

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 hybrid 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 Sandra L. Duggan, Esq.
16 Steven A. Schwartz, Esq.
17 Roberta Liebenberg, Esq.
18 David R. Buchanan, Esq.
19 Inez Johnson Ross, Esq.
20 D. Aaron Rihn, Esq.
21 Peter St. Tienne Wolff, Esq.

22 **For the Philips RS** John P. Lavelle, Jr., Esq.
23 **North America, LLC** Wendy West Feinstein, Esq.
24 **Defendants:** Bradie Williams, Esq.

25 **For Other Philips** Elizabeth N. Olsen, Esq.
 Defendants: William B. Monahan, Esq.
 Michael Steinberg, Esq.

Court Reporter: Veronica R. Trettel, RMR, CRR
 U.S. Courthouse
 700 Grant Street
 Suite 5300
 Pittsburgh, Pennsylvania 15219

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

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

2 Thursday Morning, November 18, 2022, 11:20 a.m.

3 (In Open Court)

4 THE COURT: And once again, this is the status
5 conference, IN RE: Philips recalled CPAP, Bi-Level PAP and
6 Mechanical Ventilator Products Litigation, MDL 3014.

7 The parties have entered their notices. That was
8 dated November 14th. So the speakers have entered their
9 appearances.

10 If there's somebody else that wishes to have their
11 appearance noted on the record, please sign the sign-up sheet
12 next to the court reporter in the courtroom.

13 Now, we have a proposed agenda and we'll start first
14 with the status and proceedings with Special Master Katz. You
15 get to do double-duty today.

16 MR. WILLIAMS: I feel very lucky today, Your Honor.
17 Thank you.

18 THE COURT: You need to state your name, though.

19 MR. WILLIAMS: Thank you. Yes, Bradie Williams with
20 Morgan, Lewis & Bockius on behalf of defendants Philips RS
21 North America.

22 Thank you, Your Honor. The parties have continued to
23 meet and confer after the last case management conference on
24 October 19th participating in weekly and sometimes biweekly
25 conferences with the parties and exchanging detailed letters

1 on the status of discovery.

2 The parties provide Special Master Katz with updates
3 on these meet and confers during their weekly check-ins with
4 her as well.

5 The parties have been making good progress through
6 the meet and confers on the scope of collection and production
7 of noncustodial documents and data, as the discussion of the
8 systems involved in collecting those that data have evolved
9 and progressed.

10 We have also continued to make good progress through
11 the meet and confers on the collection and production of
12 custodial documents from the pre-2014 time period with
13 discussions around the collection and the valuation of that
14 custodial data progressing well. And the parties continue to
15 meet and confer regarding the collection and production of
16 custodial documents from the post-2014 time period.

17 We also continue to meet and confer on the deposition
18 protocol and are making good progress there.

19 THE COURT: Is that protocol going to set the
20 timeframes for the discovery? Who is going to be deposed on
21 deposition dates?

22 MS. WEST FEINSTEIN: Thank you, Your Honor. Wendy
23 West Feinstein with Morgan, Lewis also on behalf of
24 Philips RS.

25 The deposition protocol contemplates a rough schedule

1 with numbers of depositions, but doesn't have dates in it
2 necessarily. We were addressing dates in another
3 conversation.

4 THE COURT: Okay. Thank you.

5 MR. WILLIAMS: Thank you, Ms. Feinstein.

6 That is all, Your Honor. Thank you.

7 THE COURT: Okay.

8 MS. IVERSON: Good morning, Your Honor. Kelly
9 Iverson for the plaintiffs in the Philips case.

10 We do have our Friday meet and confers each Friday,
11 as well as our Monday Special Master Katz calls. So there
12 have been a lot of issues certainly that have come up that we
13 have been able to work through that process and ones that we
14 are still obviously trying to work through with the assistance
15 of Special Master Katz.

16 I'm not sure that I want to say I completely dispute
17 good progress, but we did start custodial document production
18 from defendants on September 30th. I think we received two
19 rolling productions since then, and I think it's been only
20 about 5,000 custodial documents. So we're really working with
21 them to see how we can ramp up that pace.

22 The defendants served written discovery on
23 plaintiffs. We have responded in a written discovery. We had
24 previously served I think about 1200 pages of documents under
25 408 designations. So we're working on getting those

1 re-served, as well as preparing productions for the additional
2 plaintiffs.

3 The deposition protocol and written limits, there
4 were a few gaps there. Those are narrowing. Hoping that we
5 expect by Monday that we'll be able to bring those to ground
6 with Special Master Katz because of how much those gaps have
7 narrowed and get something on file with you.

8 I think that's everything, unless you have questions.
9 I do think that deadlines with respect to depositions, in fact
10 discovery are going to be covered in the next topic.

11 THE COURT: Okay. Just a question for both sides.
12 Has it been helpful to have the special master to keep you
13 focused and moving forward? Is that helpful in this case to
14 keep progress going forward?

15 MS. IVERSON: I believe it has been. I think you
16 know Special Master Katz is very detail orientated. This
17 morning she showed up with her different colored pens that she
18 uses to track who from each of the cases is speaking so that
19 she can keep track of that in her own notes, and she's very
20 good about making sure to follow up even on every deadline
21 that's set to make sure that stuff is proceeding and moving
22 along.

