

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 3014
6 LITIGATION.

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8 Transcript of the status conference proceedings held on
9 Wednesday, December 14, 2022, in the United States District
10 Court, 700 Grant Street, Pittsburgh, PA, 15219, before the
11 Honorable Joy Flowers Conti, United States District Judge.

12 APPEARANCES:

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

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

2 Wednesday Morning, December 15, 2022

3 (In Open Court)

4 THE COURT: All right. Moving onto IN RE: Philips
5 Recalled CPAP, Bi-Level PAP and Mechanical Ventilation
6 Products Litigation. This is MDL 3014.

7 I'll give people a chance to move chairs.

8 (Pause noted)

9 THE COURT: Everyone settled and ready to go with the
10 Philips?

11 Okay. First, I'll note that the Notice of the
12 Speakers has been entered. If there's anyone else that
13 intends to speak, please stand and enter your appearance now.

14 Also, if you want to just enter your appearance for
15 the record, we do have the paper that is available next to the
16 court reporter for you to sign in.

17 MS. ITRI: Yes, Your Honor, Shauna Itri from Seeger
18 Weiss.

19 THE COURT: You need to speak into the microphone.

20 MS. ITRI: Shauna Itri from Seeger Weiss.

21 THE COURT: How do you spell your last name?

22 MS. ITRI: I-T-R-I.

23 THE COURT: And it's Shawn?

24 MS. ITRI: Shauna, S-H-A-U-N-A. Yep.

25 THE COURT: Okay. And what is your firm again?

1 MS. ITRI: Seeger Weiss.

2 THE COURT: Okay. All right. So your appearance is
3 noted and you'll be speaking, is that correct?

4 MS. ITRI: Yes, Your Honor.

5 THE COURT: Okay. Now, we have the status of the
6 proceedings with the special master. This is for the
7 discovery proceedings.

8 MR. BUCHANAN: Ms. Itri will be addressing that, Your
9 Honor.

10 THE COURT: Okay.

11 MS. ITRI: Your Honor, Shauna Itri from Seeger Weiss.

12 We have been having a productive conversation about
13 discovery in this case. As you have seen, we ended a
14 stipulated deposition protocol.

15 THE COURT: Yes, I did sign that.

16 MS. ITRI: I think we have one more protocol, and for
17 the protocol phase of the discovery, they will be concluding
18 soon.

19 THE COURT: What's the last protocol that you have?

20 MS. ITRI: We have a search term methodology protocol
21 that will be forthcoming. We have been meeting and conferring
22 regularly. I think my colleague at the last CMC discussed, we
23 have had a lot of noncustodial production of design history
24 files, complaint files, regulatory files.

25 We have started -- Philips has started production of

1 custodial files in September. I think last time I checked,
2 December, the beginning of December, we have about 26,000
3 custodial files, and meeting and conferring -- even this
4 morning -- about producing additional files and noncustodial
5 and custodial files. So it's ongoing, and I'll let my
6 colleague add anything.

7 MS. McNALLY: Thanks. Good morning, Your Honor. I'm
8 Laura McNally from Morgan, Lewis on behalf of Philips --

9 THE COURT: You have to speak into the mic. That's
10 just a light. (Everyone chuckled)

11 MS. McNALLY: This morning, the person checking me
12 out at the hotel said, "Do you have a long trip home?" And I
13 thought she said to me, "Do you want a Longfellow poem?" And
14 I said, "Yes, you can give me a Longfellow poem." And
15 hilarity ensued. So I'm really on a roll today.

16 But I agree with what my colleague Ms. Itri said. We
17 have been hard at work on the discovery front. We have
18 produced about 400,000 noncustodial documents and files;
19 meaning that these are things that have to be kind of hand
20 cold from the company.

21 And then in addition, we have produced on the
22 custodial front, which is more your traditional, you know,
23 running search terms and document review. We have gotten
24 about 25,000 documents out the door of review.

25 It's a moving target right now as we kind of are

1 revisiting some search terms, but it's anywhere from five to
2 eight million documents that we have slated for review. We
3 have about 160 first-level reviewers, second-level reviewers
4 working on getting those out the door.

5 So it's a lot of discovery, but we have been working
6 collaboratively with plaintiffs to try to be as efficient as
7 possible.

8 THE COURT: Thank you.

9 MS. ITRI: I agree with my colleague. I think my
10 colleague Dave Buchanan will be talking about the pace of play
11 during the discussion of production schedules.

12 THE COURT: Okay. The next one is probably the most
13 problematic, and that's the joint status report pursuant to
14 the stipulation and order regarding jurisdictional discovery.

15 Counsel want to come up?

16 MR. SCHWARTZ: Good morning, Your Honor. Steve
17 Schwartz from the Chimicles, Schwartz firm for the plaintiffs.

18 THE COURT: And it's really tough when you give me a
19 status report like that two days before the hearing. So I've
20 done my best to review those matters and I'll address it the
21 best that I can today.

22 MR. SCHWARTZ: Understood, Your Honor. So I'll do
23 what I can to help simplify it for Your Honor.

24 There are five motions to dismiss that have been
25 filed in the case, and the schedule we had proposed only

1 relates to two of them, and they are motions -- the 12(b)(2)
2 motion for personal jurisdiction filed by Royal Philips or
3 KPNV, and a second motion that was filed under 12(b)(6) by
4 what I'll call the non Morgan, Lewis defendants, the non
5 Respironics defendants from Philips, which is Philips NA,
6 Philips Holding, Philips RS Holding and KPNV.

7 So basically every Philips defendant except
8 Respironics filed a second motion to dismiss.

9 But the motion to dismiss the 12(b)(6) motion that
10 they filed raises the same three issues that were raised in a
11 personal jurisdiction motion and those issues relate to
12 whether there's --

13 THE COURT: You are talking about the parent's motion
14 or the --

15 MR. SCHWARTZ: The parents.

16 THE COURT: -- other subsidiaries?

17 MR. SCHWARTZ: The parent's jurisdictional motion and
18 the motion of the parent and what I'll call the holding
19 companies except for the Respironics.

20 THE COURT: So it applies to all of the 12(b)(6)
21 issues that you are going to tell me about apply to all of the
22 Philips defendants except Respironics.

23 MR. SCHWARTZ: Right. And it's the same issues in
24 the personal jurisdiction motion which everyone agrees has to
25 be deferred for discovery, and those three issues are: Is

1 there any pre-recall conduct by KPNV, Philips NA, Philips
2 Holding and Philips RS Holding;

3 And second, is there an alter ego or agency
4 relationship claim that we can bring that brings them all into
5 the case;

6 And third, it relates to the group pleading issue as
7 to whether we have said and sorted out exactly what each of
8 the various holding companies and even the parent did.

