

## Philips Inks \$1.1B Deal To Resolve CPAP Injury Claims

By **Matthew Santoni**

*Law360 (April 29, 2024, 9:52 AM EDT)* -- The plaintiffs' attorneys leading a multidistrict litigation against Koninklijke Philips NV and some of its American subsidiaries announced Monday that they had reached a \$1.1 billion settlement agreement for plaintiffs claiming that degraded foam in their breathing machines caused them personal injuries or will require long-term medical monitoring.

The company will pay \$1.075 billion to settle the personal injury claims and \$25 million for medical monitoring claims. Together with a recently approved, uncapped settlement for economic loss claims starting at \$506.3 million, the deals would end all three tracks of the multidistrict litigation against Philips stemming from its recalled CPAP, BiPAP and ventilator machines.

"Ultimately, these combined agreements accomplish what we sought to achieve when this litigation began — holding Philips accountable by obtaining care for those with physical injuries and compensation for those needing new respiratory devices," said a combined statement early Monday from the co-lead counsel for the plaintiffs, Sandra L. Duggan of Levin Sedran & Berman LLP, Kelly K. Iverson of Lynch Carpenter LLP, Christopher A. Seeger of Seeger Weiss LLP, and Steven A. Schwartz of Chemicles Schwartz Kriner & Donaldson-Smith LLP.

"We extend our thanks to the court-appointed mediator, Judge Diane Welsh, for her invaluable guidance which led to this resolution, and we will provide more information to eligible claimants and their legal counsel once the agreements are finalized and filed," the statement continued.

Details of the settlement have not yet been added to the docket for the MDL, which has been proceeding in Pennsylvania's Western District, where Philips Respironics manufactured many of the recalled devices.

Philips' CEO, Roy Jakobs, addressed the settlement in the company's first-quarter earnings statement to investors Monday, saying that insurers will pay the company €540 million (\$579 million) this year to help it cover the recall-related claims, and calling the settlements part of the company's "path forward."

"Patient safety and quality is our highest priority, and we have taken important steps in further resolving the consequences of the Respironics recall," Jakobs said in the statement. "The remediation of the sleep therapy devices for patients is almost complete, and the test results to date show the use of these devices is not expected to result in appreciable harm to health. We do regret the concern that patients may have experienced. The approved consent decree and economic loss settlement, and now the resolution of the personal injury and medical monitoring litigation in the U.S., are significant milestones

and provide further clarity on the way forward for Philips."

Philips had faced hundreds of lawsuits after it issued a 2021 recall of 10.8 million breathing machines used to treat conditions such as sleep apnea. The company said it had used the wrong kind of sound-insulating foam in the machines, which could break down under certain conditions and release chemicals and particles that plaintiffs said they inhaled while using the machines.

Cases against Philips were consolidated in the U.S. District Court for the Western District of Pennsylvania in October 2021, and cases against a separate company, SoClean, whose products were allegedly blamed for exacerbating the foam problems, were also consolidated there in February 2022.

The suits against Philips were eventually divided into three tracks, each with its own "master complaint": customers who only suffered economic losses from having to replace a recalled device, customers who claimed physical injuries from allegedly breathing in the degraded foam and its byproducts, and customers who wanted long-term monitoring of their health for problems that might arise later due to their alleged exposure.

Philips and the plaintiffs' lead attorneys reached a deal for the economic loss group in September, with terms that paid customers extra to return their recalled devices rather than keeping them or just trashing them. Philips agreed to establish a settlement fund that started out being worth at least \$467.5 million, and that could go up to \$1 billion depending on how many customers file claims. The attorneys sought fees of \$94.4 million for the economic loss class settlement, which the court approved.

There were disputes with Philips and the case's special master over whether the medical monitoring claims could be brought in all states, since not every jurisdiction allowed medical monitoring as a standalone claim, and others required there to be some "manifest physical injury."

The U.S. Food and Drug Administration signed off on a consent decree early in April that bars Philips from resuming production of the devices at three U.S. facilities until it hires an independent monitor, undergoes FDA inspections and has an outside expert verify that the replacement foam has been adequately tested.

The plaintiffs are represented by Sandra L. Duggan and Keith J. Verrier of Levin Sedran & Berman LLP, Christopher A. Seeger, Caleb Seeley and David R. Buchanan of Seeger Weiss LLP, Kelly K. Iverson of Lynch Carpenter LLP, Steven A. Schwartz of Chemicles Schwartz Kriner & Donaldson-Smith LLP, D. Aaron Rihn of Robert Peirce & Associates PC, Michael F. Ram of Morgan & Morgan PA, and Peter St. Tienne Wolff of Pietragallo Gordon Alfano Bosick & Raspanti LLP.

Philips is represented by Wendy West Feinstein, John P. Lavelle Jr. and Lisa C. Dykstra of Morgan Lewis & Bockius LLP, Erik T. Koons of Baker Botts LLP, and Michael H. Steinberg, Tracy Richelle High and William B. Monahan of Sullivan & Cromwell LLP.

The case is In re: Philips Recalled CPAP, Bilevel PAP and Mechanical Ventilator Products Litigation, case number 2:21-mc-01230, in the U.S. District Court for the Western District of Pennsylvania.

--Additional reporting by P.J. D'Annunzio, Lauren Berg and Mike Curley. Editing by Daniel King.