UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: BAIR HUGGER FORCED AIR WARMING DEVICES PRODUCTS LIABILITY LITIGATION	MDL No. 15-2666 (JNE/DTS)
This Document Relates To: All Actions	**AGENDA AND JOINT STATUS UPDATE**

The parties respectfully submit the following Agenda and Joint Status Update in anticipation of their status conference with Magistrate Judge Schultz on Aug. 28, 2025.

AGENDA

1. Plaintiff Fact Sheets

PTO 14 "Reset" Order – Aug. 26 deadline (Dkt. No. 2835)

- Defendants' Aug. 7 letter (Dkt. No. 2938)

- Defendants' proposal for addressing persistent § III.1 deficiencies (Dkt. No. 2971)

Order to Show Cause – Aug. 28 deadline (Dkt. No. 2932)

Defendants' PFS lists served on Aug. 25 and request for new Order to Show Cause

2. Status Update

Number of Cases in the MDL

Trial Candidates

State Court Cases

Canadian Action

Non-Case-Specific Discovery

Other Pending Motions/Orders/R&Rs

STATUS UPDATE

1. Number of Cases in the MDL

On Aug. 26, 2025, there were 8,888 cases pending in this MDL.

Plaintiffs' request concerning Court website: As that number continues to grow, and as various attorneys across the country have reasonable questions about various issues touching on the history of this mature MDL, Plaintiffs respectfully request that the Court reinitiate the Bair Hugger MDL website links previously available on the District of Minnesota's official website. In years past, the Bair Hugger MDL landing page on the Court's website included counsel contact information, pretrial orders, transcripts, information about upcoming status conferences and the like. Other active MDLs in the District of Minnesota have links to similar such documents. It would facilitate and clarify Court expectations and obligations of counsel if these hyperlinks were restored so counsel can easily access this information.

Defendants' response: Defendants take no position on Plaintiffs' request.

2. Trial Candidate Cases

In late 2024, the parties selected 34 trial candidate cases pursuant to a protocol negotiated under the supervision of former special settlement master. Fifteen of these cases remain pending as of Aug. 26, 2025:

Plaintiff	Court	Trial	Notes
Boncher	E.D. Pa.	Mistrial on 5/2 following three days of deliberation	New trial not set.

Fratino	D.S.C.	Trial 3/2/26 or 60 days after resolution of Rule 56 motion, whichever is later	In expert discovery.
Finley	D.S.C.	Trial 5/11/26 or 60 days after resolution of Rule 56 motion, whichever is later	In expert discovery.
Robinson	M.D. Fla.	Trial 5/11/26	MSJ and FRE 702 motions granted in part and denied in part on 7/23.
Billitteri	D. Nev.	Not set	MSJ and FRE 702 motions filed.
Cage	S.D. Ohio	Not set	In discovery.
Clark (fka Butler)	S.D. Ohio	Not set	MSJ and FRE 702 motions under advisement.
Ciolino-Terzoli	D. Nev.	Not set	MSJ and FRE 702 motions filed.
Goffinet	S.D. Ohio	Not set	MSJ and FRE 702 motions filed.
Jones	D. Minn.	Not set	MSJ and FRE 702 motions under advisement.
Moore	D. Minn.	Not set	Removed from calendar based on product ID issue.
Pelican	D. Minn.	Not set	MSJ and FRE 702 motions under advisement.
Skinner	D. Minn.	Not set	MSJ and FRE 702 motions granted in part; denied in part.
Sooter	N.D. Ill.	Not set	In discovery.

Vinson	S.D. Tex.	Not set	Stryker added as defendant based on product ID dispute. In discovery.

On Aug. 19, the Northern District of Georgia granted summary judgment in favor of Defendants in *Prichard*, 1:24-cv-01421-VMC based on lack of product ID.

