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

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

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Transcript of proceedings on August 31, 2022  
United States District Court, 700 Grant Street, Pittsburgh,  
PA, 15219, before Honorable Joy Flowers Conti, United States  
District Judge.

APPEARANCES:

For the Plaintiffs:   Christopher A. Seeger, Esq.  
                          David R. Buchanan, Esq.  
                          Sandra L. Duggan, Esq.  
                          Steven A. Schwartz, Esq.  
                          Roberta Liebenberg, Esq.  
                          Ava Cavaco, Esq.  
                          Lauren Miller, Esq.

For the Philips  
Defendants:           Wendy West Feinstein, Esq.  
                          Laura Hughes McNally, Esq.  
                          John P. Lavelle, Esq.  
                          Lisa C. Dykstra, Esq.  
                          Michael H. Steinberg, Esq.  
                          William B. Monahan, Esq.

For Polymer  
Technologies:       Eric Scott Thompson, Esq.

Court Reporter:     Marsia Balobeck

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

## P R O C E E D I N G S

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3 THE COURT: So this is the status conference in IN  
4 RE: Philips Recalled CPAP, MDL number 3014. I received a  
5 joint notice of the counsel who are going to be speaking. And  
6 anyone else who wanted to have their appearance noted. Is  
7 there any changes to that?

8 MR. BUCHANAN: This is Mr. David Buchanan from Seeger  
9 Weiss. I'm going to be speaking on behalf of plaintiffs.

10 THE COURT: You're going to be speaking?

11 MR. BUCHANAN: Yes, Your Honor.

12 THE COURT: Is there anyone else that wishes to have  
13 their appearance entered? Hearing none, we'll go to the  
14 agenda. Okay.

15 Discovery update.

16 MR. BUCHANAN: Good afternoon, Your Honor. Taking, I  
17 guess, the first three items. The first is the ESI addendum  
18 submitted at your request following last month's status  
19 conference. It's a supplement to the ESI protocol and the  
20 production protocol. We had, I would say, significant meet  
21 and confers guided by --

22 THE COURT: This is where we set forth the dates.

23 MR. BUCHANAN: The team has been actively involved  
24 over the last month and has set, I would say, a good schedule  
25 to keep things moving and to close some issues, information

1 exchanges, production, and other things to hopefully guide us.  
2 Hopefully by the next status conference, Your Honor, we'll  
3 have exchanged more information and be well underway.

4 THE COURT: Good. Thank you.

5 The census registry.

6 MR. BUCHANAN: There are two other items on  
7 discovery, Your Honor, just to have them before you. The  
8 deposition protocol. There was date for us to sharpen any  
9 issues and present those to the special master. I think we  
10 set that for the 12th. The 12th. So that issue may or may be  
11 before you by the next status conference. Parties are working  
12 through their issues across both MDLs on that.

13 At the final issue will be before Special Master Katz  
14 in the next few weeks concerning limits on discovery. So that  
15 was under a discovery plan and that was for us to work  
16 through. Hopefully, we'll have a report back with agreement  
17 or resolution by Special Master Katz by the the next CMC.

18 THE COURT: Thank you.

19 MR. MONAHAN: Hey, Your Honor. I agree with  
20 everything Mr. Buchanan said. Just one additional item in the  
21 discovery about to vet I just wanted to mention. We're  
22 working on the device examination protocol, the visual  
23 protocol where we can open up plaintiff's devices, look to see  
24 if there's been foam degradation. We're working with  
25 plaintiffs. We have to give some information to them and they

1 have to get some information to us and with the discovery  
2 master we'll get that worked out as well.

3 THE COURT: Okay.

4 MR. BUCHANAN: A few other items, Your Honor. On  
5 that one I think there are some issues the parties are working  
6 through. One concerning the timeliness and utility given the  
7 scope of it. But that's not an issue for Your Honor today,  
8 that's an issue for Special Master Katz.

9 THE COURT: Okay. Thank you.

10 MS. MCNALLY: Good afternoon again, Your Honor.  
11 Lauren McNally for Philips RS.

12 Just to give you a little bit of an update on the  
13 discovery that has taken place. Defendants have produced over  
14 63,000 pages of documents, including FDA communications,  
15 information about the devices, documents surrounding the 518  
16 and 483 responses, exemplar documents relating to the devices,  
17 documents from foam suppliers, org charts, remediation  
18 documents, photos and schematics of the devices, testing  
19 records, CAPA files, design history file indices and  
20 regulatory checklists.

21 I just didn't want to give any impression that in any  
22 way discovery hadn't begun yet. We have already been  
23 producing documents. We're very close to agreement over 60  
24 custodians and close to, I think, 400 search terms resulting  
25 in what's going to be a review population of well over 4

1 million documents to date and that number is just growing as  
2 we get more files and whatnot in. So just wanted to let you  
3 know that we are well underway.

