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Philips Faces Class Suits Over Recalled CPAP Sleep Devices

By **Jonathan Capriel**

Law360 (July 27, 2021, 3:53 PM EDT) -- Dutch medical equipment company Philips is facing a flurry of proposed class actions after recently recalling its sleep apnea breathing machines, which the company says may have exposed users to cancer-causing chemicals from defective foam.

The consumers cite a voluntary recall Philips issued in June that affected several million devices meant to treat sleep apnea, a condition that obstructs respiratory airways during sleep.

The most recent suit was filed in Massachusetts federal court Monday by Ellen Osman and husband Daniel Osman, who claim she was diagnosed with lung cancer while using the machine.

Their lawsuit did not explicitly claim that her cancer was caused by the device she used nightly for the past five years, nor is it asking for Philips to pay for her cancer treatment. Her lawsuit asks the court to make the company cover the cost of a new machine for herself, her husband and others in her class living in Florida. It also requested punitive damages against the Amsterdam-based company.

There are at least 11 other class actions representing consumers in other states, claiming varying levels of injury and demanding reimbursement for the defective devices. Most of the actions were filed in Massachusetts and Pennsylvania, where Philips' US subsidiaries are situated. Besides Florida, the suits represent residents of New York, New Jersey, Pennsylvania, California, Maryland, Oregon, Indiana, Texas, Louisiana and Arkansas.

The machines — the continuous positive airway pressure, CPAP, and the Bi-Level Positive Airway Pressure, or Bi-Level PAP — alleviate irregular breathing during sleep by pumping a stream of oxygen into a person's nose, mouth or both from the device to a mask worn in bed.

Philips insulated these machines with a polyester-based polyurethane foam, known as PE-PUR, meant to reduce noise. But the company issued a recall in June that said the foam is susceptible to degradation when exposed to humidity, improper cleaning and other conditions. When degrading, the foam emits toxic particulates that can cause "headache, irritation, inflammation, respiratory issues" and possibly cancer, according to the recall notice.

The Osman complaint says her lung cancer was detected about two years ago and "was in remission until a month ago." Her suit focuses largely on the financial damages she and her husband experienced by having to purchase new machines. Both suffer from sleep apnea.

In the recall, Philips said it would create a repair-and-replace program for the affected devices. But the company hasn't told consumers when the program would begin, according to Osman's complaint.

"In fact, Philips has not provided its customers with a safe or satisfactory solution to the PE-PUR foam defect," her lawsuit said. "If plaintiffs and other affected patients want to treat their sleep apnea or respiratory failure, they have no choice but to use their dangerous, defective breathing devices or pay for a new device."

Daniel Osman has gone without a machine for weeks since the recall and has suffered because of it, according to the lawsuit. Ellen Osman claims she spent $521 to replace her Philips CPAP device. Another proposed class action, filed on July 16, claims that Los Angeles resident Lisa Mitrovich paid $940 to replace her Bi-Level PAP machine.

This delay has burnt a hole in consumers' pockets who've taken on the costs of a new machine, said David M. Birka-White, attorney at Birka-White Law Offices, who is counsel for Mitrovich.

"There are a very large number of people who have these sleep machines," Birka-White said. "Philips is not offering a solution by either replacing or fixing these machines. When Philips doesn't offer an interim fix, it's leaving people out in the lurch."

And just because there is no visible damage to the foam doesn't mean users didn't inhale toxic chemicals, according to a lawsuit filed on Friday in Pennsylvania district court by New Jersey-resident Suzanne Cohen. She's demanding that Philips pay for "monitoring procedures" that would detect health risks caused by PE-PUR foam exposure.

Philips did not immediately respond to questions for this story.

The Osmans are represented by Kimberly A. Dougherty of Justice Law Collaborative LLC; David S. Stellings and Gabriel Panek of Lieff Cabraser Heimann & Bernstein LLP; and Michael E. Criden and Lindsey C. Grossman Criden & Love PA.

Mitrovich is represented by David M. Birka-White of Birka-White Law Offices and Geoffrey P. Norton of Norton & Melnik APC.

Cohen is represented by D. Aaron Rihn of Robert Peirce & Associates PC; Pearl A. Robertson and Anthony D. Irpino of Irpino Avin Hawkins Law Firm; and Richard M. Golomb and Kenneth J. Grunfeld of Golomb Spirt Grunfeld PC.

Counsel information for Philips was not immediately available.

The cases are Lisa Mitrovich v. Koninklijke Philips NV et al., case number 2:21-cv-05793, in the United States District Court Central District of California, Western Division; Daniel Osman and Ellen Osman v. Koninklijke Philips N.V. et al., case number 1:21-cv-11199, in the United States District Court District of Massachusetts; Suzanne Cohen v. Koninklijke Philips N.V. et al., case number 2:21-cv-00984, in the United States District Court for the Western District of Pennsylvania, case number 2:21-cv-00984, in the United States District Court for the Western District of Pennsylvania.

--Editing by Rich Mills.