

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

IN RE: PHILIPS RECALLED CPAP, No. 21-mc-1230
BI-LEVEL PAP, AND MECHANICAL
VENTILATOR PRODUCTS LIABILITY
LITIGATION.

- - -

Transcript of proceedings held on Thursday, May 19, 2022,
in the United States District Court, 700 Grant Street,
Pittsburgh, PA, 15219, before the Honorable Joy Flowers
Conti, United States District Judge.

APPEARANCES:

For the Plaintiffs:	Kelly K. Iverson, Esq. Christopher A. Seeger, Esq. David R. Buchanan, Esq. Sandra L. Duggan, Esq. Steven A. Schwartz, Esq. Roberta Liebenberg, Esq. Benjamin F. Johns, Esq.
For the Philips Defendants:	John P. Lavelle, Jr., Esq. Lisa Dykstra, Esq. Suniti N. Mehta, Esq. William B. Monahan, Esq.
For the Burnett Defendants:	Frederick W. Bode, III, Esq. Kristen Hock Prex, Esq.
Court Reporter:	Veronica R. Trettel, RMR, CRR U.S. Courthouse 700 Grant Street Suite 5300 Pittsburgh, Pennsylvania 15219

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

1 P-R-O-C-E-E-D-I-N-G-S

2 Thursday, May 19, 2022, 3:30 p.m.

3 (In Open Court)

4 THE COURT: This is the status conference in the MDL
5 IN RE: Philips Recalled CPAP, Bi-Level PAP and Mechanical
6 Ventilator Products Litigation. It's at MDL No. 3014.

7 The Court has received a joint notice of those
8 lawyers who will be speaking, as well as those who wish to
9 have their appearance noted as being in attendance at this
10 conference. If you are not on the list and you would like to
11 be included in the transcript as being in attendance, there's
12 a sheet that you should sign so that we can provide it to the
13 court reporter. So at this stage, the joint notice will
14 indicate those who are present and speaking.

15 We will begin with just some matters that I needed to
16 have added to the agenda, and the first thing has to do with
17 the responsibilities of the liaison counsel to prepare a
18 written summary of the proceedings in a status conference, as
19 well as any hearing, and that written summary must be
20 submitted to counsel of record in the pertinent cases within
21 10 days. And by pertinent cases, I mean the liaison counsel
22 for the class action cases will provide a summary for the
23 counsel in the class action cases and the liaison counsel for
24 the personal injury plaintiffs will prepare the summary and
25 send that summary to the pertinent counsel for those

1 plaintiffs who have personal injury claims.

2 So there's two separate liaison counsel here and we
3 have a different responsibility for the class counsel, and
4 that would be Mr. Wolff. Mr. Rihn will have it for the
5 personal injury plaintiff's counsel. Okay? And that is being
6 required because the lapse of time necessary to have a
7 transcript finalized, reviewed and then being ready to be
8 placed on the docket will take at least 90 days, and this way,
9 any interested counsel will have a report within 10 days of
10 the hearing or status conference as the case may be.

11 Okay. And then at the end, I would like to also hear
12 something from the leadership development committee. I also
13 want to take up the motion to remand and some of the issues
14 about whether there should be a stay for a response to the
15 motion to remand, and I think those are the two items that I
16 wish to have added.

17 So the first thing on the agenda is the discovery
18 plan update with the Special Master, Ms. Katz.

19 SPECIAL MASTER KATZ: Good afternoon, Your Honor.
20 Yes, the parties have been working diligently. We have had a
21 number of conferences where they've updated me. We have a
22 list of about 13 priority items, the vast majority of which
23 don't depend on the consolidated amended complaints. They're
24 going to have to be done no matter what, and we're -- the
25 parties are making good progress on those. We have -- so

1 we're not going to have a complete discovery plan by the end
2 of June, but we're hoping to at least get the priority items
3 done so when the consolidated amended complaints are filed, we
4 can then kind of phase it, if that works for the Court.

5 THE COURT: Are you going to be preparing a schedule
6 for the discovery, you know, sort of a broad level, not each
7 individual piece, but just so the Court will have a sense of
8 the timing for the discovery?

