

COURSE TITLE: MASS TORT LITIGATION:

DATE: Thursday, June 15th at 3:15 PM at Seven Springs

CLE Credits: One (1) substantive credit.

COURSE DESCRIPTION:

Asbestos, Thalidomide, cigarettes, breast implants. For decades, thousands of people have been harmed and many others have died due to defective products, failed medical devices, dangerous drugs, and toxins. Mass tort claims have provided a remedy for many individuals; however, until recently, members of the military were excluded. Despite multi-million-dollar verdicts, large recoveries are not always realized by plaintiffs.

- Learn how mass tort claims are organized, managed, and resolved.
- Hear from the attorney co-leading the Philips CPAP Products Liability MDL pending in the Western District of Pennsylvania.
- Learn about new laws that opened the door to military recovery at Fort Lejeune.
- Learn about plaintiff recovery issues including Medicaid liens, benefits, and settlement planning.
- Discover how artificial intelligence played a role in winning the first Roundup case (Johnson v. Monsanto).

INTRODUCTION *Elisa Cavalier/Moderator*

1. Introduction of Speakers

RECENT LAWS & NOTABLE CASES

1. PHILIPS: CPAP, BIPAP, VENTILATOR RECALL -*Kelly Iverson – Lynch Carpenter*
 - History
 - Centralization and Case Structure
 - Case Status
 - See Appendix for Transfer & Pretrial Orders

2. CAMP LEJEUNE - *Kelly Iverson/Elisa Cavalier*
 - History
 - Federal Tort Claims Act (1946) and the Feres Doctrine (1950)
 - Honoring our PACT Act including the Camp Lejeune Justice Act
 - Attempt to cap attorneys' fees.

SHOW ME THE MONEY: LEGAL FEES & PLAINTIFF RECOVERY

Nora Gieg Chatha - Tucker-Arensberg, and Kelly Iverson

- Calculation of Lawyers' Fees and Common Benefit Assessments
- Medicare/Medicaid Liens (Gallardo v. Marsteller)
- Settlement planning for plaintiffs
- Financial and estate planning for mass tort recoveries.

USING AI IN MASS TORT LITIGATION *Art Crivella – Crivella Technology*

- Role of artificial intelligence in the Roundup/Monsanto litigation
- Discovery/Due Diligence/Analytics
- Deep Learning and Predictive Technologies
- Benefits & Limitations

Q&A and CONCLUSION *Elisa Cavalier/Moderator*

I. FEDERAL CAUSE OF ACTION UNDER THE CAMP LEJEUNE JUSTICE ACT.

On August 10, 2022, President Biden signed into law, the Promise to Address Comprehensive Toxics (“PACT”) Act. HONORING OUR PACT ACT OF 2022, PL 117-168, August 10, 2022, 136 Stat 1759. The Honoring Our Pact Act includes the Camp Lejeune Justice Act of 2022 (the “Act”). *Id.* at 804(a). The Act creates a federal cause of action against the United States for those stationed at Camp Lejeune for at least 30 days between August 1, 1953, and December 31, 1987 for harm caused by exposure to the water at Camp Lejeune. *Id.* at 804(b). Camp Lejeune is a Marine Corps base in Jacksonville, North Carolina, where the military says as many as one million individuals may have been exposed to tainted water. The drinking water was contaminated with chemicals, including trichloroethylene, perchloroethylene, benzene, vinyl chloride, and other compounds. *See Camp Lejeune Water Contamination Health Issues*, U.S. Veterans Admin., <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/camp-lejeune-water-contamination/>.

Those bringing a claim for damages bear the burden of showing that the contaminated water more likely than not caused or contributed to their harm. Act at 804(c). Based on scientific research, the Agency for Toxic Substances and Disease Registry has identified the following conditions as sufficiently linked to one or more of the chemicals found in the water at Camp Lejeune: (1) kidney cancer; (2) non-Hodgkin lymphoma; (3) multiple myeloma; (4) leukemias; (5) liver cancer; (6) bladder cancer; (7) Parkinson’s disease; (8) end stage renal disease; (9) systemic sclerosis/scleroderma; and (10) cardiac defects. *See Clear as Mud: What Diseases are Covered By the Camp Lejeune Justice Act?*, Ward & Smith P.A. (Sep. 19, 2022), <https://www.wardandsmith.com/articles/clear-as-mud-what-diseases-are-covered-by-the-camp-lejeune-justice-act>.

The cause of action created under the Act is the only cause of action an individual may bring for harm caused as a result of contaminated drinking water at Camp Lejeune—there is no option to bring a cause of action against the United States pursuant to any other law. Act at 804(e). Further all, actions for damages under the Act must be brought in the United States District Court for the Eastern District of North Carolina. *Id.* at 804(d). The United States cannot assert sovereign immunity as a defense to a claim brought under the Act. *Id.* at 804(f).

However, before filing a lawsuit under the Act, an individual must first comply with 28 U.S.C. § 2675, by filing an administration claim with the Department of the Navy’s Office of the Judge Advocate General of the Navy’s Tort Claims Unit (“TCU”) in Norfolk Virginia. Act. Act at 804(h); *see also Filing Claims Under the Camp Lejeune Just Act of 2022*, https://www.jag.navy.mil/organization/code_15_Camp_Lejeune_Claims.htm. To file a claim with TCU, a completed CLJA claims form must be submitted by mail to the TCU. *Id.* At this time there is no current electronic filing option. *Filing Claims Under the Camp Lejeune Just Act of 2022*, https://www.jag.navy.mil/organization/code_15_Camp_Lejeune_Claims.htm. TCU has provided detailed instructions for completing a CLJA claims form. *Id.* While military personnel records are not required at the filing of the claim, records may be requested a later date for TCU to process the claims. *Id.*

After a claim with JAG is filed, JAG will have six months to either accept or deny the claim. Michelle Llama, *Camp Lejeune Water Contamination JAG Claims Exceed 5,000*, Consumer Notice (Sept. 14, 2022), <https://www.consumernotice.org/news/camp-lejeune-water-contamination-claims/>. Only then can a federal lawsuit be filed in the Eastern District of North Carolina. *Id.* Due to the large amount of claims TCU anticipates receiving, it cannot forecast an

expected processing time. *See Filing Claims Under the Camp Lejeune Just Act of 2022*, https://www.jag.navy.mil/organization/code_15_Camp_Lejeune_Claims.htm.

An individual has the later of two years following the enactment of the Act or 180 days after the date on which their claim is denied by TCU to file a lawsuit. Act at 804(j). Any award of money under the Act must be offset by any disability award payment, or benefit provided by the Secretary of Veterans Affairs, Medicare, or Medicaid that relates to exposure to the water at Camp Lejeune. *Id.* at 804(e). Punitive damages cannot be awarded under the Act. *Id.* at 804(g).

II. SOME RECOMMEND APPLYING FOR CAMP LEJEUNE VETERANS ADMINISTRATION DISABILITY BENEFITS BEFORE FILING A CLAIM UNDER THE CAMP LEJEUNE JUSTICE ACT.

With few legal parameters currently in place, veterans' groups have been urging veterans curious about lawsuits under the Act to first file a claim with the Veterans Administration ("VA"), to see if they are eligible for medical care and benefits. *See Leo Shane III, Don't Expect quick Payouts from Camp Lejeune Toxic Water Lawsuits*, Marine Corps Times (Aug. 18, 2022), <https://www.marinecorpstimes.com/news/pentagon-congress/2022/08/18/dont-expect-quick-payouts-from-camp-lejeune-water-lawsuits/>. Pursuant to 38 C.F.R. 3, veterans, reservists, and national guardsmen who were stationed at Camp Lejeune or Marine Corps Air Station ("MCAS") New River in North Carolina for at least 30 cumulative days between August 1953 and December 1987, and who did not receive a dishonorable discharge when separated from the military may be eligible for VA disability benefits. *See Camp Lejeune Water Contamination Health Issues*, U.S. Veterans Admin., <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/camp-lejeune-water-contamination/>. The disability benefits include healthcare and financial compensation payments. *Id.* To qualify for disability benefits, an individual must have one or more presumptive conditions linked to the contaminated drinking water and Camp Lejeune or MCAS the VA has identified: (1) adult leukemia; (2) aplastic

anemia and other myelodysplastic syndromes; (3) bladder cancer; (4) kidney cancer; (5) liver cancer; (6) multiple myeloma; (7) non-Hodgkin's lymphoma; (8) Parkinson's disease. *Id.*

In order to apply for VA disability benefits, a qualified individual must file a claim with the VA and provide supporting documentation of: (1) military records showing service at Camp Lejeune or MCAS for at least 30 days between August 1953 and December 1987 while on active duty, or in the National Guard or Reserves, and (2) medical records stating the individuals has one or more of the presumptive illnesses. *Id.*

However, it should be noted that it may take months for the disability benefits process to be completed. Shane, *supra*. Further, the VA disability claims process has already proved to be unreliable. Of 57,500 claims filed since 2017 for illnesses related to the contaminated water at Camp Lejeune, the VA mishandled nearly 40% of all claims, denying or delaying benefits for more than 21,000 affected veterans. Patricia Kime, *Veterans Were Denied \$14 Million in Payments Because VA Mishandled Lejeune Water Claims*, Military.com (Aug. 26, 2022), <https://www.military.com/daily-news/2022/08/26/veterans-were-denied-14-million-payments-because-va-mishandled-lejeune-water-claims.html>. Based on the VA's abysmal claims process for Camp Lejeune disability benefits, some veterans have come to believe that the VA's approach is "deny, deny, deny until the die." Catherine Herridge & Jessica Kegou, "*Deny Until They Die*": *Some Veterans Say VA Wrongly Rejects Claims for Illnesses they blame on Camp Lejeune's Contaminated Water*, CBS News (Feb. 16, 2022), <https://www.cbsnews.com/news/va-camp-lejeune-contaminated-water-veterans-disability-claims/>.

