

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

IN RE PHILIPS RECALLED CPAP, BI-LEVEL PAP
and MECHANICAL VENTILATOR PRODUCTS
LIABILITY LITIGATION

No. 21-mc-1230

MDL No. 3014

Transcript of STATUS CONFERENCE proceedings recorded on
September 21, 2022, in the United States District Court,
Pittsburgh, Pennsylvania, before The Hon. Joy Flowers Conti,
United States District Judge

APPEARANCES:

For the Plaintiffs: Sandra L. Duggan, Esq.
Kelly K. Iverson, Esq.
Steven A. Schwartz, Esq.
Christopher A. Seeger, Esq.
David S. Stellings, Esq.
Peter St. Tienne Wolff, Esq.
D. Aaron Rihn, Esq.
David R. Buchanan, Esq.
Ashley DiLiberto, Esq.

For Philips RS North
America, LLC, Defendants: Laura Hughes McNally, Esq.
John P. Lavelle, Jr., Esq.
Lisa C. Dykstra, Esq.

For Other Philips
Defendants: Tracy Richelle High, Esq.
William B. Monahan, Esq.
Daniel Sisgoreo, Esq.

For Polymer
Technologies, Inc.: Oleh Bilynsky, Esq.

Court Reporter: Deborah Rowe, RMR, CRR
700 Grant Street, Ste. 5300
Pittsburgh, PA 15219
(412) 471-2510

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

P R O C E E D I N G S

- - -

(2:29 p.m.; in open court:)

THE COURT: Okay. We're ready for the status conference in In Re: Philips Recalled CPAP, Bi-Level PAP and Mechanical Ventilator Products Litigation, MDL No. 3014.

The Court has received a joint notice of the speakers today. This is your entry of your notice of appearance. Are there any changes or amendments to that?

MR. STELLINGS: Yes, Your Honor. Good afternoon. David Stelling, Lief Cabraser. I'll address any questions the Court might have regarding the amended Protective Order.

THE COURT: The amended what?

MR. STELLINGS: Protective Order.

THE COURT: Okay. Thank you. So we have also a pad of paper in the front. If anybody else wishes to enter their appearance for the record, that's where you should sign.

So the first thing on the agenda is the discovery update. Who would like to address that?

MS. DYKSTRA: Good afternoon, Your Honor. Lisa Dykstra from Morgan Lewis --

THE COURT: You need to speak into the microphone.

MS. DYKSTRA: Okay. Lisa Dykstra for Philips RS. Your Honor, we have been having productive discussions and

1 meet and confers with the Plaintiffs. Since we've had 18
2 productions to date, we've had three large productions since
3 August. We have another production this week.

4 In ballpark, the productions have covered
5 regulatory information, quality information, FDA
6 communications, updates on our 518(a) discussions with the
7 FDA, testing information, and, as I said, an additional
8 10,000 pages of information that are going to be produced
9 this week.

10 My partner and the Plaintiffs and I have had weekly
11 meet and confers at length and have talked with Carole Katz
12 about all sorts of issues that have been arising during these
13 discussions. I think they've been productive and have all
14 been in very good faith on both sides.

15 We have discussed the continuation of our
16 noncustodial productions, and the last update is that on
17 September 30, consistent with our discussions, we are going
18 to begin producing our custodial productions, and we've
19 agreed to what is at this point 59 custodians whose documents
20 we are going to be searching for. So right now I think
21 everything is proceeding --

22 THE COURT: Is that going on simultaneously or are
23 they in --

24 MS. DYKSTRA: Everything is going on
25 simultaneously. So the noncustodial sources are continuing

1 to be reviewed -- collected, reviewed and produced. And we
2 have people collecting and reviewing custodial sources. So
3 we'll get that out simultaneously.

4 THE COURT: Okay. Thank you.

5 MS. DYKSTRA: Thank you.

6 MS. IVERSON: Good afternoon, Your Honor. Kelly
7 Iverson. Thank you last month for letting me attention
8 Science Day remotely. I very much appreciate that, first of
9 all.

10 I agree with everything Lisa said. I think the
11 Friday meet and confers have been very productive for all
12 sides to be working together each Friday, as well as keeping
13 Carole updated each week, taking issues to her as needed.

14 The other two, we have an order setting deposition
15 protocol and limitations on written discovery there are still
16 due that we're still working on. We've been working with
17 Philips and Polytech on the deposition protocol and have been
18 coordinating with SoClean MDL parties on that as well. So
19 it's a lot of kind of hands in the pot.

20 We're having a meet and confer on this Friday
21 again, and we're expecting to work with Carole next week on
22 any issues that we're not able to resolve. We were supposed
23 to initially I think have those in to Carole last month, and
24 we had gotten an extension because the parties were still
25 trying to work through a lot of stuff cooperatively together

1 and didn't want to tee up anything until we knew where we
2 were at an impasse.

3 The same thing with limitations on written
4 discovery. I actually met with Carole this week on some of
5 the issues. We have a meet and confer on Friday as well with
6 Defendants to try to finalize that and hopefully get that to
7 you. Any questions?