9 SPECIAL MASTER KATZ: Yes. I envision that will be
10 part of Phase II of the discovery plan.

11 THE COURT: Okay. Phase I was again?

12 SPECIAL MASTER KATZ: Well, Phase I, we have a whole
13 list of about 13 items, preservation orders, ESI --

14 THE COURT: Sort of administrative things getting
15 ready --

16 SPECIAL MASTER KATZ: Things that can be done
17 without -- yeah.

18 THE COURT: Okay. Does either side wish to be heard
19 on that?

20 MR. BUCHANAN: Good afternoon, Your Honor. Dave
21 Buchanan. I'm Chris Seeger's partner.

22 I would say we heard you at the last conference, Your
23 Honor, discussing and getting some agreement on the shape of
24 the table. I think getting a plan made a lot of sense.

25 So as Special Master Katz highlighted, we spent a lot

1 of time, if you will, identifying buckets or baskets or a list
2 of items that we should prioritize and clear out. Many of
3 these are already on the agenda, so I won't rehash them for
4 Your Honor.

5 But we're making good progress. We have had four or
6 five sessions with Special Master Katz and sessions with
7 defense counsel and exchanges of drafts independent of that.

8 So I think the shape of the table now is getting
9 fairly well-defined. We have exchanged from plaintiffs to
10 defense our first request for production of documents. That
11 was noted in the 26F report.

12 It was taken as an early exchange for their thought
13 and consideration as they're identifying custodians and
14 thinking about search terms and planning for the discovery and
15 the action. So they have that. They've agreed to respond to
16 that I think in mid July. That was in the 26F report.

17 The bulk of our work has been these administrative
18 tools: Protective order, the ESI protocol, I'd say stipulated
19 exchanges for discovery, a defense fact sheet, a plaintiff's
20 fact sheet, how that dovetails with the initial disclosures.
21 Separately, a tool that you've discussed, Your Honor, a census
22 registry tool. So that's all that's on the table.

23 THE COURT: When do you anticipate the registry tool
24 would be ready to be presented?

25 MR. BUCHANAN: Great question, Your Honor. So we

1 have exchanged drafts with the defense. We had a preliminary
2 conversation on the additional round of changes today. We're
3 meeting with the defense next week to try and hammer that out.
4 But the form itself is one piece.

5 The second will be the implementation order, which we
6 have yet to see a draft of. I understand the defense is
7 working on the implementation order, and we'll discuss that,
8 but I would hope we would be able to move that forward before
9 we next see you.

10 THE COURT: Okay. That should be a separate agenda
11 item.

12 MR. BUCHANAN: Fair enough, because it's not really
13 discovery. It's outside of discovery.

14 THE COURT: I view it as an informational and as a
15 tooling document that will be filed so it will be helpful to
16 anyone who isn't a named plaintiff that wants to be added and
17 considered and part of this litigation.

18 MR. BUCHANAN: I think as Your Honor is aware there's
19 separately a tolling agreement that was made available and
20 it's out there and there's some basic information that's
21 exchanged on that.

22 We're working, though, to try and enhance it, if you
23 will, get some additional preliminary information that could
24 be exchanged. So that's well in the process.

25 We are meeting again next week on the ESI matters.

1 As Your Honor knows, there's a fairly long runway on
2 the ESI sometimes from identifying custodians and noncustodial
3 sources, search terms, and scope, discussions, et cetera. So
4 we're meeting again or circling back with the defense on that
5 next week.

6 From the plaintiff's perspective, we're trying to
7 clear out some of the preliminary underbrush so we can start
8 moving, and I think Your Honor's statement that discovery is
9 important to move, we heard it early and we heard it again
10 today. So we're looking forward to getting it going.

11 I think we envisioned over the next month with
12 Special Master Katz trying to sharpen up the plan so that we
13 can get rolling, and we're particularly interested -- there
14 are a number of third parties that have been identified by
15 Philips.

16 There's a number of third parties that are identified
17 in Philips' documents, and we certainly want to start that
18 process because sometimes that doesn't move as quickly as we'd
19 like. So obviously the bell's gotta ring so we can start and
20 hopefully we can get to that by the next conference.

21 THE COURT: Okay.

22 MR. BUCHANAN: Thank you.

23 MS. DYKSTRA: Good afternoon, Your Honor. Lisa
24 Dykstra for Philips RS.

25 We agree we have been making a lot of progress with

1 the special master. I think we've identified issues that
2 coordination is necessary, privilege log issues, protective
3 order issues.

4 We have circulated and included the SoClean MDL folks
5 in our draft documents, and so we do have a runway and we are
6 making progress.

