

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

<b>IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LITIGATION</b>	)	
	)	
	)	Master Docket: Misc. No. 21-1230
	)	
	)	
This Document Relates to: All Actions	)	MDL No. 3014
	)	
	)	
	)	

**ORDER APPOINTING DISCOVERY SPECIAL MASTER  
FOR NON-DISCOVERY MOTIONS**

In light of the numerous substantive motions pending before the court and expected to be filed in this multidistrict litigation (“MDL”), and the court’s intention to timely and efficiently resolve this MDL, the court determined that an individual serving as Special Master would be appointed to prepare Reports and Recommendations concerning the substantive motions filed in this MDL. The court determined that the Special Master should have substantial experience in presiding over and resolving substantive issues to facilitate the just, speedy and inexpensive determination of motions in this case.

1. The court hereby appoints the **Honorable Thomas I. Vanaskie** as Special Master (“Special Master”) in this matter for the purposes outlined in this Order. The duties of the Special Master with respect to all non-discovery motions, including dispositive motions, referred to the Special Master by the court, shall include the preparation of Report and Recommendations with respect to those motions. The preparation of the Report and Recommendations may include the Special Master holding hearings on the referred motions and the preparation of charts and other documents that aid the court in resolving the referred motion. The court, in its discretion, may refer any non-discovery motion to the Special Master.<sup>1</sup>

2. The court previously received the Special Master’s declaration confirming that he is aware of no grounds for disqualification under 28 U.S.C. § 455.

3. Pursuant to Rule 53(b)(2), the court hereby directs the Special Master to proceed with all reasonable diligence to perform the duties set forth herein, as well as any additional

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<sup>1</sup> The court appointed a special master for general discovery and e-discovery. (ECF No. 540.)

duties that the court in its discretion may impose from time to time as necessary by further orders.

4. The duties and powers of the Special Master are limited to those specifically set forth herein. The Special Master shall not have the power to issue any binding orders or impose any sanctions. The Special Master shall comply with the requirements of Rule 53(d), if applicable, respecting the entry of any order.

5. The Special Master shall hold status conferences to provide a forum for the parties to discuss anticipated motions and any foreseeable issues arising in this case with respect to the filing of non-discovery motions, as well as to discuss such other matters with respect to the resolution of the referred non-discovery motions as scheduled by the Special Master. The Special Master may schedule as many or as few status conferences as he sees fit and may require the parties to attend any status conference in person or via videoconferencing. The status conferences need not be on the record but will be recorded at the request of any party, with the expense of transcription to be borne equally by the parties requesting transcription.

6. The Special Master may hold other meetings or hearings as he deems appropriate. All adjudicative hearings in front of the Special Master shall be recorded by a court reporter as if the hearing was being held before the court. At the Special Master's discretion, hearings may be held in Judge Conti's courtroom, Courtroom 5A of the Joseph F. Weis, Jr. United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219 in Pittsburgh, Pennsylvania. Judge Conti will attend such hearings, if possible, to expedite the de novo review process.

7. The Special Master may correspond with counsel for the parties jointly through conference calls and written correspondence, including, but not limited to, emails and letter, and may, at any time, request additional information or documents from the parties relating to the duties described herein, including, without limitation, (i) briefs, letters, or position statements clarifying or providing additional information about the respective positions, and (ii) documents that are not provided *in camera*, such as documents referenced in documents provided *in camera* or documents necessary to provide context to documents provided *in camera*.

8. Unless authorized by the court or by express written consent of all of the parties, the Special Master shall not have *ex parte* communications with either party or their respective counsel.

9. The Special Master may, at any time, communicate *ex parte* with the court for any purpose relating to the duties described herein. In particular, if the Special Master identifies any matters that pose particular or unique problems, the court shall be consulted. The court, in its discretion, may also communicate *ex parte* with the Special Master for any purpose relating to the Special Master's duties described herein.

10. The Special Master shall maintain detailed billing records of the time spent on these matters, with descriptions of the activities and matters worked on, which shall be submitted to the parties on a monthly basis for review and payment.

11. Pursuant to Rule 53(b)(2)(C), the Special Master shall maintain orderly files consisting of all documents submitted to him by the parties and any of his written orders,

findings, and/or recommendations. The Special Master shall report to the court as directed by the court. The Special Master shall file any written orders, findings, and/or recommendations with the court via the court's Electronic Case Filing ("ECF") system. Such filing shall fulfill the Special Master's duty to serve his order(s) on the parties pursuant to Rule 53(e).

12. The following persons are designated as the primary contacts for the Special Master:

**a) For Plaintiffs:**

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**b) For Defendant Philips RS North America LLC:**

**John P. Lavelle, Jr.**

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**c) For Defendant Koninklijke Philips N.V., Philips Holding USA, Inc.,  
and Philips North America LLC:**

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**d) For Polymer Technologies Inc. and Polymer Molded Products, LLC:**

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Except for approved *ex parte* communications, all parties shall be copied on any party's communications with or submissions to the Special Master.

