

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 3014

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel:* Plaintiffs in the *Lis* action listed on Schedule A move under Panel Rule 7.1 to vacate our order that conditionally transferred *Lis* to the Western District of Pennsylvania for inclusion in MDL No. 3014. Defendants Philips RS North America LLC, Koninklijke Philips N.V., Philips North America LLC, Philips Holding USA, Inc., and Philips Healthcare¹ oppose the motion.

Plaintiffs argue that federal subject matter jurisdiction over their action is lacking and that transfer is therefore inappropriate. Ordinarily, this would be insufficient to justify vacating the CTO. *See, e.g., In re Ford Motor Co. DPS6 PowerShift Transmission Prods. Liab. Litig.*, 289 F. Supp. 3d 1350, 1352 (J.P.M.L. 2018) (“It is well-established that jurisdictional objections, including objections to removal, are not relevant to transfer.”). The procedural posture of *Lis*, however, warrants a different resolution. The assigned magistrate judge in the Western District of New York has issued a Report and Recommendation recommending that the transferor court remand *Lis* to state court. Objections to this Report were filed on November 27, 2023.² Given these developments, transfer at this time would only introduce procedural inefficiencies with respect to this action. Accordingly, we grant plaintiffs’ motion to vacate the conditional transfer order. Should *Lis* remain in federal court once all proceedings relating to the remand order are concluded, the parties or the court can re-notice *Lis* as a potential tag-along action in MDL No. 3014.

* Judge Karen K. Caldwell did not participate in the decision of this matter.

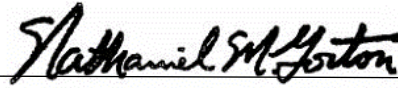
¹ In its papers, Philips states that there is no legal entity called “Philips Healthcare.”

² Plaintiffs notified the Panel of the briefing schedule on objections to the magistrate judge’s Report on November 17, 2023. *See* MDL No. 2873, ECF No. 846. Defendants argue that this filing occurred after the close of briefing on plaintiffs’ motion to vacate and was improper. *See* MDL No. 2873, ECF No. 847. We need not decide this dispute, as the transferor court’s briefing schedule did not impact our decision here.

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IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-81" is vacated as to the action listed on Schedule A.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Nathaniel M. Gorton", is positioned above a horizontal line.

Nathaniel M. Gorton
Acting Chair

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

David C. Norton
Dale A. Kimball

**IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP,
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SCHEDULE A

Western District of New York

LIS, ET AL. v. KONINKLIJKE PHILIPS N.V., ET AL., C.A. No. 1:23-00907