7 I think in this case, it's unique in some ways in
8 that because we have produced so many documents pursuant to
9 our informal discovery, I think it's about 35,000 pages of
10 documents, I think it will be -- help us get to the end of the
11 ESI agreement and the search-term negotiations somewhat
12 quicker. But, otherwise, I generally think we are all making
13 progress and we are meeting next week to continue that.

14 I don't have anything else on that issue. I was
15 going to address the Trilogy preservation order, if you want
16 to hear that right now.

17 THE COURT: Well, first of all, is there anything
18 else on the discovery plan?

19 MR. BUCHANAN: Just a brief comment, Your Honor.

20 THE COURT: Okay.

21 MR. BUCHANAN: I do appreciate Ms. Dykstra's
22 statement that we have significant documents that have been
23 shared. Most of those came in this week. We're pretty fast,
24 but we haven't gotten through those yet, but we're certainly
25 going to be digesting those as quickly as we can and trying to

1 see what we can do to get to a place where the green light
2 starts by the time we're next with you. Thank you.

3 THE COURT: Okay. Thank you.

4 MS. DYKSTRA: Your Honor, we had a Trilogy
5 preservation order on the agenda because the FDA has approved
6 remediation the Trilogy ventilation devices, and we had some
7 key issues where we were in disagreement about how to move
8 that along.

9 We met today. We resolved those issues, and we have
10 provided and we are going to be providing to you a joint order
11 for your entry hopefully today.

12 Because of the FDA approval and because of the
13 necessity that that order be entered so that we can then begin
14 remediation on devices that have already been returned to
15 Philips and are going to be returned, we would like that to be
16 entered today, if possible, so that we can begin that
17 remediation.

18 THE COURT: Well --

19 MS. DYKSTRA: I know.

20 THE COURT: Okay. If not today, tomorrow morning.

21 MS. DYKSTRA: Thank you so much, Your Honor. I
22 appreciate it.

23 THE COURT: Thank you.

24 MR. MONAHAN: Just, Your Honor, on the first agenda
25 topic, just because we were talking about the registry, Your

1 Honor, you asked Mr. Buchanan when you thought that would be
2 done. I mean, I'm not sure Mr. Buchanan answered. I think
3 June is the right time for that. I think we want to get that
4 done sooner rather than later, and I think it's a very
5 valuable tool not just for tolling, but also to understand
6 what the universe of people are.

7 THE COURT: That's the information aspect.

8 MR. MONAHAN: Yes, the injuries, right. How many
9 people are claiming that they got some sort of respiratory
10 issue? How many people -- despite the Canadian study saying
11 there's not a statistical link between with cancer and the use
12 of the Philips CPAP devices are people still going to claim
13 cancer, and, of course, how many of those?

14 So I think that's where the registry census form
15 becomes a very valuable informational tool, but I think we
16 should get it done soon and I'm aiming for June. Thank you,
17 Your Honor.

18 MR. SEEGER: Can I add one thing? I agree --

19 THE COURT: You need to state your name for the
20 record.

21 MR. SEEGER: Oh. Chris Seeger. Sorry about that.

22 I agree with almost everything Mr. Monahan said. I
23 agree for the need for a census. We're cooperative. We're
24 totally onboard, but that is interconnected very closely to a
25 plaintiff's fact sheet and a defense fact sheet. Those things

1 have to be done together. I just don't want to create any
2 unrealistic expectations that we can walk in with one without
3 the other two, and a bellwether plan. These are all
4 interconnected. So I just wanted to make that clear.

5 THE COURT: And by the bellwether plan, are you
6 talking about for mediation or for the --

7 MR. SEEGER: For both. For both. In fact, we heard
8 you loud and clear. I'm very familiar with the plan that
9 Judge Martinotti had in Stryker where he came up with a
10 bellwether mediation process.

11 I think we could use whatever we come up with for a
12 bellwether process to apply to both of those trial cases as
13 well as mediated cases.

14 THE COURT: Okay. So the science tutorial has been
15 set for September the 1st at 11 a.m. I think the -- I didn't
16 mention this in the SoClean, but I think the mediator should
17 be invited to that. I think it would be helpful to have the
18 mediator present.