III. CLAIMS FILED TO DATE.

According to a recent media inquiry response from the TCU, a total of 8,000 Camp Lejeune claims have been filed since the claims process went live. *See* Barry Simms, *I-Team: Some People Find Difficulty While Filing Claims Over Contaminated Water at Camp Lejeune*, WBALTV (Nov. 10, 2022), <https://www.wbaltv.com/article/i-team-some-people-find-difficulty-while-filing-claims-over-contaminated-water-at-camp-lejeune/41903038#>. Of those 8,000 claims, at least 3,000 have been filed by the Bell Legal Group. *See* Diana Novak Jones, *Camp Lejeune Water Contamination Claims Total About 5,000 so far U.S., Navy Says*, Reuters (Sept. 12, 2022), <https://www.reuters.com/legal/government/camp-lejeune-water-contamination-claims-total-about-5000-so-far-us-navy-says-2022-09-12/>.

Public Benefits Issues

Public Benefits Overview

- Most Common Public Benefits:

- Needs-Based Benefits which impose an income and/or resource limit:

- Medicaid/Supplemental Security Income (SSI)

- Entitlement Benefits, which do not impose an income and/or resource limit:

- Medicare/Social Security Disability

- Other Benefits:

- SSDAC

- Survivor Benefits

- VA Benefits

- Food Stamps

- Section 8 Considerations

Medicare Secondary Payor Act

- Complying with the MSP statute regarding past and future medicals is not necessarily limited to WC claims
- CMS Stalcup Memo – 5/25/11
 - The law requires that the Medicare Trust Funds be protected from payment for future services whether it is a WC or liability case. There is no distinction in the law
 - There is no formal CMS review process in the liability arena as there is for WC. However, CMS does expect the funds to be exhausted on Medicare covered and otherwise reimbursable services related to what was claimed and/or released before Medicare is ever billed
 - Each attorney is going to have to decide, based on the specific facts of each of their cases, whether or not there is funding for future medicals and if so, a need to protect the Trust Funds

When to Consider a Medicare Set Aside?

- The claimant is currently a Medicare beneficiary
- The claimant has applied for SSDI (Social Security Disability Insurance) or is in the process of applying
- The claimant has applied for SSDI and has been denied and anticipates reapplying
- The claimant is over 62.5 years of age and is Medicare Eligible
- The monetary value of the case

Medicaid: The Payer of Last Resort

- State Medicaid Agency Third Party Liability Lien
- *Gallardo v. Marstiller*
- Recent CMS Guidance to State Medicaid Agencies

Identifying & Preserving Public Benefits

- Lump sum distributions to mean-tested public benefit recipients may impact their benefits
- Failure to advise clients to consider could result in malpractice
- How to navigate in the mass-tort space

Common Distribution Options

- **Outright distribution to the client (sudden money)**
 - Either lose means-tested public benefits or spend down
- **Trust**
 - Anything other than a “Special Needs Trust” may result in loss of means-tested public benefits
- **Guardianship**
 - One option for minor/incapacitated person, but also consider a Trust
- **Structured Settlement payable to Client, Trust or Guardian**
 - Paying to anything other than a “Special Needs Trust” may result in loss of means-tested public benefits

Common Trust Options

Special Needs Trust	Settlement Protection Trust	Minor's Master Trust	Adult Master Trust
<ul style="list-style-type: none"> ▪ Client is an adult or minor receiving SSI. ▪ Trust can be created by a parent, grandparent, court or guardian. ▪ All distributions must be for the sole benefit of the disabled beneficiary. ▪ Court involvement in distributions varies from state to state and court to court. Some states require little oversight while others require a budget to be submitted before any distribution is made. ▪ Trust can own real estate, but only one primary residence and property should be no more than 25% of trust corpus 	<ul style="list-style-type: none"> ▪ Client is an adult or child that is not currently receiving SSI. ▪ Distributions must still be for sole benefit of the client, however more flexibility is allowed here than in the SNT, especially when a client is an adult. SNT rules do not allow an adult with children to use trust funds to care for their children, that would be allowed in a SPT. ▪ If client is competent, they may elect to retain discretion over all or a portion of the funds and use our services for investments, bill pay and advice only. ▪ If client is a child the trust will have an age where withdrawal is allowed, we recommend 25 for trusts funding with less than \$300,000 and 30 for all others. 	<ul style="list-style-type: none"> ▪ Client is a minor, under 18 in most states. ▪ Distributions for sole benefit of client. ▪ One check per month for aggregate of all approved requests, cutoff is currently the 4th and checks are sent on the 15th. ▪ One time emergency distribution can be made if the client cannot wait until the next 15th funding. ▪ If client's family receives food stamps, trust can be limited to Health and Education only, to avoid reduction of food stamp benefits. ▪ Right of withdrawal at 25, we can add an option to increase to 30 if needed. ▪ No trust attorney is needed. Trust can be established by court order or signature of parent or guardian on joinder. 	<ul style="list-style-type: none"> ▪ Client is competent adult. ▪ Trust can give us full discretion or limit our role to investments and bill pay only. ▪ No limit on amount or timing of distributions. ▪ If we are giving discretion, distributions should be for direct benefit of the client, small exceptions are allowed. ▪ No trust attorney is needed. Trust is established with client signature on the joinder. ▪ May be terminated at any time by competent beneficiary.

Structured Settlement Considerations

- Provides financial security and diversification
- Tax-free
- Does not have any administrative or management fees
- Eliminates the burden of dealing with a large cash settlement
- Offers unlimited flexibility
- Helps protect the plaintiff
- Capital protection for minors
- Estate protection for heirs
- Backed by highly rated insurance companies

Crivella Ai - Testimonials

"The Miller Firm has been trying mass tort cases with the exceptional backing of Crivella Technologies for the last seven years.

The Crivella System has taken over the mass tort arena in the U.S. by radically improving the accuracy and speed of trial preparations - allowing firms like ours to greatly reduce our cost of preparing and trying complicated cases."



Mike Miller,
Senior Partner, The Miller Firm;
Plaintiffs' Co-Lead Counsel and Co-Chair of the Executive Committee
- RoundUp Products Liability Litigation (MDL 2741)

"Crivella is a legend in the Mass Tort world. Art & his team invented the most powerful Artificial Intelligence tools in use today by attorneys to analyze and utilize data produced by defendants.

The work Crivella did in blasting apart privilege claims of the defendant in the Avandia litigation is universally considered to be the most cutting edge application of Ai tools in the history of Mass Torts."

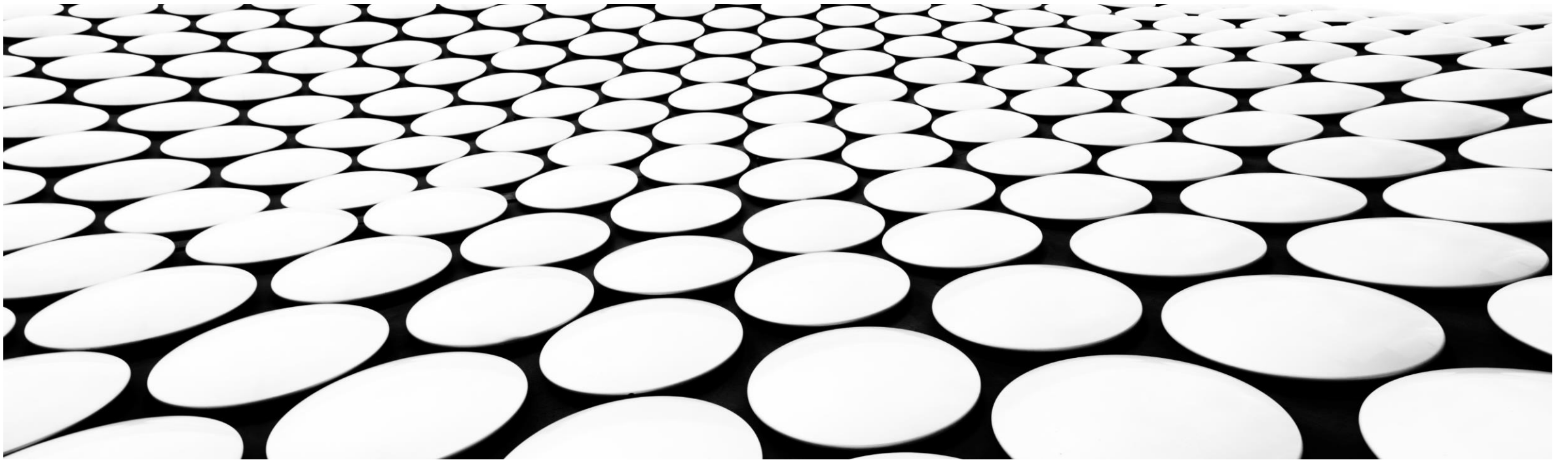


**-Vance R. Andrus, Esquire
Andrus Wagstaff Attorneys at Law**

THE ROUNDUP[®] CASE

Using Ai in Mass Tort Litigation

Arthur Crivella – Crivella.Ai



Roundup[®] Litigation

- Glyphosate, commonly known as Roundup[®], is the most widely used herbicide on the planet.
- Introduced in 1974, Roundup was the “cash cow” for Monsanto (purchased by Bayer in 2018).



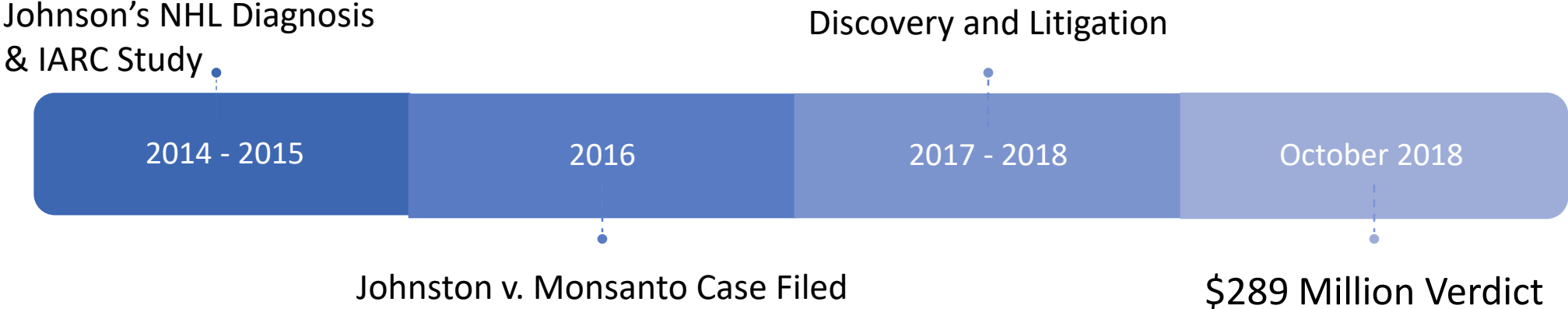
Roundup Case

Using Ai to win mass tort cases

- Dewayne “Lee” Johnson, a school groundskeeper routinely used Roundup, and was diagnosed in 2014 with non-Hodgkin’s lymphoma (NHL) at age 42.
- Johnson v. Monsanto was the first lawsuit to proceed to trial.
- Landmark jury award of \$289M in punitive and compensatory damages; reduced to \$78M and finally \$21M after appeal.
- Case paved the way for historic settlements for thousands (Roundup Products Liability Litigation, MDL No, 2741)

The Roundup® Case

Using Ai to win mass tort cases



Discovery

The Monsanto Papers

1M+ Pages of Monsanto emails, studies & communications disclosing:

- 1997-1999: Studies finding glyphosate has a possible genotoxic effects
- “Ghostwriting” scientific papers asserting the safety of Roundup
- Plans to discredit the World Health Organization/IACR
- Undue influence on EPA
- Scientific numbers flawed/manipulated

Discovery

Solving Problems with Ai

W.H.O.