4 THE COURT: Thank you.

5 MR. BUCHANAN: The danger with production stats is  
6 that from one side there's pride behind them and from the  
7 other side there's angst.

8 From our side, Your Honor, I think those 63,000 pages  
9 compose about 2,500 documents and we've been mostly there  
10 since June. But in fairness, I wasn't going down this road,  
11 we are working to accelerate the pace of production and we  
12 hope that will happen over the next 30 days.

13 THE COURT: Thank you.

14 Anybody else want to be heard on discovery?

15 Census registry.

16 MR. BUCHANAN: I'm happy to address that, but I think  
17 maybe the defendants would like to take the first step.

18 THE COURT: Thank you.

19 MR. LAVELLE: Thank you. Good afternoon, Your Honor.  
20 John Lavelle from Morgan, Lewis for Philips RS.

21 The parties have submitted to Your Honor a motion for  
22 approval of a proposed census registry program that was filed  
23 on August 23rd as document 696.

24 THE COURT: And I don't have any problem with it.  
25 It's just the date. I just wanted to make sure I waited at

1 least a couple of weeks to see if there's any objections that  
2 have come in. I'm not anticipating there will. But once that  
3 time passes, that two weeks, then I'll sign this.

4 MR. LAVELLE: Thank you, Your Honor.

5 THE COURT: Unless there's an objection. I'm not  
6 assuming there will be. But I don't want to just sign it and  
7 then somebody comes in and objects. But I personally did not  
8 have any problems with the information.

9 MR. LAVELLE: Very good. Thank you, Your Honor.

10 MR. BUCHANAN: John, you can stay up. Your Honor,  
11 one of the aspects of the registry and it may not have been  
12 picked up by our agenda --

13 THE COURT: I did have one question I wanted to use.  
14 My understanding is the information from the registry, you can  
15 put it in certain report formats so you can see people of a  
16 certain age, locations, that type of thing. And there's  
17 something on page 5 about the disclosure other than for  
18 vetting and understanding the composition of unfiled and  
19 unvetted claims.

20 So would those kinds of reports be within that  
21 understanding the composition?

22 MR. LAVELLE: Your Honor, I think paragraphs 12 and  
23 13 of the agreement address this. And there's an agreement  
24 between the parties set forth in paragraph 12 about what we  
25 cannot -- what we can use the information for and what we

1 can't use it for.

2 And then paragraph 13, I guess it's fair to say,  
3 signals that there was an agreement to disagree on the extent  
4 to which this could be used for certain information. And  
5 plaintiffs have stated their position, we stated our position.  
6 But at this point, we don't think that there's a dispute  
7 that's right to address by this court related to --

8 THE COURT: But I was asking specifically about those  
9 kinds of reports that you can generate from this type of  
10 information.

11 MR. LAVELLE: Right. So --

12 THE COURT: Is that going to be permissible or not?

13 MR. LAVELLE: From the care orchestrater database, I  
14 think is what Your Honor is referring to, we've limited the  
15 scope of the release to three categories of information:  
16 Usage data and information about the ambient temperature and  
17 humidity in which the device is being used. And we provided  
18 to the plaintiffs' counsel what that information would look  
19 like. And it could be put in the form of a report or it could  
20 be in the form of a raw data.

21 THE COURT: Sometimes the demographics are somewhat  
22 interesting in terms of when you're looking for certain  
23 purposes and trying to assess some of those things. These are  
24 just matters that I heard discussed by other judges who have  
25 MDLs that involve torts. So that's not contemplated here,

1 those kinds of reports?

2 MR. BUCHANAN: Your Honor, I think one of the issues  
3 the parties wrestled with in putting this together is the  
4 recognition that the census registry is fundamentally an  
5 unvetted claimant pool, cases that may or may not ultimately  
6 move forward to litigation.

7 There's a tolling that's accompanying this that  
8 allows the parties, the plaintiffs in particular, to vet their  
9 claims and to evaluate their claims.

10 So the concern from the plaintiff's perspective is  
11 really the utility of drawing too much information from an  
12 unvetted patient population or unvetted claiming population.

13 So the data you're talking about can be -- it is  
14 captured . The question is what to draw from it. And that's  
15 really the debate. Mr. Seeger has got perspective on this.

16 MR. SEEGER: Not only this, but I think I understand,  
17 maybe because they're focused, the census may not be picking  
18 up on what you're asking, Judge. If you're interested in  
19 information on filed cases, we are working with MDL  
20 Centrality. And we're going to upload -- people will upload  
21 data about their cases. So let's say if Your Honor says: I'd  
22 like to know what I have here, can you run some data for us?  
23 I think we're going to be able to -- we've done that in 3M and  
24 other cases. I think we can do that.

25 THE COURT: Okay. But that's only on the filed



1 plaintiffs?

