

FEDERAL COURT OF AUSTRALIA

OPT OUT NOTICE

Philips Class Action

Eva Lindbloom v Philips Electronics Australia Limited T/AS Philips Healthcare (ACN 008 445 743) & and Philips RS North America LLC (VID565/2021)

Formerly known as *Peter Lewis v Philips Electronics Australia Limited T/AS Philips Healthcare (ACN 008 445 743) & and Philips RS North America LLC (VID565/2021)*

THIS NOTICE IS IMPORTANT

The Federal Court of Australia has ordered that this notice be published for the information of persons who might be Group Members on whose behalf the action is brought and may be affected by this class action.

PLEASE READ THIS NOTICE CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS

- This notice is for the information of persons who are Group Members in the Federal Court class action *Eva Lindbloom v Philips Electronics Australia Limited T/AS Philips Healthcare (ACN 008 445743) and Philips RS North America LLC (Class Action)*. This proceeding was previously known as *Peter Lewis v Philips Electronics Australia Limited T/AS Philips Healthcare (ACN 008 445 743) & and Philips RS North America LLC*.
- The Class Action is being conducted on behalf of Group Members. You are a Group Member if you:
 - purchased, rented and/or used certain Philips sleep and respiratory care devices set out in Part A to this Notice (**Devices**); and
 - have suffered personal injury, loss or damage from your purchase, rental and/or use of the Device in the manner outlined in this notice.
- The Class Action involves Mrs Lindbloom (the **Applicant**) alleging that the Devices had a safety defect and that Group Members suffered personal injury, loss or damage as a result. Specifically, it is alleged that the degradation of polyester based polyurethane sound abatement foam in the Devices caused the Applicant and the Group Members to be subject to (1) particulate exposure and (2) the ingestion or inhalation of volatile organic compound chemicals.
- Some Group Members are also Sub-Group Members. You are a Sub-Group Member if you:
 - are Group Member; and
 - have received a replacement, whether repaired, refurbished or new, for a Device from Philips Australia as part of the Urgent Product Defect Correction RC-2021-RN-01373-1 (**Replacement Devices**).
- For the Sub-Group Members, the Class Action alleges that the Replacement Devices also had a safety defect, and that Sub-Group Members suffered personal injury, loss or damage as a result
- Philips Electronics Australia Limited and Philips RS North America LLC (the **Respondents**) deny the claims made by the Applicant in relation to either the Devices or the Replacement Devices and are defending the Class Action
- If you are a Group Member, you may do one of two things in response to this Notice:

1. **Do nothing** and you will remain part of the Class Action and may receive compensation if it is successful.
 2. **Opt out** of the class action by completing the attached form and sending it to the Federal Court of Australia registry before **4:00pm** AEDT on **31 January 2025**. If you opt out, you will not be bound by any outcome in the Class Action and will not receive any compensation arising out of the Class Action if it is successful.
- You may have received this Notice because you are the executor or contact person for the estate of a deceased individual who may have been a Group Member at the time of their death. In that case, you should provide a copy of this Notice to each beneficiary of the estate of the former Group Member.

If you have any questions about this Notice or the Class Action, you should seek independent legal advice. You may also seek further information from Gerard Malouf & Partners, the lawyers conducting the class action on behalf of the Applicant and Group Members, by visiting the website at www.philipscpapclaim.com.au or contacting them on 1800 004 878 or philipsclassaction@gmp.net.au. You may also register your details with Gerard Malouf & Partners so as to receive updates about the proceeding. Any questions you have concerning this notice should **not** be directed to the Court.

1. WHAT IS A CLASS ACTION?

- 1.1. A class action is a legal proceeding brought by a person (in this case, Mrs Lindbloom the **Applicant**) on their own behalf, and on behalf of a number of persons (referred to as **Group Members**), who have similar claims against the same person (**Respondent**).
- 1.2. Group Members in a class action are not individually responsible for the legal costs associated with bringing the class action. In a class action, unless the Court orders otherwise, only the Applicant is responsible for the costs.
- 1.3. Group Members will be bound by the outcome of the Class Action unless they choose to opt out of the Class Action before the deadline. A binding result can happen in two ways: a judgment following a trial, or a settlement at any time. If there is a judgment or settlement of the Class Action, Group Members who have not opted out will not be able to pursue the same claims against the Respondent in separate proceedings
- 1.4. If you consider that you have claims against a Respondent which are based on your individual circumstances or otherwise additional to the claims described in the Class Action, then it is important that you seek independent legal advice about the potential binding effects of the Class Action before the deadline