23 She does a lot of mediating to some degree with
24 respect to the issues that come up and hasn't had to delve
25 into any kind of R and Rs at this point. I'm sure those will

1 be coming with other issues that will come up in the future,
2 but with deadlines and discovery issues, we've really been
3 able to work a lot out with her assistance. So I don't know
4 if Special Master Katz wants to add anything.

5 THE COURT: I take it the defense -- I saw all the
6 heads nodding affirmatively.

7 MR. WILLIAMS: The affirmative nodding is in
8 agreement. Thank you, Your Honor.

9 THE COURT: Ms. Katz, is there anything you wanted to
10 add?

11 SPECIAL MASTER KATZ: No. The parties work hard
12 to -- you know, and disagree usually agreeably and really
13 cooperate and try and work through issues.

14 So I view the fact that you haven't heard about
15 discovery disputes yet as a sign of success.

16 THE COURT: That's a good sign for the Court, yes.
17 So thank you all for working cooperatively together.

18 Okay. So the next thing would be the update on
19 initial discovery plan.

20 MR. BUCHANAN: David Buchanan from Seeger Weiss.
21 Good morning. We're in the -- this is a fairly large agenda
22 item in the discovery plan. Obviously when you review it,
23 you can see the nuances that are explored there -- a
24 scheduling order largely for many different aspects of the
25 case, substantial completion dates, fact discovery dates,

1 expert disclosures, Daubert, et cetera. That process is
2 leading to I'd say an exploration of the parties' vision for
3 the case going forward.

4 Also, kind of the realities of different time lines,
5 plaintiffs' expectations for completion of documents versus
6 defendants' expectations, defendants' expectations on certain
7 issues versus the plaintiffs. I'd say it's been a robust and
8 vigorous discussion between the parties as to those visions.
9 They may be slightly different at this point.

10 We had a meet and confer with Special Master Katz's
11 assistance this morning and sharpened I would say our focus a
12 little bit on a few issues for us to come back on, and I'd say
13 that's probably going to happen in the coming weeks as we
14 approach November 30th.

15 I would guess, Your Honor, that we're probably going
16 to need to report back to you at the next CMC whether we are
17 able to reach agreements on all of these items or whether
18 there is something to come to the Court as a scheduling matter
19 on it. Just the pace of the play may be different from the
20 plaintiffs' perspective and what that would present in terms
21 of trials versus the defendants or the process from the
22 defendants' perspective for those trials, there's a number of
23 issues to work through.

24 I don't think we have a decision that we would be
25 looking for from Your Honor at this point. I think we have

1 some more work to do. Special Master Katz has guided us I
2 think to some areas for exploration. I'm hopeful that we will
3 come to more agreements than not before the December CMC, if
4 that's acceptable to the Court.

5 This date is one that if you told us, Your Honor, you
6 wanted our schedules or our disagreements done by that date,
7 we would do our best to do what we could do on that.

8 I would say at this point after this morning, we are
9 going to do our best to continue to meet and confer
10 aggressively and exchange information, see what we can do to
11 accelerate the pace of production so that we can be in a place
12 to present a trial schedule that the Court would be happy
13 with. So there's some work to do though.

14 THE COURT: Okay. Thank you.

15 Anything from the defense?

16 MS. WEST FEINSTEIN: Thank you, Your Honor. Wendy
17 West Feinstein with Morgan, Lewis for Philips RS and speaking
18 on behalf of the defendants.

19 I agree with how Mr. Buchanan characterized our
20 discussions today and throughout the case really about how we
21 need to proceed going forward.

22 We specifically addressed the schedule going forward
23 this morning, and conceptually I think landed in a good place,
24 and I agree with Mr. Buchanan that we will continue those
25 discussions with the assistance of the special master as

1 needed and should have a report for you at the next
2 conference, if that's acceptable to the Court.

3 THE COURT: Thank you.

4 MS. WEST FEINSTEIN: Thank you.

5 MR. BUCHANAN: Your Honor, just to keep our focus, I
6 think we're happy obviously to continue to work through this
7 process.

8 I would hope we'd be in a position to submit
9 agreements and stipulations or proposed orders to you in
10 advance of the next conference, together with a report on
11 issues where we can't reach an agreement, if that's acceptable
12 to Your Honor.

13 THE COURT: No, I think that would be good because it
14 should be by November 30th, which is coming up. So it should
15 be just in time for our next conference in December.

16 MR. BUCHANAN: Thank you.

17 MS. WEST FEINSTEIN: Thank you, Your Honor.

18 THE COURT: Okay. Amendments to fact sheet and
19 census registry, I did approve those. So those have been
20 signed. I would just need a sense from the parties as to how
21 the registry is working because that's not something that I
22 would have access to.

23 MR. LAVELLE: Good morning, Your Honor. John Lavelle
24 from Morgan, Lewis for Philips RS.

25 We believe the census registry is working well. MDL

1 Centrality, as you know, is hosting it pursuant to Your
2 Honor's order. We have over 2,000 potential claimants who
3 have submitted registration forms so far.