9 So the issues to decide, the personal jurisdiction
10 motion, which will require a discovery under Third Circuit law
11 and by agreement, are the same issues that are relevant to the
12 12(b)(6) motion that we think should be deferred pending the
13 completion of discovery so Your Honor can decide both motions
14 at the same time and so we don't have redoes and it will be
15 more efficient.

16 Now, this doesn't mean though that the 12(b)(6)
17 motion movants, the various Philips entities, it doesn't mean
18 they don't get a bite at the motion to dismiss apple because
19 they are getting actually two bites that we have agreed that
20 should go forward.

21 The first bite is all of the Philips defendants have
22 filed a 12(b)(1) motion saying that there's no damage for
23 what's happened. So that motion to dismiss will go forward.

24 And in addition, the Respironics Philips entity filed
25 a 12(b)(6) motion which covers the gambit, which basically

1 says every single claim that we have brought should be
2 dismissed, and the other Philips entities have joined into
3 that motion.

4 So they're getting two bites at the motion to dismiss
5 apple that's going to go forward immediately and we're going
6 to brief it at the same time as another motion that was filed
7 by Polymer Technologies on seeking to dismiss the complaint.

8 So Your Honor will have the opportunity to have three
9 motions to dismiss go forward right now, and what we're saying
10 is since the personal jurisdiction motion has to be deferred
11 for briefing and for adjudication due to the discovery that's
12 necessary, that we should defer the 12(b)(6) motion by the non
13 Respironics Philips defendants because the issues are all
14 intertwined and it's going to be the same issues.

15 Now, fortunately, there's case law on the issue and
16 I'm going help Your Honor, hopefully, sort out the various
17 cases that we submitted in the brief.

18 The good news is we cited five cases that are on
19 point, and where the issue was, you have a motion to dismiss
20 under 12(b)(2) for personal jurisdiction at the same time, you
21 have the 12(b)(6) motion where the issues are intertwined and
22 are basically the same, and we cited five cases.

23 All five of our cases say you defer the 12(b)(6) and
24 decide it at the same time as the personal jurisdiction motion
25 after the discovery. Three of those cases, the intertwining

1 issue was the alter ego issue. That's the UHS Delaware case,
2 the Gaspar case and the Diisocyanate case.

3 There are two other cases we cited, which were a
4 group pleading was the issue that was the common issue, and
5 that's the Opheim versus Volkswagen case and the Logitech
6 case.

7 Now, here's where the good news is. My friends only
8 cited one case where you had a 12(b)(2) and 12(b)(6) filed at
9 the same time where the issues were the same, and that case
10 was the Quality International Packing Case, and in that case,
11 they cited the 2015 decision in that case. That happened
12 after the jurisdictional discovery. But the 2014 decision in
13 that case -- and the cite for that is 2014, West Law, 246,
14 5262.

15 The 2014 decision in that case decided we're going to
16 defer the 12(b)(6) motion until after we get the
17 jurisdictional discovery and then have the jurisdictional
18 motion queued up and we'll decide it at the same time.

19 So their case that's on point says the same thing
20 that our cases say is on point. So we only have six cases on
21 point, and they all go one way, which is what we're
22 suggesting.

23 So we think that's a way to sort out, you know, what
24 I'll call the legalese that we've given your Your Honor in the
25 joint report, which is longer than we should have done, but

1 the case law is pretty clear that's what should be done.

2 The second -- and we think it's going to be more
3 efficient because the last thing Your Honor wants to do is
4 decide something when the pleadings and the facts catch up to
5 it and you get inconsistent decisions. We think that would be
6 very inefficient.

7 The second overarching point from the cases is that
8 none of their cases are the situation we have here where there
9 are 12(b)(6) motions that are going forward that can dismiss
10 the whole case, in addition to the 12(b)(6) motion that we
11 have asked to be deferred and is tied up and raises the same
12 issues as the personal jurisdiction motion.

13 So this is not a situation, as I started with, where
14 they're not going to get an early bite of the apple on a
15 motion to dismiss, because there are multiple motions to
16 dismiss, including two they either filed themselves or joined
17 into, they are getting their bite at the apple, and we think
18 it makes sense from an efficiency point of view to simply
19 defer the 12(b)(6) that raises the same issues as the personal
20 jurisdiction motion.

21 I'm happy to answer any questions you have or --

22 THE COURT: I'll hear from --

23 MR. SCHWARTZ: -- pass the baton.

24 THE COURT: Pass the baton. Thank you.

25 MR. SCHWARTZ: Thank you.

1 MR. STEINBERG: Good morning, Your Honor. Michael
2 Steinberg from Sullivan & Cromwell on behalf of KPNV and
3 Philips North America.

4 This proposal makes no sense at all and will
5 fundamentally disrupt the progress of this MDL in fundamental
6 ways.

7 There is -- you'll recall when we were here before,
8 the only issue before Your Honor was whether or not there
9 would be jurisdictional discovery, and that was the content of
10 the stipulation, and we have agreed that there will be
11 jurisdictional discovery, but now plaintiffs have a new ask,
12 and the new ask is this: Defer the 12(b)(6), which makes no
13 sense at all, and contrary to what Mr. Schwartz represented,
14 the cases actually do not help them at all. In fact, they
15 actually go our way.

16 So let's talk about this because what -- I heard you
17 loud and clear this morning. You said that there has been --
18 they want to pick up the pace in this case, but it's been the
19 plaintiffs because of their group pleading that have now set
20 things back four months.

21 So we're here four months later than we should have
22 been and we still haven't argued the motion to dismiss and
23 they still haven't responded to a motion to dismiss. And now,
24 because their pleadings are still wildly inadequate, they
25 don't address the right legal standard for 12(b)(6), they want

1 to push it off even more, and it makes no sense at all because
2 how long are we going to push it off, and then how is that
3 going to, you know, evolve into the class issues, and how is
4 that going to evolve into the discovery issues.

5 If we keep pushing things off, what's going to happen
6 to the schedule and what's going to happen to the necessary
7 prerequisites to getting to the next stage of the schedule?

8 The first part of this case is about identifying what
9 are the claims that are to go forward, and in this case,
10 there's absolutely no basis to suggest that we should delay
11 that because the two motions are based upon two different
12 standards.

13 12(b) (2), of course, evaluates the contacts between
14 KPNV and the United States or the individual states, and the
15 conduct, the question of the 12(b) (6) is whether or not the
16 complaint that they have now rewritten several times states a
17 claim at all, and we say it doesn't, and we think the law is
18 pretty clear on that.

19 So, you know, in our view, it makes no sense to marry
20 these two up, and so -- which is what they are proposing we
21 do, and contrary to what's being suggested -- I mean if you
22 look at the -- I'm going to mispronounce the name of the case
23 because it's impossible. It's a chemical. It's the
24 Diisocyanate Antitrust litigation.

