

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

2 Wednesday Morning, February 22, 2023

3 (In Open Court)

4 THE COURT: Please be seated. Good morning,
5 everyone. We'll begin with the IN RE: SoClean Marketing,
6 Sales Practices and Products Liability Litigation. It's
7 Master Docket Number 22-mc-152 -- oh, we're supposed to start
8 with Philips because Philips has to leave early today.

9 Okay. So this is the IN RE: Philips Recalled CPAP,
10 Bi-Level PAP, and Mechanical Ventilator Products Litigation.
11 It's at Master Docket Number 21-1230, MDL 3014.

12 We have the agenda that's been set out for today.
13 The first item, we already had the Notice of the Speakers for
14 today. Are there going to be any additions to that? If
15 anyone wishes to add their name to the list of those making an
16 appearance, we'll put out a separate pad, which we have up
17 here by the court reporter. You can please come forward and
18 sign your name and your appearance will be noted.

19 So the first thing is the discovery update, status of
20 the proceedings with Special Master Katz. Who would like to
21 address that? Make sure you state your name before you speak
22 for the record. Thank you.

23 MS. McNALLY: Good morning, Your Honor. I am Laura
24 McNally from Morgan, Lewis. I represent the Philips RS
25 defendant.

1 So with respect to discovery, we are dealing with
2 sifting through millions of documents from 70 custodians for
3 17 years with over 300 search terms. We have a team of 160
4 reviewers, a document review vendor, and over three dozen
5 attorneys from the defense firms here today. We've produced
6 over 600,000 noncustodial documents, over 3 million pages from
7 Philips various systems. This week we'll add about another
8 200,000 documents to that number.

9 THE COURT: What does the noncustodial mean?

10 MS. McNALLY: Custodial, our custodial production,
11 which are about 100,000 documents, those are your typical
12 e-mails and documents from people's computers.

13 Noncustodial documents are things like the regulatory
14 file, complaint files, things that we're pulling from Philips
15 various --

16 THE COURT: Most of the production has been on that
17 type of document; is that what you're saying?

18 MS. McNALLY: Most of the production numbers have
19 been on that type of document, but also the review work is on
20 both that and the custodial piece because on the noncustodial
21 side of things, we can really produce it without, as we know
22 it's kind of responsive and relevant and maybe we know that
23 there's not privileged issues so we are able to turn that
24 faster.

25 On the custodial side of things, the number is lower.

1 It's about 100,000 documents that we produced on that side,
2 but to get to that 100,000 documents that gets out the door, a
3 lot more work goes into that review work-stream with all of
4 those attorneys and doing lots of, you know, review for
5 responsiveness and privilege and different layers of review
6 and whatnot.

7 So that's -- I don't want to make it seem like the
8 work has been on all the noncustodial side. It's really been
9 kind of evenly split on both sides of the fence.

10 Then we have also -- we worked with plaintiffs to
11 commit to finish certain people's documents over time and at
12 different dates so that we can start depositions, and we
13 anticipate starting depositions in the next few months. So
14 things I think are progressing well.

15 We have constant meeting and conferring and calls
16 with Mr. Buchanan and his colleagues, and I welcome any
17 comments that Mr. Buchanan has. I'm happy to answer any
18 questions from the Court as well.

19 MR. BUCHANAN: Good morning, Your Honor. Dave
20 Buchanan for the plaintiffs.

21 We are fairly in line with the comments of defense
22 counsel. The stats can be a little, in some respects,
23 misleading. I think sometimes when we have a big bucket of
24 noncustodial files, like 600,000, I think 400 or 450,000 of
25 those are complaint files, which was very much an automated

1 production, but they needed to be produced, and we welcome
2 them and we'll be looking at them.

3 The big slug at this point is really a slug of
4 documents coming through the pipeline and that we're waiting
5 on the custodial files, but we're working with the defense to
6 try and prioritize those custodians consistent with your
7 guidance at the last conference, Your Honor.

8 THE COURT: Thank you.

9 MS. POLLOCK-AVERY: Good morning, Your Honor.
10 Elizabeth Pollock-Avery for the plaintiff.

11 I just wanted to update Your Honor on the plaintiff's
12 discovery responses and production so far. We have an agreed-
13 upon fact sheet for the PI plaintiffs.

14 The defendants have served written discovery to the
15 class plaintiffs. We responded to a number of those requests
16 during the process of responding to other ones. We have
17 approximately 87,000 pages of documents produced by plaintiffs
18 so far.

19 I'm happy to answer any questions the Court has.

20 THE COURT: Are you having any trouble getting the
21 medical records? I assume those are part of the production
22 requests.