2 MR. SEEGER: Now there will be information on unfiled  
3 and I think our position is if you were to ask for something,  
4 we would like to talk about how that's presented to the court  
5 with caveats. We might say: Judge, you're entitled to get  
6 this information, but these are unvetted cases, may never make  
7 it onto your docket.

8 THE COURT: Right.

9 MR. SEEGER: So we may look to remind you of that.  
10 That's a different pool than the pool that's likely to be  
11 filed here.

12 But I think John framed it perfectly. We kind of  
13 kicked that bucket down to the road for another day to fight  
14 over. This took long enough to put together.

15 THE COURT: Just so I'm clear, I just want to know  
16 what's in and what's out. Okay. Thank you.

17 So we'll just wait the 14 days and then if no  
18 objections are filed, I'll approve this.

19 MR. LAVELLE: Thank you, Your Honor. And Your Honor,  
20 we will be terminating the tolling agreement that's currently  
21 in existence once you --

22 THE COURT: Once I enter the order?

23 MR. LAVELLE: Yes.

24 THE COURT: Okay.

25 Fact sheets and fact sheet implementation.

1 MR. BUCHANAN: Your Honor, with serial back and  
2 forths, we ultimately were able to reach an agreement on that.  
3 I think there will be an order submitted within --

4 THE COURT: I have nothing before me now?

5 MR. BUCHANAN: You have nothing before you now.

6 THE COURT: All right.

7 The amended protective order. Did you all hear what  
8 I said about the protective order in the SoClean case?

9 MR. LAVELLE: Yes.

10 THE COURT: So if you can make those adjustments as  
11 well. Meet and confer with each other, counsel from SoClean  
12 so everybody is on the same page. Okay?

13 MR. LAVELLE: Yes, Your Honor.

14 THE COURT: Preservation.

15 MR. LAVELLE: Yes, John Lavelle. Very briefly.  
16 There are, I think, a couple of projects going on relating to  
17 preservation. We have to update the original preservation  
18 order with respect to station one. Parties have had extensive  
19 negotiations about that. I think we're close to finalizing  
20 that. We don't have anything for Your Honor today. I expect  
21 we'll have it before Your Honor in advance of the next case  
22 management conference.

23 We've also been discussing an open issue. And it was  
24 in the Trilogy preservation order with respect to individual  
25 claimants who want to self-preserve their devices. We've had

1 a lot of communications back and forth on that. Again, we  
2 don't have anything to present to Your Honor today on that.  
3 But we are working through those issues and hopefully will  
4 have something to present to Your Honor in the near future.

5 In the meantime, we've been reporting to the  
6 plaintiffs on preservation of devices and we've submitted our  
7 most recent report to them today on preservation.

8 MR. BUCHANAN: Your Honor, just in regard to the  
9 second item addressed by Mr. Lavelle, it relates to the  
10 Trilogy ventilators. That was raised, I think, at the CMC  
11 back in May.

12 The self-preserve option that's reflected in the  
13 order, I think it's paragraph 22 of the order, that afforded  
14 the plaintiffs the right to do so. The parties will work he  
15 expeditiously to solve for that. I think there's a need for  
16 us to solve for that in the near term.

17 THE COURT: This is the ventilators? Is that what  
18 we're talking about here?

19 MR. BUCHANAN: Yes.

20 THE COURT: Are these mainly in hospitals or people  
21 have them in their homes?

22 MR. BUCHANAN: It looks like about one percent or  
23 less.

24 THE COURT: Sort of critical to their --

25 MR. BUCHANAN: They can be prescribed for different

1 reasons, COPD or other things, more severe case. But it's a  
2 relatively small fraction and John probably has -- defense  
3 counsel probably has better information because of the  
4 preservation registry. I just wanted to alert the court,  
5 we're going to try to work through Special Master Katz. We're  
6 going to try to bring this to a conclusion in the next few  
7 weeks and hopefully have an order by the next CMC.

8 MR. LAVELLE: I just want to confirm Mr. Buchanan is  
9 correct, the Trilogy devices are a small percentage of this  
10 litigation. And the claimants who have identified themselves  
11 on the preservation registry as wanting to preserve Trilogy is  
12 a very small percentage of that registration group. That  
13 said, we are trying to come up with a solution for that.

14 THE COURT: So science day. The court did an order  
15 setting forth the provisions about confidentiality, the need  
16 for good cause if anybody wants to get a transcript. The  
17 transcript is just for the court's use and it's purely for  
18 informational purposes. There's no evidence, no discovery can  
19 be taken as a result of what was said. No one is under oath.  
20 So it's a very informal process. Is there anything else about  
21 science day other than what I alerted to you about the present  
22 markers? Okay.