25 In that case, the Court actually determined both the

1 12(b) (6) and the jurisdictional motion by first denying
2 without prejudice the motion for 12(b) (2) on personal
3 jurisdiction, and then evaluated the 12(b) (6), and it's even
4 worse than that because the plaintiffs also want to, you know,
5 take all sorts of discovery and do all the rest, but in the
6 Diisocyanate case, the Court noted that the ordinary rule is
7 that you are not even permitted merit-based discovery until
8 the jurisdictional discovery is over.

9 As to the Gaspar case, again, there was -- in that
10 case, there was one defendant who submitted one motion under
11 12(b) (2) and 12(b) (6). The 12(b) (6) was fully briefed and
12 there was no supplemental briefing on the 12(b) (6) argument
13 that was submitted after the limited jurisdiction discovery.
14 There was no deferral. The defendants didn't argue for a
15 12(b) (6) dismissal based upon a failure to plead alter ego or
16 agency, which is the exact opposite of what's occurred here,
17 and they only address the alter ego agency with respect to the
18 12(b) (2) motions.

19 In this case, there is a lot of -- you've got to know
20 what are the claims in order to determine the jurisdiction.
21 One example, they've pled a RICO claim or said they've pled a
22 RICO claim. We have attacked that both as to KPNV and as to
23 Respirationics.

24 If there is a RICO case because of nationwide service
25 of process, you look at the contacts with the United States.

1 If that case -- if that claim is out of the case, you only
2 look at the individual states. There's no other federal claim
3 that has a nationwide service process aspect to it.

4 So, again, we say that these cases all stand for the
5 proposition that the two are separate. The two motions,
6 12(b)(2) looks at contacts, 12(b)(6) looks at the sufficiency
7 of the complaint, and if we don't address the sufficiency of
8 the complaint now as to KPNV, and as to the rest, we are going
9 to have to address them later. And when would that be?
10 Because I'm not seeing when.

11 Again, we are the fundamentally delayed for four
12 months to get here because of their group pleading, and now
13 they want to say that, Philips, your motion, your motion,
14 we're not going to hear it for a long time until we conduct
15 limited jurisdictional discovery.

16 And I would note, Your Honor, that I think both sides
17 would appreciate the guidance of Your Honor on the 12(b)(6)
18 motions. For example, plaintiffs have a laundry list of
19 conduct that they say is sufficient that, you know, that
20 Philips KPNV -- I'm sorry.

21 THE COURT: Well, I can stop you there, because I was
22 really surprised when I was reading all the materials that you
23 were submitting on this issue that you never picked up on the
24 fact that this Court, myself in particular, I've addressed
25 these issues, and one was an MDL and the other was a complex

1 environmental case, both my cases, went up to the Court of
2 Appeals and I was affirmed on the issues, the very issues that
3 you are raising here today, which is when you have personal
4 jurisdiction that is intertwined with an alter ego theory.

5 I mean, neither side picked this up, which is really
6 shocking to me in this day and age with the Googling and how
7 you can find cases.

8 So I want to give you the standards, okay, because to
9 my knowledge, these cases have not been overruled and they
10 would be good within the Third Circuit and as to Pennsylvania
11 law because it picks up both. Okay?

12 Now, the two cases, and then there's a third case I
13 wanted to talk to you about, which is the most recent one we
14 could find out of the Eastern District of Pennsylvania.

15 So the two cases, the first one, which is the MDL, is
16 IN RE: Enterprise Rent-A-Car, Wage and Hour Employment
17 Practices Litigation, and my decision is cited at 735 F.
18 Supp. 2d, 277 Western District, PA, 2010. And on page 317,
19 talking about personal jurisdiction and the alter ego
20 theory -- I mean, it's the very issues that are raised here.

21 I go through in great detail -- going on for pages, I
22 tend to write longer decisions. So I go on and on and talk
23 about how this is done, and the Court notes that whether the
24 exercise of jurisdiction over a parent corporation is
25 proper -- we're talking now about personal jurisdiction over a

1 parent corporation is proper under the alter ego theory
2 depends upon the details of the unique relationship between
3 the parent corporation and its subsidiary.

4 The parent subsidiary relationship itself is not
5 sufficient to establish in personam jurisdiction over the
6 parent entity.

7 The Pennsylvania Supreme Court discussed the
8 background of Cannon Manufacturing, which was a Supreme Court
9 decision. So you are going to see -- and this comes out in
10 the Third Circuit decision upholding my findings with respect
11 to the alter ego theory in the second case I'm going to
12 discuss, Trinity Industries, there's an overlap between the
13 federal standards and the Pennsylvania. There may be some
14 slight differences, but the bulk of the analysis, whenever you
15 look at state law or federal law, are going to be
16 substantially the same.

17 So we start off with this 1925 decision from the
18 Supreme Court in Cannon Manufacturing Company versus Cudahy
19 Packing Company, and it goes through all of this. And in the
20 IN RE: Latex Gloves Products Liability Litigation, a very
21 well-known MDL out of the Eastern District of Pennsylvania, in
22 2001 noted: Plaintiffs must prove that the parent controls
23 the day-to-day operations of the subsidiary, such as the
24 subsidiary can be said to be a mere department of the parent.

25 And then there's ten factors that another MDL out of

1 the Middle District IN RE: Chocolate Confectionery Antitrust
2 looked at. There were ten factors that you go through:
3 Ownership of all or significant majority of the subsidiary
4 stock, commonality of officers or directors, corporate family,
5 possesses unique marketing imaging including common branding,
6 corporate insignias, trademarks, logos, corporate family
7 members, share employees, parent has integrated its sales and
8 distribution systems with those of its subsidiaries, the
9 corporations exchange or share managerial or supervisory
10 personnel, the subsidiary performs business functions that
11 would be ordinarily handled by a parent corporation, the
12 parent uses the subsidiary as a marketing division or as an
13 exclusive distributor and the parent exercises control or
14 provides instruction to the subsidiaries, officers or
15 directors.

16 And the Court noted in a Fifth Circuit decision that
17 the alter ego test for attribution of contacts, i.e., personal
18 jurisdiction, is less stringent than that for liability. So
19 it's maybe less stringent, but it's still there.

20 The Court goes on to -- I go on to look at it in the
21 modern context. Cannon is 1925. The business world has
22 really changed since that period of time, and I discuss in
23 detail the IN RE: Latex case, and then the Chocolate
24 Confectionery II decisions, there were two decisions that came
25 up to the Third Circuit.

1 I note on page 323 that a degree of control naturally
2 flows from aspects of the parent subsidiary relationship, but
3 this incidental control does not rise to the level required to
4 permit the exercise of jurisdiction over the parent, and
5 Chocolate Confectionery II, the Court noted a parent
6 corporation is entitled to establish group-wide financial
7 protocols, monitor the performance of its subsidiaries and
8 reap financial benefits from their profits.