23 MS. POLLOCK-AVERY: That would be covered by the
24 individual plaintiff's counsel for the individual PI
25 plaintiffs. I am unaware of any issues at this time, but can

1 definitely follow up on that to see if there is anything.

2 THE COURT: Sometimes just getting the consents and
3 getting the documents in, sometimes a lot of delays come
4 about.

5 MS. POLLOCK-AVERY: Yes, Your Honor.

6 THE COURT: Thank you.

7 MS. DYKSTRA: Good morning, Your Honor. Lisa Dykstra
8 for Philips RS.

9 I just wanted to let you know that following up on
10 our last conference, we are continuing to work with the
11 plaintiffs' scheduled device inspections, the visual
12 inspections, and we hope that they're going to start off most
13 likely at the end of March.

14 Carole Katz, the discovery master, may try to attend
15 depending on everybody's schedules, and we will let you know
16 and keep you updated on that process.

17 THE COURT: Are there going to be experts present at
18 that or is it --

19 MS. DYKSTRA: We are going to have an expert. I
20 expect the plaintiffs will have an expert as well. Thank you.

21 THE COURT: All right.

22 MS. IVERSON: Thank you. With respect to the device
23 inspections, we got a proposal yesterday of the date. So
24 we're going to try to clear that with our schedule and our
25 experts, and if that doesn't work, try to work something out

1 towards the end of March works for us. I think the parties
2 are still working together and with Special Master Katz to
3 coordinate the process and what devices.

4 We're waiting for defendants to be able to fully
5 identify what devices they have in their storage facility.
6 They said they needed serial numbers to do that, which are
7 available through the MDL Centrality where the plaintiff fact
8 sheets are.

9 So we pulled that report and are waiting to hear back
10 from them as far as which of the personal injury plaintiff
11 devices they should have at their facility, and hopefully
12 we'll have that soon so that we can get everything set up for
13 the end of March. Thank you, Your Honor.

14 THE COURT: Anything further on the first item on the
15 agenda?

16 The second item, the status of the proceedings with
17 Special Master Vanaskie.

18 MR. LAVELLE: John Lavelle from Morgan, Lewis for
19 Philips RS.

20 This is a very brief report. Since we last appeared
21 in front of Your Honor, I believe the only thing that's
22 happened with respect to Special Master Vanaskie at his
23 request, both parties have -- both sides have submitted
24 electronic versions of the filings that were made on the
25 motions to dismiss so far, and we have a schedule in place to

1 submit those directly to Special Master Vanaskie going
2 forward.

3 THE COURT: So he hasn't set any dates? That's what
4 I would be interested in, any hearings on those matters?

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

7 The parties had an initial conference before Special
8 Master Vanaskie on January 27th. He requested that all
9 materials that are relevant to the motions that you have
10 referred to him be sent electronically and bookmarked and the
11 parties have hyperlinked these documents and I know he's
12 working on them. He's waiting for the briefing to be
13 completed before he schedules a hearing.

14 He did indicate that he's going to have two separate
15 hearings, one on the motion to dismiss the economic loss
16 complaint and a separate hearing for the motions to dismiss
17 both the medical monitoring class complaint and the master
18 personal injury complaint. And the briefing will be completed
19 on the economic loss complaint on March 23rd.

20 MR. LAVELLE: Correct.

21 MS. DUGGAN: And we're in the process then of
22 currently responding to the motions to dismiss both the
23 medical monitoring complaint and the master personal injury
24 complaint.

25 The plaintiffs' responses are due on March 7th and

1 then the defendants have a reply date.

2 THE COURT: I was looking through the joint timeline
3 and I didn't see the date for the hearing on the personal
4 jurisdiction issue.

5 MS. DUGGAN: So we don't have a hearing date set yet,
6 Your Honor. What happened was the parties agreed to a
7 briefing schedule that Your Honor just approved several days
8 ago, and the plaintiffs are responding to Royal Philips'
9 motion to dismiss for lack of personal jurisdiction on the
10 economic loss complaint, and at the same time we are going to
11 be filing a surreply to their 12(b)(6) motion to dismiss, as
12 well as responses to the other, because they are almost the
13 same, motions to dismiss for lack of jurisdiction, the other
14 two, the class complaints --

15 THE COURT: I think they all should be heard together
16 because I don't think there's going to be a difference in the
17 proof or are there different issues?

18 MS. DUGGAN: We would recommend, Your Honor -- I
19 haven't discussed this yet with Mr. Monahan -- a single
20 hearing on the two motions, and briefing has now coalesced
21 into unified dates for responses and for replies.