23 Complaints and motions to dismiss.

24 MS. DUGGAN: Good afternoon, Your Honor. Sandra  
25 Duggan for the plaintiffs.

1           Pursuant to pretrial order number 14, the plaintiffs  
2 filed on August 22nd a master personal injury complaint,  
3 that's at doc 695. And attached as Exhibit A to that  
4 complaint is a template for a short form answer. That's at  
5 695-1.

6           We also filed a consolidated amended medical  
7 monitoring class action complaint. We had deadlines set forth  
8 in pretrial order 14 for responses to those complaints or for,  
9 you know, motions to dismiss. And I've been speaking with  
10 Eric Thompson, who represents Polymer Technologies. He's here  
11 today. He's probably going to need some more time to respond  
12 to those complaints. And the date that's set forth in the  
13 agreed-to order that was entered before this client was named  
14 in the economic loss complaint. So perhaps within a week we  
15 can discuss the dates and present something to Your Honor --

16           THE COURT: Okay.

17           MS. DUGGAN: -- with regard to that.

18           Now in response to our economic loss complaint, four  
19 separate motions to dismiss were filed. One was filed by  
20 Polytech, and three different motions were filed by the  
21 various Philips defendants. One of them is a Rule 12(b)(1)  
22 motion to dismiss for lack of standing. And there's two  
23 separate motions to dismiss for failure to state claims. We  
24 are in the process of evaluating those and we'll be responding  
25 by the deadline we have in Your Honor's order.

1 THE COURT: Okay. Anything from the defendants?

2 MR. STEINBERG: Yes, Your Honor. Michael Steinberg  
3 on behalf of the non-Respironics Philips defendants.

4 After yesterday's hearing where Your Honor discussed  
5 the issue of group pleading, we went back, of course, and we  
6 knew that we filed on Monday motions -- our motions to dismiss  
7 based upon those group pleading allegations that are  
8 throughout the economic loss complaint, throughout the medical  
9 monitoring complaint and without the personal injury  
10 complaint.

11 In the non-economic -- in the economic loss  
12 complaint, there are exactly six allegations about Philips in  
13 its 883 paragraphs. Instead, they do the same thing, they  
14 define all of the Philips entities together and then they say  
15 Philips throughout the rest. And I think the rules are very  
16 clear on this. I think Your Honor was extremely clear  
17 yesterday. And I worry that we're about to have a huge waste  
18 of time because -- I mean again, in the economic loss  
19 complaint, filed our motion to dismiss, there are six separate  
20 allegations. And those allegations consist mostly of Philips  
21 owns -- KPMV owns 100% of the shares of -- and listing through  
22 the subsidiaries.

23 There is, of course, a boilerplate allegation of  
24 alterego and control, that Philips controls all sorts of other  
25 entities. But there's nothing in there at all. And I'm quite

1 worried because this is now just going to be a complete waste  
2 of time, frankly.

3 THE COURT: Ms. Duggan, were you here yesterday?

4 MS. DUGGAN: I was here, Your Honor. I listened very  
5 carefully. And my response to what Mr. Steinberg is saying is  
6 plaintiffs were prepared to address a motion to dismiss for  
7 lack of personal jurisdiction. We discussed that with them in  
8 our 26(f) conference. And the parties agreed to defer that  
9 issue. And we would need discovery to -- into those various  
10 allegations that we have. And we're willing to do that, but  
11 the parties agreed to defer the issue.

12 And my suggestion to the court is that we defer this  
13 issue because it's intertwined -- in other words, the  
14 discovery we need on those allegations are intertwined with  
15 the facts of this complaint. So we can address it now and  
16 delve into it or we can put it off to a later date.

17 THE COURT: I guess my question to you would be: If  
18 you're not successful in the alterego/piercing the corporate  
19 veil argument -- then that's the only way you can lump them  
20 all together as you know going through if there was a  
21 conspiracy. And I raised the concerns I had about a  
22 conspiracy allegation.

23 So if you are not going to separate them out at this  
24 time, then we would have to go through and do another amended  
25 pleading later. And everybody would have to agree to preserve

1 that issue. But you are just sort of rolling it down the  
2 line. If you know what entity said what, you can still make  
3 an allegation that they're all in there together under the  
4 alterego/piercing the corporate veil argument. That would be  
5 preserved for a later day. But what do we do? Are we just  
6 pushing off again? The issue about you can't -- you fail to  
7 segregate them.