4 I think there have been a few minor hiccups that we
5 have been able to work through with counsel and with the help
6 of Brown Greer, and I think with the revisions to the form
7 that Your Honor has approved, I think some of the issues that
8 we had identified will be taken care of, and we appreciate
9 Your Honor's input and we certainly can provide reports on an
10 ongoing basis.

11 THE COURT: It helps to know how it's functioning and
12 the fact sheets, I assume -- are they starting to be filed?

13 MR. LAVELLE: Yes, Your Honor. So under Your Honor's
14 order, the plaintiff fact sheets are timed in accordance with
15 the short-form complaints. I believe we've got a handful of
16 plaintiff fact sheets that have been submitted so far -- three
17 to five, something in that range. But we will be getting I
18 would expect a number more over the next month to two months.

19 We have had some requests for extensions that we have
20 been able to work out, but I think, again, the process seems
21 to be working pretty well. I think counsel on both sides are
22 pretty familiar with how this works from the perspective of
23 inputting information in MDL Centrality and getting reports
24 out of it.

25 THE COURT: So do the plaintiffs have a view on how

1 the fact sheets and the registry are doing and that process I
2 should say is working?

3 MR. BUCHANAN: I think it's been working well, Your
4 Honor. We had a few hiccups, some typos, some changes to the
5 census registry form, which obviously Your Honor endorsed.

6 Aaron Rihn, our liaison counsel is fielding a lot of
7 calls from those that have questions. We're trying to
8 minimize the issues that people are -- you know, that may
9 arise from people who are new to the litigation or only
10 represent a few clients.

11 So I think it's working well so far, but we'll put a
12 tracking item on the agenda going forward to update you on
13 stats and any issues that we see or any questions that we may
14 need some insight from Your Honor.

15 THE COURT: Thank you.

16 MR. BUCHANAN: Thank you.

17 THE COURT: The update on the Trilogy preservation
18 order.

19 MS. IVERSON: Your Honor, Kelly Iverson again. If
20 you recall, the Trilogy preservation order was initially filed
21 in May. We had a pretty extensive meet and confer in order to
22 try to get that on file because the defendants wanted to start
23 a remediation process on those devices, but there was a major
24 issue that still remained with respect to self-preservation,
25 and to take a step back, just so you understand, the Trilogy

1 is actually a ventilator device, but not like -- you know, I
2 initially thought of it as something that would be in the
3 hospital, but it's really meant for at home use.

4 So this is individuals that have these devices.
5 They're not necessarily always continuous flow. They're not
6 necessarily because someone has a tracheotomy. It might be
7 something that -- somebody I know had one set up on their
8 wheelchair and they had the device so they could actually use
9 the ventilator as needed rather than on a continuous flow. So
10 it was important to us that injured plaintiffs had an ability
11 to self-preserve their Trilogy.

12 The Dream Stations, when Philips was doing the
13 remediation process, they were actually taking the device,
14 they would take -- re-work that device, send it to somebody,
15 they would get somebody else's device that was re-worked and
16 cleaned up, and then send their device back for re-work was
17 their process. So they weren't getting their same device
18 back, but that's different with the Trilogy. The same device
19 gets returned.

20 We spent a long time because of issues with respect
21 to the FDA and the remediation process trying to come up with
22 the self-preservation option.

23 We have reached an agreement on that. I got language
24 from plaintiff -- from Philips and we just had an agreement
25 this morning. We just have to tweak a couple typos and

1 things, and we should be getting an amended order to you, and
2 Philips agreed to actually give a replacement ventilator to
3 plaintiffs that elect to self-preserve their ventilator, and
4 then there are certain requirements of how plaintiffs would
5 have to preserve that ventilator if they do elect to
6 self-preserve.

7 As I understand it, the way we have been proceeding,
8 so we brought this up -- I think it was raised maybe by Dave
9 when I was not in town about trying to push forward, but the
10 remediation process on the Trilogy is actually paused because
11 there were some complaints and concerns with the actual
12 remediated devices.

13 So I think getting this in to you within the next
14 week hopefully is timely enough for everybody that wants to
15 self-preserve to continue to do so.

16 Do you have questions on that, Your Honor?

17 THE COURT: Not right now. I'll wait for the order
18 to come in.

19 MS. IVERSON: And we'll give you a redline whenever
20 we do that.

21 THE COURT: Thank you.

22 MS. IVERSON: Thank you, Your Honor.

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

25 I confirmed our agreement with Ms. Iverson's

1 description. It did take us some time to work through the
2 logistics of providing what Ms. Iverson described as the self-
3 preservation option. So that did take us more time than we
4 would have hoped, but we have been able to resolve that and we
5 would submit the agreed-upon order shortly. Thank you.

6 THE COURT: Thank you.

7 MS. WEST FEINSTEIN: Your Honor, if I may, Wendy West
8 Feinstein. Just before we go on to the next topic, I just
9 wanted -- if I could address --

10 THE COURT: Sure.

11 MS. WEST FEINSTEIN: -- a point. Apologies for
12 moving backwards on the agenda. Just folks on the defense
13 side heard things a little bit differently when we were
14 talking about the November 30th meet and confer deadline.

