

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

**In Re: PHILIPS RECALLED CPAP, BI-
LEVEL PAP, AND MECHANICAL
VENTILATOR PRODUCTS LITIGATION**

Master Docket: Misc. No. 21-1230

MDL No. 3014

This Document Relates to: *All Actions*

PRETRIAL ORDER #29 re: STIPULATED DEPOSITION PROTOCOL

Pursuant to Federal Rules of Civil Procedure 30 and 45, and the Local Rules of this Court, Plaintiffs and Defendants (each a “Party” and collectively, the “Parties”) jointly stipulate to the following protocol for conducting depositions in all cases currently pending in MDL No. 3014 and to all related cases that have been or will be transferred or removed to, or directly filed in, this Court and assigned hereto (collectively, the “Philips MDL Action”).

I. GENERAL PROVISIONS

A. **Scope.** This Deposition Protocol shall apply to all depositions in the Philips MDL Action, including witnesses who are current or former employees of Defendants, designees pursuant to Fed. R. Civ. P. 30(b)(6), Named Class Plaintiffs, and all generally applicable nonparty or third-party witnesses other than witnesses who are relevant only to the claims of a particular plaintiff, *i.e.*, case-specific witnesses. This Deposition Protocol shall also apply, as described and further set forth herein, to coordinated depositions originally noticed for deposition in the SoClean MDL Action (*In re: SoClean, Inc. Marketing, Sales Practices and Products Liability Litigation*, MDL No. 3021) properly cross-noticed by Plaintiffs or by Defendants herein.

B. For avoidance of doubt, this Order, including the limitations in Section II, does not apply to case-specific depositions of witnesses related to the personal injury claims of a particular plaintiff, including the deposition of the plaintiff, his or her representatives, family members, personal acquaintances, healthcare providers, sales representatives of the defendants, and all other case-specific fact witnesses. The Parties agree that the number and timing of case-specific witness

depositions for personal injury actions shall be addressed in subsequent orders related to case-specific discovery.

C. **Cooperation.** The Parties and their counsel acknowledge their duty to work together cooperatively in both scheduling and conducting depositions and agree to also work cooperatively with the parties to the SoClean MDL Action on overlapping witnesses.

D. **Disputes.** Disputes arising prior to and/or during the depositions that cannot be resolved by agreement shall be presented to Special Master Katz. If a dispute arises during a deposition and the Special Master is not available during the deposition, the deposition shall continue with full reservation of rights by all Parties for a ruling at the earliest possible time. Nothing in this Deposition Protocol shall preclude any Party from seeking relief with the Special Master or the Court subsequent to the deposition, including through the filing of an appropriate motion.

II. LIMITATIONS ON NUMBER OF DEPOSITIONS

A. Absent agreement of the Parties or Order of the Court on a showing of particularized need, the Parties agree to the following limits on depositions:

1. The deposition limits do not include depositions of experts.

2. The deposition limits do not include non-party fact witnesses, including non-party Rule 30(b)(6) witnesses. For purposes of this Order, (a) former employees of Defendants and non-party affiliates of the Philips Defendants¹ are considered party fact witnesses, not non-party fact witnesses, and (b) Rule 30(b)(6) depositions of non-party affiliates of the Philips Defendants are considered party Rule 30(b)(6) witnesses, not non-party Rule 30(b)(6) witnesses. Only those non-party affiliates of Philips Defendants that have been specifically identified in advance of the filing of this protocol are included in this paragraph.

3. Unless otherwise agreed by the Parties or directed by the Special Master or ordered by the Court, Defendants collectively may take up to seven (7) hours of examination time on the record of each Named Class Plaintiff that is deposed, exclusive of any responsive subsequent

¹ “Philips Defendants” as used herein means Koninklijke Philips N.V., Philips North America LLC, Philips RS North America LLC, Philips Holding USA Inc., and Philips RS North America Holding Corporation.

examination time conducted by counsel for the witness or counsel for other parties, and any further examination conducted by Defendants responsive to such examinations.

4. This section does not limit any Party's right to object to or seek a protective order with respect to any particular deposition noticed in this case.

5. Plaintiffs collectively may take 60 depositions of fact witnesses currently or formerly employed by Defendants, and 70 hours of deposition testimony pursuant to Fed. R. Civ. P. 30(b)(6). The foregoing limits apply to Plaintiff-noticed or Plaintiff cross-noticed depositions, and the hour limitations apply to Plaintiffs' on-the-record examination time with a 30(b)(6) witness noticed or cross-noticed by Plaintiffs. For the avoidance of doubt, additional examination conducted subsequent to, and within the scope of, any examinations conducted by counsel for the witness or counsel for other parties, shall not be counted toward the hour limits set forth in this paragraph.