8 MS. DUGGAN: Well, I think Your Honor, we feel  
9 confident that for purposes of pleading, that we've pled it  
10 sufficiently. And we're not alleging conspiracy, we're  
11 alleging they're one and the same. And the standard is  
12 different for prevailing at trial --

13 THE COURT: If we lose that -- if you lose that, then  
14 what happens?

15 MS. DUGGAN: We would probably ask for leave to  
16 amend. Is that is what you're asking?

17 THE COURT: Yes, that's what I'm saying. So you  
18 know, it's just sloppy pleading, quite frankly. Usually, when  
19 you do this, you separate them out, who said what to whom or  
20 whenever so you know which particular defendant you're  
21 responding to. It gives a clarity when somebody is responding  
22 on a paragraph-by-paragraph basis to deny, because they know  
23 exactly what you're pointing to. So that's what's sloppy  
24 about it in terms of giving a fairness to the other side, to  
25 actually be able to respond to a factual assertion that's set



1       forth.  So it's, you know --

2               MS. DUGGAN:  In a way, we're -- though, Your Honor,  
3       because if they had filed their motion to dismiss, we would  
4       have sought jurisdictional discovery and that's exactly and  
5       precisely the kind of facts we would have elicited in  
6       discovery in order to be able to do that.

7               But because we agreed, the parties agreed to push  
8       that off down the road, we would suggest that that would be  
9       the appropriate time to deal with all these issues, dealing  
10      with which particular Philips defendant did what, for example,  
11      or whether the parent entity --

12              THE COURT:  No.  I have to say in the other  
13      situations, SoClean versus Philips, there are a lot of other  
14      issues with the complaint that were raised that are going to  
15      be clarified the next time around.  And I think it was  
16      appropriate to clarify the separate allegations to make it a  
17      better pleading.  But -- and I don't know what the issues are  
18      going to be with your consolidated complaint, if they're going  
19      to be as thorny as the ones that I saw in the SoClean versus  
20      Philips.

21              MR. STEINBERG:  Your Honor, I would just note, I  
22      think they've gotten it exactly wrong.  Because we're entitled  
23      to know now what we're accused of in this case.  And if what  
24      we're accused of in this case gives this court personal  
25      jurisdiction, that's the issue.  You first get accused of what

1 you've done. Then you learn whether or not what you've done  
2 is closely connected enough to the jurisdiction so the  
3 Constitution allows the exercise of personal jurisdiction.  
4 It's not the other way around, which is how they are treating  
5 it.

6 MS. DUGGAN: Well, we've alleged that the parent  
7 entity controlled all the other entities that were named in  
8 the complaint.

9 MR. STEINBERG: For sure we owned it. For sure we  
10 owned 100%. But that's not an allegation that gives rise to  
11 alterego. That's just a perfectly lawful exercise.

12 THE COURT: I'm familiar with the complexities of  
13 alterego/piercing the corporate veil. And that will be under  
14 the Third Circuit precedent. You know, so make sure that's  
15 what you're pointing to when we get there.

16 But it is sloppy pleading. And there's like -- if  
17 you know that something took place and it involved a statement  
18 by an employee of one of the subsidiaries, that's what you  
19 identify, you know, this employee of that entity.

20 Now I have to be frank, I haven't reviewed that  
21 consolidated complaint yet. I usually do that when I'm  
22 reviewing the motion to dismiss so I see it all in context.  
23 But it is a problem if it's sloppy pleading. It makes it  
24 difficult for the responses to come in and then we wind up, if  
25 you're unsuccessful to say this is all attributed to the

1 combined entities. And if you're not successful in that, then  
2 you have to whittle it out and then it can be a problem.

3 MR. STEINBERG: They have the right right now to file  
4 an amended complaint because we have moved to dismiss against  
5 it. So you know, we agree with you, that they elect to delay,  
6 we're going to vigorously fight any question of amendment for  
7 sure. We've been in this lawsuit for nine months. We've been  
8 sued countless times. And yet the only allegations that we  
9 control are ownership of these subsidiaries.

10 MS. DUGGAN: We can certainly engage in a  
11 jurisdictional discovery. We would be willing to do that.

12 MR. STEINBERG: Again, puts the horse before the  
13 cart. Because they have to establish allegations of what  
14 we've done. And they're not doing that. We're entitled to  
15 that. We're entitled to have their allegations and measure  
16 them against personal jurisdiction and the constitutional --

17 THE COURT: No. It's a question of whether it's a  
18 facial or factual attack. It's not a facial attack, as I  
19 understand it, it's going to be a factual attack on personal  
20 jurisdiction.

21 MS. DUGGAN: Your Honor, in all fairness, I think  
22 Mr. Steinberg would agree with me, back in April, when we met,  
23 I anticipated a motion to dismiss for lack of personal  
24 jurisdiction. I said at that time we would need discovery.  
25 And then we agreed they wanted to put it off, so we said fine.

1 MR. STEINBERG: Your Honor, we did agree to put it  
2 off, but again, I would say this: They filed an amended  
3 complaint, an amended consolidated complaint drawn from over  
4 100 class actions and they still have six paragraphs that  
5 relate to Philips and jointly allege Philips throughout.

