

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

2 Thursday Morning, August 17, 2023

3 (In Open Court)

4 THE COURT: Everyone set? Good.

5 This is the status conference in In Re: Philips
6 Recalled CPAP, Bi-Level PAP and Mechanical Ventilator Products
7 Litigation at MDL 3014, at Master Docket No. 21-1230.

8 Counsel have already filed a notice of their
9 appearance. If anyone else intends to have their appearance
10 noted for the record, they should come forward and sign the
11 tablet to indicate their presence.

12 Okay. So onto the agenda that has been provided.
13 The first item is the discovery update with the status of the
14 proceedings with the special master.

15 MS. ITRI: Good morning, Your Honor. Shauna Itri
16 from Seeger Weiss on behalf of the plaintiffs.

17 For custodial productions, we have gotten a little
18 bit over half of the production in mid June. We're expecting
19 about a handful of more custodians August 25th.

20 Plaintiffs are working through analyzing and
21 reviewing those documents, and we are also working through
22 some issues that are addressing some possible deficiencies.
23 We are working with Special Master Katz. We have identified
24 additional custodians. We still have a lot of work to do, and
25 we also have issued subpoenas that we are also following up on

1 obtaining more documents.

2 We have been scheduling depositions. We had one
3 yesterday. So we have had two depositions of current
4 employees so far. We have depositions reaching out through
5 the end of October; I believe about eight or so.

6 We are still working through some processes of
7 scheduling these with Special Master Katz, but it has been
8 going pretty smoothly so far.

9 We are also following up with some non-custodian
10 productions. We are still in some negotiations and looking at
11 some additional complaint data and possibly others.

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

14 Just to put a little bit more parameters around some
15 of the documents that have been going out would just give you
16 a sense of the size and scope of this discovery:

17 As of today, we have produced 2,086,819 documents,
18 totaling 5,204,769 pages. So it is truly a massive amount of
19 discovery that we have been working around the clock to get
20 out the door.

21 There's I think close to 80 custodians at this point.
22 Each person has 15 -- can have up to 15-plus years of data.
23 So it's a tremendous amount of documents that we have been
24 working through and getting out the door. We have been
25 largely making the deadlines that we, you know, agreed to work

1 with plaintiffs on.

2 That said, there's plenty of issues that we're
3 continuing to, you know, try to tie up and tie off and working
4 cooperatively with plaintiffs to address those and with
5 Special Master Katz as well.

6 But I just kind of wanted to give you a size of the
7 breadth of the amount of discovery that we have managed to get
8 out the door, and it's been based on the hard work of a lot of
9 people and a lot of those young associates that we like to see
10 up here. So I just wanted to give some flavor as to that, and
11 I'll let my colleague Wendy West Feinstein speak to
12 depositions.

13 MS. WEST FEINSTEIN: Thanks, Laura.

14 Good morning, Your Honor. Wendy West Feinstein also
15 on behalf of Philips RS Respironics.

16 Just to reiterate what Ms. Itri said, deposition
17 scheduling is moving ahead. I also wanted to comment on the
18 discovery served by the defendants on the plaintiffs in the
19 Philips MDL.

20 We have been working with Special Master Katz on
21 discovery requests that have been issued to the named
22 plaintiffs in the medical monitoring track. Those discussions
23 have been proceeding, and we're dealing with disputes through
24 that process. We have been working collaboratively with the
25 plaintiffs on that.

1 In terms of the personal injury plaintiffs, we have
2 been working with the PFS process, the Plaintiff Fact Sheet
3 process and have identified some -- kind of things that we'd
4 like to suggest tweaking in the PTO that impact the deficiency
5 process with the PFS.

6 THE COURT: When you say you are reviewing this, are
7 you getting reports that you can synthesize and then see how
8 many certain kinds of diseases and ages, and you can sort of
9 map out matters that would be pertinent to the litigation?

10 MS. WEST FEINSTEIN: Yes, Your Honor, that's a part
11 of it, and what I was getting at, and not in a very articulate
12 way, was when we identify what we believe are deficiencies in
13 the responses in the Plaintiff Fact Sheet so that we can do
14 the analysis that Your Honor just identified, we have a
15 process in the PTO currently, and we've been working with the
16 plaintiffs on how to kind of streamline that so that if we
17 reach a point where we're at impasse or have a dispute, how we
18 then elevate that to the special master.

19 So the parties have discussed a process. We're
20 working on putting pen to paper on that process so that we can
21 submit it to Your Honor to consider through an amendment to
22 the PFS PTO, and then from that, with the PFS data, you're
23 absolutely right, Your Honor, we are able to kind of evaluate
24 the types of claims, the number of claimants that have various
25 injuries alleged, what devices they used, what cleaning

1 processes they used, all of those things.