6. Not including the Named Class Plaintiffs, Defendants collectively may notice 5 fact depositions of party witnesses.

B. The Parties shall reasonably cooperate to coordinate overlapping witnesses between the Philips MDL Action and the SoClean MDL Action to minimize the potential that witnesses are deposed more than once across the two MDL Actions. In the event that a deposition of a current or former employee of Defendants is originally noticed for deposition in the SoClean MDL Action, and Plaintiffs in the Philips MDL Action cross-notice that deposition, that deposition shall count toward the limits set forth above.

III. LIMITATIONS ON LENGTH OF DEPOSITIONS

Unless otherwise agreed to by the Parties, or ordered by the Court, the following provisions shall govern:

A. Duration.

1. **Named Class Plaintiffs.** The duration of a deposition of a Named Class Plaintiff shall be up to seven (7) hours of examination on the record, exclusive of any responsive subsequent examination time conducted by counsel for the witness or counsel for other parties, and

any further examination conducted by the noticing party responsive to such examinations, unless otherwise agreed by the Parties or directed by the Special Master or ordered by the Court.

2. **Defendants' current or former employees.** Unless otherwise agreed by the Parties or directed by the Special Master or ordered by the Court, Plaintiffs shall be presumptively entitled to seven (7) hours of examination time on the record, exclusive of any responsive subsequent examination time conducted by counsel for the witness or counsel for other parties, and any further examination conducted by the noticing party responsive to such examinations, for all depositions of a current or former employee of Defendants noticed or cross-noticed by Plaintiffs.

3. If there are multiple noticing parties, the Parties agree to confer regarding scheduling as set forth elsewhere in this Order.

4. **Designees pursuant to Fed. R. Civ. P. 30(b)(6).** The parties shall meet and confer on the appropriate length considering the topics noticed and the witnesses designated.

5. **Nonparty or third-party witnesses.** The duration of a deposition of a nonparty or third-party witness shall be seven (7) hours of examination on the record, unless otherwise agreed by the Parties or directed by the Special Master or ordered by the Court. If there are multiple noticing parties, the Parties agree to confer regarding the duration and sequence of examination as set forth elsewhere in this Order.

B. **Conferral Regarding Duration.** To the extent that any Party anticipates that its examination will extend beyond a single day, counsel for the relevant Parties and counsel for the witness shall meet and confer in an effort to reach agreement on the length of the deposition. Failing agreement, the relevant Party may seek relief from the Special Master or the Court. All of these time limits are subject to modification in the case of translated depositions, as provided below.

C. **Multi-Action Depositions.** If any Party cross-notices a deposition noticed in the SoClean MDL Action, or if any witness is noticed for deposition in both MDL Actions, the Parties shall confer and attempt to reasonably coordinate the scheduling and taking of such witness across both MDLs to the extent practicable and with due regard to the discovery status, discovery needs, and scheduling priorities in each MDL. The Party noticing or cross noticing the deposition in the

Philips MDL Action shall be presumptively entitled to seven (7) hours of examination time, together with such further examination consistent with the provisions of Section III.A. To the extent that any Party has an objection to proceeding on a cross noticed basis, they shall promptly raise the issue. To that end, all relevant parties will promptly meet and confer regarding the cross-notice, time allocation and scheduling. Any unresolved disputes regarding time and scheduling will be presented to and resolved by the Special Master or by Order of the Court.

D. Where reasonably practicable, depositions shall continue on consecutive days until completed, or until each noticing Party has exhausted its time under the Federal Rules of Civil Procedure, unless otherwise agreed by the Parties.

E. **Fact Witnesses Designated as Corporate Representatives.** The Parties may agree to consecutive depositions of an individual who is both a fact witness and a Rule 30(b)(6) designee. One deposition will be taken in his or her individual capacity (as a fact witness) and a separate deposition will be taken in his or her capacity as a designee.

IV. SCHEDULING, NOTICING, AND LOGISTICS

A. **Content of Notice.** Each deposition notice and subpoena shall comply with Fed. R. Civ. P. 30(b) and include the name, address, and telephone number of an attorney point of contact designated by the Party noticing the deposition (the “Deposition Liaison Counsel”) as well as the date, time, and place of the deposition, including whether the deposition will proceed in person, remotely, or hybrid. The Deposition Liaison Counsel will be responsible for all logistical issues and communications related to the noticed deposition. For depositions pursuant to Fed. R. Civ. P. 30(b)(6), the noticing party shall make a good faith effort to include all related topics in a single notice.

