

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

3 IN RE: PHILIPS RECALLED CPAP, No. 21-mc-1230
4 BI-LEVEL PAP, AND MECHANICAL
5 VENTILATOR PRODUCTS LIABILITY MDL 30-14
6 LITIGATION.

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8 Transcript of the status conference proceedings held on
9 Thursday, July 21, 2022, in the United States District Court,
10 700 Grant Street, Pittsburgh, PA, 15219, before the Honorable
11 Joy Flowers Conti, United States District Judge.

12 **APPEARANCES:**

13 **For the Plaintiffs:** Kelly K. Iverson, Esq.
14 Christopher A. Seeger, Esq.
15 David R. Buchanan, Esq.
16 Sandra L. Duggan, Esq.
17 Steven A. Schwartz, Esq.
18 Roberta Liebenberg, Esq.
19 Syreeta Poindexter, Esq.

20 **For the Philips RS** John P. Lavelle, Jr., Esq.
21 **North America, LLC** Laura McNally, Esq.
22 **Defendants:**

23 **For Other Philips** Tracy Richelle High, Esq.
24 **Defendants:** William B. Monahan, Esq.
25 Michael Steinberg, Esq.

For Polymer Eric Scott Thompson, Esq.
 Technologies, Inc.:

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 Afternoon, July 21, 2022, 2:55 p.m.

3 (In Open Court)

4 THE COURT: Okay. This is IN RE: Philips Recalled
5 CPAP, Bi-Level PAP, and Mechanical Ventilator Products
6 Litigation, MDL 30-14.

7 So this is MDL 30-14. The Joint Notice was filed of
8 the representatives of the parties who will be here and who
9 will be speaking, and you will also have the availability of a
10 sign-up sheet for anyone who wishes to enter their appearance
11 that is not on the Joint Notice.

12 So let's go with the discovery update. Who wants to
13 deal with that?

14 MS. IVERSON: Good afternoon, Your Honor. Kelly
15 Iverson.

16 Our MDL has filed both a proposed ESI protocol order,
17 as well as a privilege log protocol order. In hearing your
18 comments to the SoClean MDL, we wanted to make sure you are
19 aware we have in our discovery plan, I think it's paragraph 4,
20 addressed timing for disclosures on ESI custodians and the
21 sort.

22 We have already received disclosures from Philips and
23 made disclosures on behalf of the economic class plaintiffs.
24 We have a meet and confer scheduled for next week that's being
25 coordinated I believe with SoClean business defendant, and we

1 are planning on having weekly meet and confers until we work
2 through any issues with custodians and ESI search terms and
3 continue that process, as we have additional complaints with
4 additional people as well.

5 THE COURT: And will you be working with the special
6 master on this?

7 MS. IVERSON: The special master is aware -- we had
8 an update last week with her that we were working on
9 scheduling the meet and confers and planning to do that
10 weekly. We're going to bring her in to the extent there's
11 disputes or issues, but not necessarily to sit in on each of
12 those, unless you prefer that she does.

13 THE COURT: No, I don't. I just think what she needs
14 to know is what your schedule is, and if you have a dispute
15 about the schedules, to get the special master involved so
16 that those can be easily resolved.

17 MS. IVERSON: Absolutely.

18 THE COURT: Okay. So how will I know that you are
19 making the right kind of progress on moving forward because
20 your discovery is supposed to begin --

21 MS. IVERSON: Our discovery already began.

22 THE COURT: So without the ESI protocols in place,
23 when is your electronic discovery going to start?

24 MS. IVERSON: So we received certain discovery
25 productions from defendant that were not ESI related, and I

1 believe one more should be coming and then we are --

2 THE COURT: Because you need the searches. You need
3 to know how you are going to do the search and that is still a
4 little bit loose here like it was in the other one in terms of
5 actually how the search is going to be conducted, and then
6 that will be detailed with who the custodians are that you are
7 going to be looking at, and if there's non-custodians -- all
8 of those things have to fall in place so that you can start
9 your electronic discovery, which is sometimes the most
10 significant part of the discovery process.

11 MS. IVERSON: They absolutely do. That is why --

12 THE COURT: What are the steps needed to get to
13 actual discovery and what are your plan to get there, that's
14 what I need know.