2. WHAT IS THE CLASS ACTION ABOUT?

- 2.1. This Class Action is brought by the Applicant on her behalf and on behalf of all persons who are Group Members as defined in the proceeding, set out at **Page 1**.
- 2.2. The Class Action was commenced in October 2021 by Mr Lewis as Applicant. In April 2023, the then-Applicant Mr Lewis applied to the Court to discontinue the Class Action, for which you may have received a separate Notice. In November 2023, the Class Action was not discontinued and Mrs Eva Lindbloom was substituted instead for Mr Lewis as the Applicant in the Class Action. The Class Action has continued since that date with Mrs Lindbloom as the Applicant and with new lawyers acting for Mrs Lindbloom.
- 2.3. The Applicant alleges that the Devices have a safety defect and that Group Members suffered personal injury, loss or damage as a result of that safety defect. The safety defect alleged in the Devices is that the degradation of polyester based polyurethane sound abatement foam in the Affected Devices caused Mrs Lindbloom and the Group Members to be subject to (1) particulate

exposure and (2) the ingestion or inhalation of volatile organic compound chemicals.

- 2.4. The Applicant further alleges that, for Sub-Group Members who received a Replacement Device for their Devices, Replacement Devices themselves have a safety defect and that Sub-Group Members suffered personal injury, loss or damage as a result of that safety defect.
- 2.5. The Applicant alleges that the Respondents breached their obligations under Australian consumer protection laws and/or their duty of care owed to the Applicant and Group Members, and that as a result she and the Group Members have suffered personal injury, loss or damage arising from the use of the Devices and the Replacement Devices.
- 2.6. The Respondents deny the claims made by the Applicant and say (amongst other things) that the Devices, and the Replacement Devices, did not have a safety defect and that at all times the Devices were included in the Australian Register of Therapeutic Goods (**ARTG**) as required by law. The Respondents deny that they breached and obligations under Australian consumer protection laws or any duty of care owed to the Applicant or Group Members.

3. WHAT IS OPT OUT?

- 3.1. The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf. However, Group Members can cease to be class members by opting out of the Class Action.
- 3.2. Group Members will be bound by the outcome of the Class Action unless they choose to opt out of the Class Action before the deadline. An explanation of how Group Members can opt out is set out in section 7 below.

4. ARE YOU A GROUP MEMBER?

- 4.1. You are a Group Member if you satisfy the definition of 'Group Member' on Page 1 of this Notice.
- 4.2. You are a Sub-Group Member if you:
 - (a) are a Group Member; and
 - (b) have received a Replacement Device.
- 4.3. If you are unsure whether you are a Group Member or Sub-Group Member, please access the additional information at www.philipscpapclaim.com.au or seek your own legal advice.

5. WILL YOU BE LIABLE FOR LEGAL COSTS IF YOU REMAIN A GROUP MEMBER?

- 5.1. You will **not** become liable for any out of pocket legal costs simply by remaining a Group Member.
- 5.2. The Applicant has entered into a Conditional Legal Costs Agreement with Gerard Malouf & Partners (**Costs Agreement**). The costs of the Class Action are covered by Gerard Malouf & Partners under this Costs Agreement. Gerard Malouf & Partners will only recover costs at the end if there is a 'successful outcome'. A 'successful outcome' includes any of the following outcomes occurring at any stage of the Class Action:
 - (a) a judgment in favour of the Applicant; or
 - (b) an amount being paid by the Respondent (or any one or more Respondents) and/or an associated or other entity or entities in the Applicant's favour as a result of her claim and/or the claims of some or all of the Group Members; or
 - (c) resolution by a settlement agreement where compensation, damages and/or costs are payable from which the Applicant and/or some or all Group Members will received a sum of money, an interest in an asset or some other benefit, or payment in the nature of an *ex gratia* payment; or

- (d) Gerard Malouf & Partners obtains from one or both of the Respondents an offer of settlement, which Gerard Malouf & Partners or counsel recommends to the Applicant to accept, and which represents in the opinion of Gerard Malouf & Partners, a reasonable and appropriate resolution to the Applicant's claim and/or the Class Action as a whole.
- 5.3. The Applicant's legal costs must ultimately be approved by the Federal Court. The Court will assess the legal costs incurred in the proceeding and will only make an order for costs for an amount that the Court considers appropriate given the nature of the proceeding.
- 5.4. If the Class Action results in compensation being paid to the Applicant, the Applicant has agreed under the Costs Agreement to apply for legal costs to be deducted from the resolution sum. The Applicant has instructed Gerard Malouf & Partners that, in the event of a successful outcome of the Class Action (as defined above), Gerard Malouf & Partners is to apply to the Court for an order that the legal costs of Gerard Malouf & Partners to be paid by way of a solicitors' common fund order, seeking 25 percents of any resolution sum.
- 5.5. The effect of any such order, if made, would be that all Group Members who benefit from the successful outcome of the Class Action would share proportionately the legal costs of the Class Action having been brought to that successful outcome. That means even those who do not sign a Costs Agreement with Gerard Malouf & Partners may have to contribute to these costs out of any sum recovered by judgment or settlement (not out of pocket). Any solicitors' common fund order, including the percentage of the deduction for legal costs, must first be approved by the Court. If approved, this would be deducted from the resolution sum, prior to distribution to eligible Group Members.
- 5.6. If the Court does not approve a solicitors' common fund order for legal costs to be paid as a percentage of any resolution sum, Gerald Malouf & Partners will seek to be paid professional fees charged in accordance with the agreed rates under the Lead Applicant Costs Agreement, which includes an uplift of 25% to those rates as compensation for the risk of undertaking *no win no fee* litigation. If approved by the Court, these legal costs will similarly be deducted from the resolution sum prior to distribution to eligible Group Members.