2 THE COURT: Now, just how would that work? We have
3 already had a number of -- a lot of plaintiffs complete these
4 forms.

5 MS. WEST FEINSTEIN: Yes.

6 THE COURT: So they have -- if you revise the form,
7 do they have to submit another form?

8 MS. WEST FEINSTEIN: They submit a response to the
9 deficiency letter. How the process is set forth right now, we
10 notify them, and it's a fairly automated process -- and one of
11 my colleagues, if I misstate anything, will correct me, but
12 it's a process that's been working relatively smoothly, but at
13 times we anticipate having to discuss things with the special
14 master, and that process was not necessarily laid out clearly
15 in the PTO that governs PFSs, but it is -- it works very
16 smoothly and we have been --

17 THE COURT: So you don't need to change the form
18 then?

19 MS. WEST FEINSTEIN: We don't need to change the
20 form. It's more the process of bringing -- how we bring the
21 claims that are disputed -- the deficiencies that are disputed
22 to the special master, and there are some slight tweaks that
23 we are going to suggest in the PTO.

24 THE COURT: Okay.

25 MR. BUCHANAN: It's still good morning, Your Honor.

1 Dave Buchanan for the plaintiffs.

2 There's a group on our side that helped to coordinate
3 resolution of the deficiencies at a leadership level and
4 communicate with plaintiff's counsel. I think they're working
5 with the defense counsel to try and see what can be done in
6 this regard. But as long as it doesn't require, if you will,
7 new forms and new authorizations, all of that, we are
8 certainly amenable to discussing it. So I think the parties
9 are working in that direction.

10 THE COURT: Thank you.

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

12 MS. POLLOCK-AVERY: Good morning, Your Honor.

13 Elizabeth Pollock-Avery for the plaintiffs.

14 Just a quick update on plaintiffs' production so far.
15 We have produced over 65,000 pages for both the PI plaintiffs
16 and the medical monitoring and the other class plaintiffs, and
17 that is approximately just under 400,000 pages of documents,
18 Your Honor.

19 MS. WEST FEINSTEIN: Thank you.

20 THE COURT: Thank you all.

21 So the next item is the objections to the Special
22 Master's R&R at ECF 2108 and 2134.

23 At this stage, you were present during the status
24 conference for the SoClean MDL, and I'm just going to check to
25 see that if everybody is available on the -- I think it was

1 the 13th that we were going to move everything to and if that
2 can be argued at that same time.

3 MS. IVERSON: That works for plaintiffs, Your Honor.
4 Kelly Iverson for plaintiffs.

5 MS. WEST FEINSTEIN: Wendy West Feinstein for
6 defendants. That can work for defendants, Your Honor.

7 THE COURT: Then coordinate with everyone concerning
8 the timeframe, and then an agenda, I think it should be fairly
9 simple and just make sure everyone is comfortable with it, and
10 if that could be submitted to the Court no later than
11 September the 11th, that would be helpful to the Court. And
12 anything else on that?

13 Okay. The update on the personal jurisdiction. The
14 Court did receive a joint status report which I have reviewed.

15 MR. MONAHAN: Your Honor, I think we have a happy
16 report to give. I mean, it was only I think just last week we
17 were here and we had a whole brouhaha about discovery and
18 scheduling and whatnot, but, again, with thanks to Special
19 Master Katz, who has been working around the clock, I believe
20 we have largely resolved all of those items, as I think the
21 status reports reflects.

22 MR. SCHAFFER: Steve Schwartz for the plaintiffs.
23 And I agree with Mr. Monahan. We are in a good place. We
24 heard Your Honor loud and clear. So we'll go forward and do
25 the things that we said we were going to do.

1 THE COURT: So we need to schedule this hearing, too,
2 then.

3 MR. SCHWARTZ: Yes.

4 THE COURT: Because this will be longer given there
5 may be some actual witnesses or if there are documents, you
6 may want to have a more robust argument on affidavits or the
7 evidence that you are going to be submitting.

8 MR. MONAHAN: Yes, Your Honor.

9 MR. SCHWARTZ: Correct, Your Honor. Steve Schwartz
10 again. So we have conferred with what works on our side,
11 plaintiffs and defendants and with their witnesses, and
12 October 3 or October 4 works for us. We did talk with Your
13 Honor's clerk.

14 THE COURT: Those are not good for me. I am double
15 booked those days already, and yesterday I had to set a trial
16 and it's set for that week, and I also have other commitments
17 on those days. So that will not -- those dates would not
18 work. I could do the 10th of October.

