was entered into, Dr. Hollander has been contacted by Otsuka related entities and other third party entities. On December 9, 2016, Avanir Pharmaceuticals, a company that Plaintiffs state is a wholly-owned subsidiary of Otsuka Pharmaceutical Co. Ltd, contacted Dr. Hollander to participate in a clinical trial regarding the treatment of Intermittent Explosive Disorder. On November 23, 2016, a third party clinical research group contacted Dr. Hollander to participate in an Otsuka clinical trial

regarding the treatment of Post-Traumatic Stress Disorder with Rexulti, a successor drug to Abilify. Plaintiffs requested the Court to caution the Otsuka Defendants against contacting Dr. Hollander. Counsel for the Otsuka Defendants indicated that measures have been taken to avoid contacts with Dr. Hollander. However, he emphasized that it would be nearly impossible to assure total compliance given the large number of disparate entities involved. Recognizing this difficulty, the Court declined to caution Otsuka. The parties should continue discussing this matter.

Case Management

In Discovery Conference Order No. 2, the parties were advised that if a substantial number of new cases were not added to the MDL by the end of January, the current management approach would need to be modified. As of the fourth discovery conference call, only 94 cases had been filed. The parties were told that if a significant amount of new cases was not filed by January 23, 2017, the parties would be required to file their respective positions on how the litigation should proceed given the current caseload.

It has come to the Court's attention since the discovery conference call that in some other MDL actions the required pre-payment of the \$400 filing fee has occasionally presented a barrier to the prompt presentation of claims, and as a result some judges have postponed the payment. Thus, the Court is considering designating a period of time during which new complaints may be filed without the pre-payment of this fee. As an example of how this could be administered, please see the attached Case No. 3:16-md-2734

order from the Xarelto MDL litigation. The parties should include their position with respect to this matter in their January 23, 2017, filing with the Court.

January Case Management Conference

The parties will present an agenda for the Court's review in advance of the January Case Management Conference ("CMC"). This agenda is due to the Court by January 24, 2017. The January 30, 2017, CMC will begin at 9:15am Central Time, with the pre-conference meeting beginning at 8:30am Central Time.

DONE and **ORDERED** on this 14th day of January, 2017.

M. Casey Rodgers

M. CASEY RODGERS

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN))	MDL No. 2592
PRODUCTS LIABILITY LITIGATION)	
)	SECTION: L
_____)	
)	JUDGE FALLON
THIS DOCUMENT RELATES TO:)	MAG. JUDGE NORTH
ALL ACTIONS)	
)	
_____)	

PRETRIAL ORDER NO. 11B
(Bundling of Complaints and Answers)

This Order governs a Joined Plaintiff’s responsibility for a filing fee and modifies the second sentence of Paragraph 1(a) of Pretrial Order No. 11.¹

IT IS HEREBY ORDERED AS FOLLOWS:

A Joined Plaintiff’s (any plaintiff named in the Joint Complaint other than the Lead Plaintiff) responsibility for a filing fee will be suspended, and such responsibility for the filing fee shall be resolved upon the resolution of his/her respective claims as follows:

(1) No filing fee is owed if a Joined Plaintiff voluntarily dismisses a case with prejudice within nine (9) months of filing their complaint. After that time, a Joined Plaintiff shall pay a filing fee.

(2) A filing fee is owed if a Joined Plaintiff dismisses a case without prejudice pursuant to Fed.R.Civ.P. 41(a) (1). The Clerk of Court is directed not to docket the voluntary dismissal or close the case of until such filing fee has been paid.

¹ Second sentence of Paragraph 1(a) of Pretrial Order No. 11 presently reads as follows: “The joined plaintiffs’ (plaintiffs named in the Joint Complaint other than the Lead Plaintiff) responsibility for a filing fee will be suspended until the resolution of their respective claims, at which time the fee must be paid before the case can be dismissed and closed, unless otherwise ordered by the Court.”

(3) If a Joined Plaintiff seeks to dismiss a case without prejudice other than pursuant to Fed.R.Civ.P. 41(a)(1), Defendants shall have fourteen (14) days from the filing of the motion to dismiss to oppose the motion. No filing fee is owed if the Defendants fail to oppose the motion to dismiss within the fourteen (14) days. A filing fee is owed by a Joined Plaintiff if Defendants oppose the motion, and the Court grants the motion to dismiss without prejudice over Defendants' objection. The Clerk of Court is directed not to enter the voluntary dismissal or to close the case until the filing fee has been paid. This Order is without prejudice to Defendants' right to request and a Joined Plaintiff's right to oppose, additional conditions of dismissal under Fed.R.Civ.P. 41(a)(2).

(4) A filing fee is owed upon involuntary dismissal of a Joined Plaintiff's case by Order of Court or entry of Judgment. The Order or Judgment of involuntary dismissal shall recite the Court's continuing jurisdiction for the purpose of collection of the filing fee.


(5) A filing fee is owed upon the entry of a Judgment in favor of a Joined Plaintiff. The Clerk of Court has a lien on the Judgment for the purpose of collecting the filing fee.

(6) A filing fee is owed upon a stipulated dismissal or order of dismissal after settlement of a Joined Plaintiff's case. The Clerk of Court has a lien on the settlement for the purpose of collecting the filing fee.

(7) All counsel for a Joined Plaintiff who are listed on the Complaint are responsible for the paying of the filing fee if owed under the provisions of this Order. This responsibility is subject to a Joined Plaintiff's counsel's right, if permitted by applicable state law and fee arrangements, to seek reimbursement from the Joined Plaintiff. The Joint Complaint may specify which of the Joined Plaintiff's counsel is (are) responsible for the fee if more than one counsel is listed on the Complaint; otherwise all counsel listed on the Complaint are individually

responsible for the filing fee. By filing the Joint Complaint, all counsel listed on the Joint Complaint consent to the jurisdiction and venue of this Court for the purpose of collecting the filing fee. With respect to any Joint Complaint filed prior to entry of this Order, all Joined Counsel will be responsible for the filing fee and shall be deemed to have consented to the jurisdiction and venue of this Court for purpose of collection unless such counsel file an amended complaint within fourteen (14) days of entry of this Order specifying which of them (if fewer than all) will be responsible for paying the fee.

NEW ORLEANS, LOUISIANA this 14th day of July, 2015.

A handwritten signature in black ink that reads "Eldon E. Fallon". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Eldon E. Fallon
United States District Judge