8 THE COURT: Just that we had -- well, this is for
9 Polymer Technologies, Inc. Are they involved in all of these
10 discussions or what -- because they're so new to the case.

11 MS. IVERSON: Yes. They are involved in --

12 THE COURT: What's the status, and how is that
13 going?

14 MS. IVERSON: Yes. They are involved here --

15 THE COURT: Is anybody here for Polymer
16 Technologies --

17 MR. BILYNSKY: Oleh Bilynsky, Your Honor.

18 THE COURT: Okay. Thank you. Oh, I'm sorry,
19 because I have here Eric Scott Thompson.

20 MR. BILYNSKY: Yes, Your Honor. I'm replacing Eric
21 Thompson.

22 THE COURT: Well, you should have told us that
23 because we have him down. We have him down as a speaker. So
24 if you could just introduce yourself, thank you, and sign in.
25 And if you would speak your name into the mike, that would be

1 helpful for the court reporter.

2 MR. BILYNSKY: Oleh, O-l-e-h, Bilynsky,
3 B-i-l-y-n-s-k-y.

4 MR. MONAHAN: Hello again, Your Honor. Bill
5 Monahan. The only other thing I wanted to note, leveraging
6 off of what Ms. Iverson said on the document with the
7 limitations on written discovery, we heard, and I only speak
8 for myself, and I'm sure the Philips MDL Plaintiffs who were
9 there for the SoClean MDL conference, and appreciate the
10 guidance you gave on the limitations on requests for
11 admission and what volume and what a proper RFA looks like.

12 So we certainly heard that for our MDL, and I'm
13 sure all sides will be following that instruction
14 accordingly.

15 THE COURT: All right.

16 MR. BUCHANAN: I'm assuming by Mr. Monahan's
17 statements, that he's withdrawing from the prior agreement
18 that we were not going to be limited with regard to our RFAs
19 back and forth. That must have been the reference.
20 Your Honor, we had worked through a number of issues --

21 THE COURT: Well, everything is within reason, you
22 know, so --

23 MR. BUCHANAN: That governs everything.

24 THE COURT: With 150 on each side, we could have
25 300 requests for admissions, and that could be a battlefield

1 field in itself. So --

2 MR. BUCHANAN: Numbers are relative, and obviously
3 as long as they're judicious in their application, I think we
4 can probably get by with our current counter stipulation.
5 But I'm happy to continue talking to Philips. Thank you.

6 THE COURT REPORTER: Could you put your name on the
7 record, please?

8 MR. BUCHANAN: I'm sorry. David Buchanan.

9 THE COURT: Moving on to the second item, the
10 Census Registry and MDL neutrality order, now, just to let
11 you know, I was a little bit concerned when I saw these fact
12 sheets that go on and on and on. And I guess my question is
13 why are they so detailed?

14 It's almost like if I were a Plaintiff or a
15 Plaintiff's attorney, I would be saying, oh, my gosh, you
16 know, this is so much information. What if I make a little
17 mistake here or a mistake there? I was envisioning something
18 like, you know, I bought my machine, I used it; something
19 fairly simple.

20 But these go on and on. I guess I just need to
21 understand really how do these get used? We have the
22 BrownGreer. I mean who is BrownGreer? I guess I would like
23 to know a little bit about them, that --

24 MR. SEEGER: Your Honor, why don't I start with
25 that?

1 THE COURT: Is it confidential? I mean there's a
2 lot of personal information that's being requested here.
3 What assurances do people have that it's only seen by those
4 who really need to see it.

5 I understand if somebody gets selected, one of
6 these individuals, for bellwether, then it's going to be more
7 widely available. But still, I was a little surprised I
8 guess would be the fair point to say about the breadth of
9 this information and how detailed it is.

10 MR. SEEGER: All right. Let me start with just --

11 THE COURT: I mean are these only for people who
12 have actually filed cases?

13 MR. SEEGER: Yes. Let me back up.

14 THE COURT: I need to understand a little bit.

15 MR. SEEGER: First, I'm Chris Seeger. Judge, I
16 want to re-orient you to exactly where we are. So we came up
17 on the census document. That's very different from the fact
18 sheets that you're talking about.

19 THE COURT: I thought they were going to be one and
20 the same.

21 MR. SEEGER: No. It's a different process. In
22 fact, that is, in fact, very short. Now, and those are,
23 again, to vet and screen unfiled cases.

24 THE COURT: These are the ones that get filed. Are
25 they going to get filed through this BrownGreer as well?

1 MR. SEEGER: They will also -- in the census
2 program everyone will fill out --

3 THE COURT: You need to speak into the mike. The
4 Special Master Katz is on the line. She needs to be able to
5 hear everyone.