- Glyphosate is “probably carcinogenic to humans”

EPA

- Glyphosate is not hazardous

NCI/NIH

- “No association was apparent between glyphosate and ...NHL and its subtypes”

Motions Etc.

How Ai was used in Roundup Case

Ai SOFTWARE HELPED WIN INITIAL MOTIONS & DAUBERT¹ HEARINGS

NO CAUSATION – NO CASE

- Admissibility of expert testimony
- To support both general and specific causation
- Expert testimony must be founded upon “scientific knowledge”
- Establishing “standard of evidentiary reliability.”

1. Daubert v. Merrill Dow Pharmaceuticals 509 U.S. 579 (1993)

Capabilities

Using Ai in your practice

Crivelli Ai provides plaintiff's counsel capabilities to completely reimagine case strategy and management.

- Heightened focus on offense and speed
- Linear case management is out
- Understand and utilize complex data produced by defendants.
- Software to reveal patterns in complex material
- Computational models

Capabilities

Using Ai in your practice

- Due diligence / Document automation
- Improve the accuracy and speed of trial preparation
- Create intelligent software that “learns”
- Natural language understanding
- Prediction technology
- Data analytics / statistical decision modeling
- Multimedia data management



THANK YOU

Crivella.Ai

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP,
AND MECHANICAL VENTILATOR PRODUCTS
LIABILITY LITIGATION**

MDL No. 3014

TRANSFER ORDER

Before the Panel:* Plaintiff in the Eastern District of Pennsylvania *Starner* action moves under 28 U.S.C. § 1407 to centralize this litigation in the Eastern District of Pennsylvania or, alternatively, in the Western District of Pennsylvania.¹ This litigation consists of ten actions pending in five districts, as listed on Schedule A. The parties have informed the Panel of 104 related actions pending in 31 districts.²

Plaintiffs in more than fifty actions responded to the motion. All support centralization, but differ as to the proposed transferee district. The suggested transferee districts include: the Northern District of California, the Middle District of Georgia, the Northern District of Georgia, the District of Kansas, the Eastern District of Louisiana, the District of Massachusetts, the Western District of Missouri, the District of Oregon, the Eastern District of Pennsylvania, the Western District of Pennsylvania, the Eastern District of Virginia, and the Southern District of West Virginia. Defendants Philips North America LLC and Philips RS North America LLC (collectively, Philips) likewise support centralization. Defendants suggest either the District of Massachusetts or the Western District of Pennsylvania as the transferee district.

On the basis of the papers filed and the hearing session held,³ we find that the actions listed

* One or more Panel members who could be members of the putative classes in this litigation have renounced their participation in these classes and have participated in this decision.

¹ Movant also does not oppose centralization in the Eastern District of Louisiana or the District of Massachusetts.

² These and any other related actions are potential tag-along actions. *See* Panel Rules 1.1(h), 7.1, and 7.2.

³ In light of the concerns about the spread of the COVID-19 virus (coronavirus), the Panel heard oral argument by videoconference at its hearing session of September 30, 2021. *See* Suppl. Notice of Hearing Session, MDL No. 3014 (J.P.M.L. Sept. 13, 2021), ECF No. 134.

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on Schedule A involve common questions of fact, and that centralization in the Western District of Pennsylvania will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. These actions share factual questions arising from Philips' recall of certain Continuous Positive Airway Pressure (CPAP), Bi-Level Positive Airway Pressure (Bi-Level PAP), and mechanical ventilator devices on June 14, 2021.⁴ The recalled devices allegedly contain polyester-based polyurethane (PE-PUR) sound abatement foam that may degrade into particles or off-gas volatile organic compounds that may then be ingested or inhaled by the user, causing injury. Plaintiffs allege that defendants concealed the problems with the PE-PUR foam before the recall was announced and made misrepresentations regarding the recalled devices in connection with their marketing and sales.

Most of the actions are putative consumer class actions asserting overlapping claims for violations of state consumer protection statutes, breach of warranties, and unjust enrichment. The asserted nationwide and state classes overlap significantly. Approximately thirty actions assert individual personal injury claims. The parties support inclusion of these personal injury actions in the MDL. We concur. All of the Philips actions will raise similar factual questions regarding the recalled devices and the conduct of the recall, and will require common discovery regarding the development and safety of the recalled devices and the potential harm that can be caused by the alleged defect. *See In re Valsartan N-Nitrosodimethylamine (NDMA) Contamination Prods. Liab. Litig.*, 363 F. Supp. 3d 1378, 1381–82 (J.P.M.L. 2019) (centralizing consumer claims for economic damages with personal injury claims). Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings, particularly with respect to class certification motions; and conserve the resources of the parties, their counsel, and the judiciary.

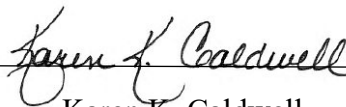
The Western District of Pennsylvania is an appropriate transferee district for this litigation. It appears from the parties' submissions and arguments that the recalled products were primarily manufactured by Philips RS North America LLC (formerly Philips Respironics) in Murrysville, Pennsylvania. Thus, many of witnesses and much of the documentary evidence relevant to this litigation likely will be located within the Western District of Pennsylvania. The district also presents a convenient and accessible venue for this litigation. We assign this MDL to the Honorable Joy Flowers Conti, an experienced transferee judge, who we are confident will steer this litigation on a prudent and expeditious course.

⁴ The recalled devices include: E30 (Emergency Use Authorization); DreamStation ASV; DreamStation ST, AVAPS; SystemOne ASV4; C Series ASV; C Series S/T and AVAPS; OmniLab Advanced Plus; SystemOne (Q Series); DreamStation; DreamStation Go; Dorma 400; Dorma 500; REMStar SE Auto; Trilogy 100 Ventilator; Trilogy 200 Ventilator; Garbin Plus, Aeris, LifeVent Ventilator; A-Series BiPAP Hybrid A30; Philips A-Series BiPAP V30 Auto Ventilator; Philips A-Series BiPAP A40; and Philips A-Series BiPAP A30.

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IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the Western District of Pennsylvania are transferred to the Western District of Pennsylvania and, with the consent of that court, assigned to the Honorable Joy Flowers Conti for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Karen K. Caldwell", is positioned above a horizontal line.

Karen K. Caldwell
Chair

Catherine D. Perry
Matthew F. Kennelly
Roger T. Benitez

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

**IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP,
AND MECHANICAL VENTILATOR PRODUCTS
LIABILITY LITIGATION**

MDL No. 3014

SCHEDULE A

District of Delaware

SHRACK v. KONINKLIJKE PHILIPS N.V., ET AL., C.A. No. 1:21-00989

Middle District of Florida

EMMINO v. PHILIPS NORTH AMERICA LLC, ET AL., C.A. No. 8:21-01609

Middle District of Georgia

HELLER v. KONINKELIJKE PHILIPS N.V. ET AL., C.A. No. 4:21-00111

District of Massachusetts

MANNA v. KONINKLIJKE PHILIPS N.V., ET AL., C.A. No. 1:21-11017
SHELTON v. KONINKLIJKE PHILIPS N.V., ET AL., C.A. No. 1:21-11076
GRIFFIN v. KONINKLIJKE PHILIPS N.V., ET AL., C.A. No. 1:21-11077
OLDIGS v. PHILIPS NORTH AMERICA LLC, ET AL., C.A. No. 1:21-11078
SCHUCKIT v. PHILIPS NORTH AMERICA LLC, ET AL., C.A. No. 1:21-11088
BOUDREAU, ET AL. v. PHILIPS NORTH AMERICA LLC, ET AL.,
C.A. No. 1:21-11095

Eastern District of Pennsylvania

STARNER v. KONINKLIJKE PHILIPS N.V., ET AL., C.A. No. 2:21-02925

WHEREFORE, this case will require the appointment of an array of highly skilled counsel with diverse backgrounds and experience who will provide the plaintiffs with effective counsel to advance this MDL in an efficient and just manner,

NOW, this 15th day of February 2022, this court **HEREBY** issues this order to establish the plaintiffs' leadership structure, appoint plaintiffs' leadership members, clarify and expand upon the plaintiffs' leadership responsibilities as set forth in Pretrial Order #1,² and appoint certain committee and subcommittee members and chairs:

A. Co-Lead Counsel.

1. Appointment. Because this case is expected to be expansive and present complex issues of fact, science, and law, the court, **HEREBY** appoints the following 4 counsel to serve as plaintiffs' co-lead counsel:

Sandra Duggan
Levin Sedran & Berman
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Steven A. Schwartz
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(610) 642-8500
steveschwartz@chimicles.com

2. Responsibilities and Duties. Co-lead counsel will have the duties outlined in Section 10.221 of the Manual for Complex Litigation (Fourth), which include formulating and presenting positions on substantive and procedural issues during the litigation. Co-lead counsel shall prosecute all claims (class, medical monitoring, and personal injury) and coordinate the pretrial proceedings conducted by counsel for the individual plaintiffs and classes. The authority, duties, and responsibilities of co-lead counsel with respect to all claims also

² To the extent there is any discrepancy between Pretrial Order #1 and this order, Pretrial Order #8, the provisions of Pretrial Order #8 control.

include, but shall not be limited to, the following (after consultation with members of the PSC and other counsel as may be appropriate):