19 So if somebody can undertake to invite her to this so
20 that she can clear her calendar hopefully and be present --

21 MR. SEEGER: She has been invited.

22 THE COURT: -- I think it would be helpful. I just
23 thought about that.

24 Okay. And as I indicated in the SoClean, I'm going
25 to require that the schedule be provided for how that tutorial

1 is going to function in terms of timing and who is on first
2 and that type of thing. That will be provided at the same
3 time you file your agenda for that meeting. I'm envisioning
4 it will be the same for SoClean and for this one. So we'll
5 file them at both MDLs -- the July one, I'm sorry, for the
6 July. It will be filed in July.

7 Now, the special master, settlement special master, I
8 really think this is a mediator rather than a master. So we
9 need to change that name, and then you're also going to need
10 to go and have a short amendment to the common benefit order
11 because you have the same reference to just being assessed for
12 shared costs for settlement -- for special masters, it should
13 be special masters/mediators so that's clear. So you'll need
14 to include that there.

15 And I also had the same questions on this special
16 master appointment order that I had -- excuse me -- this
17 mediator appointment order that I had in the SoClean in terms
18 of making sure that the mediator has the responsibility to
19 develop a mediation schedule and to address the plan to --
20 this one is different from the SoClean because the mediator
21 has to develop a plan that will be able to coordinate the
22 class action mediation and the personal injury mediation, as
23 well as the medical monitoring. You know, how are all of
24 those claims and differences going to be mediated, and also to
25 address bellwether mediations, how will that process be set

1 up, and then also the discovery issues that need to be
2 coordinated with the discovery special master, what does the
3 mediator, after meeting and conferring with the parties,
4 determines needs to be part of an early discovery process so
5 that you can have a meaningful mediation. So those tasks and
6 responsibilities I think should be included in your order.

7 Other than the nomenclature issue about master versus
8 mediator and the items that I just identified, I was fine with
9 this.

10 So if you can have that redrafted, share it with all
11 of the parties and then provide it back to the Court for
12 signing. Does anybody have any questions on that?

13 MR. SEEGER: No, Judge. I think the language we used
14 attempted to be very broad, but we're going to delineate it --

15 THE COURT: I just want -- those are important to me
16 as the Judge overseeing this case because I want to make sure
17 they are attuned to that and they know that I want -- I want
18 to know what the schedule is.

19 I want to see -- I mean, I'm not going to get
20 involved in your mediation, but I do want to know the timing,
21 what are you doing, and making sure that there's proper
22 coordination between the mediator and the discovery special
23 master on timing and what needs to be prioritized so we don't
24 get any unnecessary delays in the process.

25 So I think it's also going to be important on the

1 bellwether issues, because we have the mediator. If we're
2 going to do bellwether mediations, then we may have bellwether
3 trial issues and how are you going to be coordinating that and
4 the timing of all of that. It's going to be important.

5 MR. SEEGER: Your Honor, we agree with all of that.
6 We also agree with some of your earlier comments in the prior
7 hearing about the special mediator having total discretion on
8 how to sort of --

9 THE COURT: How to effectuate --

10 MR. SEEGER: Yeah.

11 THE COURT: -- a good process. I mean, the mediator
12 can't force anybody to do anything, but the mediator has to
13 have some discretion so that we don't get a delay in this case
14 because there's a concern that there's something going on in
15 the other case, and the mediator is going to be aware of
16 everything and she should be in a position to make some
17 efficient decisions.

18 MR. SEEGER: We agree, Your Honor.

19 THE COURT: Does anybody want to be heard any further
20 on this?

21 MS. DYKSTRA: No, Your Honor.

22 THE COURT: Okay. Next is the scheduling order for
23 filing of a consolidated master complaints and Rule 12
24 briefing. I did enter that order. So I just entered it.

25 MS. DUGGAN: Sandra Duggan. You spared me a

1 presentation, Your Honor.

2 THE COURT: Okay. I just entered that.

3 The order appointing discovery liaison counsel, I
4 have also entered that. We have had the Trilogy update, and
5 so I'll be looking for a proposed preservation order on that
6 matter.

7 Potential amendment to confidentiality protective
8 order, who wishes to address that?

9 MR. LAVELLE: Good afternoon, Your Honor. John
10 Lavelle from Morgan, Lewis for Philips RS.

11 Very briefly. The issue is we have a confidentiality
12 protective order that was entered in December of 2021. It was
13 negotiated with the interim leadership at that time. We think
14 it's generally workable. We have discussed with plaintiffs
15 leadership making some minor adjustments in order to address
16 the simultaneous SoClean litigation and production issues. We
17 have circulated a proposed revision to plaintiffs leadership
18 and we think that's moving forward and hopefully we'll have
19 something to present to Your Honor shortly.