19 MR. SCHWARTZ: Your Honor, we don't have our expert
20 available on the 10th.

21 THE COURT: When are your experts available?

22 MR. SCHWARTZ: So our experts --

23 THE COURT: The 6th?

24 MR. SCHWARTZ: The 6th would work for plaintiffs, but
25 I don't think it works for defendants.

1 MR. MONAHAN: It does not. One item -- I mean, we
2 certainly have a universe of witnesses, Your Honor. I'm not
3 sure that plaintiffs will be calling both of their experts or
4 any of their experts and whatnot, and that may end up freeing
5 up some dates.

6 MR. SCHWARTZ: Both of our experts are not available
7 on the 10th.

8 THE COURT: Is that the same thing for the 9th? The
9 11th?

10 MR. MONAHAN: I think we could make the 9th work, not
11 the 11th, Your Honor.

12 MR. SCHWARTZ: I think the 9th --

13 MS. IVERSON: Is that a federal holiday?

14 MR. SCHWARTZ: That's Columbus Day.

15 THE COURT: Well, we won't have anybody to let you
16 into the courthouse.

17 MR. MONAHAN: Right.

18 (Pause noted)

19 THE COURT: How about the 17th?

20 MR. SCHWARTZ: Your Honor, my son is getting married
21 the 14th and we -- that's the problem with --

22 THE COURT: Um-hum.

23 MR. MONAHAN: I might suggest the week of the 23rd,
24 Your Honor, if that works. I know one of two plaintiffs'
25 financial experts who submitted a joint expert report --

1 THE COURT: That's the Judge's MDL conference.

2 MR. MONAHAN: That's a bad week.

3 THE COURT: That's a bad week for me.

4 MR. MONAHAN: I'm trying, Your Honor.

5 MR. SCHWARTZ: I know the 31st works for the
6 plaintiff, but I think there's a problem with the defendant.

7 MR. MONAHAN: Our only fact witness is not available
8 that day.

9 THE COURT: Okay. Let's go back and look at -- did
10 you say anything about the 6th of October?

11 MR. SCHWARTZ: Plaintiffs were able to do the 6th,
12 but I thought --

13 MR. MONAHAN: That's a bad date. I forget why. Let
14 me figure out why, Your Honor, but --

15 THE COURT: How about the 5th? I have criminal
16 things I can move to the 6th if I needed to.

17 MR. SCHWARTZ: Plaintiffs could do the 5th.

18 MR. MONAHAN: I'm supposed to be going for an
19 argument to San Diego. I don't know what the flights are from
20 Pittsburgh to San Diego.

21 THE COURT: I don't think there's a direct flight, to
22 be honest.

23 MR. MONAHAN: San Diego for work. So I don't think I
24 can do either the 5th or the 6th, Your Honor.

25 THE COURT: If the trial settles -- I'm hoping that

1 there will be a settlement, but I don't know. It's a civil
2 case. Would the 2nd work?

3 MR. MONAHAN: We can make it work.

4 MR. SCHWARTZ: I believe we can make it work.

5 THE COURT: Actually, this was an announcement that I
6 was going to make a little bit later, but my one law clerk, my
7 long-term law clerk has just accepted a wonderful new position
8 in the Court. She'll be leaving, and I have a new clerk that
9 would probably be starting October the 10th, and I'd really
10 like to have that clerk present to assist because I only have
11 two clerks, and it would be helpful to that have person
12 available that day. So when is the wedding?

13 MR. SCHWARTZ: The wedding is the 14th.

14 THE COURT: The 14th. Okay. So the following week
15 you're not available?

16 MR. SCHWARTZ: So the following week, if we go out to
17 like the 18th, the 18th is a date that works for us. Let me
18 see.

19 THE COURT: Unfortunately, we have a new judge being
20 sworn in that day.

21 MR. SCHWARTZ: So the 17th is a Tuesday. We can make
22 the 17th work if that's the only day we have and I'll just --
23 we can make -- is that okay given the other?

24 MR. MONAHAN: We'll make it work, Judge. I think,
25 unfortunately, a key member of our team who has been

1 intimately involved in this is not going to be able to make
2 it, one of the members of our leadership development
3 committee, but we'll make it work given the complications on
4 finding a date.

5 MR. SCHWARTZ: Right. The 17th?

6 THE COURT: We have the 17th or the 19th, which is
7 our regularly-scheduled conference.

8 MR. SCHWARTZ: No, we don't have our expert on the
9 19th.

10 THE COURT: If we could do the 17th, that would work.

11 MR. MONAHAN: All right.

12 THE COURT: Okay.

13 MR. SCHWARTZ: I will make sure I -- I'll enjoy the
14 wedding, but I'll make sure I'm in good shape to be here on
15 the 17th.