9 And so we work through those. I could go on and I
10 talk about common marketing, various aspects of the
11 interrelationships that are quite typical in modern multi-
12 subsidiary parent relationships, and the Court went on to find
13 that there was no alter ego in that case.

14 So I went through in great detail about that and also
15 then talked about specific jurisdiction following that and
16 that came out of the issue about whether this was an FEOLA
17 case, whether there was joint employer liability, and
18 ultimately that's what turned on the case and found out that
19 it wasn't the case.

20 I also talk about prior lawsuits, where there were
21 prior lawsuits where issues that were raised whether there was
22 some kind of judicial estoppel and found that that doesn't
23 work. You know, you can't use that.

24 So there's a lot of overlap here based on what I saw
25 in some of the briefing and what I saw in some of the

1 complaint. So if you go through that, you'll get a really
2 good sense about the analysis that I have gone through in
3 excruciating detail in that case.

4 And then we have the Trinity Industries case, and
5 this went up to the Third Circuit, 903 F.3d, 333, Third
6 Circuit, 2018, Trinity Industries, Inc. versus Greenlease
7 Holding Company. It's one of the few cases where there was no
8 e-discovery because it all dealt with ancient documents, you
9 know, for property ownership and who owned what and how you
10 divided it up under the environmental laws, but there were a
11 lot of issues because of the parent relationship, and at the
12 time of the lawsuit, the company that held the land had no
13 money left because they gave it all away in dividends, and so
14 there was a big question about veil piercing and alter ego and
15 how you approach those issues, and the Court -- I address this
16 on the case below, and then it went up, and I was affirmed on
17 these issues, and we talked about both federal law and state
18 law because they were both federal and state claims.

19 The Court noted that the laws were, you know, federal
20 and state were quite similar, but they did go on and I did
21 address them separately, but the Court noted that -- and this
22 was on the liability issue as opposed to the personal
23 jurisdiction issue.

24 So the issue that the Court comes up with in the
25 Trinity case, the Court found that there has to be a threshold

1 showing that the controlled corporation under Pennsylvania law
2 acted robot or puppet like in mechanical response to the
3 controlling shareholders' demands.

4 The Court also went on to note and quoted that care
5 should be taken on all occasions to avoid making the entire
6 theory of the corporate entity useless.

7 So in that case, I went through in great detail the
8 standards that were applicable, the Third Circuit repeats
9 there, and they look at some other factors in this case,
10 whether there's gross undercapitalization, failure to observe
11 corporate formalities, nonpayment of dividends, insolvency of
12 the subsidiary corporation, siphoning of the funds by the
13 dominant shareholder, non-functioning of officers and
14 directors, absence of corporate records, and whether the
15 corporation is merely a facade for the operations of the
16 dominant shareholders, and there's a citation to, by the Third
17 Circuit that specific unusual circumstances are required
18 before piercing the corporate veil, and noting that it's
19 notoriously difficult for plaintiffs to meet this.

20 So you have two cases, one of which looks both at the
21 personal jurisdiction and the intertwining with the alter ego,
22 and then you have the other decision which looks at the alter
23 ego theory.

24 So we have those decisions, and the most recent one
25 we could find in the brief time we had to do follow-up

1 research is U.S. Kindred Health Care, Inc., 469 F. Supp. 3d,
2 431, Eastern District, PA, 2020, and the Court goes through
3 again alter ego liability -- this is on the liability side,
4 showing you are looking again for that gross under-
5 capitalization, failure to observe corporate formalities,
6 nonpayment of dividends, et cetera.

7 So you can see that there's maybe a slightly
8 different test for personal jurisdiction, but the bottom line,
9 they're really all not that different and some things that are
10 common today such as brandings, some of the marketing things,
11 you know, that's not enough to get personal jurisdiction. You
12 have to delve into it.

13 So what I'm going to do here is I am going to put the
14 discovery for the personal jurisdiction on a fast track.
15 Okay? I'm going to require that your discovery be done by the
16 end of January. You both have substantial resources on each
17 side. You are going to have to get it together and get this
18 done. You are not looking at all of the -- you know, did the
19 substance, the foam, you know, cause injury. We are not
20 looking at any of those issues. You are looking at the
21 corporate relationships here. What are the corporate
22 relationships? And if you can't meet the test for personal
23 jurisdiction, then some of these other issues on alter ego
24 will go away.

25 Now, I have to say in the Trinity case, I never had

1 to -- there were a couple issues where there was sort of a
2 close question, and I never had to get to those even though
3 they were fully developed in terms of the factual analysis.
4 They got to be a close question because as the judge then, I
5 have to make some decisions if I have an evidentiary hearing
6 and that can be difficult at times.

7 So it was ready to go on joint liability and I ruled
8 on the joint liability and that ended the case on the merits
9 because you didn't have to go into those other issues and I
10 was free to do that.

11 And so that aspect is one, you know, where you can
12 defer, you can do things like that, and if we're moving the
13 pace on some of these other merits issues, if they get decided
14 first, well, then that can moot it out.

15 But I don't want to wait. I mean, if you don't win,
16 if the defendants don't win on those other merits cases at a
17 motion to dismiss stage, then we have to resolve these other
18 things.

19 So we have got to be moving on them, and we can do
20 both at the same time or I think you can. This is not a small
21 case where it's two lawyers and they have other cases and it's
22 just not possible.

23 So you are going to have 45 days. You are going to
24 get this done. You are going to meet and confer. You are
25 going to put your teams together. You probably should have

1 separate teams working on this. Hopefully the special master
2 can carve out some extra time for you if you need it.

3 If that can't be done because of all the other issues
4 that are going on, you need to get to me right away so that we
5 can get some other assistance there to cut through this.

6 But you are going to have to get this done. I don't
7 see why it can't be done. You can have targeted
8 interrogatories, followed by 30(b)(6) depositions targeted to
9 this. You might have document productions that you are going
10 to go through in looking at it.

11 But these large multi-national corporations, you have
12 the secretaries of the corporations, they have a whole staff
13 where they keep the corporate minutes. They know what's going
14 on. They have recording requirements, you know, because of
15 how they operate in the various jurisdictions. They have
16 financial statements already done. I'm sure they probably
17 have separate financial statements for each of the
18 subsidiaries, how that's happening, how the funds flow back
19 and forth.

20 You know, you may have some overlapping of health
21 benefit treatments that was the health benefits and management
22 of health benefits, that was in the Enterprise case and that
23 wasn't enough to say that you could have alter ego for
24 personal jurisdiction.

25 So you need to look at these things and you need to

1 go through and see what the factors are you've got to look at.
2 Once you see what that is, that will target your discovery,
3 how are you going to do the discovery.