15 MS. IVERSON: Absolutely. That's why we asked for
16 the weekly conferences to make sure we are pushing that along
17 because that is something that we want to get to sooner rather
18 than later.

19 THE COURT: You are started, but you are not really
20 started. That's really --

21 MS. IVERSON: Yeah, if I can suggest with the meet
22 and confer next week, I think it makes sense then for us to
23 come up with the deadlines and schedules.

24 THE COURT: Just to schedule, you know, and you have
25 to modify it if things get more complicated, I mean, I

1 understand all of that, but at least if you know, okay, we're
2 going to -- if by this date we should have had identified all
3 of the custodians, we have had our discussions, and we'll have
4 a meeting to go through that to see what -- any problems, that
5 kind of thing, so that's what I need to know.

6 MS. IVERSON: That sounds great. We can do that for
7 you. Did you have any questions on the privilege protocol?

8 THE COURT: Did I give the other side a deadline or
9 they are just going to report to me at the next hearing I
10 think? I'll expect to hear from you at the next hearing about
11 your timetable.

12 MS. IVERSON: Okay. I think you had suggested filing
13 an appendix.

14 THE COURT: Yes, I did, yes.

15 MS. IVERSON: So we can do that by the agenda before
16 the next hearing if that works.

17 THE COURT: Yes, before the next hearing. Okay.
18 That would be helpful.

19 MS. IVERSON: Okay.

20 THE COURT: Any other problems with discovery?

21 MS. IVERSON: No. We're working -- we're pretty
22 close on an amended protective order. We are working on fact
23 sheets. We're getting closer on those.

24 THE COURT: Well, that's the next item up. I want to
25 talk about that.

1 MS. IVERSON: Census registry is the next item up. I
2 was referring to the fact sheets for the filed cases.

3 THE COURT: Oh, okay.

4 MS. IVERSON: That's all I have, unless you had
5 questions on the privilege protocol log.

6 THE COURT: Well, tell me a little bit about the fact
7 sheets. What are you doing there?

8 MS. IVERSON: So I will defer to my partner Chris on
9 the fact sheets.

10 THE COURT: Okay.

11 MS. McNALLY: Your Honor, before we get to the fact
12 sheets, may I address the Court?

13 THE COURT: Sure.

14 MS. McNALLY: Good afternoon, Your Honor. Laura
15 McNally from Morgan Lewis.

16 THE COURT: Both sides can come up at one time if you
17 want to. It may be easier if you are going to be talking
18 about the same things, that way you can --

19 MS. McNALLY: Okay. Well, in that case, Mr. Seeger
20 and Ms. Iverson, I just wanted to briefly address discovery as
21 counsel for Philips RS.

22 Just to add to what Ms. Iverson said, Philips RS has
23 made initial -- provided initial custodians, search terms, as
24 well as non-custodial sources of data, and as Ms. Iverson
25 mentioned, we have made productions already of a significant

1 amount of data. So I just wanted to provide that update to
2 Your Honor and that's all.

3 THE COURT: Okay. Thank you.

4 MS. McNALLY: Thank you.

5 MR. SEEGER: Your Honor, I want to address --

6 THE COURT: The fact sheets.

7 MR. SEEGER: -- the fact sheets, yes. So I'm really
8 happy to report that in the last several days, we've made a
9 lot of progress.

10 THE COURT: And you are meeting with the --

11 MR. SEEGER: We have been meeting --

12 THE COURT: Right.

13 MR. SEEGER: -- with Philips and all of us. We have
14 had Zooms with Carole Katz. We've met on our own. We are
15 close on both the plaintiffs' fact sheet -- when I say close,
16 I mean we are 99.9 percent there I believe, unless somebody
17 wants to correct me, its language now, the defense fact sheet,
18 and I can go ahead with the census, but I kind of always think
19 of the census as part of this process.

20 THE COURT: It's similar to it I think.

21 MR. SEEGER: Yes. It's really -- I mean, it's the
22 vetting process to --

23 THE COURT: To both, anybody that's going to have a
24 claim in this.

25 MR. SEEGER: Exactly. And we made just today, this

1 morning, tremendous progress on that as well. So we are very
2 close on all of those things.

