



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

2 Wednesday Morning, March 15, 2023

3 THE FOLLOWING IS A ZOOM VIDEO STATUS CONFERENCE PROCEEDING

4 THE COURT: We'll proceed with the IN RE: Philips  
5 Recalled CPAP, Bi-Level PAP and Mechanical Ventilator Products  
6 Litigation. It's at MDL No. 3014, Miscellaneous Docket  
7 No. 21-1230.

8 The Court has received the submission of the  
9 individuals who will be speaking today. That constitutes  
10 their notice of appearance.

11 If anyone else wishes to enter their appearance,  
12 please e-mail my law clerk who will then provide that  
13 information to the court reporter so it can be made part of  
14 the record.

15 We will begin then with the first item, which is  
16 discovery update, status of proceedings with Special Master  
17 Katz.

18 Oh, before we leave, there's one thing I just wanted  
19 to mention. I did not receive an update to the timeline from  
20 SoClean, but there were -- there was at least one date that  
21 had changed from the prior timeline, which was submitted in  
22 January.

23 So before the next meeting, I do expect an updated  
24 timeline to be submitted in advance of the call -- in advance  
25 of our conference. Thank you. Same thing would go for the

1 Philips.

2 So we'll begin now with the Philips case, the  
3 discovery update and status of proceedings with the Special  
4 Master. Who would like to address that?

5 MR. BUCHANAN: It's a little harder when we're not  
6 before Your Honor. I don't know who is stepping up to the  
7 mic. Dave Buchanan for the plaintiffs. I'm happy to kick it  
8 off.

9 On the general discovery side, we have been fairly  
10 focused I'd say on trying to get through the business of  
11 getting custodial files in hand so the business of depositions  
12 could commence.

13 So there have been some issues and delays that we're  
14 working through on that, working cooperatively with the  
15 defense. Obviously, our objective is to get them sooner  
16 rather than later so that we can get rolling with depositions.

17 We had hoped to start that in the February, March  
18 timeframe. It's been pushed back a little. With the  
19 assistance of Special Master Katz and several meet and  
20 confers, also with the defendants, we're trying to get those  
21 first 12 custodial files which were to be produced by the end  
22 of January closed so we can start depositions in the  
23 relatively near term.

24 Beyond that, we've done, as Your Honor suggested, we  
25 provided some sequencing around our custodians to try and

1 prioritize those for earlier production or in a production  
2 sequence that makes sense aligned with the Court's priorities  
3 and suggestions I think back in January.

4 We're still working through that and I think that  
5 will tie in to our schedule update in the agenda item.

6 In terms of volume, custodial files have been in  
7 process, not quite as robustly as we hoped, but we are hoping  
8 that the pace of play will accelerate, and we'll be into  
9 deeper discovery process in the relatively near term.

10 THE COURT: Thank you. Anything from the defense on  
11 that?

12 MS. McNALLY: Good morning, Your Honor. Laura  
13 McNally from Morgan, Lewis on behalf of Philips RS.

14 I think I generally agree with what Mr. Buchanan  
15 stated. However, I'll note that from our perspective, we have  
16 been proceeding very quickly and our efforts have been  
17 extremely robust.

18 We have got a lot of hands on deck in getting all of  
19 this discovery collected, reviewed, produced and out the door.  
20 We have produced almost a million documents to date. That  
21 includes over a hundred thousand custodial emails and other  
22 documents, as well as the documents from a variety of other  
23 systems within Philips.

24 So in our view, we are full throttle and really  
25 pouring a tremendous amount of resources into these discovery

1 efforts, and we'll continue to work collaboratively with the  
2 plaintiffs and bringing in Special Master Katz to help us work  
3 through some of the -- some stickier issues when we confront  
4 them.

5 THE COURT: Thank you. Anything else?

6 MR. BUCHANAN: No, Your Honor, I don't think we have  
7 to go tit-for-tat on where we stand on that. I think, for the  
8 most part, we are working hard to move the litigation as  
9 quickly as we can and, hopefully, we'll have further progress  
10 to report next month.

11 THE COURT: Okay. So the update on the case  
12 management schedule.

13 MR. LAVELLE: Good morning, Your Honor. John Lavelle  
14 from Morgan, Lewis on behalf of the Philips RS.

15 Your Honor, when we appeared in front of you a few  
16 weeks ago, I believe we reported that we were not at the  
17 finish line, but we could see it from where we are. We have  
18 gotten closer to the finish line, but we haven't quite gotten  
19 there yet. I think we are very close.

20 We have had additional discussions, including  
21 facilitated by Special Master Carole Katz. Mr. Buchanan and I  
22 met again in person yesterday in our Philadelphia office, and  
23 we have exchanged additional drafts and, again, I think we are  
24 very close.

25 So while we're disappointed that we don't have a

1 final agreement to present to Your Honor today, I'm hopeful  
2 that we will have one very, very soon.