6 MR. SEEGER: So in the census program everyone will
7 fill out a Census Registry Form with that very basic
8 information you were just talking to, and some information
9 the Defendant is allowed to pull --

10 THE COURT: Now, which one is which? Is the fact
11 sheet the short one or the long one?

12 MR. SEEGER: The fact sheet is the long one.

13 THE COURT: So the Census Registry --

14 MR. SEEGER: Is the short one.

15 THE COURT: -- is the short one. And that's for
16 people who do not have a case pending?

17 MR. SEEGER: Correct, Your Honor.

18 THE COURT: But they want to take advantage of the
19 tolling --

20 MR. SEEGER: Yes.

21 THE COURT: -- and be able to get notice and
22 follow --

23 MR. SEEGER: Yes.

24 THE COURT: -- and be included in any potential
25 settlement or, if they have to go to trial, maybe they would

1 have access to some of the discovery that's been developed --

2 MR. SEEGER: Yes.

3 THE COURT: -- throughout the case. So there's an
4 advantage to them without being encumbered by actually having
5 to file a case. They can file on this Census Registry.

6 MR. SEEGER: Exactly right. So it's really part of
7 the vetting process we put in place as a result of you asking
8 us to do so.

9 THE COURT: Right.

10 MR. SEEGER: If the people, once they vet their
11 cases, want to file, no one is restricted from filing.
12 Anyone can file. In fact, the census program that we have is
13 a voluntarily program, just to remind those listening.

14 They're going to terminate -- John's client will
15 terminate the existing tolling agreement, but they will get
16 on to the new tolling agreement by participating in this
17 program.

18 THE COURT: And how many days do they have for
19 that?

20 MR. LAVELLE: I can answer that. John Lavelle from
21 Morgan Lewis for Philips RS. So with respect to the Census
22 Registry -- and Your Honor entered the Census Registry Order
23 last week --

24 THE COURT: Right. That's why I was a little
25 surprised by this one. I mean I just was confused.

1 MR. LAVELLE: Right. So the Census Registry, which
2 is for nonfiled cases by potential claimants, that Your Honor
3 entered that Order last week --

4 THE COURT: Right.

5 MR. LAVELLE: BrownGreer, which is a law firm that
6 offers this MDL Centrality portal --

7 THE COURT: They don't represent any party.

8 MR. LAVELLE: They don't represent any party. They
9 are in the business of providing this MDL Centrality portal.
10 It's a secure portal and database. We've all used it in
11 multiple MDLs and found it to be very useful and cost
12 effective and --

13 THE COURT: These people don't sign up on or file
14 anything on the Court's docket? They're just --

15 MR. LAVELLE: The potential claimants who are in
16 the Census Registry do not file on the court docket. They
17 instead fill out a form in the MDL Centrality portal. And
18 MDL Centrality has that portal up and running. As of this
19 morning, there were three potential claimants who had already
20 successfully completed the process. So we know it is
21 operational. And going forward --

22 THE COURT: How did they get notice of this?

23 MR. LAVELLE: So what we did is, as Mr. Seeger
24 correctly pointed out, we notified everybody who was on the
25 tolling agreement that we had terminated the tolling

1 agreement.

2 And we provided them with a copy of Your Honor's
3 Order and the website for the MDL Centrality. So they are
4 able to go there, just as three of the claimants already
5 have.

6 And going forward, any attempts that we receive to
7 enter the old tolling agreement, which is now closed, we are
8 automatically sending out a notification saying this is
9 closed. You've got to go to the Census Registry, and here's
10 the website.

11 THE COURT: And how long do they have to sign up
12 for that?

13 MR. LAVELLE: The Census Registry is open for at
14 least 18 months I believe is the --

15 MR. SEEGER: If it's terminated, it will be a
16 90-day notice.

17 MR. LAVELLE: Right. So with respect to the
18 terminations, it was a sliding scale, depending on how many
19 claimants the lawyers had signed up. So I think the shortest
20 time period was 45 days, and I think the longest time period
21 was 150 days. So we've provided notification pursuant to the
22 tolling agreement to everybody of what their specific
23 deadline is to sign up.

24 THE COURT: Okay.

25 MR. SEEGER: Now if I could take a minute just to

1 address --

2 THE COURT: You need to speak into the mike.

3 MR. SEEGER: I'll take a minute to address the
4 issue you started with, which is the Plaintiffs' fact sheet
5 and the Defense fact sheet.

6 THE COURT: Okay.

7 MR. SEEGER: So once a case moves from vetting to
8 filed, in lieu of formal discovery, they will complete the
9 Plaintiffs' fact sheet.

10 THE COURT: Okay. That takes the place of the
11 discovery you would have been -- the defense would have been
12 propounding to the individual Plaintiffs.

13 MR. SEEGER: For the most part. There is some
14 additional discovery they concede, but that's most of it
15 right there. And then once that's served, the Defendants
16 will produce a fact sheet that's specific to the case
17 involved.

18 THE COURT: Now, how many individual Plaintiffs do
19 we have in the MDL that have filed?

20 MR. SEEGER: That is a great question. Do you guys
21 have that?

22 MS. DUGGAN: Sandra Duggan for the Plaintiffs.
23 Currently there are 233 individual actions on file in the
24 MDL.

25 MR. SEEGER: That number is going to go up, but

1 that's where we are right now. So I don't know if you have
2 any more questions about that or Mr. Lavelle?