The Court's Feb. 7, 2025 order led to the selection of 150 additional trial candidate cases, as well as a process for replacement of cases dismissed from that group. (Dkt. No. 2549). On June 27, the Court issued an order dividing the cases into three groups.[1] (Dkt. No. 2866). Judge Schultz has issued scheduling orders for the Group 1[2] and Group 2 cases.[3] The Rule 16 conference for Group 3 is set for Sept. 10.[4]

On Aug. 22, Defendants sent a letter to certain Group 1 plaintiffs regarding the sufficiency of the product ID information in their initial disclosures. Defendants may raise this issue at the status conference depending on the responses it receives.

[1] Group 1 included 67 cases; Group 2 included 23 cases; and Group 3 included 60 cases.

[2] These 23 Group 1 cases have now been dismissed: *Phillips*, 16-cv-2501; *Walls*, 17-0638; *Messin*, 17-1627; *Romesburg*; 17-1839; *Dunn*, 17-2512; *Bass*, 17-2720; *Goddard*, 17-2782; *Shepard*, 17-3156; *Wright*, 17-cv-3249; *Jones*, 17-cv-3370; *Brown*, 17-3683; *Little*, 17-cv-3698; *Barrett/Baldaseroni*, 17-3860; *Huey*, 17-4242; *Fehr*, 17-4535; *Guess*, 17-4639; *Stubbs,* 17-cv-4799; *Blake*, 17-cv-5195; *Ellis*, 18-1222; 18-1483; *Banks/Feimster*, 18-cv-1483; *Rudd*; 18-cv-2823; *Studt*, 23-1106; and *Robinson*, 23-2439. The plaintiff in *Fairfax*, 18-293, is deceased without substitution, and no updated authorization or initial disclosures have been served. Per David Tawil's email to the Court on Aug. 26, plaintiff's counsel has not been successful in contacting next of kin. In addition, the Court approved withdrawal of counsel in *Anderson*, 17-cv-0101, and moved the case to Group 3.

[3] *Edwards*, 15-4361, and *Lasdasky*, 17-cv-4990, have been dismissed from Group 2.

[4] *Dukes*, 17-3400, has been dismissed from Group 3.

3. State Court Cases

There are eight pending state court cases:

Plaintiff	Court	Trial Date	Notes
Kelso	Harris County, TX	2/23/26	Healthcare providers also named as defendants. In discovery.
Moore	Philadelphia Common Pleas, PA	4/6/26	Hospital also named as a defendant. In discovery.
Friedrich	Ramsey County, MN	Not set	Putative class action alleging consumer protection claims. Prior schedule vacated; parties have proposed new schedule but not yet adopted by the court.
Capoferri, et al.	Ramsey County, MN	Not set	10 plaintiffs asserting personal injury and consumer protection claims.
Barry	Lewis and Clark County, MT	Not set	Hospital named as co-defendant was dismissed on summary judgment. In discovery.
George	Lewis and Clark County, MT	Not set	Hospital has been dismissed by stipulation. In discovery.
Sedberry	Bernalillo County, NM	Not set	Hospital also named as a defendant. In discovery.
Sparrow	Bernalillo County, NM	Not set	Healthcare providers also named as defendants. In discovery.

4. Canadian Action

On June 22, 2016, Defendants were served with a Canadian putative class action, *Driessen v. 3M Canada Company, 3M Company and Arizant Healthcare Inc.*, filed in Ontario Superior Court of Justice, File No. 16-69039. Plaintiff Driessen seeks to represent a putative class of "[a]ll persons residing in Canada who had the 3M Bair Hugger Forced-Air Warming Device used on them during surgery." There has been no recent case activity.

5. Non-Case-Specific Fact and Expert Discovery

On July 8, the Court granted Plaintiffs' motion for leave to conduct *de bene esse* depositions to preserve the testimony of three general causation experts for use in future trials. (Dkt. No. 2874.) The parties are negotiating the logistics of these depositions.

On Aug. 7, the Court heard Plaintiffs' Motion to Compel Discovery Responses Pursuant to CAR Protocol (PTO 12) or in the Alternative to Correct Search Terms. (Dkt. 2816.) The motion is under advisement.

The Court has also taken under advisement the issue of production of various insurance policies held by Defendants as it relates to this litigation.