- a.** organize themselves and agree upon a plan for conducting the MDL on behalf of all plaintiffs;
- b.** determine and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of the plaintiffs on matters arising during the coordinated pretrial proceedings;
- c.** the filing, if appropriate, of consolidated master complaints and other pleadings;
- d.** brief and argue motions for the plaintiffs and file opposing briefs and argue motions and proceedings initiated by other parties (except as to matters specifically directed to individual plaintiffs and their counsel) or designate the appropriate counsel to carry out these tasks;
- e.** the initiation and conduct of discovery on behalf of the plaintiffs consistent with the requirements of Federal Rule of Civil Procedure 26, including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions, except that the discovery and motions initiated by the defendants directed to or regarding named individual plaintiffs will be handled by the counsel for those individuals;
- f.** delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the plaintiffs is conducted effectively, efficiently and economically;
- g.** enter into stipulations with opposing counsel necessary for the conduct of the MDL;
- h.** convene meetings of the PSC, other committees or subcommittees as necessary for the purpose of proposing joint action and discussing and resolving matters of common concern;

- i.** coordinate common benefit payments into a common benefit shared cost fund in amounts and at times to be set forth in a protocol³ prepared by the Plaintiffs' Time and Expense Subcommittee;
- j.** assess members of the PSC, members of other committees (including the Leadership Development Committee) and members of subcommittees, and other counsel performing authorized common benefit work;
- k.** consult with and employ expert witnesses (in consultation with any relevant subcommittee);
- l.** monitor work performed by the PSC, Settlement Committee, Leadership Development Committee, co-liaison counsel, subcommittees, and those whose work co-lead counsel has specifically authorized;
- m.** perform all tasks necessary to carry out the functions of co-lead counsel and to properly coordinate plaintiffs' pretrial activities;
- n.** form task-specific subcommittees of counsel, as appropriate;
- o.** authorize plaintiffs' counsel to initiate case-specific motions and discovery;
- p.** designate plaintiffs' counsel authorized to attend hearings and depositions;
- q.** along with the Settlement Committee, participate in the settlement negotiations on behalf of plaintiffs and enter into settlement agreements subject to court approval;
- r.** if there is a settlement, participate with the Settlement Committee in proposing a plan of allocation;
- s.** prepare and distribute periodic status reports to the PSC, the court, and the parties; and coordinate and communicate with defendants' counsel with respect to the matters addressed in this paragraph.

³ It is contemplated that the protocol will address the maintenance of time and expense records for work performed, costs incurred, and other disbursements made or any potential common benefit claim, proof of potential common benefit claim, and related matters concerning expenses, disbursements, and receipts, all subject to the approval of the court and to be reviewed by an accountant selected by the Plaintiffs' Time and Expense Subcommittee, with the approval of the co-lead counsel.

No generic discovery or other common action or work in this litigation will be undertaken on behalf of the PSC, or any other committee or any subcommittee except at the direction or with permission of co-lead counsel.

B. PSC.

1. Appointment. The co-lead counsel will be ex-officio members of the PSC and the court **HEREBY** appoints the following 12 counsel to serve on the PSC:

William Audet

Audet & Partners, LLP
711 Van Ness
Suite 500
San Francisco, CA 94102
415-568-2555
waudet@audetlaw.com

Ron Anthony Austin

Ron Austin Law
400 Manhattan Blvd
Harvey, LA 70058
504-227-8100
504-227-8122 (fax)
raustin@ronaustinlaw.com

Michael J. Blakely, II

Pope McGlamry
3391 Peachtree Road
Suite 300
Atlanta, GA 30326
404-523-7706
efile@pmkm.com

Virginia Marie Buchanan

Levin Law Firm
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Ste 600
Pensacola, FL 32502
850-435-7023
850-436-6023 (fax)
vbuchanan@levinlaw.com

Shanon J. Carson

Berger Montague PC
1818 Market Street
Suite 3600
Philadelphia, PA 19103
215-875-4656
215-875-4604 (fax)
scarson@bm.net

Ruth Anne French-Hodson

Sharp Law, LLP
4820 W. 75th St.
Prairie Village, KS 66208
913-901-0505
913-901-0419 (fax)
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Lauren Sanderson Miller

Hagens Berman Sobol Shapiro LLP
1301 2nd Ave
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Seattle, WA 98101
206-623-7292
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Michael F. Ram

Morgan & Morgan Mass Tort Dept.
711 Van Ness Avenue
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415-358-6913
415-358-6293 (fax)
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Jason Rathod

Migliaccio & Rathod LLP
412 H St NE
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202-509-5951
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Joyce Chambers Reichard
Kelley & Ferraro, LLP
Ernst & Young Tower
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Ste 1300
Cleveland, OH 44113
216-575-0777
216-575-0799 (fax)
jreichard@kelley-ferraro.com

Dena C. Sharp
Girard Sharp LLP
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San Francisco, CA 94108
415-981-4800
dsharp@girardsharp.com

David S. Stellings
Lieff Cabraser Heimann & Bernstein, LLP
250 Hudson St., 8th fl.
New York, NY 10013
212-355-9500
dstellings@lchb.com

2. Responsibilities and Duties. As set forth in Pretrial Order #1 and as amended in this order, the PSC shall, at a minimum, have the responsibilities set forth in Section 10.221 of the Manual for Complex Litigation (Fourth), and the following responsibilities:

- a. DISCOVERY.** The PSC shall coordinate with co-lead counsel:
- i.** the conduct of all pretrial discovery on behalf of plaintiffs in all actions which are consolidated with the instant MDL;
 - ii.** develop and propose to the court schedules for the commencement, execution, and completion of all discovery on behalf of all plaintiffs;
 - iii.** cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the trial of relevant issues;
 - iv.** conduct of all discovery in a coordinated and consolidated manner on behalf of and for the benefit of all plaintiffs, in a fashion in keeping with

practice guidelines to be established in subsequent discovery plans or orders of this court.

b. HEARINGS AND MEETINGS. The PSC shall coordinate with co-lead counsel to:

- i.** call meetings of plaintiffs' counsel for any appropriate purpose, including organizing responses to questions of other parties or of the court;
- ii.** initiate proposals, suggestions, schedules, or joint briefs, and any other appropriate matters pertaining to pretrial proceedings;
- iii.** examine witnesses and introduce evidence at hearings on behalf of plaintiffs; and
- iv.** communicate on behalf of all plaintiffs at pretrial proceedings and in response to any inquiries by the court, subject to the right of any plaintiff's counsel to present non-repetitive individual or different positions.

c. MISCELLANEOUS. In addition, the PSC shall coordinate with co-lead counsel to:

- i.** submit and argue any oral or written motions presented to the court on behalf of the PSC and oppose when necessary any motions submitted by the defendants or other parties which involve matters within the sphere of the PSC;
- ii.** negotiate and enter into stipulations with defendants with respect to this litigation; all such stipulations must be submitted to the court for approval, except for purely administrative details; any attorney not in agreement with a non-administrative stipulation may file with the court a written objection thereto within 14 days after the attorney knows or reasonably should have become aware of the stipulation; failure to timely object shall be deemed a waiver, and the stipulation shall be binding on that party;

- iii. maintain adequate files of all pretrial matters and have them available, under reasonable terms and conditions, for examination by plaintiffs or their attorneys;
- iv. prepare periodic status reports summarizing the PSC's work and progress; these reports shall be submitted to the plaintiffs' co-liaison counsel, who will promptly distribute copies to the other plaintiffs' attorneys; and
- v. perform any task necessary and proper for the PSC to accomplish its responsibilities as defined or authorized by the court's orders.

C. Co-Liaison Counsel.

1. Appointment. Because of the expected expansiveness of this litigation and the assertion of class action, medical monitoring, and personal injury claims, the court **HEREBY** appoints the following 2 counsel as co-liaison counsel:

D. Aaron Rihn

Robert Peirce & Associates, P.C.
707 Grant Street
Suite 125
Pittsburgh, PA 15219
412-281-7229
412-281-4229 (fax)
arih@peircelaw.com

Peter S. Wolff

Pietragallo Gordon Alfano Bosick &
Raspanti, LLP
One Oxford Centre - 38th Floor
Pittsburgh, PA 15219
412-263-2000
412-263-2001 (fax)
psw@pietragallo.com

Mr. Rihn and Mr. Wolff are appointed as co-liaison counsel each with liaison oversight over the entire MDL. Mr. Rihn will have primary responsibility for the administrative tasks as set forth in this order with respect to the personal injury claims. Mr. Rihn is appointed an ex-officio member of any subcommittee tasked with duties or issues related to those claims. Mr. Wolff will have primary responsibility for the administrative tasks as set forth in this order with respect to the class action and medical monitoring claims. Mr. Wolff is appointed an ex-officio member of any subcommittee tasked with duties or issues related to those claims. Mr. Wolff and Mr. Rihn—at the direction of the co-lead counsel—may attend any co-lead, PSC, committee, or subcommittee meeting.

2. Responsibilities and Duties. Co-liaison counsel will be charged with essentially administrative functions as set forth in Section 10.221 of the Manual for Complex Litigation (Fourth). For example, co-liaison counsel shall be authorized to receive orders and notices from the court on behalf of all parties and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties and the performance of other tasks determined by the court. Co-liaison counsel shall be required to maintain complete files with copies of all documents served upon that counsel in hard copy or electronic form, and to make such files available to parties upon request. Co-liaison counsel are also authorized to receive orders and notices from the Panel pursuant to Rule 5.2(e) of the Panel's Rules of Procedure or from the court on behalf of all parties and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties. The expenses incurred in performing the services of co-liaison counsel shall be shared by all plaintiffs in the manner to be set forth in the protocol referred to in paragraph A(2)(i) of this order. The co-liaison counsel shall be available for any conference convened by the court and should communicate the substance of any such conference to all other plaintiffs' counsel in conjunction with co-lead counsel, if necessary.

D. Other Committees and Subcommittees. There is a wealth of talent and specialized experience among the applicants for plaintiffs' leadership in this MDL. The court appoints initially the following counsel to the committees and subcommittee identified below to further promote the efficient, just, and speedy resolution of this case and the development of future MDL leaders. This list is not an exhaustive list of the subcommittees which may be appointed in this case.