20 THE COURT: Okay. Thank you.

21 MS. IVERSON: Kelly Iverson, Your Honor.

22 I agree. I do want to say we have brought up as
23 plaintiffs a couple times that we also wanted to revisit the
24 confidentiality protective order. It was entered by the
25 interim co-lead counsel and, you know, there was a real push

1 to get that entered and get that completed so that we could
2 proceed with the inspection and the interim preservation order
3 because we have some provisions we want to make sure that we
4 all take a look at as the co-lead counsel that are looking at
5 this for the duration of the case, and we agree wholeheartedly
6 with the defendants that there should be some process between
7 the coordination of the two MDLs with regard to the protective
8 order.

9 Thank you, Your Honor.

10 THE COURT: Okay. The next item is the in extremis
11 deposition protocol.

12 MR. LAVELLE: Yes, Your Honor. Your Honor, John
13 Lavelle from Morgan, Lewis again.

14 Very briefly. This is an issue that came up
15 initially in December. The parties have negotiated a proposed
16 in extremis protocol. I believe it was submitted, e-filed
17 before Your Honor this morning. So what has been submitted
18 has been the product of extensive discussions and agreement by
19 counsel.

20 THE COURT: I haven't had a chance to look at that,
21 but I will.

22 MR. LAVELLE: Thank you.

23 THE COURT: Okay. Next is the consideration of in-
24 chamber conferences coordinated with status conferences.

25 MR. SEEGER: Your Honor, we would ask that you

1 consider -- I don't know what your practice has been, but in a
2 case like this where we have got two MDLs that are
3 interconnected, hundreds of issues that come up constantly --
4 in some of the most successful MDLs I have been in front of
5 Judge Fallen, Judge Brody and others, we were able to have
6 sort of an in-chamber conference where we could make -- let me
7 phrase it this way -- sensitize the Court to issues that could
8 be coming down the road, and if you are comfortable giving
9 input, fine, but even if you are not --

10 THE COURT: On the record?

11 MR. SEEGER: Off the record. And typically what we
12 would do --

13 THE COURT: I never have off-the-record conferences.

14 MR. SEEGER: Well, there's a little bit of a hitch to
15 it. Can I just --

16 THE COURT: Okay. Sure.

17 MR. SEEGER: You might like this. You might not.
18 Judge Rodgers felt that way in 3M. So we would meet with her
19 in the back and then we came out and we basically would say:
20 This is what was discussed. This was the Court's position, if
21 the Court took a position. If the Court didn't, this was the
22 parties' position.

23 It's just I think an important case management tool
24 for a case that could turn out to be very complicated. A
25 quick example, like Mr. Monahan was up in the prior conference

1 and there was confusion of whether there were going to be
2 personal injury cases in the SoClean case.

3 Well, my firm alone has over 3,000 personal injury
4 cases. Some other firms have a lot of personal injury cases.
5 You only have a little bit filed right now, but as we get down
6 the road, issues are going to be teed up and they are going to
7 be really complicated, and it would be I think helpful and
8 insightful for the parties to be able to air some of that in a
9 way that -- you know, there are things that -- you know, there
10 are coordination issues that might -- the parties might be
11 more comfortable saying in the back room, even though we might
12 come out and give a summary of it, than they would be in open
13 court in this way because what we are not trying to do is turn
14 up the temperature, we're trying to turn it down in some
15 cases.

16 So I don't expect an answer from you at this moment.
17 I wanted to raise it as something to consider and think about.
18 I didn't know if you'd want to talk to colleagues about how
19 they feel about it. I know you have your own policy on it and
20 I respect that. I just think that it would give the parties
21 an opportunity to really bring you into some of the issues
22 that could be coming down the road in a way that would
23 prepare you.

24 MR. LAVELLE: Your Honor, John Lavelle for
25 Philips RS.

1 While we concede that there may be a circumstance at
2 some point in the future where that type of conference might
3 be appropriate or necessary, we don't think it's necessary at
4 this time to adopt that as a routine procedure, and we think
5 that as a matter of course, the proceedings in this matter,
6 which are going to require a lot of attention from the Court
7 should by default be occurring in the courtroom and in a
8 public proceeding.