7. Other Pending Motions/Orders/R&Rs.

Plaintiff in member case *Biebrach v. 3M Co.*, 25-cv-2184, moved to remand his case to Cook County, Illinois, on May 30. (Dkt. No. 19.) The motion is under advisement.

Defendants filed their 14th Motion to Dismiss relating to deceased plaintiffs on July 11. (Dkt. No. 2889.) The motion is under advisement. Defendants filed their 15th Motion to Dismiss relating to deceased plaintiffs on Aug. 11. (Dkt. No. 2953.) Oppositions are due

Sept. 1. The Court granted leave to Defendants to file a single, combined reply by Sept. 15. (Dkt. No. 2981.)

Defendants filed their Omnibus Motion for Summary Judgment or, in the Alternative, for a Special Case Management Order on Aug. 8. (Dkt. No. 2945.)

Defendants filed motions for judgment on the pleadings based on the statute of limitations for certain Alabama (Dkt. No 2985), Idaho (Dkt. No. 2991), and Virginia (Dkt. No. 2997) cases on Aug. 25.

On May 28, the Court issued an Order "resetting" the PTO 14 process. (Dkt. No. 2835.) The Order provided, in part: "Plaintiffs who have received a deficiency letter but failed to serve an amended PFS in response shall file an amended PFS by August 26, 2025." The Court approved a stipulated extension until Sept. 26 for certain Bernheim Kelley cases. (Dkt. No. 2984.)

On July 31, the Court issued an Order to Show Cause setting Aug. 28 as the deadline for the listed plaintiffs to serve a verified PFS or appear and show cause why their cases should not be dismissed. (Dkt. No. 2932.)

On August 20, the Court issued an Order (Dkt. No. 2971) granting in part and denying in part Defendants' Motion to Enforce the Court's May 28, 2025 Discovery Order. The listed plaintiffs were ordered to "either serve an amended PFS with a complete response to § III.1 before the status conference scheduled for October 2, 2025, or appear and demonstrate good cause why their case should not be dismissed for failure to comply with PTO 14 and this Court's discovery orders."

In addition, Judge Schultz has issued the following R&Rs:

- Amended Order and R&R on PFS issues, filed July 24 (Dkt. No. 2921.) Three plaintiffs filed objections before the Aug. 7 deadline, and Defendants filed their response on Aug. 11 (Dkt. No. 2959). Plaintiff Laurenti filed a motion for leave to file a late objection on Aug. 20. (Dkt. No. 2972.) Defendants filed their response on Aug. 26 (Dkt. No. 3006.)
- R&R on Defendants' 22nd Motion to Dismiss for Failure to Comply with PTO 14, filed Aug. 11 (Dkt. No. 2951). No objections were filed by the Aug. 25 objection deadline.
- R&R filed on Aug. 25 in in *Atwood*, 24-cv-0369 (Dkt. No. 13), and *Hailey*, 24-cv-1376 (Dkt. No. 13), recommending dismissal for lack of subject matter jurisdiction. Objections are due Sept. 8.

On Aug. 21, Defendants submitted a letter reporting on compliance with paragraphs 1 and 2 of the July 24 Amended Order and R&R and the Order to Show Cause (Dkt. No. 2979.)

Dated: August 27, 2025

Respectfully submitted,

s/Benjamin W. Hulse
Benjamin W. Hulse (MN #0390952)
NORTON ROSE FULBRIGHT US LLP
30 South Sixth Street, Suite 3100
Minneapolis, MN 55402
Phone: (612) 321-2800
Email: ben.hulse@nortonrosefulbright.com

Co-Lead Counsel for Defendants

s/Genevieve M. Zimmerman
Genevieve M. Zimmerman (MN #330292)
MESHBESHER & SPENCE LTD.
1616 Park Avenue South
Minneapolis, MN 55404
Phone: (612) 339-9121
Fax: (612) 339-9188
Email: gzimmerman@meshbesher.com

Co-Lead Counsel for Plaintiffs