1. Settlement Committee Appointment. The court **HEREBY** appoints the following 3 counsel to serve as the chair and vice chairs for the Settlement Committee:

Roberta D Liebenberg—Chair
Fine, Kaplan and Black, R.P.C.
One South Broad Street
23rd Floor
Philadelphia, PA 19107
215-567-6565
215-568-5872 (fax)
rliebenberg@finekaplan.com

Lisa Ann Gorshe—Vice Chair
Johnson Becker PLLC
444 Cedar Street
Ste 1800
Saint Paul, MN 55101
612-436-1852
Fax: 612-436-1801
lgorshe@johnsonbecker.com

Arthur H. Stroyd, Jr.—Vice Chair

Del Sole Cavanaugh Stroyd LLC
3 PPG Place
Suite 600
Pittsburgh, PA 15222
(412) 261-2172
412-261-2110 (fax)
astroyd@dscslaw.com

The co-lead counsel shall coordinate with the members of the Settlement Committee and are ex-officio members of the Settlement Committee. Ms. Liebenberg, Ms. Gorshe, and Mr. Stroyd may attend all meetings of the co-lead counsel, the PSC, or subcommittees to further their efforts to settle the cases in this MDL. These appointments do not serve as an exhaustive list of the members and this order does not identify all the duties of the Settlement Committee.

2. Leadership Development Committee Appointment. The court appreciated the enthusiasm and talent of the applicants with minimal MDL experience. A Leadership Development Committee is appropriate in this case to provide those applicants with the education, experience, and mentorship necessary to lead future MDLs. The co-lead counsel shall appoint a member of the PSC to chair this committee and oversee the incorporation of the talents of the members of this committee throughout the litigation. It is the court's intent that the members of the Leadership Development Committee will—where appropriate—meaningfully participate in all phases of this MDL including, but not limited to, participation on committees and subcommittees, drafting master complaints, drafting and arguing briefs, participating in settlement negotiations, and preparing for and taking depositions of lay witnesses and expert witnesses. The court **HEREBY** appoints the following 10 counsel to the Leadership Development Committee:

Miriam Fresco Agait

Rubenstein Law, P.A.
9130 S. Dadeland Blvd, Suite PH
Miami, FL 33156
Tel: (305) 661-6000
Fax: (305) 670-7555
E-mail: mfagrait@rubensteinlaw.com

Kristina Anderson

Hensley Legal Group, PC
117 E. Washington Street
Ste 200
Indianapolis, IN 46204
317-472-3333
kanderson@hensleylegal.com

Claire E. Berg

Gainsburgh, Benjamin, David, Meunier & Warshauer, LLC
2800 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
504-522-2304
cberg@gainsben.com

Ava Cavaco

Meshbesh & Spence
1616 Park Avenue
Minneapolis, MN 55404
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F: 612-339-9188
acavaco@meshbesh.com

Syreeta Defrance-Poindexter

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22 E. Gay Street
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Columbus OH 43215
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syreeta.poindexter@babinlaws.com

Ashley B. DiLiberto

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215-568-3500 / Fax: 215-568-3501

Kathryn L. Harrison

Campbell & Levine, LLC
1700 Grant Building
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412-261-0310
412-261-5066 (fax)
klh@camlev.com

Inez Johnson Ross
Onder Law, LLC
110 East Lockwood
St. Louis, MO 63119
314-227-7674
314-963-1700 (fax)
iross@onderlaw.com

Ian W. Sloss
Silver Golub & Teitell LLP
184 Atlantic Street
Stamford, CT 06901
203-325-4491
isloss@sgtlaw.com

Kevin W. Tucker
East End Trial Group LLC
6901 Lynn Way
Suite 215
Pittsburgh, PA 15208
412-877-5220
ktucker@eastendtrialgroup.com

3. Plaintiffs' Time and Expense Subcommittee Appointment. The court **HEREBY** appoints the following 2 counsel to serve as the co-chairs for the Plaintiffs' Time and Expense Subcommittee:

Alyson L. Oliver
Oliver Law Group P.C.
1647 W. Big Beaver Rd.
Troy, MI 48084-5380
248-327-6556
248-436-3385 (fax)
notifications@oliverlawgroup.com

Patrick Wayne Pendley
Pendley, Baudin & Coffin
24110 Eden Street
Post Office Drawer 71
Plaquemine, LA 70764
225-687-6396
225-687-6398 (fax)
pwpendley@pbclawfirm.com

Ms. Oliver and Mr. Pendley shall draft a protocol for the common benefit fund to include the process for the plaintiffs' time and expense submissions, and payments from the common benefit fund. This committee shall monitor and report to the court, co-lead counsel, and the PSC the progress of plaintiffs' time and expense throughout the pendency of this MDL and any payments

from the common benefit fund. These appointments do not serve as an exhaustive list of the members or duties of the Plaintiffs' Time and Expense Subcommittee.

E. Terms of Appointment. Counsel who accept the appointments set forth in this order agree to serve for the duration of the MDL or until such time as the court determines that a change in the duration of service shall be made.

F. Personal Appointments. The appointments set forth in this order are personal in nature. The court expects the appointees will draw upon the resources of their firms, their co-counsel, and their co-counsel's firms. Each appointee, however, is personally responsible for the responsibilities and duties that he or she assumes. If any counsel appointed to a leadership position leaves her or his firm during this MDL, the counsel must immediately notify the court, and the court may reassess the counsel's role in a leadership position. If the court allocates common benefit monies at the conclusion of the litigation, the court may consider all firms with which counsel has been affiliated during the litigation and the contributions that each firm has made to the litigation. There should be no expectation that all benefits will be afforded to one firm or another.

G. Review of Appointments. The court will consider a process for periodically evaluating leadership appointees' performance and commitment to the tasks assigned, as well as the ongoing needs of the litigation. The court anticipates that this evaluation will happen on an approximately annual basis; but this timing will be adjusted as circumstances warrant and at a time that minimizes any disruption to the litigation that might occur if changes were made to the team. In evaluating plaintiffs' leadership, the court will consider: the amount of time the counsel has devoted to the litigation; the resources the counsel and her or his firm has contributed to the litigation; whether the counsel is in arrears in her or his contributions; the ability of the counsel to work collaboratively with other counsel, including counsel who is not appointed to plaintiffs' leadership; and the commitment the counsel has shown to the fair, just, and efficient management of this MDL. The court will also periodically assess the needs of the MDL, including whether any additional or different resources, committees, or subcommittees are necessary for the plaintiffs' leadership as the case progresses.

H. Designation of Subcommittee Chairs and Members. The court leaves the creation of any other committees and subcommittees, the designation of other committee and

subcommittee chairs (and co-chairs), committee and subcommittee membership, and the timing of the foregoing decisions to the full discretion of co-lead counsel. Co-lead counsel shall determine a structure for a registry and data collection and analytics and shall consider whether a subcommittee will be useful with respect to state/federal coordination and be prepared to report its recommendations to the court.

I. Committee and Subcommittee Members. The chairs (and co-chairs) of any committee or subcommittee shall work under and at the direction of co-lead counsel in all aspects of their work in this MDL. The PSC, committee, and subcommittee members, including those on the Leadership Development Committee, shall work at the direction of co-lead counsel, and, if applicable, under the direction of the relevant committee or subcommittee chair or chairs with respect to that committee's or subcommittee's work performed in this MDL.

IT IS SO ORDERED.

/s/ JOY FLOWERS CONTI

Joy Flowers Conti

Senior United States District Court Judge

- how each device is manufactured;
 - the materials used in the device;
 - how the device works;
 - issues with the materials used;
 - the injuries alleged in this litigation;
 - medical literature and regulatory information about the devices; and
 - other matters the parties select;
2. The parties shall not address liability or attempt to establish claims or defenses in their respective MDL;
 3. The Science Day presentations will be transcribed by a court reporter for the court's use only, with costs to be split by the parties. The parties may move to request a copy of the transcript and will have to establish good cause for their request. The transcript, if released, shall be treated as confidential and will be subject to the Confidentiality Order in this case;
 4. The court will invite to Science Day the state-court judge the parties identified as the only state-court judge presiding over issues raised in this MDL. (ECF No. 679.) Science Day will be otherwise closed to public and open only to attorneys who have appearances on file with this MDL, as well as their presenting expert (if any), the court, the court staff, the special discovery master, and the mediator;
 5. The presentations may be made by the parties' attorneys or experts. The presenters will not be questioned by each other or opposing counsel. The court, the special discovery master, the mediator, and any state court judge in attendance will have the opportunity to ask questions of the presenters as the court deems appropriate. Nothing in this paragraph should be read to mean that the parties are required to present with an expert. The Federal Rules of Evidence will not be enforced during Science Day, including during the presentations by or questioning of any expert;
 6. The participation of any expert or other witness in Science Day shall not be an independent basis for subjecting the expert to discovery and shall not waive any consulting expert privilege. No party shall conduct discovery of the presenting experts regarding their presentations or Science Day itself, whether or not later designated as a testifying expert;

7. Science Day will be conducted in open court, but the proceeding is intended to be informal and any expert will not be placed under oath;
8. The format will be lecture-style presentations that may incorporate the use of PowerPoint presentations or other demonstrative aids. The parties' attorneys will be allowed to lead the experts through a modified direct examination format to focus the presentation;
9. The transcript, PowerPoint presentations, other demonstrative aides, or any statement or presentation by any expert or counsel during Science Day shall not be: discoverable; admissible; used in any fashion for impeachment, cross-examination, or for collateral attack on any presenter, expert, or other witness; shared beyond the counsel of record in this litigation and their staff; attached to any public filing; or used for any purpose other than for the court's benefit to gather knowledge informally at Science Day about the devices at issue in this case;
10. The total length of time that will be allotted to Science Day shall be approximately 5 hours, combined for both MDLs, not including the time for any questions the court has after the parties' presentations, and shall proceed in accordance with the agenda submitted by the parties, which is subject to change by the court; and
11. Any objections to or suggestions for amendment of this order shall be filed on or before August 24, 2022.

IT IS SO ORDERED.