3 The census program, I mean we probably spent almost
4 as much time on that as we have on the fact sheets because we
5 have got about 60,000 people already on the tolling agreement
6 that expected one deal and now we're going to be shifting them
7 slightly into another. So we've had a lot back and forth.
8 But I think we're finally onto something that could work and
9 that we can ask you to approve.

10 THE COURT: Okay. Because that has to get on the
11 docket somehow and we have to work with our tech people with
12 the court to make sure everything goes smoothly.

13 MR. SEEGER: We're going to be providing you with
14 obviously implementing orders that would be posted and all of
15 that.

16 THE COURT: That would be great.

17 MR. STEINBERG: Nothing to add.

18 MR. SEEGER: What? (Everyone chuckled.)

19 THE COURT: So we have already talked about the
20 science show and tell in the other case. So there may be some
21 further follow-up here.

22 MR. SEEGER: That was tough, Judge. Mr. Steinberg is
23 a great guy and somewhat of a friend, but it's difficult
24 sitting on the side watching him discuss our case.

25 Look, I don't want to spend a lot of time on the

1 merits, but I'm just telling you based on the presentation we
2 heard, it's going to turn into an evidentiary hearing on the
3 merits.

4 THE COURT: I don't want that, no.

5 MR. SEEGER: Okay.

6 THE COURT: I just want to understand the science
7 behind the technology, why -- here are the machines, why do
8 they work --

9 MR. SEEGER: Okay, but if you'd give me ten
10 seconds --

11 THE COURT: I will. You can respond to it.

12 MR. SEEGER: And I'll do it quickly. Everything that
13 Mr. Steinberg said about ozone is just totally incorrect.
14 There's a letter that was issued by the FDA, May of 2022, and
15 in that letter, they specifically reject almost everything
16 Mr. Steinberg said about ozone being implicated in
17 degradation.

18 In fact, they said it wasn't a violation of the
19 standard of care using an ozone cleaner in the machine. So
20 that's the kind of hearing we're going to have if we're going
21 to get into only, you know, so many have visual signs of
22 degradation.

23 So what we think you want is you want to know how the
24 machine works. I think you want to understand the basics
25 behind the causation of the foam degrading.

1 THE COURT: Um-hum.

2 MR. SEEGER: But unless we have this wrong, I don't
3 think you really --

4 THE COURT: Nobody is disputing that the foam is
5 degrading. What that causes is a different issue.

6 MR. SEEGER: Well, Mr. Steinberg has his opinions,
7 but they're not consistent with the evidence that's been
8 provided to the FDA by the company.

9 So I understand what happens in a courtroom may be
10 different than what happens in the regulatory room, but we're
11 going to try to keep them honest on that point, and I guess
12 the way we have got this set up, they're going to go first and
13 we're going to go second. So if they don't overstep, we don't
14 have much to respond to and it will be a simple day.

15 I did have another point on the science day, but I'm
16 actually --

17 THE COURT: Is there something else?

18 MR. SEEGER: -- blanking on it. Well, I guess the
19 last point I'll make is we are pretty close to working out the
20 scope and protocols and --

21 THE COURT: For the science day?

22 MR. SEEGER: The science day, yes. Other than that,
23 that's it.

24 THE COURT: I think I asked for that --

25 MR. STEINBERG: August 17th.

1 THE COURT: -- August 17th, right.

2 MR. STEINBERG: Your Honor, Michael Steinberg for
3 Philips.

4 I can't resist if my friend, Mr. Seeger is going to
5 say, talk about what's in the letter to the FDA or what the
6 FDA said, the FDA said that ozone contributes to it. I never
7 said it's the sole cause, but ozone certainly contributes to
8 the difficulties in the product for sure.

9 So that may be a whole discussion, but that is not
10 what the FDA letter said and --

11 THE COURT: I understand there's a dispute about what
12 the FDA letter said.

13 MR. STEINBERG: We're going to have a lot of
14 discussions. And it's on their website. The FDA has warned
15 people not to use SoClean products with Philips products,
16 ResMed products, any products.

17 The FDA says -- and that's actually what they said in
18 the May letter. They asked us to increase the level of
19 prominence of the warning against using ozone products on the
20 Philips website. They said increase the prominence -- not
21 lessen it -- because it's a significant contributor. So I
22 don't want to try the case right now, but that's what the FDA
23 said.

