

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

IN RE: PHILIPS RECALLED CPAP,) Master Docket: Misc. No. 21-1230
BI-LEVEL PAP, AND MECHANICAL)
VENTILATOR PRODUCTS LITIGATION) MDL No. 3014
)
)
)

This Document Relates to: All Actions and)
these specific cases:

2:21-cv-01910-JFC
2:21-cv-01893-JFC
2:22-cv-00116-JFC
2:21-cv-01866-JFC
2:21-cv-01871-JFC
2:21-cv-01876-JFC
1:22-cv-00092-JFC
2:21-cv-01868-JFC
2:22-cv-00088-JFC
2:21-cv-01869-JFC
2:22-cv-00188-JFC
2:21-cv-01830-JFC
2:21-cv-01877-JFC
2:22-cv-00175-JFC
2:22-cv-00156-JFC
2:21-cv-01848-JFC
2:21-cv-01908-JFC
3:21-cv-04244-JFC
2:21-cv-01894-JFC
2:21-cv-01812-JFC
2:21-cv-01870-JFC
2:21-cv-01909-JFC
1:22-cv-00057-JFC
2:21-cv-01847-JFC
2:21-cv-01895-JFC
2:22-cv-00152-JFC

**STIPULATION AND NOTICE OF DISMISSAL OF THE
BURNETT DEFENDANTS PURSUANT TO F.R.C.P. 41(a)
(1)(A)(i) AND STIPULATED TOLLING AGREEMENT**

It is hereby stipulated by and among Co-Lead Counsel for Plaintiffs and Defendants Wm. T. Burnett Foam LLC; Wm. T. Burnett & Co.; Wm. T. Burnett Management, Inc.; Wm. T. Burnett Holding LLC; Wm. T. Burnett & Co., Incorporated; Wm. T. Burnett Fiber LLC; and Wm. T. Burnett IP LLC (“Burnett”) and their respective Counsel as follows:

WHEREAS, MDL 3014 has been established in the U.S. District Court for the Western District of Pennsylvania for consolidated pretrial proceedings of litigation relating to the purchase and/or use of one or more of the recalled Continuous Positive Airway Pressure (“CPAP”) machines, Bilevel Positive Airway Pressure (“BiPAP”) machines, and/or ventilators designed and manufactured by Defendants Philips RS North America LLC f/k/a Respironics, Inc.; Koninklijke Philips N.V., Philips North America LLC, Philips Holding USA, Inc., and/or Philips RS North America Holding Corporation (hereinafter collectively referred to as “Philips”) which are the subject of this litigation (hereinafter collectively referred to as the “Recalled Devices”);

WHEREAS, Wm. T. Burnett Foam LLC; Wm. T. Burnett & Co.; Wm. T. Burnett Management, Inc.; Wm. T. Burnett Holding LLC; Wm. T. Burnett & Co., Incorporated; Wm. T. Burnett Fiber LLC; and Wm. T. Burnett IP LLC (“Burnett”) were named as Defendants in the below-listed actions which are or will be consolidated as part of MDL 3014;

WHEREAS Burnett denies any responsibility or liability for any Plaintiffs or Potential Claimants’ Claims, injuries and/or damages or other relief, and in support of its position, Burnett submitted the Affidavits of Lee Lawler and Nick Vero, attached hereto as **Exhibits A and B**, respectively;

THEREFORE, Co-Lead Counsel for Plaintiffs and the Burnett Defendants, hereby stipulate and agree as follows:

1. Burnett is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) from the lawsuits currently filed and consolidated in the MDL No. 3014 in the U.S. District Court for the Western District of Pennsylvania, at the following matters:

Blevins, Delbert & Deborah	2:21-cv-01910-JFC
Briske, Deborah	2:21-cv-01893-JFC
Cables, Gary Richard	2:22-cv-00116-JFC
Christiansen, Kevin & Christy	2:21-cv-01866-JFC
Davis, Cecil & Karen	2:21-cv-01871-JFC
Gayten, Terrance	2:21-cv-01876-JFC
Genau, Richard & Susan	1:22-cv-00092-JFC
Hargers, Lathersia	2:21-cv-01868-JFC
Hawkins, Ervin III	2:22-cv-00088-JFC
Hill, John Clayton	2:21-cv-01869-JFC
Howard, Jack Wayne	2:22-cv-00188-JFC
Jackson, Tanish	2:21-cv-01830-JFC
Janes, Peter & Judith	2:21-cv-01877-JFC
Kell, Toliver James Jr. & Dorothy A.	2:22-cv-00175-JFC
Luttner, Pamela & Mark	2:22-cv-00156-JFC
Matthews, Desi & Carolyn-Bolomas	2:21-cv-01848-JFC
McGee, Thomas	2:21-cv-01908-JFC
Mitchell, Thomas	3:21-cv-04244-JFC
Rogers, John	2:21-cv-01894-JFC
Silva, Sandra	2:21-cv-01812-JFC

