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Xarelto

Xarelto Test Trials Feature New Technology, Selection Method

Bellwether trials in federal litigation over the blood thinner Xarelto could start in early 2017 (*In re Xarelto (Rivaroxaban) Prod. Liab. Litig.*, E.D. La., MDL No. 2592).

And Judge Eldon E. Fallon of the U.S. District Court for the Eastern District of Louisiana, known for innovative management of multidistrict proceedings (31 TXLR 403, 4/28/16), has implemented a creative hybrid bellwether selection approach, plaintiffs' attorneys say.

Also debuting in the Xarelto MDL is an online mass tort management system, called MDL Centrality, plaintiffs' attorney Martin Schrama with Stark & Stark in Lawrenceville, N.J., told Bloomberg BNA.

MDL Centrality serves as a central informational hub.

"It collects and analyzes Plaintiff and Defendant Fact Sheet information, which gives the parties and the Court unprecedented visibility into the demographics of the case, including plaintiff-specific information regarding injuries and product use," Jake Woody, an attorney with the settlement administration law firm that developed Centrality, told Bloomberg BNA.

"This information also allows the Court to determine if cases selected for bellwether trial are representative of the case as a whole, which ensures that bellwether trials are useful," said Woody, an attorney with BrownGreer in Richmond, Va.

"The technology allows for real-time administration and categorizing of cases and common case attributes, and, ostensibly, more focused, equitable and effective bellwether selection," said Schrama, who served on the bellwether selection committee.

The Xarelto litigation has mushroomed since about 50 then-pending suits were consolidated before Fallon in December 2014 (29 TXLR 1112, 12/18/14).

Some 4,579 actions are pending in the Xarelto proceedings, MDL No. 2592, according to an April 15 statistics report.

Hybrid Selection Method. Typically there's tension over the selection of bellwether trials, which are meant to test the strengths and weaknesses of claims, plaintiffs' attorney Stefanie Colella-Walsh of Stark & Stark in Lawrenceville, N.J., who also served on the bellwether selection committee, told Bloomberg BNA.

Often, each side chooses cases which go into a pool to be worked up for trial. But if each side picks its best

cases, that can cost time and money while failing to advance the litigation.

In preparation for bellwether selection under Fallon's new approach, the parties provided their criteria—such as the plaintiff's age and type of injury—to BrownGreer, Woody said. A list of cases meeting those criteria was then generated.

Next, the plaintiffs chose 10 cases from that case list, the defendants chose 10, and Fallon had 20 cases randomly selected to make up total pool of 40.

"Judge Fallon thinks, and it's very creative, that one of the ways to make it more fair would be to have an equal number of cases, not only picked by the two sides, but also picked randomly," Schrama said.

The random cases picked by the court came from the group that had been chosen based on certain criteria the court provided, Woody said.

Higher Quality of Cases. Woody said he "thinks they were able to get a higher quality of cases in the bellwether pool" because the makeup of the bellwethers could better reflect the demographics of the litigation.

At a February status hearing that included a discussion about Centrality, Fallon suggested, "[W]hen you are dealing with bellwethers, there's no sense in picking all of the bellwether cases from age 17 to 39, because that's only 3 percent of the whole litigation. That won't give you any information that you need."

All 40 cases are eligible to go to trial and are being worked up, but it's not yet known which will be selected for trial, Schrama said.

Fallon directed the parties to propose a selection method by Aug. 1, and set the first trial for Feb. 6, 2017.

Defendants include Bayer Healthcare Pharmaceuticals Inc. and related companies, and Janssen Research & Development LLC and related companies.

Plaintiffs allege the defendants overstated the efficacy of Xarelto, and failed to adequately disclose that the drug can cause fatal bleeding because there is no means to reverse its anticoagulation effects.

Janssen said it wouldn't comment on the technology being implemented in the MDL.

As to the allegations in the suit, the company said, "All anticoagulants, or blood thinners, carry the risk of bleeding, and the prescribing information for Xarelto has always warned of these risks. We will continue to defend against the claims raised in this litigation."

Bayer couldn't be reached for comment.

Schrama and Colella-Walsh are with Stark & Stark.

Drinker Biddle & Reath LLP represents Janssen.

Kaye Scholer represents Bayer.

By JULIE STEINBERG

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Full text of the bellwether order is available at <http://src.bna.com/evp>.

Full text of CMO 2 is available at <http://src.bna.com/eHj>.