Adverse costs and security for costs

- 5.7. If the Class Action is **unsuccessful**, you will not have to pay anything.
- 5.8. In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (**adverse costs**) and may order that money be paid into Court or some other arrangement entered into by way of security against a future adverse costs order (**security for costs**).
- 5.9. In a class action, only the Applicant faces the risk of an adverse costs order or an order for security for costs. You will not be responsible for paying the legal costs of Gerard Malouf & Partners if the Class Action is unsuccessful unless you have entered into a separate costs agreement with them. If the Class Action is unsuccessful Gerard Malouf & Partners have agreed to pay any adverse costs and security for costs ordered against the Applicant in this Class Action.

6. WHAT WILL HAPPEN IF YOU DO NOT OPT OUT OF BEING A GROUP MEMBER?

- 6.1. Unless you opt out, you will be bound by any settlement or judgment of the Class Action. If the Class Action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and Group Members, although you may have to satisfy certain conditions before your entitlement arises. If the action is unsuccessful or is not as successful as you might have wished, you will not be able pursue the same claims and may not be able to pursue related claims against one or both of the Respondents in other legal proceedings.

7. WHAT DO GROUP MEMBERS NEED TO DO?

7.1. If you are a Group Member, you have two options.

Option 1 - Remain A Group Member - Do Nothing

7.2. If you wish to remain a Group Member in the Class Action, there is **nothing you need to do** at the present time. The Applicant will continue to pursue the Class Action on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicant and Group Members.

Option 2 - Opt Out of the Class Action

7.3. If you do not wish to remain a Group Member in the Class Action, you may opt out. If you opt out of the class action, you will:

- (a) not be bound by any orders made in the Class Action; and
- (b) not be entitled to share in the benefit of any order, judgment or settlement in the Class Action; and
- (c) be entitled to bring your own separate claim against the Respondents in relation to the matters the subject of the Class Action, provided that you issue Court proceedings within the time limit applicable to your claim.

7.4. If you wish to opt out of the Class Action, you **must** complete the 'Opt-Out Notice' form contained in **Part B** to this notice and send the completed 'Opt-Out Notice' form to the Victorian District Registry of the Federal Court of Australia (Level 7, Commonwealth Law Courts, 305 William Street, Melbourne VIC 3000) or by email to vicreq@fedcourt.gov.au.

IMPORTANT: the Notice must reach the Victorian District Registry by no later than **4:00pm** AEDT on **31 January 2025**, otherwise it will not be effective.

7.5. Each Group Member seeking to opt out should fill out a separate form.

8. WHERE CAN YOU OBTAIN COPIES OF THE RELEVANT DOCUMENTS OR FURTHER INFORMATION?

8.1. If you wish to obtain copies of relevant documents about the Class Action including a copy of the pleadings (which may be subject to change), or seek further information about the class action, you can:

- (a) visit www.philipscpapclaim.com.au;
- (b) contact Gerard Malouf & Partners at 1800 004 878, philipsclassaction@gmp.net.au;
- (c) visit the website of the Federal Court: <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>; or
- (d) contact the Victorian Registry of the Federal Court to inspect the file following the payment of an inspection fee (contact details are available at www.fedcourt.gov.au).

8.2. Please consider the above matters carefully. If there is anything of which you are unsure, you may access the additional information found at www.philipscpapclaim.com.au, or seek your own independent legal advice. In making your decision, please be aware of the deadline set out in this notice. You should not delay in making your decision.