6 So again, I don't think their complaint can pass  
7 muster. And we have not been identified. There's no  
8 identification of what Philips did or any of the subsidiaries  
9 did other than what Respiroics did. Respiroics was its own  
10 company. It was founded --

11 THE COURT: That's another -- that's the merits issue  
12 on that matter. But I guess it would be fair to say if you  
13 could just go through the complaint, the consolidated  
14 complaint, and if it's true all of the actions that are  
15 pinpointed were undertaken under the Respiroics name, you  
16 know, if you can identify that and make an amendment to that  
17 or have something to clarify that, then that makes it easy.  
18 It's only what Respiroics was doing.

19 It was different in the Philips versus SoClean.  
20 There were statements being made by the CEO of the parent  
21 company, the ultimate parent. So there were different issues  
22 there.

23 But if it's clear there were factual allegations  
24 about specific kinds of conduct whereas the conduct of the  
25 subsidiary -- and whether the parents are going to be brought

1 into that because of alterego, that's is a different issue.

2 MS. DUGGAN: That was our intent, Your Honor, to  
3 bring the parent in through alterego because it's the head of  
4 the entire operation.

5 THE COURT: But there's no independent action that  
6 you're pointing to for any of the parents that are involved?

7 MS. DUGGAN: We actually do because a lot of those  
8 statements that were referred to yesterday in the hearing  
9 before Your Honor are the same statements with regard to the  
10 recall that we cite to in our complaint.

11 THE COURT: So you are making assertions?

12 MS. DUGGAN: We are.

13 THE COURT: Okay.

14 MR. STEINBERG: I said my piece, Your Honor. They  
15 made group pleadings. They have not isolated it. They've  
16 asserted zero facts that would justify a determination of  
17 alterego.

18 THE COURT: Well, that's a question for -- that's a  
19 factual attack on the complaint.

20 MR. STEINBERG: Simply put, it's just a basic  
21 Iqbal/Twombly issue that the Supreme Court allowed. They have  
22 to plead some plausible basis in order to -- for the  
23 underlying offenses in order to obtain jurisdiction of this  
24 court, in order to pass a Rule 12 motion. Both Rule 8 and  
25 Rule 9(b), which are applicable --

1 THE COURT: We're not talking about Rule 12(b)(1)  
2 here, we're talking about --

3 MR. STEINBERG: 12(b)(6), correct. So I mean, again,  
4 these are basic requirements that have been flouted to this  
5 complaint?

6 THE COURT: Well --

7 MR. STEINBERG: And I'm just worried. Frankly, it's  
8 just going to be -- we're going to -- the parent -- see the  
9 same thing about the master personal complaint. I'm going to  
10 see the same thing about medical monitoring. They're all  
11 equally group pleading. That's all it is, just a group  
12 pleading. And that's just not going to pass muster. It's not  
13 fair to us, it's not fair to the court. And it's just going  
14 to delay things tremendously as we fight it out. I'm happy to  
15 fight it out, but I think it's just a waste of time.

16 MS. DUGGAN: You know what troubles me here, Your  
17 Honor, is we had agreed to a procedure. We had agreed to  
18 three separate administrative complaints for purposes of  
19 efficiency. We agreed to put off the issue of personal  
20 jurisdiction. Now they're coming forward and saying, well,  
21 you don't have the facts you need to plead the complaint.

22 THE COURT: Well, in fairness, they haven't seen the  
23 consolidated complaint. And there's two separate issues here,  
24 one is the personal jurisdiction and the second is the  
25 pleading. And the pleading is -- from what I'm

1 understanding -- is pled as though there is a finding of alter  
2 ego or piercing of the corporate veil and it's pled that way.

3 MS. DUGGAN: Yes, we do make that allegation.

4 THE COURT: So it's a matter of pleading. And the  
5 courts generally disfavor that kind of pleading unless you set  
6 forth the basis for the alter ego in the complaint. That's  
7 different from personal jurisdiction. So there's just  
8 conclusory allegation, that would be insufficient. It's a  
9 different issue if you're following what I'm saying. So then  
10 you would have to have specific pleadings about each of the  
11 defendants in order for them to respond. That's a fair  
12 pleading.

13 And what's happened is here is because of the  
14 deferral, you know, that complicates this situation but you  
15 still have to pass the pleading issue. So unless they're  
16 agreeing to push that pleading issue off, then you're going to  
17 have to plead some of the alter ego issues.

18 MR. STEINBERG: I'm not --

19 THE COURT: That's a 12(b)(6). That's the standard  
20 for 12(b)(6). And there's legions of cases and -- decisions,  
21 I should say, that discuss that issue. Why don't you meet and  
22 confer about this.

23 MR. STEINBERG: Just to be clear, we did not waive  
24 our rights to Iqbal/Twombly by their filing an amended  
25 complaint.