3 MR. LAVELLE: Your Honor, if I could just maybe
4 give a little more clarification --

5 THE COURT: How many people were in your informal
6 tolling?

7 MR. LAVELLE: At the end of it, I believe 60,000
8 were on the tolling agreement. And their counsel have all
9 been notified of the termination of that and given the
10 opportunity to sign up for the Census Registry.

11 Just following up on a couple points that Mr.
12 Seeger mentioned, so MDL Centrality is going to be the portal
13 for the Census Registry. It will also be the portal for the
14 fact sheets, and we'll also be doing some other services
15 through MDL Centrality, including filing and service of Short
16 Form Complaints.

17 So what we have submitted to Your Honor, and I
18 think there are actually three different Orders or proposed
19 Orders that are currently pending before Your Honor. I'll
20 just give you the docket numbers so you can keep them
21 straight.

22 Last week we filed Docket No. 741, which is the
23 proposed motion with respect to the Plaintiff and Defendant
24 fact sheets.

25 THE COURT: Yes.

1 MR. LAVELLE: And then this week there was a motion
2 filed on Monday. That's No. 749. That is the one with
3 respect to Short Form Complaints and the Amended Master --

4 THE COURT: I have that as a separate item --

5 MR. LAVELLE: Understood.

6 THE COURT: -- that I want to get to because I have
7 a couple of mechanical questions that go along with that.

8 MR. LAVELLE: There is a reference to MDL
9 Centrality. That's the only reason I'm mentioning it now.

10 There was a motion we filed yesterday, No. 755,
11 which also refers to MDL Centrality, and that basically
12 authorizes them to do certain things, and it's a fairly
13 standard form that's used in all of the cases that MDL
14 Centrality has been retained in. And again, all three of
15 these motions are joint motions which we negotiated with
16 counsel for Plaintiffs.

17 MR. SEEGER: Just to add --

18 THE COURT: I guess this is like talking about
19 service and serving documents, which is -- is this like the
20 discovery related documents that you're talking about here?
21 What is this?

22 MR. SEEGER: We can serve through that. The
23 parties can serve, and it's a very efficient and easy and
24 cost-effective way to --

25 THE COURT: So somebody signs up, and rather than

1 serving on the lawyer or something like that --

2 MR. SEEGER: Yes.

3 THE COURT: But it's nothing that would have
4 otherwise been filed in the court. Is that correct?

5 MR. SEEGER: It will also be filed in the Court,
6 but served through MDL Centrality.

7 THE COURT: Okay. That was my question.

8 MR. SEEGER: And I believe there's a way that if
9 you ever need to see who it went to, that information can be
10 provided --

11 THE COURT: Sometimes, you know, you have to look
12 at were they properly served?

13 MR. SEEGER: Yes. The one comment I wanted to make
14 just briefly about BrownGreer, they're a law firm, but they
15 have historically always acted as a neutral. They were
16 appointed in the diet drugs litigation to administer the
17 settlement.

18 Judge Brody appointed them in a concussion
19 litigation. Currently they're performing the service in 3M
20 that they'll be providing here in this case. So there are
21 Judges if you ever wanted to talk to them --

22 THE COURT: I wanted to make sure, because this is
23 beyond what I was initially envisioning their role would be.

24 MR. SEEGER: Understood. Thank you, Your Honor.

25 THE COURT: Okay. Well, we didn't finish talking

1 about the fact sheet and everything. Okay.

2 MR. LAVELLE: We're back.

3 THE COURT: So the confidentiality of the
4 information, how does that work? Mainly it's the Plaintiffs'
5 fact sheet.

6 MR. LAVELLE: Yes, Your Honor. Again --

7 THE COURT: There's a lot of personal information,
8 personal health information that's being --

9 MR. LAVELLE: Yes. So MDL Centrality a secure
10 portal. Only people who have credentials can get access --

11 THE COURT: So I assume they have firewalls to
12 protect them against hackers and that type of thing?

13 MR. SEEGER: Yes.

14 MR. LAVELLE: Yes. And through experience we've
15 found that they're very effective, and we're doing the exact
16 same thing, the fact sheets in the Valsartan litigation, for
17 example. And it's a good way to collect and provide to the
18 other side in a secure way authorizations, as well as
19 records, medical records and the like. And we will intend to
20 produce medical records through that secure portal. So that,
21 for example, the counsel on an individual case are the ones
22 and the only ones who have access to the documents for that
23 particular case.

24 THE COURT: And what's the timing? When does
25 somebody who's a named Plaintiff already have to file this

1 information?

2 MR. SEEGER: I actually forget -- go ahead.

3 MR. LAVELLE: I believe, Your Honor, for the
4 Plaintiffs who are currently in the suit, it's 60 days from
5 when Your Honor enters the Order.

6 THE COURT: Okay.

7 MR. LAVELLE: And then it depends on after the
8 filing of the Short Form Complaint thereafter for newly added
9 people.

10 THE COURT: Okay. So my understanding would be
11 that the Plaintiffs' leadership would be really taking
12 aggressive steps to make sure each individual Plaintiff has
13 filed a claim here, knows that they have to complete this and
14 the timing for them.