24 THE COURT: There's a dispute. I understand that.

25 MR. STEINBERG: Understood. Thank you.

1 THE COURT: There is not an evidentiary hearing.

2 Okay, page extension for the motions to dismiss.

3 MR. LAVELLE: Your Honor, John Lavelle for Philips RS
4 again.

5 We have had a meet and confer with plaintiff's
6 counsel with Ms. Duggan about this earlier this week. As we
7 are contemplating filing a motion to dismiss under 12(b)(6)
8 for failure to state a claim with respect to the master
9 economic loss complaint, we are cognizant of the Court's
10 15-page limit, and we understand that brevity is the soul of
11 wit, and we'll strive for brevity, but as we look at the
12 issues we need to raise, we believe we are going to have some
13 additional page needs.

14 One specific question that we had for the Court is
15 when we look at what we want to present to the Court, one of
16 the areas that we would like to present are kind of
17 state-by-state surveys on specific legal issues that are
18 raised in the economic loss complaint that we want to present
19 12(b)(6) arguments on, and we can present that in the form of
20 tables, and we could do that either as an appendix or in the
21 brief itself, and we don't know what Your Honor's preference
22 would be on that, and if we could present those in tables and
23 attach them to the back of the brief, then we think we could
24 do it in 30 pages, plus 15 pages of tables or we could do it
25 in 45 pages of brief.

1 THE COURT: Now, are these tables matter of law
2 issues?

3 MR. LAVELLE: Yes. It would be a state-by-state
4 survey comparing and contrasting what the law is.

5 THE COURT: The state law?

6 MR. LAVELLE: Yes, on the specific issues.

7 THE COURT: So it's a legal description.

8 MR. LAVELLE: For example, we have consumer
9 production law claims under every state and so they are
10 different --

11 THE COURT: I think an appendix would be helpful on
12 that. You can have your general conclusions in the briefing.
13 Is there any objection to that by the plaintiffs?

14 MS. DUGGAN: Good afternoon, Your Honor. Sandy
15 Duggan for the plaintiffs.

16 We actually thought it would be helpful to the Court
17 to present groupings of issues by state and that would help
18 the Court in adjudicating.

19 THE COURT: So you don't disagree?

20 MS. DUGGAN: No, we actually agree and thought it
21 would be helpful not only for the parties, but for the Court
22 itself in determining this issue.

23 THE COURT: So you want 30 pages, and then I assume
24 you would want 30 pages and you both want an extension, is
25 that correct?

1 MS. DUGGAN: Of the page limitation, yes, and we did
2 also discuss because the Court is already allowing a reply
3 brief on the schedule, and I don't believe defense know at
4 this point if they would need any extension there. Well,
5 there's not even an extension because it's not permitted, but
6 it would have to be subject to the Court's permission on page
7 limitations.

8 THE COURT: So that will be 30 pages for each of the
9 motion to dismiss and the response to the motion to dismiss.
10 The 15 pages of tables showing the applicable law, and then if
11 you dispute those, you can have your own 15 pages to show
12 where there's a problem.

13 MS. DUGGAN: Thank you.

14 MR. LAVELLE: Thank you, Your Honor.

15 MS. DUGGAN: That will work and then we'll approach
16 the Court once they decide how many pages they want for a
17 reply brief.

18 THE COURT: And do you know what would be helpful for
19 me afterwards, I do this with summary judgment motions, but if
20 you could do like a consolidated table so I can see what the
21 difference is in each state real easily. Like, here's
22 Pennsylvania, and here's what the defendant says and here's
23 what the plaintiffs say. So if you could consolidate those,
24 too, after they're filed.

25 MR. LAVELLE: Yes, Your Honor, we can do that. Would

1 Your Honor like us to submit a motion for a proposed formal
2 order on this?

3 THE COURT: Yes, that would be helpful.

4 MR. LAVELLE: We will do that.

5 MS. DUGGAN: I think there is one other issue.

6 MR. MONAHAN: Ms. Duggan and I have discussed this.
7 I think what we were just talking about there, Judge, is what
8 I would call the main 12(b)(6) brief with, you know, sort of
9 the core arguments that apply to all of the defendants.

10 We're anticipating on behalf of the parent companies
11 also filing a separate, no page extension request necessary,
12 with certain specific arguments that would apply to the parent
13 company level.