Walker, Katrina L	2:21-cv-01870-JFC
White, Teri	2:21-cv-01909-JFC
Shiffler, Doug	2:22-cv-00623-JFC
Dennis, James	2:21-cv-01847-JFC
Teague, Mary Ann	2:21-cv-01895-JFC
Giuffre, James	2:22-cv-00152-JFC

2. Burnett agrees to the tolling of Limitations¹ with respect to any Claim(s)² held by any Claimant(s).³

3. The “**Effective Date**” for the tolling of Limitations set forth in paragraph 2 shall begin: (a) for the cases identified in Paragraph 1, on the date their specific action was filed; (b) for all other Claimants, on February 5, 2022.

4. The “**Tolling Period**” shall begin on the Effective Date and shall end on the earlier of: (i) 90 days after any party provides written notice that the party is withdrawing from this Tolling Agreement; or (ii) the date on which the Claimant files or otherwise commences a tolled Claim

¹ The term “**Limitations**” shall refer to shall mean 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.

² The term “**Claim(s)**” shall refer to any claim(s) or cause(s) of action alleging personal injury, wrongful death, economic injuries, or any associated harms caused by using a Philip’s CPAP, BiBAP or Ventilator device that contained foam supplied by Burnett. The term “Claim” as defined herein specifically includes any loss of consortium claims and punitive damages claims that may exist, if any.

³ “**Claimant(s)**” includes any Plaintiff in any action filed in or transferred to this MDL, any person who registers on any census registry created in this MDL and who has or will file tolling agreements with the Phillips Defendants pursuant to its tolling agreement, and/or any person who is otherwise specifically identified to Burnett as one with any Claim(s), as defined herein. For the avoidance of doubt, the term Claimant(s) includes any person who has a consortium or other claim derivative of the Claim(s) of any Claimant; consortium or derivative Claimants need not be separately identified or registered.

against Defendants. The Tolling Period can be extended upon written agreement by all of the Parties.

5. Burnett agrees to provide at least 60 days written notice of the intention to seek to terminate this stipulated tolling agreement. If Burnett gives notice of their intent to terminate the tolling agreement as to all Claimants, the parties agree to work cooperatively to provide notice to all Claimants, including by filing notice with the Court and distributing a notice to persons who have registered on a census registry.

6. While the stipulated tolling agreement set forth in paragraph 2 is in effect, Burnett will not be named as a Defendant in any of the Consolidated or Master Complaints to be filed in MDL No. 3014.

7. The Tolling Period may not be included in computing any period limited by law, regulation, or order for the bringing of any Claim.

8. The tolling of any applicable Limitations is not intended to and shall not be deemed to limit or adversely affect any defense, other than a Limitations defense that Burnett has, may have, or would have had in the absence of this stipulated agreement. Additionally, this stipulation shall not be deemed to limit or adversely affect any Claimant from arguing that any cause of action they may later assert against Burnett, if any, “relates back” to another complaint or to assert any other changes to any Limitations period based upon any discovery rule or on any other equitable basis.

9. Burnett agrees to cooperate, subject to any applicable objections they may have, with any discovery propounded by Plaintiffs to Burnett related to this action, including for documents or depositions, as though Burnett was a party to this action. In the event of a dispute among Plaintiffs and Burnett concerning any objection to discovery propounded by Plaintiffs that is

presented to the Discovery Special Master, the Court, or its designee for determination and/or decision, Burnett shall be viewed as a party for purposes of assessing its relative obligations and responsibilities to provide discovery in these proceedings.

10. Burnett agrees that service of process on its undersigned counsel (including by e-mail) constitutes valid service of process for any discovery or other process that Plaintiffs serve on Burnett related to this action.

11. Burnett agrees to cooperate with any other reasonable request made of them by Plaintiffs Co-Lead Counsel related to this action.

IT IS SO ORDERED.

BY THE COURT:

Dated: June 1, 2022

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

So agreed and stipulated to this 27th day of May, 2022.

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2:21-cv-01910-JFC
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2:21-cv-01909-JFC
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2:22-cv-00152-JFC

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2 :22-cv-00623-JFC

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