15 MR. SEEGER: Absolutely. And just as a reminder,
16 we have Aaron Rihn, who's here, and his office as liaison
17 counsel. They assist people with this kind of stuff.

18 THE COURT: Okay. Thank you.

19 MR. LAVELLE: Your Honor, just one other point I'll
20 make, and you'll see this in Paragraphs 12 and 13 of the
21 proposed Order that we sent. We spent a good deal of time
22 discussing what would be the process for identifying and
23 giving notice and opportunity to correct any deficiencies.

24 THE COURT: Yes.

25 MR. LAVELLE: Again, we have been able to draw on

1 experience from having these issues in other MDLs. So you'll
2 see that there is a several-step process of notice,
3 opportunity to cure. Then ultimately it may go to the
4 discovery Special Master if it can't be cured that way. And
5 hopefully we'll get it resolved that way, and there's a route
6 to get to Your Honor if necessary.

7 THE COURT: Okay. So I will enter this Order, and
8 then make sure you take the appropriate steps on behalf of
9 the Plaintiffs to properly notify everyone.

10 MR. SEEGER: We will do that, Your Honor.

11 THE COURT: And everybody is satisfied with the
12 information that's being requested from the individual
13 Plaintiffs?

14 MR. SEEGER: Yes. It's been a group effort.

15 THE COURT: Okay. Thank you.

16 MR. SEEGER: Thanks, Judge.

17 MR. LAVELLE: Thank you, Your Honor.

18 THE COURT: Okay. So next we have the amended
19 Protective Order.

20 MR. STELLINGS: Hello, Your Honor. David Stellings
21 again. We heard what you said during the --

22 THE COURT: About the redactions, the red line --

23 MR. STELLINGS: We heard both things you said.

24 Absolutely, of course, going forward when we file an amended
25 document with the Court, we'll provide the Court with the red

1 line --

2 THE COURT: Well, I mean we have to apply the rule
3 of reason here on these issues. But if it's a two-page or
4 three-page motion or Order, it's not necessary. I can look
5 through it. But when it's a more lengthy one, I have to go
6 through each page to see if I can see what's been changed,
7 you know, other than what we've generally talked about. So
8 that would be helpful.

9 MR. STELLINGS: I am personally very sympathetic,
10 and even if it's two or three pages, I like it when I get the
11 red line so I can see what was changed. So we will
12 definitely give you red lines going forward.

13 We also heard during the SoClean CMC that you plan
14 to enter the Order. So we're happy to take "yes" as an
15 answer. But, of course, I'm happy to answer any questions
16 that you may have.

17 THE COURT: No. I'm fine.

18 MR. STELLINGS: Thank you.

19 THE COURT: Thank you. Amended preservation
20 orders: And I saw this. This is about the DreamStation 1?
21 And what's the need for and what is the change here that I
22 should be looking for?

23 MS. IVERSON: Kelly Iverson again, Your Honor. So
24 there's actually been a number of changes. What I can do is
25 run a paradox and get that submitted and filed so that you

1 can look at it.

2 The major -- there were a few open items when we
3 submitted the document the first time. One was temperature
4 and humidity controls. We also needed to work out the method
5 and manner that people could return their devices if they had
6 already received a device, had theirs in their home and
7 wanted Philips to preserve it.

8 So we worked through those processes. They're set
9 forth in here. There's a few other tweaks that, you know, we
10 made on -- that were reported to us, that we found some
11 additional information we wanted that they agreed to provide.

12 And so those are kind of the major issues. We made
13 some tweaks to the stipulations because, as we continued to
14 talk about them; and when we got into the Trilogy Order in
15 May, it didn't seem like we were completely on the same page.
16 So we wanted to make sure any language that we weren't clear
17 on was set forth in a clearer manner. And hopefully we're on
18 the same page on those now.

19 THE COURT: You'll send me a red line copy --

20 MS. IVERSON: Yes.

21 THE COURT: -- and I can look through that. That
22 would make it easier. It's hard for me to understand what
23 was changing and why it was changing.

24 MS. IVERSON: Fair enough. Do you want me to just
25 E-mail that to Ms. McGee, or do you want it filed?

1 THE COURT: You can E-mail it to Ms. McGee.

2 MS. IVERSON: I will do so. Any other questions?

3 I guess we can wait until you have a chance --

4 THE COURT: Yes. If the other side has anything
5 they want to say about it, my understanding is that both
6 sides were agreeing to this, and I would just like to know
7 really what were the changes, and what was the reason for the
8 changes.

9 MS. DYKSTRA: Yes. I have nothing to add to what
10 Ms. Iverson said. Thank you.

11 THE COURT: Thank you.

12 MS. IVERSON: We also have the Trilogy preservation
13 Order that was filed in May that also contemplates an
14 amendment for the process to use or preserve devices as well
15 as a few other items.