14 THE COURT: Specific to the parent.

15 MR. MONAHAN: That's right, Your Honor. And we also
16 have out there -- and I think maybe Ms. Duggan and I can work
17 it out so not to brief it now. We do have similar personal
18 jurisdiction issues here and I think we can probably --

19 THE COURT: So the problem is like a shifting burden.
20 Once the issue is raised about personal jurisdiction, then the
21 plaintiff has to come forward with evidence that supports the
22 personal jurisdiction and then the defendant will have an
23 opportunity to respond to that and that's when you get into
24 whether you need an evidentiary hearing.

25 Now, if the plaintiff says it's clear from the

1 complaint, those would be the facts that the Court would look
2 at and, you know, resolve it on the face of the complaint.

3 But if there's going to be a dispute, then that's
4 when you might need discovery and you might need to get into
5 it. It's not necessarily that if the complaint is
6 insufficient that you get rid of it. You know, the complaint
7 alleges it, and if the defendant says no and there's a reason
8 for it, then the plaintiff has to come back with facts and
9 evidence to support their issue.

10 MS. DUGGAN: Your Honor, we have discussed this and
11 we have already let the defendants know that if they are going
12 to file a Rule 12(b)(2) motion, we are going to need
13 discovery.

14 THE COURT: Okay.

15 MR. MONAHAN: I think there's going to be a way, Your
16 Honor, to certainly table this issue, not brief it now, do
17 some discovery and then perhaps visit it later on.

18 THE COURT: Okay.

19 MR. MONAHAN: So the only reason I got up is because
20 Mr. Lavelle and the 30 pages, plus the appendix. That's
21 really the main reason.

22 THE COURT: I'm assuming you have other issues,
23 too --

24 MR. MONAHAN: Correct.

25 THE COURT: -- besides personal jurisdiction.

1 MR. MONAHAN: Correct.

2 THE COURT: So when you are looking at personal
3 jurisdiction, I think you need to meet and confer on it and
4 determine what period you'll need for the discovery, and then
5 we'll have a schedule set up for that filing of that separate
6 motion.

7 MR. MONAHAN: Sound good, Your Honor. Thank you.

8 THE COURT: Thank you.

9 MS. DUGGAN: Thank you.

10 THE COURT: Okay. Mediation, how is that going?

11 MS. LIEBENBERG: Good afternoon, Your Honor. Roberta
12 Liebenberg.

13 Lead counsel for the plaintiffs and members of the
14 plaintiffs settlement committee and counsel for Philips have
15 engaged in a number of conversations with Magistrate Judge
16 Welsh about the process and timing of the mediation and we're
17 planning to continue to engage in those conversations. So
18 we're also on track for the mediation.

19 MR. LAVELLE: I have nothing to add, Your Honor.

20 THE COURT: Okay. So just as I said in the SoClean
21 case, the special master is coming in for the science day. I
22 do intend to meet with her, you know, and I'll get it from
23 her, a status report, and under the provisions of the
24 appointment, I am allowed to have some discussions with her.
25 I don't need to get into the who is offering what and that

1 kind of thing. I just need to be comfortable with progress is
2 being made just in terms of parties meeting and what they need
3 to get to a robust mediation, what kind of discovery is
4 necessary.

5 So I assume are you coordinating with the discovery
6 special master so if some discovery needs to be taken to make
7 a meaningful mediation, we can put that on the fast track?

8 MS. LIEBENBERG: We will do that, Your Honor.

9 THE COURT: Okay, because that's where this
10 coordination is important.

11 MS. LIEBENBERG: Thank you.

12 MR. LAVELLE: Yes, Your Honor.

13 THE COURT: Okay. Thanks.

14 State court litigation. I didn't know that there was
15 much state court litigation, but maybe there is.

16 MR. LAVELLE: Your Honor, there is not, but the last
17 time we gave Your Honor an update on this, there was really
18 nothing happening in the state court. We now have one case
19 that we wanted to bring to Your Honor's attention.

20 Generally speaking, all the cases that have been
21 filed in the state court have either been small claims court
22 cases or have been cases that we had removed into Federal
23 Court and they are now before Your Honor.

24 There is one case that was filed that is in state
25 court in Massachusetts. The plaintiff's name is St. John.

1 It's pending in Middlesex County, Massachusetts. I believe
2 the County seat there is Woburn. This is a case of personal
3 injury claims.