16 THE COURT: What time would you like to start that
17 day? How long do you think it's going to take?

18 MR. SCHWARTZ: Your Honor, there are some witnesses
19 on both sides and we are taking some depositions, too. I
20 prefer to start earlier depending on Your Honor's preferences.

21 THE COURT: 10:00?

22 MR. MONAHAN: I think we should start earlier, Your
23 Honor. We are all very interested to get plaintiffs' renewed
24 brief on August 22nd next week to see what theories they are
25 now doing. So I think it's hard to predict, but I think if we

1 start early, that is the wise thing to do.

2 THE COURT: We'll start at 10 a.m.

3 MR. SCHWARTZ: Ten sounds great.

4 THE COURT: And if you -- and if it's going to be
5 more time-consuming, we will start at 9:30, but right now, I
6 think maybe 10:00. I'll stay until five if we need to.

7 MR. SCHWARTZ: Sure. And we can bring in lunch again
8 to expedite lunch.

9 MR. MONAHAN: And even dinner if we need to.

10 (Everyone chuckles)

11 THE COURT: In my heyday, we used to have night
12 court. I used to have trial all day and then start with
13 another matter and go into the evening, but I try to avoid
14 that if possible now. So, but if necessary, we can have night
15 court.

16 MR. MONAHAN: Thank you.

17 MR. SCHWARTZ: Thank you, Your Honor.

18 THE COURT: Okay. Update on the census registry.

19 MR. LAVELLE: Good morning, Your Honor. John Lavelle
20 for Morgan, Lewis on behalf of Philips RS.

21 As of yesterday, August 16th, we had 52,940 potential
22 claimants registered in the census registry.

23 THE COURT: Okay.

24 MS. REICHARD: Good morning, Your Honor. Joyce
25 Reichard on behalf of plaintiffs.

1 I actually checked the numbers this morning and they
2 were up to 53,000, which is an increase of 2,658 from last
3 month's status conference.

4 THE COURT: Okay. Thank you.

5 MS. REICHARD: Thank you.

6 MR. LAVELLE: Yes, Your Honor, one point I would add
7 is that the increase since last month appeared to be largely
8 attributable to one particular law firm adding several
9 thousand people to the census registry, and that happens from
10 time to time.

11 THE COURT: Okay. Thank you.

12 The next item is the case management timing in
13 October.

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

15 I apologize for another calendar check request, but
16 we have a conflict on my team's side. Thursday, October 19th
17 is the current scheduled date for the case management
18 conference. Unfortunately, the Morgan, Lewis law firm
19 partners' meeting --

20 THE COURT: Well, that's not unfortunate for you --

21 MR. LAVELLE: Well, hopefully it will be a wonderful
22 time. None of the counsel who are assembled here today have
23 any say over when that is scheduled. It is a command
24 appearance.

25 THE COURT: Can you be here on the 17th?

1 MR. LAVELLE: We can be here on the 17th, Your Honor.

2 THE COURT: So we will move it to the 17th, okay?

3 MR. LAVELLE: Yes, Your Honor.

4 THE COURT: We'll squeeze you in. Hopefully, there
5 will be just some -- try to make very brief updates. So we
6 can take a break maybe -- if we start at 10, we can take a
7 break, and we'll go -- we'll think about maybe -- well, maybe
8 this will be better this way. We do the SoClean first at 10,
9 and then we'll follow-up with the Philips. So if anyone is
10 not staying for the evidentiary hearing, they'll be free
11 to go.

12 MR. LAVELLE: Thank you, Your Honor.

13 THE COURT: I think that's the best way to do that.
14 Okay? Is there anything else that needs to be brought to the
15 Court's attention?

16 Okay. We're on the LDC, leadership development. We
17 haven't heard from our young lawyers.

18 MS. VAKY: Thank you, Your Honor. Katherine Vaky
19 from Morgan Lewis on behalf of Philips Respironics.

20 It's a privilege to address the Court today,
21 especially in such a sophisticated case and, of course, it's
22 an honor to work alongside excellent lawyers among all the
23 parties in the case and even better when it's in one's
24 hometown.

25 While my projects are becoming a little more short

1 term these days, I was fortunate enough to argue portions of
2 the motion in limine argument last month in front of Your
3 Honor and Judge Vanaskie.

4 More recently, I have been working with a cross-
5 office team of lawyers focusing on non-party discovery
6 requests and played a key role in drafting some of those
7 responses.