9 THE COURT: My initial reaction is because I disfavor
10 those because it's always a question of who was left out, who
11 doesn't get to hear what's happening, and we are trying to
12 achieve some transparency here with the special websites and
13 each -- the plaintiffs have their own websites, you know,
14 trying to get communications out.

15 So I think the point is if there's something that
16 needs to be addressed separately that would benefit from that,
17 I might consider it at that time, but at the present time, I
18 don't know that it would be, at least in my view from the
19 years that I've been on the bench, something that I would be
20 willing to do at this time.

21 But if there's a need for it -- I mean, in criminal
22 cases, sometimes, you know, you have to do something off the
23 record, you know, because of serious concerns, but if there's
24 a need for something to be addressed for the Court to have a
25 better understanding, as long as there would be a summary

1 provided, I don't want anybody to think, you know, things are
2 going on in the Court's -- in her chambers that they don't
3 know about, and that would make me uncomfortable as the Judge.

4 MR. SEEGER: Understood, Your Honor. We'll raise it
5 on an as-needed basis.

6 THE COURT: Okay. Thank you. Okay. Update on
7 Burnett defendants. You're still here.

8 MR. SEEGER: Not for long.

9 THE COURT: You haven't escaped yet.

10 MR. BODE: This is my last response.

11 Rick Bode, Your Honor, from Dickie McCamey. I know
12 Mr. Seeger also wants to speak.

13 The plaintiffs have agreed to dismiss Burnett without
14 prejudice. We have an agreement, a tolling agreement. We are
15 going to cooperate with them on discovery and we have agreed
16 that if they want to serve us with papers to have people come
17 to court for trial, we have agreed that that will occur and
18 we'll cooperate with discovery.

19 Anything I miss, Chris?

20 MR. SEEGER: No, no. I think that's an accurate
21 description of where we are. We're pretty close to getting
22 these details finalized. We'll miss him.

23 MR. BODE: We'll do an agreement and we'll have a "It
24 is so ordered" at the bottom of the agreement, and then with
25 Your Honor's approval, I will no longer attend these meetings.

1 THE COURT: Do the other defendants have any issue
2 with that?

3 MS. DYKSTRA: We don't have an issue at this time.

4 THE COURT: Okay. Update on the status of
5 remediation and FDA 518(b) notice.

6 MR. SCHWARTZ: Good afternoon, Your Honor. Steve
7 Schwartz for the plaintiffs.

8 We just wanted to give Your Honor notice that the FDA
9 on May 2 came out with another 518. This was a 518(b) letter,
10 which I want to give you notice of that just so Your Honor
11 knows what's going on in the regulatory world, which has a big
12 impact, obviously, in this case.

13 I'm happy to hand copies up to you if Your Honor
14 wants it. It's publicly available. So you can access it off
15 of the web, too.

16 THE COURT: If you have a copy, that would be fine.

17 MR. SCHWARTZ: Sure. Thank you, Your Honor.

18 THE COURT: Thank you.

19 MS. DYKSTRA: Your Honor, Lisa Dykstra. We
20 acknowledge the order was entered. It's entered by the FDA.
21 The company is in the process of responding to that order.
22 The plan is going to be submitted on June 1, and we advised
23 plaintiffs that we would provide them the information provided
24 to the FDA at that time.

25 THE COURT: Okay. Thank you.

1 The next item that I wanted to raise was there was at
2 least one motion to remand that has been filed, and the
3 defendants have responded to that by indicating they intend to
4 challenge that, but there may be other motions to remand that
5 will be filed.

6 MR. MONAHAN: Thank you, Your Honor. At this time
7 we're only aware of that single motion to remand. I don't
8 think that will be the last. We have removed cases where, for
9 instance --

10 THE COURT: Isn't there a timeliness issue? I mean,
11 they have to file them within a period of time. I think I
12 have the stay. Maybe I have to lift the stay to permit any
13 motions to remand.

14 MR. MONAHAN: I think they would probably say that
15 the existing PTO 1 stay applies to motions to remand.
16 However, what I might suggest based on prior cases, including
17 some of Mr. Seeger, usually what I think happens in these
18 cases is there should be some stabilization of the filing of
19 additional complaints because there will be many more
20 complaints filed. We will remove them. Plaintiffs may object
21 to the removal and ultimately want to seek remand, and once
22 that stabilizes, then in my experience MDL judges set a
23 schedule at that time for the filing of motions to remand on
24 this date.