4 And so we can get through this, but we're going to do
5 it on a fast track. So that they are either in or out on
6 personal jurisdiction. There's this issue about the recall
7 where they are in from Pennsylvania they agree --

8 MR. STEINBERG: Yes.

9 THE COURT: -- but not otherwise. I have a hard time
10 because I haven't had a chance to really look at that issue,
11 but I have a hard time seeing if you are controlling the
12 recall for purposes of personal jurisdiction in Pennsylvania,
13 why doesn't that work for the other states? I mean, your
14 recall is going out to the other ones or your contacts are
15 going out there.

16 MR. STEINBERG: We wouldn't determine it as control.
17 We're happy to discuss that.

18 THE COURT: I don't know, but I'm saying I have a
19 little bit of a concern about that, but that's not involved
20 here with what we are doing right now.

21 So let's get this done. Let's get through this.
22 Let's answer the -- let's tee up the other motions to dismiss.
23 You'll have the research that you need, and if you are in for
24 personal jurisdiction, it still doesn't necessarily mean that
25 you meet the alter ego for liability requirements. So that's

1 still an issue that you would have, but I can tell you that if
2 you meet the alter ego theories for liability, you are going
3 to have to personal jurisdiction.

4 So it's, you know, how you go about it in looking at
5 it, but there's some overlap between the tests. It's really
6 are you operating -- is the parent operating the subsidiaries
7 as if they are one in the same. That's what alter ego means
8 and it is a hard test. It's hard even for personal
9 jurisdiction and it's hard for liability.

10 So, but let's get to it. And let's get this done.
11 So you are both going to get what you want. You are going to
12 get your discovery, but we're going to be moving. We're not
13 going to be wasting time here.

14 Now, the only other thing I'm going to say is I only
15 have two law clerks and myself. I have all of these motions
16 to dismiss all coming in at the same time. I do need some
17 help of a special master, and I'll decide how to divvy it up.

18 So I'm going to need a special master to help with
19 these motions to dismiss. I'll do some myself and I'll give
20 some to the special master, and I'm going to look at the
21 timing issues. Maybe I'll take these jurisdictional issues
22 and the alter ego, and then some of the other issues, you
23 know, maybe the special master can be working on them. They
24 won't maybe be as time sensitive, you know, for want of a
25 better word. But this is something that we need to work on.

1 So I need you to meet and confer, and I need a name
2 by next Wednesday. If you can't agree on somebody, I'll pick
3 someone and give you a name and give you an opportunity to
4 object.

5 So this might be something that could be good for
6 like a law professor, somebody that's known for, you know,
7 their acumen, you know, somebody that has, maybe has some time
8 they could devote to this or it can be a retired judge,
9 somebody who does this now after they've retired from the
10 bench.

11 But somebody that's in active practice, I'm not so
12 sure that would be the best for this, because these are --
13 this isn't summary judgment motions where you have to look
14 through a lot of evidence and maybe decide some things about
15 what's really relevant or not. This is just looking at a
16 complaint and seeing if it passes muster.

17 So but I'll leave that to you. Next Wednesday is the
18 21st. So if I have a name by then, we can get this all teed
19 up and we'll be ready to go, and I'll work through and
20 probably meet with them and try to figure out how to allocate
21 the time the best way.

22 I have criminal trials coming up. I don't have the
23 big one. The gentleman did plea, but I do have another
24 motion, a suppression. It's a complicated suppression motion
25 coming up in January and a couple other trials that are

1 scheduled in January and February.

2 So I think that would be the best way to go forward
3 to try to keep it moving. My thought here is if we keep the
4 case going, we can keep meeting the strategic deadlines, and
5 then if you pass the motion to dismiss, then we're -- you are
6 still into discovery because we're not stopping that. I'm not
7 stopping discovery for purposes of the motions to dismiss.
8 We're moving forward on all fronts. How does that sound?

9 MR. STEINBERG: That sounds fine, Your Honor. And we
10 did cite your cases in our 12(b)(6) motion. Of course we did.

11 THE COURT: Okay.

12 MR. SCHWARTZ: Steve Schwartz for the plaintiffs.
13 We're certainly happy to do that discovery. We have already
14 started the process of meeting and conferring, and we had told
15 Philips that we could move forward with the briefing on the
16 jurisdiction as quickly as they could move forward with the
17 discovery. So we'll do that.

18 Just to make sure I understand --

19 THE COURT: So your brief won't be due until after
20 the discovery is over. So you have to come up with a
21 timeframe.

22 So discovery ends the end of January. That's when
23 your response to the personal jurisdiction motion, you got to
24 figure out how many days you need after that.

25 MR. SCHWARTZ: Right. Just so we're clear, we'll

1 respond to the personal jurisdiction motion within X number of
2 weeks or whatever.

3 THE COURT: Right. Meet and confer on that and give
4 me an order. If you can't agree, I'll pick a date.

5 MR. SCHWARTZ: And on the 12(b)(6) motion that we've
6 been talking about, is our responsive brief going to be due at
7 the same time as the personal jurisdiction brief?

8 MR. STEINBERG: Your Honor, if I may be heard, one
9 question here, which is -- excuse me.

10 If they are going to have the benefit of now
11 discovery, my preference would be, but it's subject to Your
12 Honor, that we file a new motion that takes into account the
13 evidence, that identifies all of the evidence that says that,
14 you know, the corporate formalities have been maintained, et
15 cetera, and then he should file his opposition.

16 We did it based upon a complaint and based upon their
17 allegations and that it fails as a matter of law for many of
18 the reasons that Your Honor discussed, but I think it would
19 make more sense just to tee it up that we would then renew our
20 motion, but add in the evidentiary basis that would identify,
21 you know, that the corporate formalities were maintained or
22 shows the agreements that provides the licenses or, you know,
23 that shows that there's been no siphoning of funds out of
24 Respirationics over many years.

25 I'm just wondering if that's going to be the better

1 way to frame the issue for Your Honor.

2 MR. SCHWARTZ: And on the flip side, it's got to be a
3 two-way street. If they get to bring in the evidence that we
4 find from the discovery, we, of course, will want to bring
5 that in also, which is why I think it probably makes sense to
6 defer briefing on the 12(b)(6), and then we will work together
7 with each other. We have the date for jurisdictional
8 discovery that we've got to do because Your Honor has given us
9 that date and then we can work on the schedule.

10 THE COURT: This is what we'll do, okay, you are
11 going to maintain the response to the 12(b)(6) motion. I'll
12 give you your -- there was an opportunity for a reply I
13 believe. I'll give you a sur-reply that you can raise -- that
14 you'll be able to file after the discovery ends, but for the
15 most part, we'll be done because if there's facts that come
16 out that are not in the complaint, you know, then you are
17 going to have to amend the complaint or you could say this
18 would have been -- you know, this is where that Iqbal -
19 Twombly comes in.

20 You know, Iqbal - Twombly, there has to be enough
21 facts from which you can infer that even if not every fact
22 necessary to meet a claim is stated, that the Court can
23 reasonably infer that the discovery will reasonably lead to
24 this, and so maybe that could be something that would be
25 helpful if, indeed, the facts are supporting the plaintiffs'

1 position. I'm not speaking -- making -- weighing either
2 side's arguments here.

