

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

MARY ORTEGO,)	
)	
PLAINTIFF,)	
)	
V.)	Civil Action No. 6:21-cv-3447
)	
KONINKLIJKE PHILIPS N.V.;)	<u>JURY DEMAND</u>
PHILIPS NORTH AMERICA LLC;)	
PHILIPS HOLDING USA, INC.; and)	
PHILIPS RS NORTH AMERICA LLC;)	
)	
DEFENDANTS.)	

COMPLAINT

Plaintiff Mary Ortego, by and through her undersigned counsel, hereby submits the following Complaint and Demand for Jury Trial against Defendants Koninklijke Philips N.V. (“Royal Philips”), Philips North America LLC (“Philips NA”), Philips Holding USA, Inc. (“PHUSA”), and Philips RS North America LLC (“Philips RS”) (collectively referred to as “Philips” or the “Defendants”) and alleges the following upon personal knowledge and belief, and investigation of counsel:

INTRODUCTION

1. Philips manufactures, markets, sells, and distributes a variety of products for sleep and home respiratory care.
2. Philips manufactures, markets, imports, sells, and distributes a variety of Continuous Positive Airway Pressure (CPAP) and BiLevel Positive Airway Pressure (BiLevel PAP) devices for patients with obstructive sleep apnea (“OSA”).
3. Philips also manufactures, markets, imports, sells, and distributes a variety of ventilator devices for patients with respiratory conditions.

4. On June 14, 2021, Philips issued a recall notification for many of its CPAP and BiLevel PAP devices as well as a number of its ventilator devices.

5. In its recall notification, Philips advised of potential health risks related to the sound abatement foam used in the affected devices.

6. Philips informed patients using these affected devices of potential risks from exposure to degraded sound abatement foam particles and exposure to chemical emissions from the sound abatement foam material.

7. Specifically, Philips notified patients that the risks related to issues with the sound abatement foam include headache, irritation, inflammation, respiratory issues, and possible toxic and carcinogenic effects.

8. Plaintiff Mary Ortego was prescribed to use and purchased the DreamStation CPAP device, one of Philips' recalled devices, to treat her obstructive sleep apnea.

9. Plaintiff used Philips' DreamStation CPAP device (the "subject device"), one of Philips' recalled devices, on a daily basis for a number of years.

10. In or around September 28, 2020, Plaintiff was diagnosed with kidney disease.

11. As a direct and proximate result of Philips' conduct, Plaintiff has suffered serious and substantial life-altering injuries.

12. As a direct and proximate result of the subject device, manufactured, marketed, imported, sold, and distributed by Philips, Plaintiff has suffered physical, emotional, and financial injuries, including kidney disease.

PLAINTIFF

13. Plaintiff Mary Ortego is an adult resident and citizen of Opelousas, Louisiana. Opelousas, Louisiana is located in St. Landry Parish.

14. Plaintiff has been a resident and citizen of Opelousas, Louisiana since the time she was prescribed her Philip's DreamStation CPAP through the present, including the time she was diagnosed with kidney disease.

DEFENDANTS

15. Defendant Koninklijke Philips N.V. ("Royal Philips") is a public limited liability company established under the laws of The Netherlands, having its principal executive offices at Philips Center, Amstelplein 2, 1096 BC Amsterdam, The Netherlands. Royal Philips is the parent company of Philips NA and Philips RS. Royal Philips can be served with process via the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* ("Hague Service Convention").

16. Defendant Philips North America LLC ("Philips NA") is a Delaware corporation with its principal place of business located at 222 Jacobs Street, Floor 3, Cambridge, Massachusetts 02141. Philips NA is a wholly-owned subsidiary of Royal Philips. Upon information and belief, Philips NA manages the operation of Royal Philips' various lines of business, including Philips RS, in North America. The sole member of Philips NA is PHUSA, which is a Delaware corporation with its principal place of business located at 222 Jacobs Street, Floor 3, Cambridge, Massachusetts 02141. Philips NA may be served through its registered agent, Corporation Service Company, at 501 Louisiana Avenue, Baton Rouge, Louisiana 70802.

17. Defendant Philips Holding USA, Inc. ("PHUSA") is a Delaware corporation with its principal place of business located at 222 Jacobs Street, Floor 3, Cambridge, Massachusetts 02141. PHUSA is a holding company that is the sole member of Defendant Philips NA. PHUSA may be served through its registered agent, Corporation Service Company, at 501 Louisiana Avenue, Baton Rouge, Louisiana 70802.

18. Defendant Philips RS North America LLC (“Philips RS”) is a Delaware corporation with its principal place of business located at 6501 Living Place, Pittsburgh, Pennsylvania 15206. Philips RS was formerly operated under the business name Respironics, Inc. (“Respironics”). Royal Philips acquired Respironics in 2008.¹ Philips RS may be served through its registered agent, Corporation Service Company, at 501 Louisiana Avenue, Baton Rouge, Louisiana 70802.

19. Royal Philips, Philips NA, PHUSA, and Philips RS are hereinafter collectively referred to as “Philips” or the “Defendants.”

JURISDICTION AND VENUE

20. At all times pertinent to this Complaint, Defendants were and are in the business of designing, manufacturing, marketing, promoting, advertising, and selling devices for the treatment of obstructive sleep apnea, including the DreamStation device prescribed for and purchased by Plaintiff at issue in this lawsuit (the “subject device”).

21. At all times pertinent to this Complaint, Defendants were the mere alter egos or instrumentalities of each other. There is such a unity of interest and ownership between Defendants that the separate personalities of their entities ceased to exist. Defendants operated as a single enterprise, equally controlled each other’s business affairs, commingled their assets and funds, disregarded corporate formalities, and used each other as a corporate shield to defeat justice, perpetuate fraud and evade contractual and/or tort liability.

22. At all times pertinent to this Complaint, Defendants acted in all respects as agents or apparent agents of one another.

¹ *Philips announces completion of tender offer to acquire Respironics*, WEB WIRE, <https://www.webwire.com/ViewPressRel.asp?aId=61199> (accessed June 30, 2021).

23. At all times pertinent to this Complaint, Defendants acted in concert in the designing, manufacturing, marketing, promoting, advertising, and selling of devices for the treatment of obstructive sleep apnea, including the subject device. Defendants combined their property and labor in a joint undertaking for profit, with rights of mutual control over each other, rendering them jointly liable to Plaintiff.

24. Defendants regularly transact business in Louisiana that includes marketing and selling devices for the treatment of obstructive sleep apnea, derive substantial revenue from their business transactions in Louisiana, and have purposely availed themselves of the privilege of doing business in Louisiana.

25. Defendants shipped or participated in shipping the subject device and other devices with the reasonable expectation that the devices could or would find their way to Louisiana through the stream of commerce.

26. Defendants' actions in marketing and selling their devices in Louisiana should have led them to reasonably anticipate being hauled into Court in Louisiana.

27. Defendants have sufficient "minimum contacts" with Louisiana that subjecting them to personal jurisdiction in Louisiana does not offend traditional notions of fair play and substantial justice.

28. As detailed below, Plaintiff suffered injuries in St. Landry Parish, Louisiana from the subject device that Defendants negligently designed and/or manufactured either in Louisiana or outside of Louisiana. Thus, Defendants committed a tort either in Louisiana or outside of Louisiana that caused injuries in Louisiana, and the Court has personal jurisdiction over Defendants under Louisiana's Long Arm Statute, La. Rev. Stat. Ann § 13:3201.

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