25 Opposition, often it is a consolidated opposition

1 because the issues overlap, and here you are going to have
2 very similar issues on at least fraudulent joinder arguments
3 because, in our view, DMEs have been fraudulently joined in
4 order to defeat diversity.

5 You are going to have citizenship questions that are
6 going to be similar. You are going to have questions around
7 the matter in controversy. And so what I've seen judges do is
8 they organize it when things have stabilized. You file a
9 consolidated opposition, then replies come, and then the MDL
10 judge deals with them in sort of one fell swoop as opposed to
11 piecemeal, you know, throughout the MDL litigation. And
12 that's what we would suggest here too, Your Honor.

13 MR. SEEGER: Your Honor, from my experience, I would
14 concur that Mr. Monahan has accurately reflected a tool that's
15 been used in certain MDL courts to just kind of allow them to
16 come in, put a schedule in place and deal with them at one
17 time down the road.

18 MR. LAVELLE: Your Honor, John Lavelle.

19 I might suggest that perhaps counsel, plaintiffs
20 leadership and defense counsel could confer and see if it can
21 reach an agreement on a post schedule.

22 THE COURT: Okay. Well, why don't we -- why don't
23 you do that, and at this stage, you are arguing that the
24 remand motion is premature. I had no response or reply to the
25 defendant's response, at least to my knowledge.

1 MR. MONAHAN: We have not seen a reply, Your Honor.

2 THE COURT: Okay. So I think at this stage, it would
3 be sufficient to find that the motion is premature and will be
4 denied without prejudice, to be re-filed in accordance with a
5 schedule to be set forth in a future order. So we'll have an
6 order entered to that affect.

7 MR. MONAHAN: Thank you, Your Honor.

8 THE COURT: And then we'll await an appropriate
9 timing. I don't want this to be unduly delayed. So I think
10 there needs to be some date or target date for this so it
11 doesn't fall off the radar screen for these plaintiffs.

12 So what do you think would be a good timing for that
13 or do you need to meet and confer and provide me that date?

14 MR. MONAHAN: I think we should meet and confer with
15 Mr. Seeger and his team and then come back at the next
16 conference with a proposal.

17 THE COURT: Okay, the proposed order for those
18 motions at the proper timing, and if it's determined that it
19 is necessary that that be extended, you can just file another
20 motion down the road if you think that, oh, there's so many
21 new plaintiffs coming into the case or new cases being filed
22 and transferred here, that you need to address that by
23 extending the date, you know, we'd consider it at that time.
24 But I think there has to be some target date so these don't
25 fall below the radar screen.

1 MR. MONAHAN: Understood, Your Honor.

2 THE COURT: Okay.

3 MR. SEEGER: Yes, Your Honor.

4 THE COURT: Okay. Anything from leadership
5 development?

6 MS. ANDERSON: Good afternoon, Your Honor. I'm
7 Kristina Anderson with Hensley Legal Group for the leadership
8 development committee. This is the first time I've had a
9 chance to speak with you. So I want to thank you quickly for
10 this appointment. I have enjoyed it so far.

11 With discovery continuing to be stayed, there's not a
12 lot of work for the leadership development committee yet.
13 However, I have had the opportunity in the last couple of the
14 weeks to be in on these meetings with Special Master Katz and
15 I think they've been very productive and educational for me,
16 and we, as a committee, are looking forward to the discovery
17 stay being lifted and really getting our feet wet.

18 As far as our mentors go, it looks like all of us
19 have great relationships with them growing and we are learning
20 a lot.

21 THE COURT: Okay. Good.

22 MS. ANDERSON: Thank you, Your Honor.

23 THE COURT: Is there anything else to come before the
24 Court?

25 MR. MONAHAN: Not here, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. DYKSTRA: No, Your Honor. Thank you.

MR. SEEGER: We're good, Your Honor. Thank you.

THE COURT: Thank you all. This conference is
adjourned.

(The proceedings concluded at 4:05 p.m.)

C E R T I F I C A T E

I, VERONICA R. TRETTEL, RMR, CRR, certify that
the foregoing is a correct transcript from the record of
proceedings in the above-entitled case.

\s\ Veronica R. Trettel
VERONICA R. TRETTEL, RMR, CRR
Official Court Reporter

05/21/2022
Date of Certification