PART A
TABLE OF PHILIPS MODELS INCLUDED IN THE CLAIM

Product Code	Product Description
1029759	BiPAP Synchrony, International.Core Pkg
1038916	BiPAP Auto SV w/ Smartcard Int.
1042900	BiPAP autoSV Advanced w/SmartCard, INTL
1043342	Omnilab Advanced, Core, (International)
1068942	BiPAP Auto SV w/ Smartcard Int.
1111126	Omnilab Advanced plus w/Humidifier INTL
1111127	Omnilab Advanced plus w/HT Humidifier INTL
AU1029756	BiPAP Synchrony Australia
IAU1060486	BiPAP AVAPS, C SERIES, AUSTRALIA
AU1061419	BiPAP AVAPS, C Series Core Package with Humidifier
AU1061421	PR BiPAP ST, C SERIES, AUSTRALIA
AU1061423	BiPAP ST, C SERIES, Core Package with Humidifier
AU1161S	BiPAP AVAPS 60 series platform
AU1161X	BiPAP AVAPS, 60/C Series, AU, 30cmH2O
AU251HS	Philips/Respironics New Gen RemStar Plus, w/Humid, w/SD Card, Aust
AU251S	Philips/Respironics New Gen RemStar Plus w/SD Card, Aust
AU451HS	Philips/Respironics New Gen RemStar Prow/Humid w/SD Card, Aust
AU451S	Philips/Respironics New Gen RemStar Prow/SD Card Aust
AU461HS	REMstar Pro System One 60 Series with Heated Humidifier
AU461S	REMstar Pro System One 60 Series
AU461TS	REMstar Pro System One 60 Series with Heated Tube Humidifier
AU551HS	Philips/Respironics New Gen RemStar Auto A-Flex w/Humid w/SD Card Aust
AU551S	Philips/Respironics New Gen RemStar Auto A-Flex w/SD Card Aust
AU561HS	REMstar Auto System One 60 Series with Heated Humidifier
AU561S	REMstar Auto System One 60 Series
AU561TS	REMstar Auto System One 60 Series with Heated Tube Humidifier
AU751HS	Bipap Auto w/Humid w/SD Card Aust, OBS..Discontd..
AU751S	Philips/Respironics New Gen Bipap Auto w/SD Card Aust
AU761HS	BiPAP Auto System One 60 Series with Heated Humidifier
AU761S	BiPAP Auto System One 60 Series
AU761TS	BiPAP Auto System One 60 Series with Heated Tube Humidifier
AU951HS	BiPAP Auto SV Advanced System One with Humidifier
AU951S	BiPAP Auto SV Advanced System One (OBS. Repl AU961S)
AU961HS	BiPAP autoSV Syst One 60 Srs with Heated Humidifier
AU961S	BiPAP autoSV System One 60 Series
AU961TS	BiPAP autoSV Sys One 60 Srs with HT Humid Obsolete (Repl by DS)
IAUG400H15	DreamStation Go CPAP with Humidifier
IAUG400S15	DreamStation Go CPAP with Bluetooth®, Australia
IAUG500H15	DreamStation Go Auto CPAP with Humidifier, AU
IAUG500S15	DreamStation Go Auto CPAP with Bluetooth®, Australia
IAUX1131T15	DreamStation BiPAP AVAPS Hum HT
AUX1131T15C	DreamStation BiPAP AVAPS Cellular with Humidifier & Heated Tube
AUX400S15	DreamStation CPAP Pro
IAUX400T15	DreamStation CPAP Pro Hum HT
IAUX400T15C	DreamStation CPAP Pro Humid HT Cellular
IAUX500S15	DreamStation Auto CPAP
AUX500T15	DreamStation Auto CPAP Hum HT
AUX500T15C	DreamStation Auto CPAP Hum HT Cellular
AUX700T15	DreamStation Auto BiPAP Hum HT
AUX700T15C	DreamStation Auto BiPAP Hum HT Cellular
AUX900T15	DreamStation AutoSV Hum HT
AUX900T15C	DreamStation AutoSV Hum HT Cellular
GBX400S15	K3B DreamStation CPAP Pro
GBX500S15	K;B DreamStation Auto CPAP
INX9999H19	BiPAP E30 Ventilator w/Humidifier, IN

PART B

OPT-OUT NOTICE

IMPORTANT: You should only complete this form if you do **NOT** want to participate in the Philips CPAP Class Action

VID565 of 2021
Federal Court of Australia
District Registry: Victoria
Division: General

EVA LINDBLOOM

Applicant

PHILIPS ELECTRONICS AUSTRALIA LIMITED

First Respondent

PHILIPS RS NORTH AMERICA LLC

Second Respondent

To: The Registrar
Federal Court of Australia, Victoria District Registry
Owen Dixon Commonwealth Law Courts Building 305
William Street
Melbourne VIC 3000

..... (print name of Group Member), a Group Member in this class action, gives notice under section 33J of the *Federal Court of Australia 1976*, that they are opting out of the class action.

Date:

Signed by:

(Group Member/Lawyer for the Group Member <i>(circle as applicable)</i>)	
Group Member Details	
Full Name:	
Email:	
Address:	
Telephone Number:	
Machine Name	
Machine Serial Number	

Details of persons signing on behalf of Group Member (if applicable):	
Full name:	
Capacity: (e.g. executor)	
Email:	
Address:	
Telephone number:	