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Former Big Law Partner 'Jumping in Deep' on Philips Class Action

"I'm jumping in deep," said Kyle Wallace, who joined Shiver Hamilton last year. "This is going to be a big deal."

By Katheryn Tucker | August 23, 2021



Kyle Wallace of Shiver Hamilton, Atlanta. (Photo: John Disney/ALM)

When Kyle Wallace left his partnership at Alston & Bird last year to join the plaintiffs firm Shiver Hamilton (<https://www.law.com/dailyreportonline/2020/10/07/big-law-partner-switches-sides/>), he said he hoped to draw on his dozen years of experience defending huge companies in more than a hundred consumer class actions, business torts, insurance bad faith and other high-stakes cases.

New partner Jeff Shiver said at the time that Wallace is “wicked smart” and has “the rare gift of being able to articulate complicated legal concepts in a way that ordinary people can understand.”

Now's his chance.

The firm has filed a potential class action lawsuit against Philips North America over the continuous positive airway pressure devices, known as CPAP machines, that have been recalled after degrading foam inside them has been linked to cancer and other health hazards.

The complaint filed in the Albany division of the Middle District of Georgia alleges the company knew about the defect years before the recall in June but still left users in the lurch.

“Philips is aware that the Subject Devices are needed for health and well-being and that CPAP and BiPAP devices are daily treatment for sleep apnea. Yet, in announcing the recall and instructing users of the Subject Devices to cease use, Philips provided no alternative option and announced no definite plan or timetable for replacing or repairing the Subject Devices,” the complaint said. “Philips suggested that users ‘work with your physician’ ... essentially saying ... ‘best of luck, you’re on your own.’”

The complaint alleged Philips left customers “with no choice but either purchase or rent a replacement (if one could be located), stop using a CPAP or BiPAP device (neglect their treatment regime), or continue to use the unsafe recalled machine.”

Wallace said some of the machines cost as much as \$1,000. The complaint said the proposed class has well over 100 members, and that the money at stake exceeds \$5 million.

The case has been assigned to Judge Leslie Abrams Gardner. Defense counsel for Philips has not yet been entered into the record. A corporate representative said Philips does not comment on litigation.

The case is one of many filed over the machines that force oxygen into the airways of users to allow them to sleep safely.

Lawyers with Beasley Allen in Atlanta and Montgomery and Mobile, Alabama, filed a lawsuit (<https://www.law.com/2021/07/07/new-litigation-links-sleep-machines-to-lung-cancer/>) in the same court alleging their client developed lung cancer after using a Philips Respironics-brand continuous positive airway pressure device for several years to treat obstructive sleep apnea.

“Plaintiff Frederick Heller was prescribed the use of and purchased one of Philips’ recalled devices, a REMstar Auto A-Flex device (also referred to as a System One) to treat his obstructive sleep apnea,” the complaint said. He used it “on a daily basis for a number of years.”

The complaint said Heller was diagnosed with lung cancer in June.

Wallace said his clients—six plaintiffs so far—are not suing because of a cancer diagnosis, but because of the harm of abruptly losing their sleep machines with no replacement. “Even those who haven’t suffered from the effects of the foam degrading still have their health at risk while they wait for a fix,” Wallace said. “They’re financially harmed—every person subject to the recall of several million devices.”

Similar proposed class actions have been filed in California, Pennsylvania and other jurisdictions. Wallace said he knows of more than 30 filed thus far. He expects the Shiver Hamilton case to be ultimately combined into multi district litigation.

"I'm jumping in deep," Wallace said. "This is going to be a big deal."

It's a new experience for Wallace working under a contingency fee arrangement after the hourly billing of a big law firm.

"This adds an entrepreneurial layer to the practice that you don't have on the defense side. It adds excitement and trepidation," he said. "Thankfully, I'm with a firm that has been successful under that model for a long time."

The case is *Richard Sizemore, individually and on behalf of all other similarly situated, v. Philips*, No. 1:21-cv-00134-LAG ([//images.law.com/contrib/content/uploads/documents/404/66300/1.0-2021.07.22-Class-Action-Complaint2.pdf](https://images.law.com/contrib/content/uploads/documents/404/66300/1.0-2021.07.22-Class-Action-Complaint2.pdf)). ([/Users/ktucker.ALM-DOMAIN1/Downloads/1.0%20-%202021.07.22%20-%20Class%20Action%20Complaint\[2\]%20\(1\).pdf](https://Users/ktucker.ALM-DOMAIN1/Downloads/1.0%20-%202021.07.22%20-%20Class%20Action%20Complaint[2]%20(1).pdf))

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