B. **Service of Counsel Copies.** Deposition notices and subpoenas shall be served by email and by MDL Centrality on Plaintiffs’ Co-Lead Counsel and Defendants’ counsel with a copy to the Lead Counsel for the Parties in the SoClean MDL.

C. **Date and Location.**

1. The Parties will reasonably cooperate regarding the date and location for depositions and agree upon deposition locations for fact witnesses. To the extent reasonably possible, depositions of witnesses located in the United States will take place in the deponent's home district, or upon agreement in another district convenient to the deponent.

2. The Federal Rules of Civil Procedure, the Local Rules of this Court, and all Orders of this Court will apply to the conduct of any deposition occurring in a foreign location. Depositions of witnesses who are located outside of the United States shall occur, by agreement, in a location at which depositions may occur consistent with the Federal Rules of Civil Procedure and in a location that is convenient to the deponent. To the extent that the laws of the foreign location prohibit the application of the Federal Rules of Civil Procedure, the Local Rules of this Court, or any Order of this Court or substantially interfere with the ability to take a deposition in that location, the Parties shall meet and confer, and hold the deposition in an alternate, convenient location which allows for their application.

3. **Remote Depositions.** Upon agreement of the Parties and counsel for the witness, a deposition may be held remotely using a secure Zoom connection or a similar audio/video conferencing technology platform. In the event that a deposition proceeds remotely ("Videoconference Deposition"), the following shall also apply:

a. If the witnesses' counsel or any Parties' counsel is physically located in the room or facility where the witness is located, then the noticing counsel has the right to be physically located in the room or facility where the witness is located.

b. Any Videoconference Deposition taken pursuant to this Court's Orders must comply with the requirements in Fed. R. Civ. P. 30(b)(5). This includes the requirements that, (a) "[u]nless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28," and (2) that officer must administer the oath or affirmation to the deponent. A Videoconference Deposition taken pursuant to this Order will be deemed to have been taken before an appropriate officer despite the court reporter not being in the same physical location as the witness—as long as the court reporter attends the deposition by the

same remote means as the other participants and is able to hear and communicate with other attendees. To the extent permitted by the law of the state in which the witness is located, the witness may be sworn in remotely with the same effect as an oath administered in person.

c. The deposition notice for any Videoconference Deposition pursuant to Fed. R. Civ. P. 30 must list the location(s) (city and state) from where the witness will attend, which information the witnesses' counsel must provide upon request of the noticing party.

d. All deposition notices must identify the company that will host and record the remote deposition (the "Remote Deposition Vendor") and contain a general description of how those attending may access the remote connection being utilized (e.g., GoToMeeting, Zoom, WebEx). The party noticing the deposition must provide the witness and all other attendees with detailed instructions regarding how to participate in the Videoconference Deposition at least three business days before the deposition.

e. To host a remote deposition, a Remote Deposition Vendor must have implemented adequate security measures to ensure the confidentiality of the remote deposition (e.g., video and audio feeds, exhibits). These security measures include using tools such as a "virtual waiting room" that allows the court reporter to admit only individuals authorized to attend the deposition. At least 24 hours before the Videoconference Deposition is scheduled to start, counsel, the witness, and the Remote Deposition Vendor must conduct a test of the system, equipment, and internet connection that will be used to conduct the remote deposition (the "Remote Deposition Technology"). If a witness noticed for a Videoconference Deposition does not have a webcam-equipped tablet, desktop or laptop computer that can be used during the deposition, counsel who noticed the deposition must provide the deponent with an agreed-upon tablet containing the audio, webcam, and Wi-Fi connectivity needed to participate in the deposition.

f. The party noticing the deposition shall arrange for technical support for the duration of the deposition to be available to any participant in the event of technological issues.

g. At the time of the deposition, the witness must advise the court reporter of his or her physical location. The witness should endeavor to participate in the deposition from a quiet, well-lit, indoor location, while seated in front of a neutral background, and facing the camera being used to record the witness. To avoid any potential disruptions of a Videoconference Deposition, those attending must enable “do not disturb” settings for applications not in use, including but not limited to, Skype, instant messaging, and/or e-mail notifications. The Court recognizes that the microphones for certain attendees (such as the witness, the court reporter, the attorney taking the deposition, and the attorney defending the deposition) must remain on when the deposition is on the record. Other attendees should mute microphones when not speaking. The Remote Deposition Technology must be able to show in real-time a list of all persons attending the Videoconference Deposition. The attorneys participating in the examination may be visible to all other participants during the deposition.