22 THE COURT: Okay.

23 MR. MONAHAN: Bill Monahan for the Philips parent
24 company defendants. Hi again, Your Honor.

25 The reply briefs are due April 28. So depending on

1 Your Honor's preference, we could do it in May or June,
2 however much time Your Honor wants.

3 THE COURT: Let's take a look at May. I think it's
4 better -- I don't know if you are going to have live witnesses
5 or it's going to be on just submissions.

6 MR. MONAHAN: Let's see how the briefing comes in. I
7 don't know that either side is currently contemplating that,
8 but let's see how it goes.

9 THE COURT: Maybe just oral argument.

10 MR. MONAHAN: Yes.

11 THE COURT: Because there will be references. All
12 right. What day is Memorial Day? Do you know, is that the
13 30th?

14 MS. IVERSON: May 29th.

15 THE COURT: Okay. Well, we have our hearing set for
16 the -- our regular status conference is set for the 24th,
17 which I think I'm going to have to move to the 25th. So we
18 could have the hearing that afternoon, if you would like.

19 MR. MONAHAN: Sounds great, Your Honor.

20 MS. DUGGAN: That would be fine, Your Honor.

21 MR. LAVELLE: The afternoon of the 25th.

22 THE COURT: The 25th. The hearings on the 24th, they
23 are going to have to move. It's the 100th anniversary of the
24 American Law Institute. So it will be the afternoon. We'll
25 move the 24th hearings of May to the 25th, and then that

1 afternoon, we'll take a lunch break and then we'll come back
2 and then we'll have the hearing, the argument. Okay?

3 MR. MONAHAN: Thank you, Your Honor.

4 MS. DUGGAN: Thank you, Your Honor.

5 THE COURT: Anything else on those matters?

6 MR. LAVELLE: No.

7 THE COURT: Next is the update on case management
8 schedule and mediations. So the question would be here where
9 do we stand on that and will you be able to have a case
10 management essentially sketched out in form that I could
11 approve it next month?

12 MR. LAVELLE: Your Honor, John Lavelle again for
13 Philips RS.

14 I think the answer to your question is yes. The
15 parties have met in person at our offices in Philadelphia on
16 February 6th. That was a productive discussion. We have had
17 a series of virtual meetings assisted by Special Master Katz
18 as well. We have exchanged various schedules and we have made
19 a lot of progress. We haven't reached the finish line, but I
20 think we can see the finish line from where we are.

21 So I'm optimistic that we will be able to submit
22 something to Your Honor that will address a schedule to get us
23 through class certification in both the economic loss and
24 medical monitoring track, as well as move forward on discovery
25 to support mediations, and we both discussed and agreed

1 generally on seeking the guidance of the mediator Diane Welsh
2 on how to proceed on the mediations, the tracks that we aren't
3 already meeting with her on.

4 MR. BUCHANAN: Counsel summed it up correctly.
5 That's where we are at the moment, Your Honor. We are waiting
6 on some additional information to continue to prioritize our
7 various discovery efforts. We anticipate getting that
8 information later this week.

9 We'll be certainly meeting back with defense counsel
10 thereafter in the hope of reaching the agreements that counsel
11 just stated.

12 THE COURT: Okay. From the Special Master Katz, is
13 there anything that you wanted to add?

14 SPECIAL MASTER KATZ: No, I agree with the summary.
15 I, too, am optimistic that by the next conference, counsel
16 will be aligned on if not all of the issues, the vast majority
17 of the scheduling issues and then be able to tee up any issues
18 where they don't agree.

19 MR. BUCHANAN: Just one point, Your Honor. Again,
20 Dave Buchanan for the plaintiffs.

21 While we are going through this process, we are
22 moving forward with general discovery. Some of that, the pace
23 or the acceleration of the deadlines around that we are still
24 working through, but the documents continue to be produced.
25 We have asked for some deposition days. I understand defense

1 counsel is working on that.

2 So while we go through the formal process of trying
3 to ink a schedule that we can submit, we are separately
4 proceeding with discovery.

5 THE COURT: Thank you. That should be done within
6 two years of the date you started.

7 MR. BUCHANAN: We're mindful of Your Honor's
8 comments.

9 THE COURT: That's the goal here.

10 MR. LAVELLE: Thank you.

11 MR. BUCHANAN: Thank you, Your Honor.

12 THE COURT: The status of the short-form complaints
13 and the Rule 41 motions seems to be a moving target still, and
14 I just need to know when it's going to be finalized because I
15 would like to issue a rule to show cause order on any of the
16 plaintiffs who are the subject of those motions that haven't
17 been resolved yet. So if somebody can give me an update on
18 those.