3 MR. STEINBERG: Understood, Your Honor.

4 MR. SCHWARTZ: Understood.

5 THE COURT: But I was referring to my cases and the
6 issue that came up, you know, with the joint notice, not
7 looking to resolve the underlying motion.

8 MR. STEINBERG: Understood.

9 THE COURT: Okay. But anyway, just so everybody is
10 clear, so you get your guidance. If there's any other Third
11 Circuit case out there or something that is more helpful than
12 mine, that's fine, too, but, you know, you need to focus on
13 what you have -- what you have to show and who has what
14 burden.

15 The plaintiffs have the burden on personal
16 jurisdiction, and the defense has to come in and show enough
17 in the motion to dismiss to argue that there's no plausible
18 claim been stated. Then the plaintiff has to respond back to
19 that.

20 So look at what the standards are. Meet and confer
21 about that. Draft your discovery and really get on track to
22 do this. So it is going to mean shortening some of the
23 timeframes for responding to interrogatories, setting up the
24 depositions.

25 So you are really going to need to work at this,

1 okay, and if you twist my arm, I might give you another two
2 weeks, but if you can get it done within the 45 days, that
3 helps everybody.

4 MR. SCHWARTZ: Your Honor, we're prepared to get on
5 our bicycles and work cooperatively with our friends.

6 THE COURT: And the only reason I would give you
7 another two weeks is because it's around the holidays for
8 everybody and that makes it tough, and I don't want to be an
9 ogre, but I do need to keep this going.

10 MR. STEINBERG: Your Honor, I'm sure we'll work
11 together to get this done because I think --

12 THE COURT: The facts are what the facts are.

13 MR. STEINBERG: I agree with Your Honor.

14 THE COURT: I mean, this isn't rocket science stuff.
15 I'm not aware -- you know, this isn't like a cover-up case.
16 It's really how are these corporations being operated? What
17 did they do? How did they function? And then you look at
18 that, find the factors, and then you apply the facts and it's
19 not --

20 MR. STEINBERG: Agreed, Your Honor.

21 THE COURT: So let's get to it. Let's get the facts
22 out there. It's in the defendant's interest, you know, to
23 produce all of this.

24 You are not going to need confidentiality agreements
25 because of some documents may be more sensitive, some of the

1 financial issues, you know, that's -- you know, you already
2 have a confidentiality in place.

3 MR. STEINBERG: Right.

4 THE COURT: So let's get this done.

5 MR. STEINBERG: We will. Thank you, Your Honor.

6 MR. SCHWARTZ: Thank you, Your Honor.

7 THE COURT: All right. If you need my help, you need
8 to come up and say you are having trouble with this or that.
9 You know, so come up with whatever appropriate process you
10 need, and then if you need -- like I said, you could push me
11 for another two weeks if you -- when you sit down and you work
12 it through that you really, really, really need it, but work
13 out the dates that you are going to have the briefing in and
14 the sur-reply, all the other motions to dismiss. How does
15 that sound?

16 MR. SCHWARTZ: It sounds like we have our homework
17 and we'll get it completed.

18 THE COURT: You have a lot of work to do.

19 MR. SCHWARTZ: And we're happy to do it. Thank you,
20 Your Honor.

21 THE COURT: Okay. So that's my ruling on the -- I
22 don't think it was a request. It was just a joint status
23 report. So I think I resolved the issues that you were
24 raising.

25 Okay. Next is the status of meet and confer on

1 supplemental discovery plan.

2 MR. BUCHANAN: I was going to say good morning, but I
3 think we slipped past.

4 THE COURT: That's okay.

5 MR. BUCHANAN: I'll do the best to stay close to the
6 noon hour, Your Honor. I know there's a commitment.

7 We discussed this at the last CMC. There was a
8 framework in the initial discovery plan with a number of items
9 that the parties were to meet and confer about to reach
10 resolution on and hopefully present agreements.

11 We have not been able to reach agreement on those
12 items. There are some where I think there's some hope, but I
13 think we on certain tracks, the class action track, in
14 particular the economic class action track, where maybe there
15 are some agreements that can be reached there. Monitoring
16 perhaps.

17 But then on the personal injury track, we're -- I'd
18 say we're chasms apart on the process on that. I think we
19 have more discussion to have. We had a further meet and
20 confer with the special master yesterday and that's ongoing.
21 I heard your comment in the SoClean conference. I heard it
22 here. MDLs can fill the space you give them.

23 THE COURT: Exactly. It's been a year, you know.

24 MR. BUCHANAN: I'm aware.

25 THE COURT: I'd like to be through discovery within a

1 year or two. So, you know, it's a lot of work. I understand
2 it's a lot of work for everybody.

3 MR. BUCHANAN: No objection on our part, Your Honor.
4 We are prepared to buckle up and get it done. I looked back
5 at your comments, I guess it was just a year ago now, and kind
6 of your urging and statements as to how you wanted to run this
7 MDL and to try and have this kind of worked up within two-to-
8 three years, obviously understanding there's uncertainties to
9 everything, but two-to-three years, that's a track record that
10 many MDL courts have achieved. I've been involved in many of
11 them and I think that's definitely replicable.

12 But there's two parties in a dance, and to some
13 extent, this case will fill the space we allow it to have,
14 and, you know, if Your Honor said be ready for a trial mid
15 2024, as you just said, get the work done in 45 days, the
16 lawyers are going to scramble to get the work done in 45 days.

17 THE COURT: That's a little more simplistic, because
18 as I said, everybody knows you get the records, get the
19 interrogatories out there, get the depositions, get that all
20 teed up and you'd be ready to go.

21 MR. BUCHANAN: No question. I think in some sense, I
22 think we all benefit from knowing directionally where we would
23 like to land because we can marshal the resources that we need
24 to marshal to get things done in the time that we have to get
25 them done.

1 We have more conferring to do on this. We had a
2 conversation yesterday. We had exchanged a proposal to the
3 defense. They got back to us last week with their positions
4 on that. We had further conferrals Thursday, Friday and
5 yesterday. Maybe it was -- yeah, Thursday, Friday and
6 yesterday. The defense --

7 THE COURT: Are you meeting by Zoom?

8 MR. BUCHANAN: We met in person, we met on the phone
9 and we met via Zoom. It's not for a lack of discussion.

10 THE COURT: Okay. Good.

11 MR. BUCHANAN: There are many issues. There's
12 probably a need for movement in both directions, but I think,
13 you know, structurally, we have -- we may have some obstacles
14 to overcome and we may need your resolution on those points,
15 Your Honor.

16 So I think we'll go as far as we can get, but we may
17 be back looking for some guidance, Your Honor, if we need you
18 to help us close that, what may be a structural impediment to
19 five years to six years to the first trial versus two years to
20 the first trial.