1 MS. DUGGAN: We're not suggesting that you did. And  
2 I heard Your Honor yesterday at the hearing and I did speak  
3 with Mr. Monahan just before this hearing. So why don't we  
4 have an opportunity to do --

5 THE COURT: Yes, why don't you have an opportunity to  
6 do that. Okay?

7 MR. STEINBERG: Thank you.

8 THE COURT: So do you want to withdraw your request  
9 to postpone that issue in light of this? That's up to you.  
10 But at this stage, you know, I have to follow what the  
11 standards would be for pleading under 12(b)(6) -- for motion  
12 to dismiss under 12(b)(6).

13 MS. DUGGAN: I understand.

14 THE COURT: Okay. The implementing order for person  
15 injury actions.

16 MS. DUGGAN: We added that, Your Honor, to the  
17 agenda. The parties have been discussing this for a couple of  
18 weeks now. We have on file the master personal injury  
19 complaint which was part of the court's ordered pretrial order  
20 14. Attached as Exhibit A is a proposed short form complaint,  
21 a template.

22 What we're missing is the implementing order from the  
23 court. Currently there's 236 personal injury actions on file  
24 in this MDL. Parties are going to need to know, what do we do  
25 if we want to file -- either if we already have an action on



1 file or what if we want to file a personal injury action.

2 THE COURT: Are you going to propose an order?

3 MS. DUGGAN: We have a proposed order. We are in  
4 agreement with the Philips defendants. A slight wrinkle is  
5 that now Polymer Technologies has been named in the master  
6 complaint. I understand from Mr. Thompson, he's going to need  
7 more time. There's certain deadlines set forth in that order.  
8 So what I thought was perhaps we could speak after this  
9 hearing. And within a week, present something to Your Honor.  
10 If you'd like I could walk through the concept though for the  
11 court to see if --

12 THE COURT: Sure. Yes.

13 MS. DUGGAN: So the idea is if there's already a  
14 complaint on file -- as I said, there's 236 as of today --  
15 those plaintiffs would be required to file a short form  
16 complaint in their individual dockets. They would be deemed  
17 to have adopted all of the claims in the master complaint and  
18 in addition to that, they would file a short form complaint.  
19 The party would list the party's name, what action they've  
20 already filed, if it's already on file what the district is  
21 where they filed, where they live, what injuries they're  
22 complaining about, which defendants they're suing, which  
23 allegations in the master complaint they're going to adopt.  
24 And if there's a loss of consortium claim, they would check  
25 that box. If it's a survivorship claim, they would check that

1 box. They would have 60 days from the date of Your Honor's  
2 order to file the short form complaint.

3 In addition to adopting all the allegations in the  
4 master complaint, if they have any additional allegations they  
5 want to bring, there would be an opportunity to do that. If  
6 they wanted to name additional defendants, they could do that  
7 as well. Then they would serve that complaint through the MDL  
8 Centralia. That's the platform we talked about that will be  
9 used for the census registry forms and the fact sheets. They  
10 would also do their service of their short form complaint  
11 through MDL Centralia.

12 If anybody wants to bring a personal injury action  
13 who's not already in the MDL, there's a direct file component  
14 to this order where they would directly file in the MDL their  
15 short form complaint. Again, having adopted the allegations  
16 in the master complaint. They would pay a filing fee. And in  
17 that short form complaint, as I said, they would state where  
18 they would have filed the action had it not been for the  
19 direct filing here. So that for purposes of remand when the  
20 cases are ready, the court system will know where the cases go  
21 back to.

22 THE COURT: Okay.

23 MS. DUGGAN: That's the basic concept.

24 THE COURT: Did you want to be heard?

25 MR. LAVELLE: Yes, Your Honor, just very briefly.

1 John Lavelle for Philips RS.

2 I agree with everything Mrs. Duggan has said. I  
3 think she described it accurately. Basically, the Philips  
4 defendants are in agreement.

5 And based on the discussion that occurred during the  
6 SoClean argument today or SoClean case management conference,  
7 we would like to have a discussion about whether any of the  
8 issues that were discussed should be worked into the short  
9 form complaint form, but I think we can meet and confer  
10 hopefully.

11 THE COURT: About SoClean adding?

12 MR. LAVELLE: Yes, correct. And the other thing that  
13 we didn't build into this is that there will be ultimately --  
14 assuming the motions to dismiss are denied in part or in  
15 total -- we will file a master answer. And that will serve as  
16 the answer to the short form complaints.

17 THE COURT: Okay.

18 MS. DUGGAN: Slight adjustment to that. The point in  
19 time there's a pool of cases from which bellwethers will be  
20 chosen, then the plaintiffs would have an opportunity to amend  
21 at that point and then we will discuss filing short form  
22 answers in those cases.

23 THE COURT: Is that part of your --

24 MS. DUGGAN: It's part of the order. That's a piece  
25 of it for deciding down the road because the parties were not

1 able to precisely agree on that.

2 Just for clarity, so there's no confusion, SoClean is  
3 not named in our master PI complaint. As I said, in the short  
4 form, there's an opportunity to name SoClean as a defendant.  
5 But SoClean is not a named defendant. I don't know if the  
6 court is aware of that because it was just filed recently.