16 And I know it was raised with you last month by Mr.
17 Buchanan that we were struggling to get a process in place
18 with Philips, and that that might be an issue. We're happy
19 to report we got a proposal today from Philips on the process
20 that seems like it should be workable. I'll get my team on
21 it, and hopefully we'll be able to get that amendment to you
22 in short order.

23 THE COURT: Okay. Thank you. Just send it at the
24 same time you're filing it, and E-mail a copy of the red line
25 version.

1 MS. IVERSON: Yes, Your Honor.

2 THE COURT: Okay. The next is the proposed
3 scheduling order for Amended Complaints.

4 MS. DUGGAN: Good afternoon. Sandra Duggan again.
5 Your Honor, when we were before the Court at the last status
6 conference, the parties agreed to meet and confer and discuss
7 filing Amended Complaints and a schedule for the same.

8 THE COURT: Yes.

9 MS. DUGGAN: And we were able to reach an agreement
10 on dates for each of the class master Complaints as well as
11 responses --

12 THE COURT: I see that.

13 MS. DUGGAN: -- and we submitted that to the Court
14 at Document 747. There's a proposed Order at 747-1.

15 THE COURT: Yes. Just so I understand, October 10
16 would be the consolidated Third Amended Class Action
17 Complaint for the economic losses followed by the monitoring.
18 Then the Monitoring Complaint on October 17, and October 24
19 would be the personal injuries.

20 MS. DUGGAN: Correct. We staggered them one week
21 apart.

22 THE COURT: Right. And then the 21st would be the
23 motions to dismiss being filed for the economics. On
24 December 16th, the motion to dismiss for medical monitoring.
25 And then December 23 for the personal injuries. And then we

1 have 60 days and 45 days for replies.

2 MS. DUGGAN: Yes. The only caveat to that is
3 because the Defendants have not seen our amended Economic
4 Loss Complaint yet, they had already filed a motion to
5 dismiss the prior Complaint. So if the parties jointly
6 filed, they probably would not need the full 60 days.

7 So I think there's built into the schedule six
8 weeks, but if, after they look at the Complaint, they think
9 they need more time, we agreed to discuss it, subject to
10 Court approval, of course.

11 THE COURT: Okay. So I will sign this Order.

12 And this implicates the next matter that you wanted
13 to talk about, which is the personal jurisdiction issues,
14 because this could impact those motions to dismiss and any
15 hearings I would set on those, because if there's discovery
16 related to personal jurisdiction, then that will extend the
17 timeframe.

18 So I guess that's really my issue. And since you
19 filed -- I did see the motion that was filed, and I looked
20 briefly at the briefing. So the other side will have an
21 opportunity to respond. Is there going to be a response?

22 MS. DUGGAN: And if I could --

23 MR. MONAHAN: Oh, no, Your Honor. We certainly
24 anticipate a response in opposition to their motion. I
25 believe our deadline for it is 21 days from yesterday, which

1 is I want to say October 11 or so.

2 But, Your Honor, I won't go into the merits unless
3 Ms. Duggan does.

4 THE COURT: It's not necessary. I wanted to say
5 that I would look at it, but I note that there may be a
6 response coming in.

7 MR. MONAHAN: Yes. We don't agree to the motion,
8 Your Honor.

9 THE COURT: Because if it is granted, then the
10 whole briefing schedules may be affected by this.

11 MS. DUGGAN: That's true, Your Honor. And we
12 unfortunately have reached an impasse on this point. We
13 explained in our motion where we are at with it; and if the
14 Court has questions, I'll be happy to address and touch on
15 some of the issues that will be raised.

16 THE COURT: I think it's best that I wait for the
17 response to come in, and then I'll be better informed about
18 both sides' views on that.

19 MS. DUGGAN: Understood.

20 THE COURT: But it's really a question of the
21 timing issues and how it's going to affect proceeding with
22 the motions to dismiss.

23 MS. DUGGAN: Understood.

24 MR. MONAHAN: Your Honor, we look forward to
25 submitting our brief in three weeks.

1 THE COURT: Okay. Thank you. Okay. Next is the
2 proposed implementing order for personal injury actions.

3 MS. DUGGAN: So we had discussed this at the last
4 status conference. We told the Court we would be filing this
5 proposed Order. The parties have met and agreed to the terms
6 of the Order. Defendant Polymer Technologies has also
7 agreed, and I had briefly walked the Court through the
8 process, but now that we have the other Orders that are
9 moving forward in place, I just wanted to mention a couple of
10 things.

11 We will be filing an Amended Master Personal Injury
12 Complaint. Then the idea is that attached to that Complaint
13 will be a Short Form Complaint. And anyone who already has
14 an action on file seeking damages for personal injuries will
15 be required to file a Short Form Complaint in their
16 individual actions.

17 So they will be in effect adopting the allegations
18 from the Master Personal Injury Complaint and filling out
19 their own Short Form Complaint that gets filed in their
20 individual dockets that basically, you know, tells the Court
21 and the parties which allegations they're adopting, which
22 Defendants they're going to sue. If they have any additional
23 allegations they want to bring, they'll have an opportunity
24 to do that. And they will also have an opportunity to name
25 additional Defendants.