3 THE COURT: Okay. Are there any matters that are at  
4 issue that I could help you in resolving?

5 MR. LAVELLE: Your Honor, I think at this point we're  
6 still talking, and I'd rather not get ahead of our discussions  
7 here.

8 If Mr. Buchanan has a different view, we can get into  
9 those details, but I would suggest we just continue the  
10 discussions directly between the parties.

11 MR. BUCHANAN: I think in fairness, Your Honor, I  
12 think we are sharpening at least where we agree and potential  
13 disagreements.

14 In fairness to the process and to defense counsel and  
15 Your Honor, I'd rather not pre-argue points. If we're unable  
16 to reach agreement, I guess I would propose that we make a  
17 submission.

18 THE COURT: Make sure you talk with the Special  
19 Master who is up-to-date on and maybe a little more intimately  
20 knowledgeable about some of the matters.

21 So maybe she'll be able to bridge the gaps that you  
22 may have, and if you can't do that, then, yes, file something  
23 with the Court with the differences and I'll address it at the  
24 next conference. Okay?

25 MR. BUCHANAN: That's fine, Your Honor. There's

1 definitely some inside game discovery points that we'd  
2 probably benefit from further discussion with the parties and  
3 Special Master Katz. So thank you.

4 THE COURT: Thank you. Okay. Status of the short  
5 form complaints and the Rule 41 motion.

6 I did receive and review the submission that came in  
7 this morning, and it looks like there are just four  
8 individuals who have not responded to the motion, and that  
9 would be Mr. Todd Brady, Lavelle Brown, Brian Crandall and  
10 Henley Wilder. Those are the four that are remaining, and I  
11 intend to send out by tomorrow a rule to show cause why the  
12 motion should not be granted, and it will be sent to those  
13 four individuals. I believe one of them is a pro se  
14 plaintiff. So I'm just not certain he understands what is  
15 required of him. Hopefully liaison counsel can coordinate  
16 with him so he is aware of the consequences of not showing  
17 cause.

18 Does anybody wish to be heard on that?

19 MS. WEST FEINSTEIN: Thank you, Your Honor. This is  
20 Wendy West Feinstein with Morgan, Lewis on behalf of the  
21 moving defendants.

22 We have been working very closely with liaison  
23 counsel on these issues, and I'll let them speak to their  
24 communication with the various plaintiffs, but it's my  
25 understanding that they have been in contact with the four or

1 have attempted to make contact with the four that remain  
2 outstanding.

3 We appreciate the Court's, you know, careful  
4 consideration of this. From the defendant's standpoint, we  
5 would like a short timeframe for that show-cause order, if  
6 possible, because this has been outstanding for some time, and  
7 we appreciate the plaintiff's efforts, but we would like some  
8 closure on this sooner than later with respect to any  
9 plaintiffs who do not wish to kind of proceed with their  
10 complaints.

11 THE COURT: Because we do have the one pro se  
12 individual, I am going to give three weeks for this. So we'll  
13 know by the time of our next conference what the status is of  
14 these four, and if they fail to respond, then the Court will  
15 grant the motion with respect to any of the four that did not  
16 show cause. Okay?

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

18 THE COURT: Okay. So we'll wrap this up by the next  
19 call -- by the next conference.

20 Anything else on that matter?

21 MS. CHAMBERS REICHARD: No, Your Honor. The  
22 plaintiffs leadership counsel has been in contact with those  
23 four individuals, and it is my understanding that the pro se  
24 litigant is aware and is in the process of working with the  
25 Clerk of Courts to verify and handle that matter accordingly.



1 THE COURT: Next is the update on the census  
2 registry.

3 MR. LAVELLE: Your Honor, John Lavelle from Morgan  
4 Lewis for Philips RS.

5 So as of this morning, the number of census registry  
6 claimants who have submitted census registry forms is 34,396  
7 individuals. That's 34,396.

8 I did want to address an issue that came up during  
9 last month's report. Mr. Buchanan reported to Your Honor a  
10 higher number. I think it was 56,000 people.

11 We double-checked, and it turns out that in MDL  
12 Centrality, which is the portal that we have all agreed upon,  
13 there is information that is visible to plaintiff's counsel  
14 that is not visible to defense counsel.

15 So we only -- on the defense side only see the census  
16 registry people who have actually completed a census registry  
17 form, and that's the number that I gave you, the 34,396.

18 The plaintiffs apparently also are able to see  
19 individuals who have started the process, but have not  
20 completed the process; who started registering, for example,  
21 but not yet completed the form or may have only provided  
22 partial information.

23 So as I understand it, that 56,000 number represents  
24 everybody who started the process whether or not they finished  
25 one. We don't see that. I don't have any way to confirm or

1 check that.

2 We have actually asked MDL Centrality whether we on  
3 the defense side can be given access to that information.

4 I understand that there may be some concerns on the  
5 plaintiff's side with giving defendants access to that because  
6 these may be people who don't actually want to complete the  
7 census registry process.

8 So that's an issue that we're going to have to try to  
9 work out with plaintiff's counsel and with MDL Centrality. We  
10 just wanted to make sure Your Honor was aware that we were  
11 accurately reporting to Your Honor the information that we  
12 know of and have been able to confirm.