15 So I wanted to ensure that we were understanding the
16 Court's order as it is reflected in the agenda for today that
17 by November 30th, the parties would meet and confer.

18 And then it's our understanding, based on what you
19 discussed with Mr. Buchanan, that we would aim to submit those
20 points on which we agree -- those dates on which we agree by
21 the December conference.

22 THE COURT: Yes, that's exactly true.

23 MS. WEST FEINSTEIN: Thank you.

24 THE COURT: Meet and conferring doesn't necessarily
25 mean you have to have reached an agreement by that date. You

1 just have to do it, and my understanding is you are meeting
2 that, you are meeting and conferring, and you are talking
3 about those matters, and hopefully most of them, if not all,
4 will be resolved, and you'll present me with appropriate joint
5 motions, and if not, then I'll know what the
6 disagreements are.

7 Then Ms. Katz will have had an opportunity to look at
8 those and maybe, you know, there will be some need for an
9 R and R, but it would be nice to be avoided. So thank you.

10 MS. WEST FEINSTEIN: Thank you, Your Honor. I just
11 wanted to clarify the November 30th deadline.

12 THE COURT: It's clear.

13 MS. WEST FEINSTEIN: Thank you, Your Honor.

14 THE COURT: Okay. Motions to dismiss, page limits
15 and timing. We've already addressed some of this I believe as
16 well.

17 MR. LAVELLE: Yes, Your Honor. John Lavelle for
18 Philips RS.

19 We submitted a joint motion on this and I believe
20 Your Honor entered the order yesterday.

21 THE COURT: Yes.

22 MR. LAVELLE: So I don't think there's anything to
23 address today.

24 THE COURT: Thank you. Now, there's one thing that I
25 wanted to bring up before we get to the leadership

1 development -- well, there was really two things. One was
2 updating the timeline, as I mentioned in the SoClean status
3 conference, that when you submit the schedule or the agenda
4 for the status conference, you should also submit an updated
5 timeline and things will drop off, things will be added, and
6 then at least we'll have a current timeline that we can all
7 look at on an as-needed basis.

8 Now, the second thing I wanted to bring up, and I
9 looked at some of the motions to dismiss that came in. I'm
10 also aware there's a personal jurisdiction issue that's going
11 to come up with the Koninklijke Philips MV case where the
12 ultimate parent is going to be arguing lack of personal
13 jurisdiction and 50 jurisdictions possibly.

14 So in both of those cases, I can see that there were
15 like numerous individuals that were named in various
16 locations, and then for the one motion to dismiss and the
17 personal jurisdiction, there's going to be a lot of
18 jurisdictions.

19 Now, some of the jurisdictions may have similar laws
20 in terms of what is the appropriate standard that would be
21 applied. So the parties, whether it's for the motions to
22 dismiss looking at some of the individual claimants, as well
23 as the personal jurisdiction, you are going to need to
24 categorize those that you agree upon are going to have the
25 same applicable standards and set forth what those standards

1 are.

2 And if I can see, you know, that there's going to be,
3 you know, 20 different issues that the Court has to look at
4 simultaneously, whether it's for the motion to dismiss looking
5 at all of those individuals or personal jurisdiction issues
6 over the ultimate parent, I'm going to need to have the
7 assistance of another special master, maybe even two, you
8 know, one for the personal jurisdiction and one for the other
9 motions to dismiss.

10 It's just not going to be possible with all of the
11 other matters on the Court's docket to get this done timely if
12 I don't have some assistance.

13 So I'm going to need you to start meeting and
14 conferring on those issues. I mean, if it's the same standard
15 and there's not many factual disputes, it's one thing. But,
16 you know, if I'm going to look at Idaho, you know, and then
17 what are the contacts in Idaho, and then you got to look at
18 Alaska and Puerto Rico and, you know, so there's going to be
19 either factual issues coming up in the personal jurisdiction,
20 the standards may be different, tweaking different.

21 So I think a special master to be appointed for those
22 matters would be of great assistance to the Court. So you'll
23 need to meet and confer on that.

24 If you cannot agree on a person or persons -- you
25 know, at this stage, I don't know how much work it's going to

1 be. It may be too much work for even one person to take on.
2 So if you can, you know, maybe you need two or three. I don't
3 know. But it's going to be a mammoth job from what I can see.
4 Maybe not. So I'll hear from the parties about this.

5 MS. DUGGAN: Good afternoon, Your Honor. Sandra
6 Duggan for the plaintiffs.

7 We understand what Your Honor is asking us to do.
8 The concept is that the motions will all be filed by December
9 6th, and we don't know yet, the plaintiffs don't know yet what
10 exactly is going to be the breadth and the scope of the
11 motions that are filed, but there will be a variety of
12 motions, including to dismiss for lack of personal
13 jurisdiction, as well as failure to state a claim.

14 So the idea was that the parties were going to meet
15 as soon as those motions are filed and try to come up with a
16 plan which will now include the MDL so that a special master
17 or masters could be involved and maybe that will involve stage
18 briefing. We may have to divide it up by subjects.

