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: Defendants Philips RS North America LLC and Philips North America LLC move under 28 U.S.C. § 1407(c) to transfer the *Roberts* action listed on Schedule A to the Western District of Pennsylvania for inclusion in MDL No. 3014. Plaintiff opposes the motion.

Defendants argue that *Roberts* shares factual questions with the actions pending in the MDL because plaintiff alleges that the CPAP device at issue in his complaint was the subject of 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 ("the Recall"). But plaintiff's complaint provides no specifics as to his alleged injury or how it was caused by the device at issue. Indeed, the complaint does not even refer to the Recall, but alleges only that plaintiff suffered an unspecified personal injury caused by a defective DreamStation CPAP device and that defendants have failed to replace the allegedly defective device. These allegations, standing alone, are insufficient to warrant transfer. The MDL encompasses claims of injury and economic loss allegedly caused by a specific defect that was the subject of the Recall—namely, that the device contained 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. *See In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Prods. Liab. Litig.*, 568 F. Supp. 3d 1408, 1409–10 (J.P.M.L. 2021). To fall within the scope of this MDL, plaintiff must allege that his injuries were caused by the defect that is the subject of the Recall.

Helpfully, though, plaintiff provides some clarity to his allegations in his opposition brief. While plaintiff fails to address the merits of defendants' transfer arguments, he attaches to his opposition brief a demand letter that he sent to Philips. *See* Opp. Br., Ex. 1, MDL No. 3014 (J.P.M.L. filed Apr. 9, 2023), ECF No. 723-1. In the letter, counsel states that plaintiff "immediately started experiencing headaches" after purchasing a Philips DreamStation device and that, upon learning that the machine had been recalled, plaintiff contacted Philips and was told to discontinue use of the device. *Id.* The clear implication of this demand letter, particularly in conjunction with the complaint and plaintiff's subsequent discovery request seeking information

regarding the Recall,[1] is that plaintiff's headaches were caused by the defect at issue in the Recall. This is sufficient to warrant transfer.

In opposition to transfer, plaintiff argues only that subject matter jurisdiction over his action is lacking and that his action should be remanded to state court. This argument is not persuasive. Jurisdictional objections such as those asserted by plaintiff here generally do not present an impediment to transfer.[2] *See, e.g.*, *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347–48 (J.P.M.L. 2001) ("[R]emand motions can be presented to and decided by the transferee judge.").

Therefore, after considering the parties' arguments, we find that the action listed on Schedule A involves common questions of fact with the actions transferred to MDL No. 3014, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we held that the Western District of Pennsylvania was an appropriate Section 1407 forum for actions sharing factual questions arising from Philips' recall of certain CPAP, Bi-Level PAP, and mechanical ventilator devices on June 14, 2021. The recalled devices allegedly contain 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. *See In re Philips*, 568 F. Supp. 3d at 1409–10. As discussed, plaintiff alleges that he suffered physical and economic injury caused by the defect at issue in the Recall.

[1] *See* Mot. to Transfer, Ex. B (Request to Produce), ¶ 2, MDL No. 3014 (J.P.M.L. filed Mar. 17, 2023), ECF No. 707-4 ("All documents, of any nature or kind, concerning the *recall* of the Dreamstation CPAP machine manufactured by one or more Defendants.") (emphasis added).

[2] Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

IT IS THEREFORE ORDERED that the action listed on Schedule A is 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

Karen K. Caldwell
Chair

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

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LIABILITY LITIGATION MDL No. 3014

SCHEDULE A

District of New Mexico

ROBERTS v. PHILIPS RESPIRONICS, INC., ET AL., C.A. No. 1:23−00201