h. Counsel and/or the interpreter shall be on camera and ensure no audio disruption if there are multiple remote attendees in a single location.

i. During live testimony on the record, no one, including attorneys, shall communicate in any manner with the deponent in any way that cannot be heard or seen by all Participants to the deposition. This includes silent signals and private messages of any kind, including, but not limited to, instant messages or text messages conveyed through phones, smart watches, or similar devices. Such prohibition shall not affect the right of the deponent and her/his lawyer(s) to communicate in private off the record to the extent otherwise permitted under Federal Rule of Civil Procedure 30(c)(1).

j. During the deposition, full and complete copies of deposition exhibits must be provided to the witness and counsel who are attending the deposition. Deposition exhibits may be made available in physical (hardcopy) form or via the Remote Deposition Technology, file sharing software, or other electronic means. A witness may be required to use a keyboard, mouse, or other similar means to open and/or advance the pages of an exhibit. Access to a full copy of the deposition exhibit electronically via iPad, tablet, laptop, or other devices, will be deemed to equate

to hardcopy access. The fact that a witness was provided with an electronic copy of an exhibit will be an insufficient basis, by itself, to object to the admissibility of that exhibit at trial. During the deposition, the Remote Deposition Technology must allow: (1) the witness to privately access any part of the exhibit; (2) counsel to display and annotate exhibits for the witness; (3) add and remove exhibits; and (4) change the order in which the exhibits are presented to the witness.

k. Any pauses, lags, and/or disruptions in technology, including but not limited to interruptions in Internet connection, will not result in waiver of objections by any party. If any pauses, lags, and/or disruptions are persistent or prolonged, the Parties should: (1) extend the remote deposition by an amount of time equal to the duration of the pause, lag, and/or disruption, provided that the additional time is less than an hour; or (2) consider rescheduling the remote deposition for a later date, if the additional time required is an hour or more.

D. **Adequacy of Notice.** Absent agreement of the Parties, or Order of the Court or directive of the Special Master, fact witness depositions (other than Rule 30(b)(6) depositions) shall be noticed at least thirty (30) days in advance of the noticed deposition date. The parties anticipate that more time may be required to adequately prepare Rule 30(b)(6) corporate representatives, and therefore the parties agree to cooperate regarding the scheduling of Rule 30(b)(6) depositions once the requested topics for the deposition have been provided.

E. **Custodial Files.** With respect to agreed document custodians, the Parties intend for the witnesses custodial files to be produced sufficiently in advance of the noticed deposition date to permit adequate time to review such documents before the deposition. If Plaintiffs notify Defendants of an intent to depose a witness for whom his or her custodial file has not yet been produced, the Parties will meet and confer over timing of the production of the custodial file in relation to the noticed deposition date.

F. **Change of Date or Time.** Once a deposition has been mutually scheduled, it shall not be taken off calendar, postponed, or rescheduled, or relocated less than one week in advance of the date it is scheduled to occur, except upon agreement of the counsel responsible for scheduling as set forth above, or by other relief obtained from the Special Master or Court.

V. INTERPRETERS AND DOCUMENT TRANSLATIONS

A. Any witness for whom English is not their native language may request an interpreter for the deposition to fully interpret or to assist. Any Party requiring an interpreter shall bear the expense of providing its own interpreter.

B. The Party requesting an interpreter shall, at least fifteen (15) days in advance of the deposition, (i) notify the Parties that he or she will require an interpreter, (ii) identify the interpreter(s) qualifications, and (iii) provide an estimate, as to whether the interpreter will be required for (a) all of the deposition; (b) half of the deposition or more; (c) approximately one-quarter to one-half of the deposition; or (d) less than one-quarter of the deposition.

C. A Party, other than the Party requesting an interpreter, may retain a “check interpreter” to independently confirm the accuracy of the lead interpreter. If any Party retains a check interpreter for a deposition, and that check interpreter objects to any portion of an interpretation or translation, the objection must be stated for the record. The interpreter of record may, but is not required to, respond. The Parties shall use reasonable efforts at the deposition to resolve any objection to any interpretation or translation.

D. If an interpreter is requested during a deposition, the Parties agree to reasonably extend the duration of such deposition to account for the time expended by interpretation. The additional time permitted to allow for interpretation will not count against the taking-party’s deposition limits.