19 There's also going to be the issue of discovery for
20 personal jurisdiction because we have requested that, but we
21 wanted to wait and see what motions were filed before we could
22 meet and confer with the defendants and try to negotiate a
23 reasonable approach to this matter.

24 THE COURT: Okay. Mr. Lavelle.

25 MR. LAVELLE: Yes, Your Honor, just so we can have

1 some clarification to use in our discussions, is Your Honor
2 thinking that there would be a special master to consider and
3 rule on the motions to dismiss? Is that the proposal?

4 THE COURT: I don't mind doing hard work and my law
5 clerks are very hard working, but, you know, if it's a deluge
6 of having to look at 50 separate jurisdictions, you know, I
7 don't have 10 to 15 people that I can appoint to review those,
8 review those issues and do it timely. I'm looking at time
9 limits here.

10 So that's where I think having the benefit of a
11 special master who -- you know, what I see special masters do
12 for me as the Court is that they can cut through a lot of
13 things, and there may be a real dispute on one or two matters
14 versus 20, you know, and then I only need to focus on the
15 20 -- I mean on the two issues. And so it's really a big help
16 overall.

17 So it does -- it saves time for the parties as well
18 because by the time I can get around to, you know, doing the
19 work that would be needed to be attentive and thoughtful about
20 the decisionmaking process, I think that would be helpful to
21 the Court.

22 MR. LAVELLE: So the concept would be that the
23 special master, if Your Honor appointed one, would do a report
24 and recommendation rule to the Court on each of the motions to
25 dismiss?

1 THE COURT: Right. And then we target which ones
2 they would be addressing. I mean, like in the
3 business-to-business case in the SoClean, there's only two
4 parties and, you know, I don't think I need somebody in that.
5 But when you have -- like I saw the one that came in, there
6 were like, I don't know, every paragraph had 10 or 15
7 different individuals named, and I just said, Wow, you know,
8 this is going to be a lot of work and how can I get this done
9 timely?

10 MR. LAVELLE: Okay. Thank you.

11 MR. STEINBERG: Your Honor, Michael Steinberg on
12 behalf of Koninklijke Philips.

13 With regard to the personal jurisdiction, we hear
14 you. I don't think it's going to be quite as massive as Your
15 Honor is believing.

16 THE COURT: Well, that's what I heard at the last
17 hearing.

18 MR. STEINBERG: I think the problem is is there's
19 going to be some questions about really identifying what is
20 the scope of the pleadings so that we can then determine
21 whether or not the personal jurisdiction lies against that
22 determination.

23 So, you know, for example, let's assume we have a
24 whole bunch of plaintiffs that come from Alaska, you know,
25 Nevada, California, wherever, and there's no allegation that

1 survives that implicates those states. Well, then it's going
2 to become --

3 THE COURT: That's the problem because my
4 understanding of the personal jurisdiction, it was going to
5 hinge on the alter ego doctrine.

6 MR. STEINBERG: Well, it will.

7 THE COURT: So it's not going to matter, you know --

8 MR. STEINBERG: They have two different claims, Your
9 Honor.

10 THE COURT: But each state may have a different alter
11 ego test. So, you know, that is sort of the issue that I
12 have.

13 MR. STEINBERG: It's not only that because, Your
14 Honor, for example, they're alleging a negligence claim
15 against Koninklijke in connection with the recall, which is a
16 direct claim, not an alter ego claim. That's one of their new
17 allegations put forward in the revised complaint.

18 So that one is going to be addressed differently for
19 purposes of jurisdiction and that is going to make that part
20 fairly simple.

21 But, for example, in the pleadings, they allege that
22 the use of trademarks by the enterprise in a consistent way is
23 itself indications of an alter ego type situation, but the
24 case law is, and we'll present it to Your Honor, of course, is
25 very clear that that, you know, the fact that you licensed

1 your trademarks even within the organization is of no moment
2 in determining whether or not a company is acting as an alter
3 ego.

4 So I think there are cases, there are going to be
5 instances like that where if the pleading is clarified, it's
6 going to reduce the scope of discovery.

7 So another example is there are allegations where
8 Philips and its subsidiaries have sued in court in various
9 jurisdictions in the United States. You know, again, there's
10 law that says that the fact that a defendant, a foreign
11 defendant sues in the United States does not confer personal
12 jurisdiction in any other case over that defendant precisely
13 because the defendant has to come or in this case the
14 plaintiff, the foreign entity has to find the defendant in a
15 place where they can be sued, and just because you find a
16 defendant where they can be sued doesn't mean that you waive
17 your rights prospectively about personal jurisdiction. The
18 two are not synonymous at all.

19 THE COURT: I think what you need to do is to
20 identify those discrete issues that the Court can deal with
21 without having to consider multiple, you know, state issues or
22 multiple problems, with factual issues that would come up with
23 specific individuals or specific jurisdictions.

24 MR. STEINBERG: And we completely agree, Your Honor,
25 and that's sort of our approach. I mean, I will say what

1 makes this much more complicated, there is a huge amount of
2 complexity over the following, which is there is no -- maybe
3 two or three small allegations about some transfer of patents,
4 but in this case, you know, the traditional factors relating
5 to abuse of the corporate forum or alter ego are that there's
6 an inadequately capitalized entity, that there are -- that the
7 corporate forum is not being honored in any way, that there
8 is, you know, domination and control.