7 THE COURT: I know that they were not a named  
8 defendant. That was made clear to me. Okay.

9 Update on the state court litigations. As far as I'm  
10 aware, there's just the one case. I reached out to the judge  
11 in that case. He's in trial this week so he's not going to be  
12 participating. But he thanked us for the opportunity.

13 MR. LAVELLE: Yes, Your Honor. Just to update Your  
14 Honor, there are no new cases that we're aware of that have  
15 progressed passed the initial stage in any state court.

16 We did provide Your Honor with a copy of the stay  
17 order that was entered in the St. John case, so that case has  
18 been stayed until January of 2023. And the parties in that  
19 litigation have been directed to, at that time, submit a  
20 report to that court about what is going on in the MDL. And  
21 at that point, the Court will decide whether to continue the  
22 stay or do something else.

23 THE COURT: Has counsel for that case filed a notice  
24 that they are going to be bound by the order that would permit  
25 them to participate and they're subject to the confidentiality

1 provisions?

2 MR. LAVELLE: We did see the submissions that they  
3 did, Your Honor. We would just ask that they confirm tomorrow  
4 if they are in the courtroom that they are subject to the  
5 court's authority.

6 THE COURT: The jurisdiction and confidentiality  
7 agreement.

8 MR. LAVELLE: Hopefully they can do that before Your  
9 Honor tomorrow.

10 THE COURT: So remind me of that before we start.

11 MR. LAVELLE: We will, Your Honor.

12 THE COURT: Common benefit assessment order.

13 MS. DUGGAN: Your Honor, we had added that to the  
14 agenda before we saw that the court had --

15 THE COURT: I did sign it. I just wanted to wait a  
16 period of time to see if there are any objections. And no  
17 objection have come in.

18 MS. DUGGAN: We thank you for that.

19 THE COURT: Thank you.

20 Okay. Leadership development update.

21 MS. CAVACO: Good afternoon, Judge Conti. Ava Cavaco  
22 for the LDC.

23 This is the first time I've been able to speak with  
24 you since the appointment, so I just is wanted to thank you  
25 for the opportunity. And we're enjoying our experience in the

1 creation of leadership development committee in the master  
2 space has been kind of revolutionary and at the forefront of  
3 hot topics for us. So thank you so much for creating it.

4 Last month, we came to you and respectfully requested  
5 some direction on our committee. And we wanted to say that we  
6 really appreciated the dialogue that you shared with us. It  
7 was very informative for us all. And I'm happy to report that  
8 the members of my committee have all reported back an increase  
9 in involvement in all of the key tasks that are happening and  
10 going on in the litigation.

11 THE COURT: Just heating up now.

12 MS. CAVACO: Exactly right. So you had made it a  
13 point to assert that we should be involved in the  
14 negotiations. So now that we have exponentially picked up  
15 speed, we all think -- we're all learning very quickly and a  
16 lot at the same time.

17 I just also wanted to make a note that you made it a  
18 point to say that you may want a mid litigation report on  
19 strategies that haven't worked or issues that we have seen.  
20 So whenever you would like to see that, just give us a notice  
21 at any conference, and we're happy to provide you with that.

22 THE COURT: Okay. I think it would be particularly  
23 important that if you are seeing issues to let me know as soon  
24 as possible. Probably early next year is when I think would  
25 be good. January or February would probably be a good time to

1 see how things have -- because discovery will be ongoing then.  
2 We'll be in the -- hopefully some of the settlement process  
3 will be starting and picking up. And we'll see how that is  
4 going. Maybe some of the discovery issues will have been  
5 resolved by that time if there are indeed any issues.

6 MS. CAVACO: For sure, we'll make a note of that and  
7 keep this dialogue open. Thank you again, Your Honor.

8 THE COURT: Thank you very much. Okay. Is there  
9 anything else to come before the Court?

10 MR. BUCHANAN: Not from the plaintiffs, Your Honor.

11 MR. LAVELLE: Your Honor, just looking forward to  
12 seeing everybody --

13 THE COURT: So that's an invitation extended by the  
14 defense -- defendants? Is it all the defendants just in this  
15 case or in SoClean, too?

16 MR. LAVELLE: Just the Philips defendants.

17 THE COURT: But everybody is invited.

18 MR. LAVELLE: Yes, everybody is invited. Yes.

19 THE COURT: Thank you all. So we'll see you later.  
20 This status conference is adjourned.

21 C E R T I F I C A T E

22 I, MARSIA L. BALOBECK, certify that the foregoing  
23 is a correct transcript from the record of proceedings in the  
24 above-entitled case.

25 \s\ Marsia L. Balobeck  
MARSIA L. BALOBECK

09/06/2022  
Date of Certification

1 Official Court Reporter

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