/s/ JOY FLOWERS CONTI

Joy Flowers Conti

Senior United States District Judge

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

**IN RE: PHILIPS RECALLED CPAP,
BI-LEVEL PAP, AND MECHANICAL
VENTILATOR LITIGATION**

This Document Relates to: Potential
Claimants

Master Docket No. 2:21-mc-1230

MDL No. 3014

PRETRIAL ORDER NO. 25(a)

MODIFYING CENSUS REGISTRY PROGRAM

The Court, upon consideration of the Joint Motion by Plaintiffs and Defendants to, *inter alia*, Modify Pretrial Order No. 25 Approving Census Registry Program as Pretrial Order No. 25(a), it is hereby ORDERED that the Motion is GRANTED.

The Census Registry Program Agreement (attaching the former Census Registry Form) that is currently made available for download from the Court's website at <https://www.pawd.uscourts.gov/mdl-3014-re-philips-recalled-cpap-bi-level-pap-and-mechanical-ventilator-products-litigation> shall be removed and replaced with the new Census Registry Program Agreement (with attachments, including the modified Census Registry Form), attached hereto as Exhibit A.

Dated: 11/16/2022

/s/ JOY FLOWERS CONTI
Honorable Joy Flowers Conti
Senior United States District Judge

EXHIBIT A

EXHIBIT A

CENSUS REGISTRY PROGRAM AGREEMENT

Subject to the terms and conditions below, this agreement (the “Agreement”) is by and between participating Potential Claimants and Philips RS North America LLC (“Philips RS”), Philips North America LLC, Philips Holding USA, Inc., Philips RS North America Holding Corporation, and Koninklijke Philips N.V. (collectively, “Philips”).

This Agreement provides for the creation of a new and voluntary Court-approved Census Registry, and associated tolling, for Potential Claimants¹ who have not filed claims, but may file claims in the future, relating to the CPAP, BiPAP, and ventilator devices Philips RS has recalled (the “Recalled Devices”).

Termination of Prior Tolling Agreement

1. Upon entry of an Order by the Court approving this Census Registry Program, Philips will provide notice that it is terminating the Tolling Agreement, dated February 4, 2022 (ECF No. 383) (the “Prior Tolling Agreement”), for all individuals who had previously participated in the Prior Tolling Agreement (the “Termination Notice”). Tolling benefits under the Prior Tolling Agreement shall end upon completion of the notice periods set forth in Paragraph 5 of the Prior Tolling Agreement.

2. As of the date of the entry of the Order approving this Census Registry Program, Philips hereby terminates any availability to participate in the Prior Tolling Agreement with respect to any individuals who have not yet entered into the Prior Tolling Agreement. No

¹ The term “Potential Claimant” refers to individuals who state that they are investigating potential claims related to the Recalled Devices but have neither filed, nor made a decision on whether to file, a lawsuit relating to any such potential claims in any court.

additional individuals may be added to the Prior Tolling Agreement following entry of the Order approving this Census Registry Program.

Census Registry Agreement Tolling

3. No Potential Claimant is obligated to participate in the Census Registry. Nor is there any obligation to bring a lawsuit by any individual on the Census Registry. In order to obtain the tolling provided for herein, however, participation in the Census Registry through compliance with this Agreement is required.

4. Philips agrees to the tolling of Limitations² with respect to any Claim(s)³ held by a Potential Claimant as of the Effective Date for that Potential Claimant solely in accordance with the terms of this Census Registry Program Agreement. The “Effective Date” shall mean the date that a Census Registry Form (“CRF”) is submitted on behalf of the Potential Claimant pursuant to Paragraph 8 below.

5. The “Tolling Period” for any particular Potential Claimant shall begin on the Effective Date for that Potential Claimant and shall end on the earlier of: (i) the date on which the Potential Claimant files or otherwise commences a tolled Claim against one or more of the Philips entities; or (ii) 90 days after any Philips entity provides written notice that it is withdrawing from this Agreement—either in its entirety as to all Potential Claimants, or with respect to a particular Potential Claimant or Claimants—with respect to tolling as to that particular Philips entity;

² The term “Limitations” shall refer to any and all time limitations for filing or pursuing Claims, including statutes of limitation, statutes of repose, prescription, laches, and any other time bars, including, but not limited to, those based in equity, to the extent permitted by applicable law.

³ The term “Claim(s)” shall refer to any claim(s) or cause(s) of action alleging personal injury (including for wrongful death) allegedly caused by a Recalled Device. The term “Claim” as defined herein specifically includes any punitive damages claims that may exist and wrongful death and/or survivorship, loss of consortium claims or other claims of representative or derivative claimants of the user of the Recalled Device, if any.

provided, however, that in the case of (ii), no such notice shall be served during the 18-month period after entry of the Order approving this Census Registry Program.

6. If any Philips entity gives notice of their intent to terminate this Agreement as to all Potential Claimants, that Philips entity, or those Philips entities, will work cooperatively to provide notice to all Potential Claimants, including by filing notice with the Court and distributing a notice to persons who have registered on the Census Registry.

7. The tolling of Limitations is not intended to, and shall not for any purposes be deemed to, limit or adversely affect any defense, other than a Limitations defense, that Philips has, may have, or would have had in the absence of Census Registry Tolling. Nor does the tolling of Limitations hereunder limit or adversely affect any Potential Claimant from asserting any argument against any Limitations defense that Philips may assert, or other tolling to any Limitations period based upon any discovery rule or on any other legal or equitable basis. Further, Census Registry Tolling does not have any impact on any tolling provided to a Potential Claimant under the Prior Tolling Agreement for those individuals who previously entered into the Prior Tolling Agreement. For the avoidance of doubt, for those Potential Claimants who avail themselves of both the Prior Tolling Agreement and Census Registry Tolling, the Tolling Period afforded Potential Claimants by Census Registry Tolling is addition to, and not in lieu of, tolling afforded by the Prior Tolling Agreement.

Census Registry Form

8. Within 5 days of entry of the Order approving this Census Registry Program, Philips will make available through MDL Centrality the CRF attached to this Agreement. Submission through MDL Centrality of a completed and signed CRF, including a signed Limited Authorization To Disclose Health Information for certain data on Care Orchestrator,

DreamMapper and/or EncoreAnywhere relating to Recalled Device usage and ambient temperature and ambient humidity (“Data Release Form”), will provide a Potential Claimant with Census Registry Tolling, as described above. Potential Claimants shall not bear any expenses in association with collection of the data subject of the Data Release Form.

9. CRFs must be substantially complete, which means a Potential Claimant must:

i. Answer all applicable questions (Potential Claimants may answer questions by indicating “not applicable,” “I don’t know,” or “I don’t recall,” or “unknown” where such response is made in good faith in accordance with the signed counsel certification); and

ii. Include a completed and signed Data Release Form.

10. If a Potential Claimant serves a CRF that is not substantially complete, Philips shall notify the Potential Claimant’s counsel. The Potential Claimant will then have one 30-day period to serve a substantially complete CRF to Philips (the “Cure Period”) in order to obtain the tolling benefits set forth herein. Provided the Potential Claimant serves a substantially complete CRF within the Cure Period, the Effective Date for tolling will relate back to the date the Potential Claimant originally served his or her CRF.

Confidentiality of Census Registry Forms & Related Data; Use of Information

11. CRFs, the information and data reflected therein, and information and data produced in response to Data Release Forms shall be deemed “Confidential” information of Third Parties, and accorded treatment as such by Receiving Parties, as provided by the applicable Protective Order. Such treatment shall be afforded the CRFs and associated information and data regardless of the presence or absence of any formal confidentiality designation on the CRFs, information, or data themselves. Such information shall be made available to the parties and their counsel in MDL 3014 for use in the litigation.

12. Recognizing that the Census Registry is drawn from the potential claims of Potential Claimants that are unfiled and in many cases not yet vetted by counsel, Philips and Plaintiffs' leadership agree that information obtained through the Census Registry, including data and information contained on CRFs, or obtained from Data Release Forms, shall not be employed by any party in connection with or in opposition to the bellwether selection process, including to support or oppose (a) the selection of any case for any discovery or bellwether pool, (b) the selection of any case as representative of some broader segment of cases, or (c) the selection of a case for any trial or consolidation of cases. In the event that a Potential Claimant files suit against one or more of the Philips entities, then information obtained by Philips pursuant to that Potential Claimant's CRF, subject to the reservations of Paragraph 14, may be used in the MDL litigation in any lawsuit asserting claims by that Potential Claimant.

13. Given the anticipated composition of the Potential Claimant pool on the Census Registry, Plaintiffs' leadership specifically objects to any disclosure of information obtained through the Census Registry for purposes other than (i) the vetting of Potential Claimants' potential claims by counsel for those Potential Claimants, and (ii) understanding the composition of unfiled and unvetted claims by Plaintiffs' leadership and by Philips. Philips disagrees that the information obtained through the Census Registry should be limited in the ways set forth in this Paragraph 13, but the parties agree to preserve all their arguments should any party seek to use such information for other purposes.

Additional Terms

14. Nothing in this Agreement or the parties' participation in the Census Registry shall impact any party's rights or positions, including with respect to the admissibility of the data or information obtained through the CRF or Data Release Form, as well as which evidence constitutes

sufficient proof of usage or injury and with respect to any future discovery, or the scope of such discovery.

AGREED TO THIS 23rd DAY OF AUGUST, 2022:

/s/ John P. Lavelle, Jr

John P. Lavelle, Jr.
Lisa C. Dykstra
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*Counsel for Defendant Philips
RS North America LLC*

/s/ Michael H. Steinberg

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IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LIABILITY LITIGATION

CENSUS FORM FOR POTENTIAL CLAIMANTS

*If you have already filed a lawsuit relating to a Philips Respironics Device, please do **not** complete this form. Instead, you are or will be required to complete a Plaintiff Fact Sheet.*

I. POTENTIAL CLAIMANT/COUNSEL INFORMATION

(If you are filling this out on behalf of someone else, please list the user of the Philips Respironics Device as the Potential Claimant)

1. Potential Claimant's Name:
2. Potential Claimant's Date of Birth:
3. Potential Claimant's Address:
4. Potential Claimant's Registering Counsel (including firm name):

II. PHILIPS RESPIRONICS DEVICE AND USAGE INFORMATION

5. List each Model of Philips Respironics Device Used:
(If you used more than one Philips Respironics Device, complete the questions in this Section II for each Device used.)

