

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: PHILIPS RECALLED CPAP, BI- Master Docket: Misc. No. 21-1230
LEVEL PAP, AND MECHANICAL
VENTILATOR PRODUCTS LITIGATION MDL No. 3014

This Document Relates to:
All Actions

CASE MANAGEMENT ORDER
INITIAL DISCOVERY PLAN

The following coordinated partial discovery plan, which has been approved by the Discovery Special Master, is entered in the above-captioned MDL.

1. Protective Orders. By June 29, 2022, the parties will submit a proposed amended protective order concerning confidential information, together with any remaining disputes regarding provisions of the same, to the Special Master.
2. ESI Order. By June 29, 2022, the parties will submit a proposed order regarding the discovery of documents and electronically stored information (“ESI”), together with any remaining disputes regarding provisions of the same, to the Special Master.
3. Privilege Log Protocol. By June 29, 2022, the parties will submit a proposed order governing a privilege log protocol, together with any remaining disputes regarding provisions of the same, to the Special Master.
4. Initial Identification of Custodians, Search Terms and Non-Custodial Sources of Data. On or by June 29, 2022, to the extent not already provided, the Philips defendants shall identify their custodial and non-custodial sources reasonably believed to contain potentially relevant information. Class plaintiffs shall identify their ESI custodians within 21 days after the filing of the operative consolidated class complaint. The parties agree that plaintiffs in any bellwether personal injury cases to be identified must also identify ESI custodians and that the deadline for such submission shall be the subject of a separate order. The parties’ identifications shall be consistent with the W.D. Pa. ESI checklist concerning scope of custodial and non-custodial productions, protocols, and processes. The identification of custodial and non-custodial sources shall be supplemented, if necessary, in accordance with Fed. R. Civ. P. 26(e). The parties shall meet and confer concerning reasonable requests for additional information on custodial and non-custodial sources, as well as any assertion by a party that the search of any particular source would be unduly burdensome, cumulative, overbroad, and/or disproportional. The selection of custodial and non-custodial sources for production shall be governed by the order regarding the discovery of documents and electronically stored information discussed in Paragraph 2 above, and such other orders as may be entered by the Court hereafter, or agreement of the parties.

5. Deposition Protocol. By August 15, 2022, the parties will submit a proposed order governing depositions, together with any remaining disputes regarding provisions of the same, to the Special Master. In the event that one of the parties seeks to take a deposition prior to that date, the parties will work cooperatively to agree to a process and limits for that deposition or to complete the deposition protocol in advance of such deposition, and bring any disagreements to the Special Master as early as possible.
6. Commencement of Fact Discovery. On July 1, 2022, fact discovery commences pursuant to this discovery plan and any other relevant Court Orders. Subpoenas pursuant to Fed. R. Civ. P. 45 may be served on or after July 1, 2022.
7. Initial Disclosures. Class representatives named in the economic damages consolidated class complaint shall make initial disclosures by July 11, 2022; class representatives named in the medical monitoring consolidated class complaint shall make initial disclosures by September 12, 2022. Within 15 days after entry of a fact sheet implementation order (*see* Paragraph 8 below), the parties will submit a proposed order governing Initial Disclosures in personal injury cases, together with any remaining disputes regarding provisions of the same, to the Special Master.
8. Fact Sheets and Related Protocols/Implementation Orders. By July 8, 2022, the parties will submit (a) a census registry protocol and voluntary tolling for unfiled claims, and any implementing order(s), and (b) stipulated forms of discovery to be used for filed claims (*e.g.*, plaintiff and defendant fact sheets/profile forms), and any implementing order(s), together with any remaining disputes regarding provisions of (a) and (b), to the Special Master. The parties anticipate using MDL Centrality as the online platform for data management of the census registry, fact sheets and related documents and will submit a proposed order appointing MDL Centrality, together with any remaining disputes, to the Special Master by July 8, 2022.
9. Deadlines and Limitations on Written Discovery. By September 9, 2022, the parties will submit a proposed order governing deadlines and limits for serving and responding to requests for production, interrogatories, and admissions, together with any remaining disputes regarding provisions of the same, to the Special Master.
10. Device Inspection Protocol. Defendants shall provide Plaintiffs with a draft of their visual device inspection protocol by June 27, 2022. Within 30 days thereafter, the parties will submit a proposed protocol, or their positions concerning such a protocol, and/or any disputes regarding the same, to the Special Master. This visual device inspection protocol is without prejudice of any kind for any party to request other inspections; Defendants intend to and Plaintiffs may seek additional inspections, and the scope and substance of those inspections have yet to be negotiated. Both parties reserve their rights regarding the scope and substance of those additional inspections.
11. By November 30, 2022, the parties shall meet and confer regarding a supplemental discovery plan and proposed case management order, including, as appropriate, deadlines for class discovery and certification, substantial completion of document production and completion of fact discovery in each operative master and/or consolidated amended

complaint, expert disclosure, and discovery schedules, *Daubert* briefing schedules, bellwether selection processes and timelines, and trials.

12. The parties will continue to participate in regularly scheduled conference calls, videoconferences, and/or meetings with the Special Master to address discovery issues. These regular calls/meetings will continue as needed and at the discretion and direction of the Special Master.

IT IS SO ORDERED.

DATED: June 17, 2022

s/Joy Flowers Conti

The Honorable Joy Flowers Conti
Senior United States District Judge

AGREED TO BY:

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