19 MS. CHAMBERS REICHARD: Good morning, Your Honor.
20 Joyce Chambers Reichard from Kelley & Ferraro, LLC on behalf
21 of the plaintiffs.

22 As of this morning, the parties have submitted the
23 joint motion to amend PTO 28, which --

24 THE COURT: I did sign that.

25 MS. CHAMBERS REICHARD: Yes, Your Honor. Thank you.

1 I believe with that process in place, there only remains eight
2 individual personal injury plaintiffs that are at issue with a
3 motion to dismiss filed in their individual cases, and of
4 those eight, five have been contacted personally by plaintiffs
5 leadership counsel and they are in the process of either
6 filing the appropriate motion for the Court for leave to file
7 a short-form complaint or to dismiss their action.

8 THE COURT: So there will be three left over?

9 MS. CHAMBERS REICHARD: That's correct. And of those
10 three, Your Honor, one has a motion for extension of time,
11 which Your Honor granted until March 1st.

12 The second case has a master or, excuse me, a short-
13 form complaint filed in the master docket. We have instructed
14 that plaintiff to file in their individual case.

15 And the third case is a duplicative case that is
16 already before this Court, which has a short-form complaint
17 filed.

18 THE COURT: So if it's duplicative, we will get rid
19 of one of them so that we don't have double complaints with
20 the same party.

21 MS. CHAMBERS REICHARD: Correct. We have instructed
22 plaintiff's counsel --

23 THE COURT: Okay, so this should resolve it at all of
24 them.

25 MS. CHAMBERS REICHARD: That's my understanding, Your

1 Honor.

2 MS. McNALLY: I have nothing to add, Your Honor.

3 THE COURT: So by next month, then this should be
4 resolved. I'll expect some kind of a status report to make
5 sure these are all cleared up, and then I can note that there
6 would be nothing further for the Court to do on that, the Rule
7 41 motions. They will all be dismissed.

8 MS. McNALLY: Thank you, Your Honor.

9 MS. CHAMBERS REICHARD: Thank you, Your Honor.

10 THE COURT: Okay. The census registry.

11 MR. LAVELLE: Good morning, Your Honor. John Lavelle
12 again.

13 As of yesterday, the total number of potential
14 claimants who had registered in the census registry was 30,572
15 individuals and, of course, these are potential claimants.
16 These aren't people who have actually filed suit, and I would
17 hold that in contrast to the number of short-form complaints
18 which have been filed, which I think is roughly around 300,
19 320 or so.

20 I will note that last week was the expiration of the
21 deadline for the last people on the tolling agreement, and I
22 expect that there will continue to be additional census
23 registry filings going forward, but that was a number that did
24 seem to drive a lot of additional registrations.

25 THE COURT: So the original 60,000 is now down to 30?

1 MR. LAVELLE: Correct. Although it's a fluid number.

2 THE COURT: Okay.

3 MR. LAVELLE: There are definitely some groups of --
4 there's some plaintiffs' counsel who have filed few or none of
5 the census registry forms, and I'm not sure why that is yet.
6 We are going to have to follow up with them individually
7 because we're waiting to see what happened as the deadline
8 expired.

9 There's one group that we know had a substantial
10 number of potential claimants who asked us for an additional
11 two weeks and we granted that. We haven't spoken to the
12 others who have inventories of substantial numbers, but we are
13 going to follow up with each of them.

14 THE COURT: Okay. Thank you.

15 MR. BUCHANAN: I'm not sure if our information is in
16 disagreement on this, but we showed at least 56,000 or so
17 claimants who had some information entered into MDL Centrality
18 and 30,000, as counsel stated, that had actually submitted
19 into the registry.

20 So I'm not sure what the disparity is. Perhaps it's
21 tied to the extensions that were granted or something else,
22 but that will evolve and we'll have sharper numbers probably
23 by March.

24 Separately counsel said there's about 320 or so
25 complaints to docket. I think there's 345 or so in this

1 court, and I'd anticipate, Your Honor, that they will continue
2 to grow as medical records are gathered, as cases are vetted
3 and ultimately filed.

4 THE COURT: Anything further on the registry?

5 MR. BUCHANAN: No, Your Honor.

6 THE COURT: Any update on state court litigation?

7 MR. LAVELLE: Yes, Your Honor. John Lavelle again.

8 Very briefly, when we last appeared in front of Your
9 Honor last month, we reported to you that there were five
10 cases that were pending in Massachusetts State Court.