9 THE COURT: Weren't there some allegations that some
10 of the entities that were split up in a way to cause issues?

11 MR. STEINBERG: Well, with respect to a few of the
12 patents from -- you know, that there's some patents that they
13 say were changed around, but I mean, I'm not sure where
14 they're getting the allegations that the entities were swapped
15 around.

16 It just doesn't -- in my mind, it doesn't have -- the
17 complaint lacks the usual allegations of inadequate
18 capitalization and changing around, and there's really no
19 allegation showing a lack of respect of the corporate forum,
20 and I think what our way of thinking about it is that we
21 should tee up those items which we think are off the table,
22 and once we get Your Honor's views that they are off the table
23 as a basis for alter ego, we're good to go. They want to take
24 discovery and get all of the minutes for meetings and find
25 out, you know, how, you know, various processes worked to, you

1 know, to make decisions at the enterprise level, et cetera,
2 okay, that's fine, but there's a whole bunch of chaff that
3 needs to be pulled from the wheat before we get to that level.

4 So that's sort of fundamentally where we are at. We
5 think that the Court can sort of easily address that and
6 that's what we intend to raise because I think once we narrow
7 down the focus, I think we'll have a very manageable issue
8 about personal jurisdiction.

9 The problem is right now, there's the moon and the
10 stars above, but the moon and the stars above aren't relevant
11 in our view to the decision that the Court is going to have to
12 make.

13 So we're fine going with the special master now. I
14 think where I see the best sort of "bang for the buck" so to
15 speak is for the Court to look at the motion and the motions
16 to dismiss as it relates to these alter ego claims, and then
17 let's say, okay, you know, this is either a good basis to go
18 forward and we'll give all of the discovery in the world or,
19 you know, it's not a good basis to go forward, and we can
20 foreclose that and focus on the facts that matter because I
21 think in this instance, frankly, there's very few facts that
22 actually matter because I don't think we're going to get
23 anywhere on this alter ego theory.

24 You know, this is a corporate enterprise. It's been
25 around for like 140 years. It's got, you know, a lot of

1 subsidiaries and a lot of really smart people that actually
2 work to make sure that the corporate forum is honored. We
3 have auditors, we have transfer pricing across jurisdictions,
4 we have every taxing authority in the world. Guess what,
5 there's going to be a lot of documentation about all of those
6 inter-corporate agreements.

7 So we're going to have this like, you know, a
8 complete frolic through the wilderness, but at the end of the
9 day, they need to prove that there was inadequate
10 capitalization and domination and control in order to override
11 the business and remove money to make the subsidiary
12 insolvent. They just don't have that.

13 So, again, our sort of perspective on this is that we
14 present sort of the basic motions to dismiss, and then Your
15 Honor can deal with these issues of alter ego which we think
16 are not pled well. We think they are just not.

17 So I have no problem with if we wanted to start this
18 process that's the special master level, but I think that
19 actually as it relates to the alter ego and allegations, I
20 think it's pretty straightforward.

21 I would say, though, that once we get into -- the
22 other thing I'm sort of cognizant of is once we get past those
23 "it's either relevant or it's not relevant," it's going to be
24 a nightmare about choice of law as it relates to which law
25 pertains to the attack on the corporate forum, on the alter

1 ego, because some states have it that it's the -- you know,
2 it's the forum of incorporation. Others say not. So there's
3 a wildly different perspective on choice of law that's going
4 to be percolating in this that I don't think at this juncture
5 we particularly have to address, but I'm cognizant that Your
6 Honor is very interested in that, but I will also make this
7 sort of more larger concept about this, what we're going to
8 prove through this process I think, and this is sort of
9 fundamentally, it affects the two classes, is that the number
10 of individual issues that we are going to have to determine
11 the alter ego for individual plaintiffs who purchased products
12 at different points in time where there were different
13 elements of profitability, where there are some transactions
14 that precede -- you know, that are alleged to form the basis
15 of these alter ego claims, where they precede some and are
16 after some and they go for a multi-year period, what we're
17 really going to establish quite quickly is that the individual
18 issues on that issue alone will predominate.

19 So I don't want to get out way ahead of ourselves
20 here, but I think we have to keep in mind the end game at the
21 end of the day because, again, these are sought to be asserted
22 on a class basis.

23 So is a 2015 plaintiff in this identical position as
24 a 2019 plaintiff for purposes of, you know, violations of the
25 corporate forum or -- you know, again, it strikes me as we are

1 going to engage in the most complicated analysis that is
2 possible, which in a one plaintiff case, okay, you could get
3 it done. In a multi, you know, in a large class that's 50
4 different states, I'm just predicting that at the end of the
5 day, we have bigger issues here, and I want to narrow the
6 issues, but I'm just -- I'm just being very blunt that I just
7 see the issues exploding, and I want to keep that, sort of
8 that knowledge in Your Honor's mind as we go forward.