21 THE COURT: Okay. Mr. Lavelle, anything from
22 Philips?

23 MR. LAVELLE: Thank you, Your Honor. John Lavelle
24 from Morgan, Lewis for Philips RS and the Philips defendants.

25 You did correctly anticipate I was going to respond

1 to Mr. Buchanan. I agree that we have been engaged in
2 extensive discussions. I think we've made some progress.
3 There's more work to be done. We have had the benefit of the
4 assistance of the special master and we have exchanged
5 proposals that are very detailed in terms of setting schedules
6 for filing of motions, for completion of discovery, for
7 completion of the inspection of the devices, for the very many
8 numerous things we need to do in order to get things moving
9 forward.

10 There is more work to be done. We don't want to
11 burden Your Honor with a detailed discussion of what the
12 issues are that we have not been able to reach agreement on at
13 this time, but there is more work to be done and hopefully
14 we'll either be able to resolve issues or present them to you
15 by the next case management conference I would expect.

16 MR. BUCHANAN: I think we might benefit from a hard
17 deadline for Your Honor to submit whatever agreements or
18 formal report, just to keep us on track.

19 THE COURT: Where are the problems -- I'll look at
20 the special master here -- in terms of what would be a
21 reasonable timeframe to have a supplemental discovery plan in
22 place?

23 SPECIAL MASTER KATZ: So relating to discovery, the
24 parties have made a lot of progress in narrowing the gap on
25 their proposals on substantial completion, and so one way to

1 look at it is when is that going to be done because then the
2 other deadlines will flow from there.

3 And then -- but a lot of the other issues are not
4 specifically discovery related, although I'm engaged on
5 everything because they are all so intermixed.

6 I do think that by the next case management
7 conference, that that's a reasonable deadline to identify
8 areas of agreement and identify areas of disagreement and get
9 more guidance from the Court that will --

10 THE COURT: So what I'm going to need is a formal
11 status report filed no later than two business days before the
12 next status conference, and in that status report, you will
13 identify what has been resolved and what the open issues are
14 with respect to the discovery plan.

15 So that would be a fixed date where you are going to
16 have to really try to hone in and really see where the
17 problems are, what is the problem here that can't be resolved.

18 So meet and confer with the special master on the
19 status report. So if you can narrow it down, we'll see what
20 you can agree on, and then things that can be agreed on, maybe
21 there can be an order on those that can be entered so you can
22 move forward with whatever you've agreed upon, what you've
23 disagreed upon.

24 If it's ripe for me to resolve it, I can try to do
25 that. I don't know if giving me just two days to look at

1 things would do it, but we may have to have a special hearing
2 or something set up after I see how complex the issues
3 might be.

4 MR. LAVELLE: Your Honor, if I may make a suggestion,
5 which is, and I think maybe we can discuss at the case
6 management conference whether Your Honor will need additional
7 submissions from the parties related to that.

8 It's possible, for example, that there may be
9 competing visions on a particular structural issue on which
10 more detailed submissions may be useful.

11 THE COURT: Okay.

12 SPECIAL MASTER KATZ: I was just going to clarify
13 that the discovery aspects are probably the easier part. This
14 plan is a lot more global. They are talking about the class
15 cert briefing, experts, trial dates. I mean, so the breadth
16 of the conversation is much broader.

17 THE COURT: Okay. All right. So we'll have that as
18 a fixed date for you to tell me where you actually stand,
19 okay.

20 MR. BUCHANAN: Given when our next status conference
21 is, Your Honor, just in terms of the month, would you like our
22 report sooner than two business days before it to allow you
23 more time to consider it?

24 THE COURT: Well, depending how much time you need.

25 MR. BUCHANAN: I imagine we can crystalize -- with a

1 month between now and then, we can crystallize issues.

2 THE COURT: If it's possible.

3 MR. BUCHANAN: That's fine from plaintiff's
4 perspective.

5 THE COURT: How about the defense?

6 MR. LAVELLE: Yes, Your Honor.

7 THE COURT: So let's look at a date. We are having
8 our conference --

9 MS. IVERSON: It's on January the 25th, I believe,
10 Your Honor.

11 THE COURT: Yes, January the 25th. We also have the
12 other matter. Can I see my law clerk?

13 (Pause noted)

14 THE COURT: So it will be due on the 18th.

15 MR. BUCHANAN: Thank you.

16 MR. LAVELLE: Thank you, Your Honor.

17 THE COURT: Thank you.

18 Then the next item is the state law to be briefed on
19 motions to dismiss individual personal injury claims utilizing
20 master personal injury complaint.

21 MR. LAVELLE: John Lavelle for Philips RS.

22 The issue that we just wanted to bring to Your
23 Honor's attention -- and this was picking up on Your Honor's
24 comments at the last conference and again today -- that
25 there's an extensive number of state law issues that are going

1 to have to be addressed and that are going to warrant the
2 appointment of a special master.

3 We obviously are going to be addressing the issues of
4 state law in our motions to dismiss the master personal injury
5 complaint.

6 At this point, we don't have plaintiffs before the
7 Court in all 50 states. In fact, we have I think short-form
8 complaints filed as of yesterday in only 18 dates.

9 Now, the short-form complaint deadline has not yet
10 past. I believe it's next -- the end of next week. So I
11 would expect that there are going to be a lot of short-form
12 complaints filed in the next week-and-a-half. I think there
13 are only 49 filed as of yesterday.

14 So it may be that we have a much more representative
15 number by the time we file our motion to dismiss on January
16 6th under Your Honor's order this morning.

17 We are anticipating addressing all 50 states law,
18 even though we may have plaintiffs from only a fraction of the
19 50. I think that's something we're just going to have to see
20 how many are on file as of the time we file our motion and
21 we'll put that in a footnote that we brief to Your Honor.

22 THE COURT: Okay. So we'll be talking next month
23 then when we see what the motion to dismiss looks like about
24 getting the special master to help on those issues.

25 MR. BUCHANAN: I don't have visibility obviously to

1 the arguments the defendants are going to raise. It's fairly
2 unusual my experience in these kinds of cases that there are
3 state law issues that are challenged on defective products at
4 the dismissal stage.

5 Generally a defective product is an actionable claim
6 under all 50 states, but we don't know what arguments they're
7 going to raise.

8 I did want to clarify one point, though, and that was
9 with regard to the short-form complaints. I think there was a
10 reference to the deadline being the 23rd or next week. That's
11 just for cases that were already on file. Of course, there
12 will be short-form complaints that continue to come onto the
13 docket over time going forward.

14 THE COURT: Okay. Are you anticipating that all 50
15 state will be involved?

16 MR. BUCHANAN: I would. There's usually some states
17 that aren't represented, but I can't speak for how it will
18 evolve over time. There's obviously a broad tolling agreement
19 that Your Honor endorsed.