8 I have also been working with defense counsel from
9 other firms on additional defense of discovery and ensuring
10 cross-matter efficiency in the fact development and
11 formulating those case scenes, including taking leadership
12 roll and managing some of my junior colleagues in working
13 through those work streams.

14 Lastly, I have been delving into some regulatory
15 issues which has allowed me a terrific opportunity to work
16 with lead counsel, some of which are here today.

17 This MDL has been a wonderful opportunity for me to
18 not only work with a number of attorneys in my own firm that I
19 have not had the privilege to work with, but also with
20 attorneys from the other firms.

21 I am especially grateful for the courtroom experience
22 both today and last month, again, in my hometown federal
23 court, and I look forward to further opportunities probably in
24 the spring.

25 THE COURT: Thank you.

1 MS. VAKY: Thank you.

2 MS. DiLIBERTO: Good morning, Your Honor. Ashley
3 DiLiberto from Messa & Associates on behalf of the leadership
4 development committee for the plaintiffs today.

5 It's great to see you again and it's great to be back
6 in Pittsburgh. I'm happy to report that over the past month,
7 the LDC has continued to have very meaningful engagements in
8 this litigation and together we have able to contribute to a
9 variety of different assignments, including document review,
10 device inspection and oral argument just to name a few.

11 Personally, I have continued to closely collaborate
12 with science and expert co-chairs Laura Miller and Jason
13 Rathod on some really meaningful projects related to the
14 science and medicine in this case.

15 And lastly, I'll just share that while I have had the
16 opportunity to be involved in a number of different MDLs over
17 the past couple of years of my career, the opportunity that
18 you have given me in this litigation to be part of leadership
19 has been really unique and it's given me a really valuable
20 perspective on the mass tort landscape that I would not
21 otherwise have had.

22 And in addition to the substantive work that this
23 role has allowed me to have, I have also been able to meet and
24 network and build friendships and relationships with a number
25 of other leaders in this space, and I do believe that those

1 relationships will last and extend beyond this litigation.

2 So I do truly, truly appreciate the opportunity, and
3 I look forward to being before you again soon. Thank you.

4 THE COURT: Thank you.

5 One last thing. I know that Mr. Rihn is not here
6 today. I excused him. Is Mr. Wolff here? Someone needs to
7 tell him he needs to be coming. He's the counsel, the liaison
8 counsel for the class action.

9 I do from time to time get letters from individuals
10 who are questioning things or want to know what they need to
11 do to, say, the most recent one, to be included in a class
12 action, and I'm going to be forwarding those letters to the
13 liaison counsel, and the liaison counsel will need to take
14 appropriate action to communicate with those individuals.
15 It's not something that the Court can do because I can't give
16 them legal advice. So that has to come really from the
17 plaintiffs.

18 So someone needs to let Mr. Rihn know, and if
19 somebody else could let Mr. Wolff know, and the most recent
20 one had to do with the class action. So that should be coming
21 forward to his attention.

22 MS. DUGGAN: Good morning, Your Honor. Sandra Duggan
23 for the plaintiffs. We regularly coordinate with Mr. Rihn on
24 matters that you've just discussed, and whenever they are
25 brought to our attention, we immediately engage with either

1 the individual, the individual's counsel. If it's pro se, we
2 try to guide them in the right direction.

3 THE COURT: Okay. Thank you.

4 MS. WATKINS: Your Honor, my appearance isn't
5 entered, but I'm with Robert Pierce & Associates as well.
6 Mr. Rihn asked me to be here just in case the Court had any
7 questions.

8 THE COURT: Thank you for coming.

9 MS. WATKINS: Of course. I'm Sara Watkins, by the
10 way. So we would be happy to speak with anyone that reaches
11 out to the Court.

12 THE COURT: Okay. Well, I will be forwarding the
13 communications that I received both to Mr. Rihn and Mr. Wolff
14 because sometimes it's on an individual case in terms of a
15 personal injury issue, and other times it would be like the
16 most recent one, on the class action issue.

17 MS. WATKINS: Okay. We'll be on the lookout for
18 those. Thank you.

19 THE COURT: And sometimes they think they want to be
20 in the class action, but maybe they really have a personal
21 injury. So that's why I forward them to both counsel, both
22 liaison counsel.

23 Okay. Is there anything else that needs to come
24 before the Court?

25 MR. MONAHAN: No, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SCHWARTZ: No, Your Honor.

THE COURT: Okay. Well, everybody is going to be very busy. Myself included. So we'll see you all in September. Thank you. We are adjourned.

(Whereupon, the hearing concluded.)

C E R T I F I C A T E

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

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

08/19/2023
Date of Certification