9 THE COURT: Ms. Duggan has been anxiously waiting to
10 respond.

11 MR. STEINBERG: I'm sure she has been. Thank you.

12 MS. DUGGAN: Your Honor, the truth of the matter is
13 that the Philips defendants manufactured and sold millions of
14 devices that were recalled to plaintiffs in all 50 states and
15 Puerto Rico, and we have filed our complaints on behalf of all
16 of those plaintiffs. We filed an economic loss complaint. We
17 filed a medical monitoring complaint, as Your Honor is
18 well-aware, and unfortunately, what I hear Mr. Steinberg
19 saying is that we are back to where we were a month ago.

20 He wants to not have any discovery on personal
21 jurisdiction so that we can adjudicate the motions to dismiss
22 for failure to state a claim, and as you know, the plaintiffs'
23 position is there are many issues, factual and legal, that are
24 intertwined, and it doesn't make any sense from an efficiency
25 standpoint, judicial resources standpoint to break these up

1 and do a duplicative effort.

2 We should figure out -- the parties agree that when
3 they file the motions, because we don't know yet the breadth
4 of the motion to dismiss for lack of personal jurisdiction.
5 We don't if they are going to challenge every jurisdiction, if
6 there's going to be some jurisdictions that they don't
7 challenge.

8 So we wanted an opportunity and they agreed to sit
9 down with us, meet, come up with a reasonable plan or not, and
10 report to the Court. I think we should be given the
11 opportunity to do that, and what I hear him saying,
12 unfortunately, is he wants to argue the motion to dismiss
13 right now, the motion for class certification right now, and
14 we're just not there yet.

15 THE COURT: No, I am going to take it issue -- motion
16 by motion, and we know this personal jurisdiction is coming
17 up, and when I saw the other motions to dismiss where they
18 were naming lots of different people, I could just see, you
19 know, the amount of work to address each one could be greatly
20 different.

21 Now, I don't know if this discovery issue on the
22 jurisdictional matters is something that Ms. Katz would have
23 time for to deal with or if we just need a special master to
24 be assigned on the personal jurisdiction issue, to work with
25 the parties to get that teed up, you know, but somehow it's

1 got to come up in a framework before me so that I can
2 effectively manage it, manage the process.

3 That's my job, to try to get you to that stage and
4 I'm trying to come up with the best way possible. If the
5 parties jointly agree, no problem. If you don't agree, which
6 I'm hearing now, you know, we're going to need some guidance,
7 somebody to be working hands-on with the parties, getting you
8 ready for this. Maybe you need to wait for the motion to
9 dismiss. What's the date for that?

10 MS. DUGGAN: December 6th, Your Honor.

11 THE COURT: Okay. December 6th. We all have to try
12 to strive to make this efficient, the process efficient. So
13 nobody is going to be cut off from having their voices heard,
14 neither the plaintiffs or any of the defendants.

15 MS. DUGGAN: Your Honor, we think that's a reasonable
16 approach, and we are all reasonable people and we should be
17 able to talk this through and report back.

18 THE COURT: So who do you need to help you? That's
19 my question. Is it going to be Ms. Katz? You can meet with
20 her and see if she has time to deal with this extra issue, or
21 do we need to get somebody onboard?

22 MR. LAVELLE: Your Honor, we can meet and confer with
23 that. One other thing I want to say, and this is not
24 revisiting the personal jurisdiction issue, but on the other
25 substantive issues that we are going to be raising, one of the

1 things that we agreed on and Your Honor has approved is
2 submitting as part of our motion these charts that we're going
3 to put at the back that are going to hopefully give exactly
4 what Your Honor I think is looking for, which is categories of
5 these number of states, 17 states are in this category, 14
6 states are in another category, which hopefully will simplify
7 the analysis, and I think Ms. Duggan and I have already
8 discussed that plaintiffs plan to respond in kind. Hopefully
9 that will make the process more streamlined.

10 MS. DUGGAN: And consistent with Your Honor's
11 suggestion to the parties several months ago, the idea is that
12 after both sides have briefed these various issues, we're
13 going to present the Court hopefully -- it's our goal -- with
14 a chart that summarizes both sides so it's easier for Your
15 Honor to make decisions.

16 THE COURT: Okay. And then as I said, it's just
17 going to depend on the numbers of issues and the complexity of
18 those issues.

19 So if there's an efficient way for us to get through
20 this -- if we need a special master to, you know, take the
21 labor more on part of those as an initial matter and then the
22 Court will have some of the others that I'll deal with just
23 with the Court's review, but somehow we've got to get a handle
24 around how this could be efficiently handled going forward so
25 it can be timely. That's one of the things I'm worried about.

1 The longer all of these motions to dismiss take, then
2 it extends the discovery period and it impedes the process for
3 mediation as well.

4 MR. LAVELLE: Your Honor, as the next step, I propose
5 that we will be filing at least one of our motions to dismiss
6 before the next case management conference and we can confer
7 and meet with plaintiffs.

8 THE COURT: Yes, meet and confer and talk about that,
9 and if you can see that there's going to be, you know, a lot
10 of issues that the Court has to deal with, then we'll take a
11 look at -- maybe you can have some suggestions for the special
12 master that can be appointed.

