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Philips Faces Refund Suit Over Recalled CPAP Devices

By **PJ D'Annunzio**

Law360 (March 9, 2022, 7:04 PM EST) -- Philips was hit with a potential class action on Wednesday by a medical device retailer claiming it and others are owed a refund due to lost money because they were unable to resell Philips' CPAP and BiPAP breathing machines, which contained PE-PUR foam.

Philadelphia-area device supplier Baird Respiratory Therapy Inc. claimed in its complaint that Philips breached its warranty and misrepresented the risk related to the potentially cancer-causing, polyester-based polyurethane sound dampeners found on CPAP and BiPAP breathing devices used by sleep apnea patients.

"As a direct and proximate result of Philips' breaches of express warranty, plaintiff and members of the class have been damaged because they purchased recalled products that they are unable to resell," the complaint said. "Plaintiff and members of the class did not receive the benefit of the bargain and suffered damages at the point of sale stemming from their overpayment for the recalled devices."

Philips recalled its devices in June, after disclosing in its quarterly report over a month earlier that the foam could degrade if cleaned improperly or was exposed to high humidity and temperature, the complaint said.

While Baird did not specify how much money it lost, it said that the aggregate class claims would exceed $5 million.

Baird also alleged that Philips delayed its recall and that it had been receiving complaints on message boards and YouTube of black particles building up in the device airways, according to the complaint.

"Thus, as a result of user reports, Philips was aware of the degradation of the PE-PUR sound abatement foam used in the recalled devices yet continued to manufacture and sell the recalled devices to plaintiff and other DME [durable medical equipment] suppliers with such awareness for a significant period of time," the complaint said. "During this period, Philips unreasonably and unjustly profited from the sale of the recalled devices."

Baird said that despite the fact that Philips announced a repair and replace program for CPAP and BiPAP users, it has done nothing to compensate the medical device suppliers who sold them to patients.

Additionally, Baird accused Philips of fraudulently misrepresenting to sellers that the devices were safe for use.

"Philips knew that its representations about the recalled devices were false in that the recalled devices contained PE-PUR Foam and were therefore defective and that could cause adverse health effects to plaintiff's customer-users of the recalled devices which does not conform to the products' labels, packaging, advertising, and statements," the complaint said.

An attorney for Baird did not immediately respond to a request for comment. Philips did not immediately respond to a request for comment.

Counsel information for Philips was not immediately available.

Baird is represented by Marc H. Edelson and Liberato P. Verderame of Edelson Lechtzin LLP and Jonathan Shub of the Shub Law Firm.

The case is Baird Respiratory Therapy Inc. v. Koninklijke Philips NV, case number 2:22-cv-00886, in U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Nicole Bleier.