20 THE COURT: Right, exactly.

21 MR. BUCHANAN: So there are cases that will be there,
22 probably brought over over time.

23 MR. STEINBERG: Your Honor, there's one thing that I
24 am concerned about -- Michael Steinberg on behalf of KPNV and
25 the other Philips defendants other than RS -- which is that if

1 there are only 18 states, let's say they get to 25 states by
2 the 23rd, I'm curious how Your Honor can rule on theories that
3 aren't advanced by plaintiffs because each of these plaintiffs
4 identify a complaint. They file a short-form complaint. They
5 incorporate by reference the master personal injury complaint,
6 but if there's no Alaska plaintiffs and no North Dakota
7 plaintiffs, I don't know why Your Honor would adventure, make
8 an adventure into those states' laws because there's no --
9 and, therefore, why we would brief it and sort of overwhelm
10 Your Honor with more briefing.

11 If, you know, if there's only half the states that
12 are represented by the plaintiffs who filed their short-form
13 complaints, it seems -- I don't want to say that it's a
14 constitutional limitation, but it seems like there's no case
15 in controversy for cases that are brought in Alabama if
16 there's no Alabama plaintiff.

17 THE COURT: You have to look at registry, too, I
18 think to see what's out there and they may want -- some of
19 those people may want to file and be added as plaintiffs. I
20 don't know. That's really up to the plaintiffs.

21 I mean, Mr. Steinberg is right. If there's no
22 plaintiff from a particular state, you know, that's at issue,
23 the Court can't just be ruling on a state where there's no
24 plaintiff.

25 MR. BUCHANAN: As I said, Your Honor, I anticipate

1 complaints will get filed over time. I'm scratching my head
2 as to what the motion would be as -- that's -- so it's hard
3 for me to really to hypothesize the wisdom or not of deferring
4 or proceeding.

5 THE COURT: After that gets filed on the 6th, that's
6 another topic for you to sit down and really discuss what
7 needs to be done.

8 If it's only 18 states, that's, you know, more
9 reasonable and maybe some of the states have similar laws and
10 we can group them, something like that.

11 MR. STEINBERG: But, Your Honor, your expectation is
12 that we would file on all 50 states and --

13 THE COURT: I don't know. I don't have any
14 expectation. It's up to you all. All I know is that when
15 this case was assigned, they talked about there's plaintiffs
16 in every state. So we'll have to see. Are they in every
17 state? It will be what's filed. I don't know.

18 MR. STEINBERG: Understood, Your Honor. Thank you.

19 THE COURT: Let's get an update on the census
20 registry.

21 MR. LAVELLE: John Lavelle again for Philips RS.

22 As of last week, December 8th, we had 4,785 -- that's
23 4,785 potential claimants who had registered in the census
24 registry, and of those, the vast majority, I'd say roughly
25 4,750 have allegations of personal injury.

1 So it's only a small number of those, roughly 40 or
2 45, don't specifically address or reference personal injury in
3 their census registry forms.

4 THE COURT: So there's really not a large number of
5 people registering.

6 MR. LAVELLE: Well, it's 4,785. That is the number
7 so far. But again, I think that has to be held against the
8 termination dates for the tolling agreement that the census
9 registry replaces.

10 As Your Honor will recall, we had kind of a rolling
11 series of termination dates. The last termination date for
12 the tolling agreement doesn't expire until mid February of
13 2023.

14 So I would say it's too soon to tell whether all or
15 substantially all of the people who are on that tolling
16 agreement are going to go on the census registry.

17 Mr. Buchanan may have a different view, but that's my
18 view, as I think we have to wait and see till all of those
19 termination dates come and go.

20 MR. BUCHANAN: I would anticipate that most would,
21 Your Honor. There was a requirement in connection with moving
22 from the old tolling agreement to the new one of completing a
23 census registry form.

24 I assume by that number, Counsel, you are referring
25 to, those are the number of people who had already delivered

1 the completed and signed census registry form and the
2 authorizations.

3 That has taken time, obviously, to work through. So
4 I anticipate that you will see most of that prior population,
5 which was approximately 60,000 transitioned over over time.

6 THE COURT: Okay.

7 MR. BUCHANAN: Thank you.

8 THE COURT: Leadership development.

9 MR. SLOSS: Good afternoon, Your Honor. Ian Sloss
10 from Silver Golub & Teitell for plaintiffs.

11 I'm happy to report my colleagues and the leadership
12 development committee have said they are all busy with a lot
13 of work, and on a personal perspective, I've been busy on
14 discovery aspects. I have been working on offensive,
15 defensive discovery. I've been afforded the opportunity to
16 participate in meet and confers with defendants and the
17 special master.

18 THE COURT: So how would you characterize your
19 experience then?

20 MR. SLOSS: It's been great. It's been enlightening
21 and rewarding and I thank you for the opportunity.

22 THE COURT: Okay. Thank you.

23 MR. SLOSS: Thank you.

24 THE COURT: From the defense?

25 MS. GALLAGHER: Good afternoon, Your Honor. Colleen

1 Gallagher here on behalf of Philips RS with my colleagues from
2 Morgan, Lewis.

3 I just want to say as somebody who spent the first
4 year of their legal career sitting at a kitchen table taking
5 Zoom calls, it's pretty surreal to be standing up here and
6 talking in court, any court for the first time. So I just
7 wanted to say thank you for that opportunity.

8 I've been very lucky to have been working very
9 closely with my colleague Laura McNally in particular on all
10 things related to discovery.

11 I had a pretty broad variety of experiences. I
12 conducted witness interviews, drafted review protocol, letter
13 of review training, been working on a bunch of written
14 discovery stuff, and actually, this Friday, we will be leading
15 a meet and confer with my colleague Caleb Seeley from Seeger
16 Weiss, who is here today, on plaintiffs' deficiency letter.
17 So a lot of great experiences so far and I have really enjoyed
18 it. Thank you.

19 THE COURT: Good. Thank you.

20 Those of you -- I think everyone was here for my
21 comments on the waiver issue of the new rule of federal
22 procedure 7.1.

23 So if you want to object to the Court waiving the
24 filing of the disclosure statements, you'll have to do that by
25 January the 6th, and if there's no objections, then I'll enter

1 that order that that will be waived going forward.

2 You've also heard the request that's going to be
3 turned into a text order that if there's a voluntary
4 dismissal, it has to be filed on both the individual docket
5 and the master docket, and we're moving the March date to
6 March the 15th for the conferences. Okay?

7 Is there anything else that needs to come before the
8 Court?

9 I wish everybody to have wonderful holidays coming
10 up. Hopefully everyone will not be overburdened with this
11 work so you'll be able to enjoy those holidays. Thank you.

12 - - -

13 (The hearing concluded at 12:25 p.m.)

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15 C E R T I F I C A T E

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

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

12/16/2021
Date of Certification

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