

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

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PEODUCTS LITIGATION This Document Relates to: All Actions	Master Docket: Misc. No. 21-1230 MDL No. 3014
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ORDER APPOINTING LEAD COUNSEL FOR LITIGATING PLAINTIFFS

WHEREFORE, this Court has suggested to the Litigating Plaintiffs' counsel that they should consider requesting the appointment of Co- Lead Counsel for future prosecution of the cases,

WHEREFORE, on the application of Alex Cabeceiras and Patrick W. Pendley, this Court by order (ECF 4306) directed Cabeceiras and Pendley to confer with interested parties and file a report on July 21, 2026;

WHEREFORE, at a hearing held on September 2, 2026, Mr. Cabeceiras did not appear or provide an excuse for not appearing, and in light of the Court not knowing whether Mr. Cabeceiras intends to fulfill the duties of a co-lead counsel at this time, only Mr. Pendley will be appointed as Lead Counsel.¹

The following is the response to the Court's direction of July 1, 2026;

A. Lead Counsel.

- 1. Responsibility and Duties.** Lead Counsel will have the duties outlined in Section 10.221 of the Manual for Complex Litigation (Fourth), except as otherwise amended by this Order to assist in the coordination of any pre-trial proceedings conducted by the individual plaintiffs. The authority, duties and responsibilities of Lead Counsel

1. Should Mr. Cabeceiras desire to be a co-lead counsel, he should file a renewed motion to be appointed co-lead.

with respect to all Litigating Plaintiffs' claims, also include, but shall not be limited, to the following (after consultation with the counsel for Litigating Plaintiffs as may be appropriate).

- a. 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 party the position of the Litigating Plaintiffs on common issues arising during the pre-trial proceedings;
- b. the filing, if appropriate, of pleadings addressing common issues and responses;
- c. brief and argue motions for the Litigating Plaintiffs and file opposing briefs and argue motions initiated by other parties (except to matters specifically directed to individual counsel) or designate the appropriate counsel to carry out these tasks;
- d. the initiation and conduct of common issue discovery on behalf of the Litigating Plaintiffs, consistent with the requirements of Federal Rule of Civil Procedure 26, which may include the preparation of joint interrogatories and request for production of documents regarding common issues, and the examination of witnesses and depositions, except that the discovery motions initiated by defendants directed to or regarding named individual plaintiffs which will be handled by counsel for those individuals;
- e. delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the Litigating Plaintiffs is conducted effectively, efficiently and economically;
- f. enter into stipulations with opposing counsel necessary for the conduct of the

litigation;

- g. convene meetings of the counsel for the Litigating Plaintiffs as necessary for the purpose of proposing joint action and discussing and resolving matters of common concern;
- h. consult with and retain expert witnesses in connection with common issues;
- i. perform all tasks necessary to carry out the functions of Lead Counsel and to properly coordinate plaintiffs' pretrial activities in the MDL proceeding before Judge Conti;
- j. authorize plaintiffs' Litigating Counsel to initiate case specific motions and discovery;
- k. designate Litigating Plaintiff's counsel authorized to attend hearings and depositions;
- l. prepare and distribute periodic status reports to the Court and the parties;
- m. and coordinate and communicate with Defendants' counsel with respect to matters addressed in this paragraph. No individual Litigating Plaintiff discovery or other work in this litigation will be undertaken by Lead Counsel except at the direction and consent of Lead Counsel and the attorney representing the individual Litigating Plaintiff.

B. Hearings and Meetings. The Lead Counsel shall coordinate to:

- i. Call meetings of Litigating 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 in hearings on behalf of the Litigating Plaintiffs;
- iv. Communicate on behalf of all Litigating Plaintiffs in response to any inquiries by the Court, subject to the right of any individual Litigating Plaintiffs' counsel to present nonrepetitive individual or different positions.

C. Abramowitz Cases

Mark Abramowitz posits that new Litigating Plaintiffs leadership will provide meaningful value by coordinating discovery, avoiding duplication of effort and addressing issues common to the remaining cases. Those efforts would benefit Mr. Abramowitz's cases and other cases that may be filed or remain pending.

Because the proposed leadership would perform work intended to advance and benefit these cases, Mr. Abramowitz does not object to an appropriate common benefit assessment for that work. Any such assessment should be structured and administered in a manner consistent with prior common benefit orders.

D. Litigating Plaintiff's Time and Expense Report. An additional responsibility of the

Lead Counsel will be to serve as Litigating Plaintiffs' Time and Expense Committee.

- i. Lead Counsel shall prepare a form for distribution to Litigating Plaintiffs' counsel to utilize in recording their common benefit time and expenses from month to month for the determination of fee payment and expense reimbursement at the conclusion of this litigation. In the event that any Litigating Plaintiffs claim is settled with the Defendants, before the resolution of all other claims, Lead Counsel and the Litigating Plaintiffs' counsel shall meet in an effort to allocate a portion of the then extant common benefit time and expenses for the

settling case. In the event that an agreement cannot be reached between Lead Counsel and counsel for the settling Litigating Plaintiff, the parties shall submit their respective positions to the Court (or mediator, as the case may be) for adjudication. The common benefit time and expense form will be filed under seal with the Court, and be provided to each counsel for Litigating Plaintiffs, or if pro se, to each Litigating Plaintiff, as well as Mr. Abramowitz. The common benefit time and expense form shall be filed no later than the 15th day of the month following the month in which the hours and expenses were incurred, to commence on October 15, 2026, with the first filing to be cumulative of the time and expenses incurred up to September 30, 2026. Any objections to the common benefit time and expenses must be filed, under seal, with the court no later than the 10th day of the following month and served on Mr. Pendley.

ii. Any payment of attorney fees or expenses to Lead Counsel or any other Litigating Plaintiff Counsel for common benefit work and reimbursement of expenses shall be paid pro rata upon the earlier of a) the settlement of any case – in which event the pro rata reimbursement must be paid out of the settlement proceeds by the paying party prior to distribution of the remaining settlement amount to the relevant Litigating Plaintiff's counsel or if pro se, to the relevant Litigating Plaintiff, or b) the conclusion of this MDL litigation.

Dated: September 2, 2026

BY THE COURT:

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