4 Plaintiff's counsel had previously filed two cases in
5 state court there called Mack and Wheeler, which we removed to
6 Federal Court, and I believe I discussed this with Your Honor
7 the last time we talked about state court cases. They
8 dismissed those two cases, rather pursued those cases before
9 Your Honor. They then filed the St. John case, which is now
10 in Massachusetts state court.

11 We have filed a motion to stay proceedings in that
12 case in deference to the MDL proceedings, and that motion to
13 stay is scheduled to be heard next Tuesday by Judge Barry-
14 Smith in Middlesex County. We'll certainly report to Your
15 Honor what the result of that is.

16 The position we will be articulating and we have done
17 in the motion papers is that we have a process that is well
18 established in this court that's moving forward and we are
19 concerned about the prospect of having a separate parallel
20 proceeding going at a different pace and re-inventing the
21 wheel.

22 THE COURT: Okay. Thank you.

23 MR. LAVELLE: Thank you.

24 THE COURT: What is the Judge's name there again?

25 MR. LAVELLE: Judge Chris Barry-Smith.

1 THE COURT: Chris?

2 MR. LAVELLE: Chris Barry-Smith.

3 THE COURT: Thank you.

4 MS. DUGGAN: Your Honor, with respect to the
5 assessment motion that we filed, Your Honor entered an order
6 that any interested party could file an objection. The
7 deadline was July 11th and no objections were filed and I just
8 wanted to make that report to the Court.

9 THE COURT: Okay. Can I see my clerk? (Pause noted)

10 I just need to check on one thing, but I wanted to
11 talk to you about that assessment order.

12 There was that 10 percent issue. I'm still very
13 worried about that because it seems to me it is difficult
14 maybe to see how that would be broken up, but I would like you
15 to meet with your assessment committee and the leadership to
16 see if you can quantify what that might be, and then maybe we
17 can adjust it as the case goes along how it would be split.

18 MS. DUGGAN: Well, Your Honor, in the majority of the
19 cases, 2 percent is the amount that's set aside for expenses
20 and the remaining amount for fees. That's certainly not an
21 unreasonable approach to take, and as with the entire amount,
22 it can be adjusted upward or downward, and I think we would be
23 satisfied with that going forward and revisiting it if need
24 be.

25 THE COURT: Okay. So you want to file an amendment

1 or a motion to break down the 10 percent that way and you can
2 look at it annually and report to the court annually because
3 you'll be seeing what's happening as time goes along.

4 MS. DUGGAN: We can do that, Your Honor.

5 THE COURT: Okay, just a second.

6 Okay. So there have been no objections. So I'll
7 enter that order and then we will hear from you. When do you
8 think you'll have that motion to clarify how the 10 percent
9 will be allocated?

10 MS. DUGGAN: By tomorrow.

11 THE COURT: All right. Great. So I will then
12 approve that order -- I mean, that motion.

13 The leadership development, I think that's the last
14 thing on the agenda.

15 MS. POINDEXTER: Good afternoon, Your Honor. Syreeta
16 Poindexter from Babin Law on behalf of the leadership
17 development committee.

18 I haven't had an opportunity to speak with you since
19 my appointment. So I would like to thank you for this
20 opportunity and for creating the leadership development
21 committee in general.

22 So in pretrial order No. 8, the Court stated that it
23 was appropriate to have a leadership development committee in
24 this litigation in order to provide committee members with the
25 education, experience and mentorship necessary to become

1 future MDL leaders.

2 Your Honor, I personally appreciate the Court's
3 desire to properly develop future MDL leaders. I also believe
4 that our leaders are putting forth their best efforts to
5 achieve the objectives of the leadership development
6 committee. However, we're all aware that this is a new
7 concept. Right?

8 The leadership development -- the first leadership
9 development committee was in 2020 during the Zantac
10 litigation. Since that time, there's been several others, but
11 we're one of the first litigations in the country to have a
12 leadership development committee, and I would respectfully
13 suggest to Your Honor that we are in a unique position to
14 create sort of a roadmap for what achieving those objectives
15 look like in our litigation and possibly for future
16 litigations as well.