13 MR. BUCHANAN: Your Honor, Dave Buchanan again for  
14 plaintiffs.

15 With the discrepancy at the last conference, we put a  
16 few folks on our side into sorting out exactly what's going on  
17 with respect to the discrepancy between the two and reached  
18 out to plaintiff's counsel.

19 The issues fall into a few buckets. Sometimes  
20 they're just census registries in process. People have yet to  
21 upload them, and that they intend to do so.

22 Sometimes it's that there's a bulk upload that's been  
23 initiated, but not yet posted in the individual plaintiff's  
24 file. That's a timing issue.

25 We understand that for some of those 20,000, there

1 are bulk uploads in the process or being processed by MDL  
2 Centrality, by BrownGreer, and then separately, there are  
3 those that may not be completing that process for one reason  
4 or another.

5 So there are good reasons why it's visible on the  
6 plaintiff's side and not the defense side. These may be cases  
7 under investigation, if you will. It can be a sandbox where  
8 people can be staging their cases for upload and processing  
9 them, but that's not something that plaintiffs leadership even  
10 has true visibility to it, may reflect discussions with their  
11 clients, et cetera.

12 So that number will be updated over time, and we have  
13 used the opportunity over the last month to try and stimulate,  
14 if you will, some action by people if there was a stall for  
15 some reason in posting cases to the registry.

16 I did want to note parenthetically that there's not a  
17 deadline per se on, you know, when you can register in the  
18 registry. So that number will change over time.

19 There was a deadline where there would be a gap in  
20 tolling, so to speak, under the tolling/registry agreement,  
21 but there is no formal deadline to register a case on MDL  
22 Centrality. So that number will change over time.

23 THE COURT: Okay. Thank you.

24 MR. BUCHANAN: I'm happy to keep Mr. Lavelle updated  
25 as we get more information on the reconciliation that we have

1 undertaken. Candidly, we initiated it a few weeks ago, but  
2 don't have the final responses from folks. So I'll get with  
3 defense counsel in the next week or two once we sharpen up  
4 what we understand to be the case.

5 THE COURT: Okay. Thank you.

6 For the leadership development committee update, who  
7 would like to speak?

8 MS. ANDERSON: Good afternoon, Your Honor. Kristina  
9 Anderson for the plaintiffs.

10 I am happy to report that all of the members of  
11 plaintiffs leadership development committee are as busy as  
12 they want to be. They have great relationships with their  
13 mentors.

14 I specifically have been working on document review  
15 and assisting with the briefing to get all of these motions to  
16 dismiss responded to, and it's going really well, and I think  
17 we have got a good process by which we get work in and we're  
18 all enjoying our experience so far.

19 THE COURT: Thank you. It looks like the pace of the  
20 work will be ongoing, particularly on the discovery side.

21 From the defense, is there anyone -- I believe is it  
22 Mr. Wilt, you had already addressed the Court with respect to  
23 the SoClean situation.

24 Anyone else on your side want to also address the  
25 Philips case?

1 MR. WILT: Not that I know of, Your Honor.

2 THE COURT: Okay. Well, is there anything else from  
3 any of the counsel on the Philips case?

4 MR. LAVELLE: Your Honor, John Lavelle again from  
5 Morgan, Lewis.

6 We were apprised by Your Honor's law clerk yesterday  
7 of a fax that was sent to Your Honor by an individual named  
8 Steven Hoffman expressing concern about his inability to  
9 connect with anyone in the Philips Respironics customer  
10 service department on a replacement device that he received.

11 Since we received that fax, one of our team here at  
12 Morgan, Lewis has been in touch with Mr. Hoffman, and we have  
13 arranged for a call at Mr. Hoffman's requested time on Friday  
14 afternoon with a customer service person. So we believe that  
15 that issue has been resolved.

16 THE COURT: You know, the Court should not be  
17 receiving these communications. So I did pass them on to the  
18 parties when I received that because it was something I  
19 thought both sides should be aware of, but I do not respond to  
20 emails that come into the Court randomly, just so you are  
21 aware of this. The Court responds to matters that are filed  
22 on the docket.

23 And I don't know whether that gentleman is  
24 represented by counsel or not, but if he is in one of the  
25 class actions in this matter, he really should be working

1 through liaison counsel or class action counsel if he's not  
2 individually represented.

3 MR. LAVELLE: Yes, Your Honor.

4 THE COURT: And maybe somebody from the plaintiff's  
5 side can also reach out to him, make him aware of the proper  
6 channels to go through. Okay?

7 Anything else to come before the Court? Thank you  
8 all and I'll be seeing you next month.

9 (Counsel said thank you.)

10 (The hearing concluded.)

11 C E R T I F I C A T E

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

15 \s\ Veronica R. Trettel  
16 VERONICA R. TRETTEL, RMR, CRR  
17 Official Court Reporter

3/17/2023  
Date of Certification