E. Document translations shall bear the same confidentiality designation pursuant to the Stipulated Protective Order as the original. A translation should share the same deposition exhibit numbers as the underlying document and should be followed with the letter “T” signifying it as a translated version of the document. Translated documents shall also bear the same Bates numbers as follows: Because languages occupy different amounts of space to say the same thing, it may be impractical for the translation to be paginated in the exact same way as the original. Parties should ensure the Bates numbers are located in the same location within the text as would be found in the underlying document (*e.g.*, the Bates number may physically fall in the middle of a page, rather than

at the bottom). Unless otherwise agreed, document translations shall use the same Bates number as the original, followed by .01, .02, etc. for any additional pages required for the translated text. Any translated document shall not contain independent notes that are not within the text of the original document (*e.g.*, notes from the translator or counsel). Emphasis in the translation (*e.g.*, bold, italics, underlined) must appear in the same form as in the original document. However, translator notations such as “original text is in English,” “original text is handwritten,” or “untranslatable symbol” may be included in brackets.

F. All translations, if certified, shall be presumed to be accurate. Objections to the accuracy of any certified document translations introduced as exhibits or used at a deposition shall be asserted within 90 days after the final transcript of the deposition is provided to the deponent for correction. Objections shall state the specific inaccuracies of the certified translation and offer an alternative translation of the portions of the document objected to. If the Parties are unable to resolve the dispute, it may be submitted to the Special Master. If no objection is made to a certified translation within the 90-day limit, it shall be deemed accurate, and no objection to admissibility on grounds of inaccuracy of the translation will be permitted. The Parties reserve all their rights and arguments, including beyond the 90-day limit for certified translations, for uncertified translations.

VI. CONDUCT OF DEPOSITIONS

A. **Attendance.** Unless otherwise agreed to by the Parties, depositions may be attended only by the Parties, the Parties’ counsel, the deponent, the deponent’s attorney, in-house counsel for the Parties, court reporters, videographers, interpreters, translators, assistants invited by counsel to assist, and any person (including experts) who is assisting in the litigation and whose presence is reasonably required by the aforementioned counsel of record. Unnecessary attendance in person or by telephone by non-examining counsel is discouraged and may not be compensated in any common benefit fee application to the Court without good cause shown or if the attendance was approved by Plaintiffs’ Lead Counsel. Any such request must be submitted to Plaintiffs’ Lead Counsel, or their designee, by email at least (five) 5 days prior to the deposition.

B. **Notice of Attendees at a Deposition.** For there to be adequate deposition space and to notify building security, counsel intending to attend a deposition noticed in the MDL should advise all Parties, including counsel for the noticing party, of the number of people anticipated to attend in person at least five (5) business days prior to the deposition.

C. **Number of Examiners.** All Parties may designate two examiners of each deponent. In the event of two examiners, the first and second examiners must coordinate in advance of the deposition to avoid duplicative areas of inquiry, repetition, and inefficiencies. The first examiner must conclude his or her examination before the second examiner may begin his or her examination.

D. **Sequence of Examinations Generally.** The Parties agree to be reasonably guided by the principle that the party that first issued the deposition notice or subpoena will proceed first, followed by the cross-noticing party or subsequent noticing party. If the Parties cannot reach agreement regarding the sequence of examination, they must submit their dispute to the Special Master or the Court, who will determine the sequence of examination.

VII. CORRECTING AND SIGNING DEPOSITION

A. Upon completion of the transcription of a deposition, the original transcript shall be sent to counsel for the witness by the court reporter. Counsel shall promptly forward it to the witness for review, correction, and signature under penalty of perjury. Within thirty (30) days of receiving the transcript from the court reporter, the witness's counsel shall then forward the original transcript plus corrections to the court reporter, who will promptly notify all counsel of its receipt and any changes to testimony made by the witness. If no corrections are made during this time, the transcript will be deemed to be accurate.

B. If the witness is not represented by counsel, the original transcript will be sent to the witness by the court reporter. After review, correction, and signature within thirty (30) days from the date of receipt, or within sixty (60) days if a translator or translated documents were used at deposition, the witness shall return the original transcript to the court reporter, who will notify all counsel of its receipt and any changes to testimony made by the witness. If no corrections are made during this time, the transcript will be deemed to be accurate.

C. The court reporter will provide the original transcript to the first examining attorney. If, for any reason, the original is lost, misplaced, not returned, not signed, or unavailable, a certified copy may be used in its place for all purposes.

VIII. PRESERVATION OF RIGHTS AND DEFENSES

Any Party's agreement to and appearance on this Stipulation does not constitute a waiver of any defense or right not specifically addressed.

IT IS SO ORDERED.

Dated: December 8, 2022

/s/ JOY FLOWERS CONTI

Joy Flowers Conti
Senior United States District Judge

SO STIPULATED AND AGREED.

DATED: December 7, 2022

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