17 THE COURT: I share that --

18 MS. POINDEXTER: I think everybody is --

19 THE COURT: Right. That's why -- I think I mentioned
20 in some of the other status conferences that we had that it
21 was helpful if the members of the leadership development
22 committee could keep track of what they're doing and what's
23 worked and what hasn't worked and meet and confer with the
24 leadership, and then at the end of the process, we can have a
25 report and maybe we could even have some midway reports.

1 Sometimes it's a little difficult until the litigation is over
2 because I don't know if there's any strategies or issues. You
3 know, you don't want to signal or whatever that may be
4 implicated. But it would be very good at least, and I'll
5 emphasize that at least by the end of the litigation that
6 there's a report about what worked, what didn't work and any
7 suggestions for future MDLs. So that's what I would look for
8 from the leadership development committee.

9 MS. POINDEXTER: Thank you, Your Honor.

10 THE COURT: I think it will be very helpful for
11 everyone.

12 MS. POINDEXTER: I think so, too.

13 THE COURT: How is it working for you so far?

14 MS. POINDEXTER: It's going very well. I'm in a
15 position to where both of my co-chairs have made themselves
16 available and I have like a mentor-mentee relationship with
17 both of them, and any time I reach out to Kelly, she's
18 available. So I have been having a good experience.

19 THE COURT: Are you actually working on matters?

20 MS. POINDEXTER: I think the most that I can be at
21 this time. I think that we're still pretty early on. So I'm
22 sure that there will be more work to come. I do think that
23 everybody is doing their best to get us involved when they
24 can. I honestly believe that.

25 THE COURT: Do you get a chance to review the, like

1 when they are working on, say, the ESI protocol to see how
2 that came to be?

3 MS. POINDEXTER: So recently I spoke to Kelly about
4 concerns that I have for my own personal growth, and at that
5 time Kelly has involved me in more things and I feel like I'm
6 learning and growing more.

7 So there are aspects that I'm not particularly
8 familiar with, but I do believe that as we speak up and things
9 change, that we'll get a better understanding for different
10 aspects of litigation.

11 THE COURT: I think it's helpful, you know, because
12 when you see how something gets negotiated, you know, how an
13 ESI protocol or the protocols for the privilege log, why do
14 you want this in here, why would you object to it, what do you
15 think the other side is doing, you know, that kind of back and
16 forth in the negotiation, that's how you are really going to
17 learn.

18 So hopefully the leadership will make available those
19 opportunities, and I understand in discovery, you know, it's
20 maybe drafting some interrogatories, working on those, going
21 back and forth, why would you want to include this, why
22 wouldn't you include that, just the same thing when you
23 actually take a deposition, you know, the framework, the
24 questioning, and maybe like in a big firm, you have an
25 associate who would be drafting an outline and then trying to

1 put it together, bringing the relevant documents, and that
2 kind of thing and able to work on that really helps you
3 develop.

4 MS. POINDEXTER: I agree, Your Honor.

5 THE COURT: So that's the kind of thing I hope the
6 younger people can get exposed to because that's really where
7 they will learn.

8 MS. POINDEXTER: I feel confident that that will
9 happen. I will continue to voice any issues or concerns that
10 I have, and like I said, Kelly has been very receptive. So I
11 think that in the end, it will happen how it is supposed to.

12 THE COURT: Okay, thank you.

13 MS. POINDEXTER: Thank you.

14 MR. MONAHAN: Hello, Your Honor. Bill Monahan again.

15 The discussion there about ESI protocols reminded me
16 of something we had mentioned earlier. This would probably go
17 towards the agenda item 1, but there's one other protocol
18 we're currently working on with plaintiff's counsel, which is
19 the device examination protocol.

20 THE COURT: Okay.

21 MR. MONAHAN: This is essentially for the plaintiff's
22 devices, some of which the plaintiffs have, some of which
23 they've returned to us and we're reserving them, but this
24 protocol would lay out the ground rules for, you know, how to
25 take apart the device, flip this over, take these screws out,

1 et cetera --

2 THE COURT: For their experts to be looking at it --

3 MR. MONAHAN: Or in the first instance, Your Honor,
4 it would be photographs, photographs of the foam, just to see
5 which of these devices actually experienced degraded foam and
6 which did not experience degraded foam and we're working on
7 that.