13. Within five (5) business days of this Order, the parties shall provide the Special Master dates and times they are available to review the status of motions and shall furnish the Special Master with copies of all filings, briefs, discovery materials, and all documents requested by the Special Master.

14. Within ten (10) business days of this Order, the Special Master shall hold a conference call with counsel for the parties to discuss the terms of this Order and the process for handling the duties imposed under this Order.

15. The Special Master shall proceed with all reasonable diligence to resolve any motions referred to him by the court. The Special Master shall, within his authority under this Order and Federal Rule of Civil Procedure 53, prepare and file on the docket a written Report and Recommendation with respect to each motion referred to him by the court, no later than forty-five (45) days after the completion of briefing and any hearing held thereon.

16. Any party may file with the court, within fourteen (14) days of the filing of a Report and Recommendation, an objection to the Report and Recommendation, setting forth the basis for such objection. Any party opposing such objection shall file a response thereto within fourteen (14) days of the filing of the objection. The failure to file a timely objection shall constitute a waiver of any objection. The party filing the objection pursuant to this paragraph shall submit with such objection any record necessary for the court to review the Special Master's Report and Recommendation, including, if necessary, any transcript of proceedings before the Special Master and any documents submitted by the parties in connection with the proceedings.

17. The Special Master's findings of fact and conclusions of law, procedural rulings or recommendations will be reviewed de novo.

18. The Special Master may have access to trade secrets, proprietary information, and other confidential information in this action, including but not limited to, information that may be subject to the Stipulated Protective Order, and any amendments thereto, entered by the court in this MDL. The Special Master shall be bound by the terms of the Stipulated Protective Order. Any disputes under Section V of the Confidentiality Protective Order with respect to confidentiality designation are to be presented to the Special Master for General Discovery and E-Discovery, Carole Katz, Esq., for determination via R&R.

19. The Special Master shall have the authority to take all appropriate measures to perform the assigned duties fairly and efficiently, including the hiring of law clerks and staff to assist him.

20. The Special Master shall be paid his standard hourly rate and reimbursed for reasonable out-of-pocket expenses in connection with the discharge of his duties. Unless the Special Master already submitted a proposed compensation schedule to the parties, including fee and/or rate information, any retainer, and expense reimbursement guidelines upon which the parties agree, the Special Master within seven (7) days of this Order shall submit to the parties a proposed compensation schedule, which shall include fee and/or rate information, any retainer, and expense reimbursement guidelines. In the event of any disagreement among the parties as to the appropriateness of either compensation schedule, each party shall submit a letter to the court setting forth the respective party's position on the proposed compensation schedule, and the court shall issue an order setting forth the compensation schedule.

21. The Special Master shall submit to the parties on a monthly basis an itemized statement of all fees and costs incurred in connection with this Order during the previous one-month period, beginning on the first day and ending on the last day of such month ("Monthly Invoice"). Each Monthly Invoice shall detail the work performed, the hours spent, and the costs incurred during the corresponding one-month period. Any non-routine expenses, including expenses associated with outside consultants proposed to be engaged or engaged by the Special Master, must be approved in advance by the parties. If a party objects to any proposed nonroutine expense or to any fee or other charge on a Monthly Invoice, the party shall provide notice of the objection to all other parties, and the parties and the Special Master shall work in good faith to resolve the objection. If the parties and the Special Master cannot resolve an issue, any party then may submit the dispute to the court. As the Monthly Invoice may reveal confidential communications between the Special Master and the parties, the court shall maintain any Monthly Invoice under seal when filed in connection with a dispute under this paragraph.

22. The parties shall be responsible for paying to the Special Master each Monthly Invoice within sixty (60) days of receipt of such Invoice in whatever manner is agreed upon by the parties and the Special Master. Generally speaking, plaintiffs will pay 50% of the invoice, and defendants will pay 50% of the invoice; provided, however, that this structure is based on the current composition of the parties and may be subject to change in the event parties are added or removed from this case. To the extent that a dispute does not involve all parties, the parties shall meet and confer and apportion the costs among the parties involved in the dispute. If no resolution of those payment issues can be reached, then the dispute will be referred to the court. The Monthly Invoice shall set forth in reasonable detail the tasks performed by the Special Master and the hours spent performing the tasks, as well as the expenses incurred. For disputes

between parties and third parties, the Special Master's fees and expenses are to be divided proportionally among the parties to the case involved in the discovery dispute. To the extent that a discovery dispute involves a third party, the Special Master will determine how fees and expenses will be allocated. The costs associated with the services of the Special Master shall not be considered taxable under 28 U.S.C. § 1920(4).

23. The court retains sole authority to issue rulings on all matters submitted to it, unless otherwise agreed to by the parties.

24. This Order shall apply to all cases that are currently part of the above-captioned MDL, and those cases that are filed in or transferred to the Western District of Pennsylvania in the future and become part of the MDL. This Order may be amended from time to time if the court finds it to be necessary and appropriate.

**SO ORDERED** this 18<sup>th</sup> day of January 2023.

**/s/ JOY FLOWERS CONTI**

Joy Flowers Conti

Senior United States District Judge