13 MR. LAVELLE: Thank you, Your Honor.

14 MS. DUGGAN: We'll do that, Your Honor. Thank you.

15 THE COURT: Okay. Leadership development. We have
16 one person from each side coming up.

17 MS. OLSEN: Good afternoon, Your Honor. Beth Olsen
18 with Sullivan & Cromwell on behalf of Koninklijke Philips and
19 the other non Respirationics Philips defendants.

20 I would just like to start by emphasizing how
21 grateful I am to even have the opportunity to stand before you
22 today, especially in light of I think the impact that COVID
23 has had on so many young lawyers' development and our ability
24 to actually be in a courtroom. The chance to address the
25 Court directly is truly a privilege.

1 This case, or I guess cases to be a little bit more
2 precise, has me doing so many different types of work that
3 have really contributed in a meaningful way to my development
4 as a legal practitioner.

5 So myself and the other young lawyers on the team, we
6 have had our hands quite full writing briefs and actually
7 developing the arguments that go into the briefs, among other
8 things. That's been the case pretty much since this case
9 first started.

10 As you know, we've already had one round of motion to
11 dismiss briefing on the economic loss claims, which myself and
12 the other young lawyers were quite involved in both drafting
13 substantively and then kind of coming up with the arguments,
14 developing strategies.

15 Now we have another round of motion to dismiss
16 briefing which everyone was just speaking about, which gives
17 me another chance to continue improving my writing and
18 developing arguments, and I speak for myself obviously, but I
19 know that the other young lawyers are really, really
20 intimately involved in that, too, and I will say that coming
21 up with the arguments that I think we should be making in this
22 case has proven to be very complex, as I think the kind of
23 dialogue that just went on illustrated, but it's been really
24 rewarding, and it's quite an educational process as I've just
25 kind of come to understand these very complex issues, working

1 to understand the scope of all of these different claims.

2 We have three different consolidated master
3 complaints for economic losses, PI, medical monitoring and,
4 you know, going through hundreds of pages trying to parse out
5 plaintiffs' allegations and theories that are about KP & V as
6 opposed to Respironics, that's by itself time consuming and
7 challenging, but really interesting.

8 The facts that we're dealing with, claims under so
9 many different state laws with potentially varying procedural
10 pleading and substantive requirements which, you know, you
11 have to figure that out first. Do they vary? What are they
12 first and then do they vary. But that's no small part of
13 what's made working on this case really, really rewarding.

14 So thank you, Your Honor. I'm looking forward to
15 seeing you again next month.

16 THE COURT: Okay. Thank you.

17 MS. ROSS: Hello.

18 THE COURT: Welcome to Pittsburgh.

19 MS. ROSS: Thank you. My name is Inez Ross and I'm
20 from Onder Law in St. Louis and I am on the leadership
21 development committee, and people keep saying "the young
22 lawyers committee," and as we can see, I'm far past that. So
23 I kind of take on the role of "mother" to the other LDC
24 members.

25 THE COURT: Well, it's young in spirit and young in

1 terms of exposure to the MDL world.

2 MS. ROSS: And that's exactly it because I've been
3 trying cases for over 30 years. So I can easily try a case
4 and pull down a jury with my hands tied behind my back, but I
5 don't have the mass tort experience.

6 Counsel, the liaison counsel, everyone, has been
7 very, very helpful to us on the LDC. They've given us a lot
8 of transparency into the mass tort discovery process as well
9 and, in fact, they have invited me to join them on the
10 discovery meetings that they have with the defendants, and
11 then, of course, everything that I hear, I take it back to my
12 little LDCs and tell them everything. So it's really very
13 helpful.

14 I have a wonderful mentor, Mike Graham from
15 California. He is excellent. All of these people behind me,
16 every time I ask a question, e-mail them, they e-mail me back
17 immediately. I mean, it's like amazing.

18 And then the fact that all of these lawyers can work
19 together for one thing is just amazing to me because like I
20 said, I've tried so many cases, but it's always, you know,
21 lawyer over here, lawyer over there, but that we can get stuff
22 done is amazing and I'm very impressed.

23 So thank you for choosing me.

24 THE COURT: So it's been helpful to you, despite not
25 being young in age and young in other experiences in the law?

1 MS. ROSS: Well, it's something new, mass tort
2 because it's on a bigger scale and there's, of course,
3 different rules, and so it is something new to me, but I feel
4 very comfortable in it because I do technically know
5 litigation and what that is about, but it's a new experience
6 and I'm grateful for the opportunity.

7 THE COURT: Thank you.

8 MS. ROSS: Thank you.

9 THE COURT: Anything else for the Philips?

10 Well, everybody has their work cut out for them, but
11 I do wish you a very Happy Thanksgiving. Hopefully everyone
12 will get the opportunity to be with family and friends and
13 enjoy the holiday. Thank you all.

14 (Everyone said, Thank you, Your Honor, and Happy Thanksgiving)

15 (The hearing concluded at 12:10 p.m.)

16 C E R T I F I C A T E

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

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

23 11/19/2022
24 Date of Certification
25