<input type="checkbox"/> E30 (Emergency Use Authorization)	<input type="checkbox"/> Dorma 500
<input type="checkbox"/> DreamStation ASV	<input type="checkbox"/> REMstar SE Auto
<input type="checkbox"/> DreamStation ST, AVAPS	<input type="checkbox"/> Trilogy 100
<input type="checkbox"/> SystemOne ASV4	<input type="checkbox"/> Trilogy 200
<input type="checkbox"/> C-Series ASV	<input type="checkbox"/> Garbin Plus, Aeris, LifeVent
<input type="checkbox"/> C-Series S/T and AVAPS	<input type="checkbox"/> A-Series BiPAP Hybrid A30 (not marketed in U.S.)
<input type="checkbox"/> OmniLab Advanced +	<input type="checkbox"/> A-Series BiPAP V30 Auto
<input type="checkbox"/> SystemOne (Q-Series)	<input type="checkbox"/> A-Series BiPAP A40
<input type="checkbox"/> DreamStation	<input type="checkbox"/> A-Series BiPAP A30
<input type="checkbox"/> DreamStation Go	<input type="checkbox"/> Other Philips Respironics Device; if other, identify the model or indicate if you do not recall:
<input type="checkbox"/> Dorma 400	

<i>Model</i>	<i>Serial Number</i>	<i>Approximate Date Began Using</i>	<i>Approximate Date Stopped Using (if Applicable)</i>

6. For what reason or condition was the Philips Respironics Device prescribed by the Potential Claimant’s physician?

7. Did Potential Claimant ever use an ozone-based cleaning device (e.g., SoClean, Respify, Sleep8, VirtuOx, etc.) with Potential Claimant’s Philips Respironics Device?

Yes No

If yes, please identify manufacturer of cleaning device: _____

III. REPLACEMENT DEVICE INFORMATION

8. Has Potential Claimant registered his or her Philips Respironics Device for repair or replacement on the Philips Respironics website [<https://www.usa.philips.com/healthcare/e/sleep/communications/src-update>]?

Yes No

If yes, please provide registration code: _____.

9. Has Potential Claimant received a repaired or replacement device from Philips Respironics?

Yes No

IV. INFORMATION CONCERNING ALLEGED INJURY OR INJURIES

10. Has Potential Claimant experienced any physical injury in connection with the Potential Claimant’s use of the Philips Respironics Device?

Yes No

If yes, please select the injury or injuries below:

- Eye Irritation
- Nose Irritation
- Skin Irritation
- Respiratory Tract Irritation
- Dizziness and/or Headache
- Hypersensitivity
- Nausea / Vomiting
- Asthma (new or worsening)
- Inflammatory Response
- Kidney Disease/Toxicity
- Liver Disease/Toxicity
- Lung Disease
- Reduced Cardiopulmonary Reserve
- Cancer: _____ [specify type]
- Death (if you are completing this form for the Device user)
- Other: _____

RELEASE FORM FOR CARE ORCHESTRATOR, DREAMMAPPER AND ENCOREANYWHERE DATA

Potential Claimant must complete, sign and return the enclosed Limited Authorization To Disclose Health Information for data maintained by Philips RS North America LLC on Care Orchestrator, DreamMapper and/or EncoreAnywhere relating to Recalled Device usage and ambient temperature and ambient humidity.

* * * * *

Either Potential Claimant or their counsel, but not both, must sign below:

By signing this Census Form, counsel confirms that they or their agent have discussed with the Potential Claimant and the Potential Claimant has confirmed the accuracy of the information provided herein.

Date: _____

Counsel Signature

By signing this Census Form, Potential Claimant confirms the accuracy of the information provided herein.

Date: _____

Potential Claimant Signature

LIMITED AUTHORIZATION TO DISCLOSE HEALTH INFORMATION
(Pursuant to the Health Insurance Portability and Accountability Act "HIPAA" of 4/14/03)

TO: Philips RS North America LLC

Patient Name: _____

DOB: _____

SSN: _____

City/State: _____

I, _____, hereby authorize you to release and furnish to: Litigation Management Inc., PO Box 241370, Cleveland, OH 44124 COPIES ONLY of the following information:

* Usage, temperature and humidity data from Care Orchestrator, DreamMapper and/or EncoreAnywhere.

1. I am a potential claimant in connection with MDL 3014 and provide this authorization in connection with my participation in the Census Registry.
2. To my medical provider: this authorization is being forwarded by, or on behalf of, attorneys for the defendants. This authorization is for the sole purpose of allowing copies of the above-mentioned medical records to be provided to the named parties and their counsel in MDL 3014. I understand and consent to the disclosure of this information to the named parties and their counsel in MDL 3014 for use in the litigation. It does not allow discussions of my medical history, care, treatment, diagnosis, prognosis, information revealed by or in the medical records, or any other matter bearing on my medical or physical condition.
3. I understand that I have the right to revoke this authorization at any time. I understand that if I revoke this authorization I must do so in writing and present my written revocation to the health information management department. I understand the revocation will not apply to information that has already been released in response to this authorization. I understand the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy. Unless otherwise revoked, this authorization will expire in one year.
4. I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand I may inspect or copy the information to be used or disclosed as provided in CFR 164.524. I understand that any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules. If I have questions about disclosure of my health information, I can contact the releaser indicated above.
5. A notarized signature is not required. CFR 164.508. A copy of this authorization may be used in place of an original.

Print Name: _____ (Potential Claimant/Representative)

Signature: _____ (Potential Claimant/Representative)

Date: _____

**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 No. 2:21-MC-1230 MDL No. 3014
This Document Relates to: All Personal Injury Cases	Judge Joy Flowers Conti

**AMENDED PRETRIAL ORDER #28(a)
(Procedures for Filing Amended Master Personal Injury Complaint
and Individual Short Form Personal Injury Complaints)**

I. SCOPE OF THE ORDER

This Order applies only to United States citizens or residents who have asserted, or seek to assert, personal injury claims related to the use of one or more of the recalled CPAP, Bi-Level PAP, or mechanical ventilators devices at issue in this litigation (the “Recalled Devices”) (“Personal Injury Plaintiffs”). No personal injury claims may be asserted in current and future-filed cases in this MDL other than pursuant to the terms of this Order.

II. PLEADINGS FOR PERSONAL INJURIES

In light of the inefficiencies of drafting unique personal injury complaints and individual answers to those complaints, the Parties have agreed to the following procedures related to the pleadings in personal injury cases. This Order is binding on all parties and their counsel in all such cases. Nothing in this Order is intended to (or does) alter the applicable provisions of the Federal Rules of Civil Procedure or the Local Rules of this Court, except as otherwise provided herein or in any subsequent Order.

A. Amended Master Personal Injury Complaint

1. **Timing.** Pursuant to Pretrial Order #14, on August 22, 2022, Plaintiffs' Co-Lead Counsel filed the Master Personal Injury Complaint (Doc. 695). The Parties agreed and the Court permitted Plaintiffs to file an Amended Master Personal Injury Complaint on October 24, 2022 (*see* Doc. 834).

2. **Effect of Amended Master Personal Injury Complaint.** All claims pleaded in the Amended Master Personal Injury Complaint will supersede and replace all claims for personal injury in any action pending in this MDL. Nothing in this Order shall preclude Plaintiffs' Co-Lead Counsel from seeking leave to amend the Amended Master Personal Injury Complaint as provided in the Federal Rules of Civil Procedure.

B. Short Form Complaints

1. Plaintiffs' Co-Lead Counsel attached as Exhibit "A" to the Amended Master Personal Injury Complaint a form of Master Short Form Complaint (the "Short Form Complaint") for use by Personal Injury Plaintiffs in current and future-filed personal injury cases in this MDL (Doc. 834-1).

2. The Short Form Complaint is an abbreviated form that each Personal Injury Plaintiff will complete, indicating their individual claims, and adopting all of the factual allegations set forth in the Amended Master Personal Injury Complaint as the basis for those individual claims. The Short Form Complaint shall be deemed to adopt the allegations set forth in the Amended Master Personal Injury Complaint by reference and shall contain, at a minimum, for each individual case:

- a. The name of the person alleging injury;

- b. Whether the claim is being brought by the person alleging injury or on behalf of someone else, and if so, the relationship between those individuals;
- c. The name of any loss of consortium Personal Injury Plaintiff;
- d. The city, county and state in which the person alleging injury currently resides (if the Recalled Device user is deceased, the city, county and state where the user resided at the time of death);
- e. If the Personal Injury Plaintiff's case is filed directly into this MDL pursuant to this Order after the filing of the Amended Master Personal Injury Complaint, identification of the federal district and division in which the action otherwise would have been filed absent the direct filing procedure set forth in this Order, which shall be the presumptive place of remand. Each case filed directly in this MDL pursuant to this Order will be litigated in the MDL for pretrial proceedings only, consistent with the Judicial Panel on Multidistrict Litigation's October 8, 2021 Transfer Order, and none of the parties is waiving his, her or its rights under *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). Nothing contained in this Order, however, shall preclude the parties from jointly agreeing at a future date to try cases filed pursuant to this Order before the MDL Court through a *Lexecon* waiver;
- f. If the Personal Injury Plaintiff's case was originally filed in or removed to another federal district court and then transferred to this MDL, the

federal district court and division (if applicable) in which the action was originally filed or to which it was removed;

- g. The model of each Recalled Device the user used;
- h. The injury or injuries the Personal Injury Plaintiff alleges resulted from use of the Recalled Device(s);
- i. The specific Defendant(s) against whom the Personal Injury Plaintiff asserts claims. The Court expects that each Personal Injury Plaintiff and their counsel will make a carefully individualized evaluation of the basis for naming specific Defendants in the Short Form Complaint;
- j. As to each Defendant, the causes of action in the Amended Master Personal Injury Complaint the Personal Injury Plaintiff adopts (including whether the Personal Injury Plaintiff is asserting a claim for loss of consortium, survival, or wrongful death), indicated by checking the applicable box on the Short Form Complaint;
- k. Additional allegations or causes of action not pleaded in the Amended Master Personal Injury Complaint, if any;
- l. Additional persons or entities that the Personal Injury Plaintiff contends are liable or responsible for the personal injury(ies) and any other damages allegedly sustained; and
- m. If any additional claims sounding in fraud or otherwise covered by Fed. R. Civ. P. 9(b) are alleged in the Short Form Complaint, particularized allegations complying with that rule.

3. For each such personal injury action, the Amended Master Personal Injury Complaint together with the Personal Injury Plaintiff's Short Form Complaint shall be deemed that Plaintiff's operative Complaint.