1 And under the terms of this Order, they will have
2 60 days from the date of the filing of the Master Complaint.
3 So it sets forth that procedure for all the claims that are
4 already on file.

5 Then for anyone who wants to bring a personal
6 injury action who is not already on file, they will simply
7 file a Short Form Complaint directly in this MDL. And in
8 that Short Form Complaint they will let the Court know where
9 they would have filed the case, had they not filed directly
10 into the MDL.

11 And so this Order tells the Plaintiffs how to do
12 that. They'll pay a filing fee when they come into this MDL,
13 as they would have done had they filed elsewhere, and they'll
14 file the same Short Form Complaint that I referenced earlier.

15 THE COURT: This is the one that I had some of
16 those pragmatic concerns about. Because I believe what you
17 say, you file a Short Form Complaint, and then any answer
18 that's filed in the Master Complaint is deemed to be an
19 answer to that Short Form Complaint.

20 But the way the ECF system works, there should be
21 something on that individual docket that reflects the answer,
22 even though in some way you can maybe make a cross-reference.
23 But I think we have to work with our Clerk of Courts office
24 to see how the docket sheets will be looking for those
25 individual --

1 MS. DUGGAN: And, Your Honor, to be honest, the
2 parties were not able to reach an agreement on the concept of
3 a short form answer. We had originally wanted a short form
4 answer in every single action. Defendants oppose that.

5 So what we were able to reach agreement on is that
6 the master answer to the Master Complaint will be deemed an
7 answer in all actions. But the point in time that there's a
8 pool of cases from which there will be bellwether trials,
9 that there will be short form answers in those actions to
10 start with.

11 THE COURT: Uh-huh. So this is just a practical --
12 like if you have an answer, and then there's nothing on the
13 docket for that particular thing, if it ever goes back
14 somewhere or something happens to it, it's a problem because
15 it's not on that particular docket.

16 So that's really the question. You either have to
17 refile that answer there, or there's got to be a way to link
18 it, hyperlink it, so that somebody that's on that docket can
19 cross-reference and go right to the other answer. It's just
20 a practical thing that you have to try to work out.

21 MS. DUGGAN: We understand, Your Honor, and I think
22 when we get to that point in time where cases may be
23 remanded, the parties are going to need to revisit this
24 issue.

25 THE COURT: I think we need to do it now though. I

1 mean that's what I'm saying, because if you have a deemed
2 answer, there's got to be a way from one docket to know where
3 to go to find it.

4 MR. BUCHANAN: We could explore with the
5 Defendants. There could be a notice of adoption of a master
6 answer or one page that's docketed --

7 THE COURT: Some way they could find it, even like
8 an ability to hyperlink to that other document, I think that
9 would be helpful.

10 MR. LAVELLE: Your Honor, John Lavelle from Morgan
11 Lewis for Philips RS. If this is a practical issue with the
12 Clerk's Office, is there a contact at the Clerk's Office who
13 Your Honor would suggest we contact?

14 THE COURT: I think you can work with -- my law
15 clerk would be helpful. That's the best way to do it.

16 MR. LAVELLE: We'll be happy to work with Your
17 Honor's law clerk --

18 THE COURT: And she could get the appropriate
19 person because I just was concerned that somehow you have a
20 docket out there, but the activity that should be there isn't
21 there. It's at some other docket. We don't really have a
22 way to link them together from a practical standpoint.

23 MR. LAVELLE: We can come up with a practical
24 solution.

25 THE COURT: That's what I was looking for, yes.

1 MS. DUGGAN: Just one final issue, Your Honor.
2 Because this Order is intertwined with other orders, the MDL
3 Centrality Order, for example, and the instructions in the
4 proposed Order would tell the Plaintiffs that you have to
5 put -- pursuant to whatever this Order is going to be called,
6 we thought maybe it would be easier if we submit an
7 electronic version to the Court in Word so you could make
8 those changes. Would that be helpful to the Court?

9 THE COURT: So what am I changing in here?

10 MS. DUGGAN: Not so much changing, just that things
11 would just need to be filled in. In other words, when the
12 Court enters the MDL Centrality implementing order, then that
13 number --

14 THE COURT: Right. So that number will go in here
15 somewhere?

16 MS. DUGGAN: There's some blank spaces in this
17 Order for that as well as whatever Order this Order is going
18 to be called, whatever number it's going to be. So, for
19 example, if you look at page 6 of the --

20 THE COURT: If I say the page of the pretrial Order
21 XX --

22 MS. DUGGAN: Right. I just thought it might be
23 helpful to the Court to submit a Word version of this.

24 THE COURT: Okay. That's fine. All right. But I
25 would like to have this idea resolved before I would enter

1 this about the deemed filing. I think we have to have the
2 resolution as part of this Order.

3 MR. LAVELLE: Yes, Your Honor.

4 MS. DUGGAN: Mr. Lavelle and I can consult on that.

5 THE COURT: And when you're submitting the
6 proposal, if you could -- when you submit the Word document,
7 then that could be fixed at the same time.