8 The only reason -- because there's nothing for Your
9 Honor -- we have to raise it with Ms. Katz if anything comes
10 up, but I just wanted to mention that protocol so it didn't
11 surprise you down the road.

12 THE COURT: And that's a good thing for someone like
13 whoever is mentoring someone who is working on that protocol
14 to let them see what's happening and why you are doing it a
15 certain way.

16 MS. IVERSON: Sure.

17 MR. MONAHAN: Thank you, Your Honor.

18 MS. IVERSON: Your Honor, Kelly Iverson. With
19 respect to the device examination protocol, we received that.
20 We have a timeline in the discovery plan to address and meet
21 and confer and get with Carole Katz.

22 Our side has some serious concerns about the
23 protocol. We have a meet and confer scheduled tomorrow, and I
24 think the parties, before we come to you and address those
25 issues, should take those through our process.

1 THE COURT: Okay.

2 MS. IVERSON: Thank you, Your Honor.

3 THE COURT: Okay. Thank you.

4 MR. THOMPSON: Your Honor, if I may?

5 THE COURT: Sure.

6 MR. THOMPSON: Eric Thompson. I represent Polymer
7 Technologies.

8 THE COURT: I heard your name in the RICO complaint,
9 the RICO fact sheet.

10 MR. THOMPSON: That's correct, Your Honor. So I am
11 coming up to speed going in both directions as this moves
12 forward and also obtaining and reviewing the Court's orders.

13 I have reached out to counsel. They have been very
14 gracious and talking to me and bringing me up to speed a
15 little bit. We are coming up on this --

16 THE COURT: You are not a named defendant, so --

17 MR. THOMPSON: Just in the RICO.

18 THE COURT: Just in the RICO.

19 MR. THOMPSON: That is correct. And as we're going
20 through that and going through that with the client trying to
21 figure out what the plan is with approaching that due to the
22 nature and relationship of Polymer Technologies and this
23 entire CPAP machine, they don't manufacture foam. They take
24 it from somebody else. They put an adhesive backing on it.
25 They put an acoustical lining over it. They give it to

1 someone else who stamps it out and provides it to Philips. So
2 it's an intermediary.

3 So there may potentially come a motion to dismiss on
4 12(b) (6) based on the allegations against it in the complaint,
5 but we're still coming up to speed on all of this.

6 THE COURT: Okay. When were you served with the --

7 MR. THOMPSON: I believe it was two weeks ago. I
8 don't have the exact date, but I think that's right.

9 THE COURT: Okay. So we have sort of set agendas for
10 the filing of these motions. So I would like you to meet and
11 confer with the other counsel and maybe the discovery master
12 about when that would be appropriate for that timing. So, but
13 if you were to file two weeks ago, I think it's 30 days for a
14 response.

15 MR. THOMPSON: It's coming up.

16 THE COURT: It's coming up. So you just want them to
17 go under the rules of the timing or --

18 MS. DUGGAN: Your Honor, I've spoken with
19 Mr. Thompson, and it would be my understanding that they would
20 have to file an answer or file a motion to dismiss by August
21 29th. It would be governed by the Court's order scheduling
22 with respect to this complaint.

23 THE COURT: Okay.

24 MS. DUGGAN: Which would be an extended period of
25 time that the parties already agreed to.

1 THE COURT: Just to clarify, because they weren't
2 part of that order. They weren't named as part of that order.
3 So it may be some question as to that.

4 So why don't you just file an order -- I mean, a
5 proposed order for the Court to approve this extended time for
6 them. Okay? Then it's clarified. We don't have to worry
7 about it.

8 MR. THOMPSON: That's fine.

9 MS. DUGGAN: We'll do that, Your Honor.

10 MR. THOMPSON: Thank you, Your Honor.

11 THE COURT: Thank you. Is there anything else to
12 come before the Court? So we'll be busy in August. It will
13 be a busy couple of days, and we will hopefully have the
14 opportunity for the hospitality, and I think that's a good
15 thing for everybody to be speaking to each other in other ways
16 and informally, and hopefully we'll foster the spirit of
17 professionalism. Thank you.

18 THE CLERK: All rise.

19 (The proceedings concluded at 3:32 p.m.)

20 C E R T I F I C A T E

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

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

07/23/2022
Date of Certification