4. **Timing and Effect of Filing Short Form Complaints:**

- a. Personal Injury Complaints Transferred, or in the Process of Being Transferred, to this MDL Before the Filing of the Amended Master Personal Injury Complaint. Any Personal Injury Plaintiff whose Complaint was transferred to this MDL or was in process of being transferred to this MDL before the date of filing of the Amended Master Personal Injury Complaint must file a Short Form Complaint in his or her individual case, referencing their individual docket number to avoid the triggering of a filing fee, within sixty (60) days of the date on which the Amended Master Personal Injury Complaint is filed or the date on which the Court posts the applicable Transfer Order on its docket, whichever is later. For purposes of statutes of limitations and statutes of repose, any such Personal Injury Plaintiff shall be deemed to have filed his or her complaint as of the date he or she filed his or her original complaint, and not the date of the Amended Master Personal Injury Complaint or the date he or she filed his or her Short Form Complaint. Nothing in this Order or the filing of a Short Form Complaint shall be construed as a prior dismissal or amendment of a prior complaint, but the prior complaint shall no longer be deemed the operative complaint.

- b. All Other Personal Injury Complaints. All other Personal Injury Plaintiffs who seek to file a Personal Injury Complaint shall direct file in this MDL his or her Short Form Complaint as a new civil action through the Court's electronic filing system and pay the required filing fee through Pay.gov. At the time of filing, the Short Form Complaint shall include in the caption that it is a "DIRECT FILED COMPLAINT PURSUANT TO PRETRIAL ORDER #28." The civil cover sheet accompanying the Short Form Complaint shall specify under the "Related Case(s)" section that this case relates to MDL 3014. Once the case is filed, it shall be assigned an individual civil case number. After review by the Clerk of Court's office, the case will be automatically consolidated for pretrial purposes in MDL 3014.
- c. No Multi-Plaintiff Personal Injury Complaints. Each Personal Injury Plaintiff must have an individual complaint on file. Any Personal Injury Plaintiff who asserts personal injury claims in a multi-plaintiff complaint that is pending or that is subsequently transferred to this MDL must file an individual Short Form Complaint, and also upload the Short Form Complaint to the online MDL Centrality System accessible at www.mdlocentrality.com/ pursuant to Pretrial Order # 27, within sixty (60) days of the date on which this Order is entered or the date on which the Court posts the applicable Transfer Order on its docket, whichever is later. This provision does not apply to Personal Injury Plaintiffs who solely assert derivative and/or loss of consortium claims.

d. Amended Short Form Complaints. Any Personal Injury Plaintiff who has filed a Short Form Complaint and who wishes to amend same may do so for any reason within 21 days after service of the Master Answers to the Amended Master Personal Injury Complaint by Defendants, and any Personal Injury Plaintiff who files a Short Form Complaint after the filing of the Master Answers to the Amended Master Personal Injury Complaint and who wishes to amend same may do so for any reason within 21 days after serving it. Any Personal Injury Plaintiff whose case is subsequently chosen for inclusion in the pool from which bellwether cases are to be selected (a process for which will be set forth in a subsequent order) may amend his or her Short Form Complaint within 21 days after the selection of his or her case for that pool. Otherwise, Plaintiffs may amend their Short Form Complaints without leave of court to update their injuries based on changed circumstances, but otherwise can amend only upon stipulation or leave of court in accordance with the Federal Rules of Civil Procedure. Any amended Short Form Complaint shall specify in its title “Amended Short Form Complaint” and shall specify in a footnote all changes made to the prior version(s) of the Short Form Complaint, with citations to the paragraphs that have been changed. If a Short Form Complaint has been amended to remove certain claims or parties, the title of the document shall include the parenthetical “(DISMISSALS INCLUDED).”

5. **Service of Short Form Complaints.** Within fourteen (14) days of filing a Short Form Complaint, Personal Injury Plaintiffs shall upload their Short Form Complaint to the online MDL Centrality System accessible at www.mdlcentrality.com/ pursuant to Pretrial Order # 27.

6. **Failure to File Short Form Complaints.** Should an Individual Personal Injury Plaintiff fail to file a Short Form Complaint or move for an extension to file a Short Form Complaint, within the prescribed deadline as outlined in paragraph 4(a) of this Order, Defendants shall have the option to file a Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(b). Prior to filing a Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(b), Defendants shall notify Plaintiff's counsel, or Plaintiff if unrepresented, along with Plaintiffs' Co-Lead Counsel, in writing, of Defendants' intent to move for dismissal. Defendants shall serve a copy of the notice letter to that Plaintiff through their counsel by one of the following methods: electronic mail (with delivery confirmation) or through MDL Centrality (if the Plaintiff is registered within MDL Centrality). In addition, Defendants shall notify Plaintiffs' Co-Lead Counsel by electronic mail by providing a list of each Plaintiff and the Plaintiff's individual case number, who Defendants believe has failed to comply with this Court's Order.

The individual Plaintiff shall have fourteen (14) days from the date of the notice to attempt to resolve the issue. If the issue remains unresolved by the fourteenth day, Defendants shall have the option to file within the individual Personal Injury Plaintiff's case number as well as the Master Docket Number, its Motion to Dismiss Pursuant to Fed. R. Civ. P. 41(b), or, in the alternative, to show cause why the case should not be dismissed with prejudice. Upon the filing of Defendants' motion, the Plaintiff will be required to file an appropriate response to Defendants' motion within

the time prescribed by the Federal Rules of Civil Procedure, or be subject to a dismissal of their case, with prejudice, for failure to comply with this Court's Order.

C. Master Answers to Amended Master Personal Injury Complaint

1. By December 23, 2022, Defendants shall file Master Answers to the Amended Master Personal Injury Complaint or shall file a Rule 12 motion or motions to dismiss the Amended Master Personal Injury Complaint, in whole or in part.

2. If any Defendant files a motion to dismiss the Amended Master Personal Injury Complaint and such motion does not result in the dismissal of the Amended Master Personal Injury Complaint in its entirety, that Defendant shall file a Master Answer to the Amended Master Personal Injury Complaint within sixty (60) days of the date on which the Court issues a ruling as to its motion to dismiss, provided that the Court does not grant Plaintiffs' Co-Lead Counsel leave to amend the Amended Master Personal Injury Complaint. If the Court grants Plaintiffs' Co-Lead Counsel leave to amend the Amended Master Personal Injury Complaint, then (absent an Order to the contrary) within forty-five (45) days of such Order, Plaintiffs' Co-Lead Counsel shall file a Second Amended Master Personal Injury Complaint.

3. Each Defendant's Master Answer to the Amended Master Personal Injury Complaint shall be filed on the MDL No. 3014 docket and also on the individual docket for each individual personal injury action, and each Master Answer shall be deemed to be that Defendant's Answer to all properly served complaints in which that Defendant is named, whether a Short Form Complaint or otherwise, in any case now or in the future pending in this MDL, including those cases filed directly in this MDL consistent with this Order, transferred to this MDL, or removed to this Court and included in this MDL. The Parties agree that all affirmative defenses pleaded in each of the Defendant's Master Answer to the Amended Master Personal Injury Complaint are

explicitly incorporated in response to any Short Form Complaint. To the extent that any Short Form Complaint contains allegations different from or in addition to the allegations in the Amended Master Personal Injury Complaint, each Defendant's Master Answer to the Amended Master Personal Injury Complaint shall be deemed to deny all such allegations. Defendants are hereby relieved of the obligation to file any individual Answer to any Short Form Complaint filed in this MDL, or in any case transferred into this MDL, until otherwise ordered to do so by this Court, as contemplated by Paragraph 4 below.

4. Upon determination of cases to be included in the pool from which bellwether cases are to be selected (which will be the subject of a subsequent order), the Parties will propose a procedure for the filing by Defendants of dispositive motions and individual answers to those Personal Injury Plaintiffs' Short Form Complaints (or those Personal Injury Plaintiffs' Short Form Complaints as amended pursuant to Section 4.d above).

5. To the extent that a Personal Injury Plaintiff asserts in a Short Form Complaint any additional allegations or causes of action not pleaded in the Amended Master Personal Injury Complaint, as provided in Paragraph II.B.2.k above, any Defendant as to which such allegation or cause of action is pleaded shall not be required to file a Rule 9 or Rule 12 motion to dismiss as to such allegation or cause of action until such later date as permitted or required by the Court.

6. Each Defendant's adoption of the Master Answer to the Amended Master Personal Injury Complaint in each case in which that Defendant is named is without prejudice to any Defendant later moving to dismiss certain counts alleged in the Amended Master Personal Injury Complaint (at the appropriate time in any individual Plaintiff's action), or otherwise challenging the sufficiency of any claim or cause of action in any complaint under the applicable

state's law in cases that may be selected for inclusion in a discovery pool or bellwether trial pool. Any proposed Order submitted to this Court for a process of selecting cases for inclusion in a discovery pool or bellwether trial pool must include a proposed procedure for the filing of dispositive motions and/or specific answers to Short Form Complaints applicable to those cases.

7. By agreeing to the procedures for filing the Amended Master Personal Injury Complaint and the Short Form Complaints, no Defendant has agreed to or admitted the allegations that will be set forth in those documents, nor has any Defendant conceded or waived its rights to dispute the legal validity of the claims alleged therein, nor has any Defendant conceded the question of personal jurisdiction in any court. Defendants' agreement to this Order does not constitute an appearance by or for any Defendant for purposes of the jurisdictional analysis, and nothing in this Order shall be construed as a waiver of personal jurisdiction by any Defendant or any Defendant's jurisdictional and/or venue arguments.

8. Nothing in this Order shall limit any Defendant's right to amend its Master Answer to the Amended Master Personal Injury Complaint as provided in the Federal Rules of Civil Procedure.

D. Choice of Law. Filing a Personal Injury Complaint directly in MDL 3014 pursuant to this Order will not determine the choice of law, including the statute of limitations. Any choice of law principles will be determined based on the choice-of-law rules that would have applied in the federal district court of the Personal Injury Plaintiff's designated venue.

E. Voluntary Dismissals

Federal Rule of Civil Procedure 41 shall govern a Personal Injury Plaintiff's dismissal of an action.

Dated: 2/21/2023

s/Joy Flowers Conti
HON. JOY FLOWERS CONTI
SENIOR UNITED STATES DISTRICT JUDGE