8 MR. LAVELLE: Yes, Your Honor. We will do that.

9 THE COURT: So just work together with that and
10 just making sure that when we have a docket, it's going to
11 reflect that. Okay, because at some point if one of these
12 Short Form Complaints, personal injury cases, is selected as
13 a bellwether, then we have it here the procedures for you to
14 come back to the Court and determine how they're going to be
15 answered in a more robust -- in particularized fashion.

16 MS. DUGGAN: Yes, Your Honor.

17 MR. LAVELLE: Yes.

18 THE COURT: Just so I understand that. So I'll be
19 looking forward to getting a revised proposed pretrial Order.

20 MR. LAVELLE: Yes, Your Honor.

21 THE COURT: All right.

22 MS. DUGGAN: Your Honor, I had one additional
23 matter that was not on the agenda. It's under the umbrella
24 of housekeeping.

25 THE COURT: Sure.

1 MS. DUGGAN: There was a motion filed by Dennis
2 Spurling.

3 THE COURT: I did sign that today.

4 MS. DUGGAN: Okay. Great. Thank you so much.

5 THE COURT: It hasn't been entered yet, but I did
6 sign that, but I didn't think it was necessary to go through
7 that. I saw it today when I was going through all my pending
8 motions, and I did sign that.

9 MS. DUGGAN: Thank you, Your Honor.

10 THE COURT: Okay. Now we have the leadership
11 development.

12 MS. DiLIBERTO: Good afternoon, Your Honor. Ashley
13 DiLiberto from Messa & Associates on behalf of the leadership
14 development committee.

15 I did have the pleasure of speaking with you last
16 month when I was in town for Science Day; but again, I just
17 want to express my appreciation for what's my first
18 appointment and the opportunity to work on this litigation.

19 I would also like to thank the Court and my
20 co-leads for the opportunity to attend Science Day last month
21 and to Philips Defendants for hosting us at their reception.
22 I think almost every single member of the LDC was able to be
23 present. So it was a wonderful opportunity for me to connect
24 with my colleagues on both sides and also speak with you at
25 the reception.

1 Finally, in terms of my own personal experience on
2 the LDC and in working with science experts, I've had a
3 really meaningful experience, and I've been able to work very
4 closely with co-chairs Lauren Miller and Jason Rathod in a
5 number of different projects, including preparing and gearing
6 up for Science Day, as well as a number of different various
7 research projects. So it's been a really meaningful
8 experience.

9 Again, I appreciate the appointment. I look
10 forward to continuing to work with my esteemed colleagues in
11 this litigation and to be before you again in the near
12 future.

13 THE COURT: And you're doing substantive work on
14 behalf of --

15 MS. DiLIBERTO: Absolutely.

16 THE COURT: Thank you.

17 MS. DiLIBERTO: Thank you so much.

18 THE COURT: And I'm assuming that the defense also
19 wanted to have their individual young lawyers -- I did meet
20 some of them at the reception as well.

21 MR. LAVELLE: Yes, Your Honor.

22 THE COURT: Okay. Do any of the young lawyers want
23 to say anything? I see a gentleman coming forward.

24 MR. SISGOREO: Hi, Your Honor. It's Daniel
25 Sisgoreo on behalf of the Philips Defendants that Sullivan

1 and Cromwell represents, and I'll write down my name for you,
2 the court reporter, after the fact.

3 It's been a great experience to be an associate on
4 the defense team for these Philips Defendants. Something
5 that's been particularly great is that this case from our
6 point of view is not siloed in any way. It's not divided up
7 in any way. So what that means is that for me as an
8 associate, I get to touch every different part of the case,
9 from the discovery to briefing, to high-level conversations
10 about strategy. And it's been an amazing experience. So
11 thanks for this opportunity.

12 THE COURT: You're welcome. Thank you. Okay. Is
13 there anything else to come before the Court?

14 MS. IVERSON: Nothing from Plaintiffs, Your Honor.

15 MS. DYKSTRA: Nothing, Your Honor.

16 THE COURT: Well, it seems like discovery is under
17 way, and it's going to be a very busy time, particularly with
18 all the motions to dismiss, the new Complaint, those motions
19 to dismiss, the briefing that's going to go along with that,
20 plus the ongoing discovery. So I know you'll be very busy.

21 And I just wanted to mention for both SoClean and
22 for the Philips -- all the counsel in those two MDLs, that
23 the January dates have to move back a week. So rather than
24 being on the -- I believe it's the 17th or the 18th?

25 We have it set on the 18th. If you could plan to

1 be here on the 25th, hopefully that will be enough time for
2 everyone to make an adjustment and to move it back a week.

3 Okay? Thank you all.

4 LAW CLERK KATIE MCGEE: All rise.

5 (Proceedings were concluded at 3:11 p.m.)

6 - - -

7

8

9

10

11

12

13

14

15

16

17

18

C E R T I F I C A T E

19

20 I, Deborah Rowe, certify that the foregoing is
21 a correct transcript from the record of proceedings in the
22 above-titled matter.

23

24 S/Deborah Rowe _____

25 Certified Realtime Reporter