11 At Your Honor's request, we submitted a report to you
12 that identified those individual cases. Some of them have --
13 do not have a judge assigned to them. We had been scheduled
14 to have a status conference in the first file of those cases,
15 a case called St. John, and that was the case in which Judge
16 Barry Smith had granted a stay last year.

17 All of the counsel appeared for the status
18 conference, but, unfortunately, there was no judge. Judge
19 Barry Smith, as I mentioned, has rotated into the criminal
20 docket, and apparently, due to some snafu in the court system,
21 no judge had been assigned to the matter.

22 So it has now been rescheduled, that status
23 conference, for March. We don't know which judge is going to
24 have it yet, but presumably that status conference will be
25 held in March and it will be determined whether or not the

1 stay will be continued.

2 The one other development we did want to apprise Your
3 Honor of is we have filed -- "we," meaning the Philips
4 defendants have filed a motion to consolidate those five cases
5 for a single judge in the Massachusetts Superior Court, and
6 that motion will probably be fully briefed in the next few
7 weeks.

8 THE COURT: Okay.

9 MR. BUCHANAN: We, for MDL leadership -- again, Dave
10 Buchanan for plaintiffs -- have been in touch with plaintiffs'
11 counsel in those actions. I think there's 150 or more
12 Massachusetts plaintiffs that are in the census registry.

13 So that gives you a sense of at least some people who
14 have already appeared with a potential claim is likely state
15 court participants. There may be more than that. I'm not
16 sure, but I do understand from counsel there they intend to
17 proceed with claims in that venue.

18 THE COURT: That's in Massachusetts?

19 MR. BUCHANAN: Massachusetts, yes. One of the
20 Philips defendants is North America I understand is based
21 there.

22 THE COURT: Thank you.

23 The leadership development update.

24 MS. KREIDER: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. KREIDER: Claire Kreider of Gainsburgh, Benjamin
2 on behalf of the plaintiff leadership development committee.

3 Our committee members continue to take advantage of
4 this opportunity that Your Honor has provided us by creating
5 the LDC. We are being mentored by many attorneys with lots of
6 experience in mass torts litigation, while contributing
7 meaningful work product to the MDL.

8 I personally have been able to work on various
9 briefing projects, specifically researching and opposing the
10 defendant's motions to dismiss, and recently I started working
11 on discovery projects as well. So far, this has been a very
12 meaningful opportunity. Thank you.

13 THE COURT: Thank you.

14 MR. WILLIAMS: Good morning, Your Honor. Julian
15 Williams with Morgan, Lewis on behalf of Philips RS.

16 I'm going to speak briefly about some of the
17 opportunities I've had to lead on this team. So to give you a
18 little bit of background, I joined this team in January of
19 2021, a little over two years ago, and my role when I first
20 joined mostly involved helping prepare the team for early
21 custodial interviews, and I think that role has grown
22 significantly over time throughout the life of the case, just
23 in that respect now to get the opportunity to be actively
24 engaged in a lot of custodial interviews and ask questions and
25 lead.

1 Another aspect that I have really enjoyed about this
2 case team is the voice that I have had in our factual
3 investigation, and I think as we embark on our factual
4 development -- and I think I speak for myself and all of the
5 other associates on our team when I say this -- that the
6 partners have been really great about getting us all really
7 engaged in that process and not just leveraging our knowledge
8 of the facts of the case, but also making sure that we have a
9 voice in that narrative. That's been really great, too.

10 I also wanted to touch briefly on the role that I
11 played in discovery. As you know, we have been working on
12 responding to plaintiff's interrogatories, and I think Laura
13 McNally is leading that project and has been really awesome
14 about giving associates the independence about how they want
15 to strategize our responses to those, and what I also think is
16 really cool about that is in anticipation of some of the meet
17 and conferrals that we plan on having for some of the
18 interrogatories, we have been having mock meet and confers to
19 get the associates prepared to do that. So I think that's
20 been a great opportunity to lead, too.

21 I also anticipate that as we start preparing for
22 depositions, I'll be heavily involved in that, too. So I
23 think it's been a great opportunity to have a lot of new
24 experiences and to lead. Thank you.

25 THE COURT: Thank you. Is there anything else in the

1 Philips MDL that anyone wishes to bring to the Court's
2 attention?

3 If not, give my very best regards to Bobbi
4 Liebenberg, who I understand is going to get a big award
5 tonight and give her my regards on that. Thank you.

6 - - -

7 (The hearing concluded at 10:33 a.m.)

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9 C E R T I F I C A T E

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

13 \s\ Veronica R. Trettel
14 VERONICA R. TRETTEL, RMR, CRR
15 Official Court Reporter

2/25/2023
Date of Certification

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