

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MDL 2666 – JNE-DTS

PLAINTIFFS RULE 26(f) REPORT

Ackerman v. 3M Company et al
Adams v. 3M Company et al
Ahearn v. 3M Company et al
Anderson v. 3M Company et al
Ashby v. 3M Company et al
Asparro v. 3M Company et al
Barr v. 3M Company et al
Borders v. 3M Company et al
Brill v. 3M Company et al
Casper v. 3M Company et al
Clack v. 3M Company et al
Clark v. 3M Company et al
Collins, Sr. v. 3M Company et al
Conley v. 3M Company et al
Cross v. 3M Company et al
Deanda v. 3M Company et al
Dukes v. 3M Company et al
Ellis v. 3M Company et al
Engel et al v. 3M Company et al
Ewing v. 3M Company et al
Gorham v. 3M Company et al
Hancock v. 3M Company et al
Hollingsworth v. 3M Company et al
Hunter v. 3M Company et al
Huwar v. 3M Company et al
Jacovino v. 3M Company et al
Jenkins v. 3M Company et al
Jennings v. 3M Company et al
Johnson et al v. 3M Company et al
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Johnson v. 3M Company et al
Kleppe v. 3M Company et al
Kuspa v. 3M Company et al
MacDougall et al v. 3M Company et al
Mazzei v. 3M Company et al
Netherton v. 3M Company et al
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Reynolds v. 3M Company et al
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Roberts v. 3M Company et al
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Rojas v. 3M Company et al
Salazar v. 3M Company et al
Schoggin v. 3M Company et al
Sherrod v. 3M Company et al
Shulfer v. 3M Company et al
Strain v. 3M Company et al
Taliaferro v. 3M Company et al
Thompson v. 3M Company et al
West v. 3M Company et al
Wood v. 3M Company et al
Workman v. 3M Company et al,

Plaintiffs,

vs.

3M Co. Inc. and Arizant Healthcare, Inc.,

Defendants.

As directed in Order at 15-md-2666 Doc. 2867, counsel conferred as required by Fed. R. Civ. P. 26(f) and the Local Rules, and undersigned counsel for plaintiffs prepared the following report.

The initial pretrial conference required under Fed. R. Civ. P. 16 and LR 16.2 is scheduled for 10 a.m. on September 10, 2025, before the United States Magistrate Judge Schultz in Room 9W, of the U.S. Courthouse, 300 South Fourth Street, in Minneapolis, Minnesota.

TRIAL BY MAGISTRATE

Defendants decline to consent to jurisdiction of the magistrate pursuant to 28 U.S.C. 636(c).

Plaintiffs DO wish to receive (1) a date certain trial date for those cases that have designated the District of Minnesota as the venue the case would have been filed but-for the direct filing order (PTO 5) and (2) a date certain for remand for those cases that indicated they would have been filed in a different jurisdiction but for the direct filing order at the Rule 16(a) conference.

DESCRIPTION OF THE CASE

- (1) Concise factual summary of plaintiff's claims:

Plaintiff alleges the 3M Bair Hugger Forced Air Patient Warming System is defectively designed and unreasonably dangerous when used in ultra-clean orthopedic surgeries, and that 3M has failed to warn about this known risk for decades. Plaintiff alleges the defects in design caused plaintiff's periprosthetic infection. Plaintiff also alleges the failure to warn and the knowledge of the defective design constitutes a willful and wanton disregard of the rights and safety of others such that punitive damages are appropriately recoverable.

- (3) Statement of jurisdiction (including statutory citations):

- (4) Summary of factual stipulations or agreements:

N/A

- (5) Statement of whether a jury trial has been timely demanded by any party:

Plaintiff timely demanded trial by jury.

- (6) Statement as to whether the parties agree to resolve the matter under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, if applicable:

N/A

PLEADINGS

Statement as to whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action:

Process **has** been served.

Plaintiffs request 30 days from Rule 16 conference to file Amended Complaints.

FACT DISCOVERY

The parties recommend that the Court establish the following fact discovery deadlines and limitations:

- (1) Plaintiffs have served a completed Plaintiffs' Fact Sheet. Plaintiff must confirm that a reasonable and good faith effort was made to obtain the information requested in the Plaintiff Fact Sheet by the submission deadline.
- (2) Plaintiffs have provided copies of all medical records in their possession.

- (3) The parties must make their initial disclosures under Fed. R. Civ. P. 26(a)(1) on or before October 15, 2025. Initial disclosures shall include identification of all sale representative(s) from Defendants who were in contact with the healthcare providers (including the health systems) where Plaintiff alleges the exposure to Bair Hugger took place and produce all documents, including those to or from sales representatives, and the healthcare providers and/or health systems. In addition, Defendants are to provide a list of corporate employees and their job description for all individuals employed currently and within the past 8 years in the patient warming business. If the parties include a description by category and location of documents, they agree to exchange copies of those initially disclosed.

Initial disclosures shall also be accompanied by production of all insurance policies that may provide coverage for the claims alleged, as contemplated by the Federal Rules of Civil Procedure.

- (4) Plaintiffs anticipate noticing a handful of depositions of Defendants employees or former employees, including at least:

- a. Caitlin Bissell
- b. Matthew Cooper, M.D.
- c. Ryan Egeland, M.D.
- d. Michelle Hulse Stevens, M.D.

- (5) The parties must complete any physical or mental examinations under Fed. R. Civ. P. 35 by 1/31/2026.

- (6) The parties must commence fact discovery procedures in time to be completed by 2/28/2026.

- (7) The parties have discussed the scope of discovery, including relevance and proportionality, and Plaintiffs propose that the Court limit the use and numbers of discovery procedures as follows:

(A) __25__ interrogatoires for Plaintiff/ __10__ interrogatories for Defendants;

(B) __25__ Document Requests for Plaintiff ____15__ Document Requests for Defendants;

(C) ____25____ requests for admission.

(D) Documents produced bearing “CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER” will be presumed to be authentic and business records of the producing party.

(E) __20____ hours of depositions for all fact and expert witnesses;

(a) The party noticing the deposition will be responsible for any fees required by the witness.

(F) ___1___ Rule 35 medical examinations; and

(G) The parties have discussed the topic of Rule 30(b)(6) deposition practice and have made the following agreements:

N/A.

EXPERT DISCOVERY

(1) The plaintiffs anticipate that the parties will require expert witnesses at the time of trial.

(A) The plaintiff anticipates calling _4-8_ (number) experts in the fields of: _orthopedic surgery, engineering/computational fluid dynamics, regulatory, infectious disease, anesthesiology, life care planners and/or economic loss experts__.

(2) The plaintiffs propose that the Court establish the following plan for expert discovery:

(A) Expert Disclosures:

(i) The identity of any expert who Plaintiff may call to testify at trial and the written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) and/or the disclosure required by Fed. R. Civ. P. 26(a)(2)(C) must be served on or before ___3/1/2026_.

(ii) The identity of any expert who Defendants may call to testify at trial and the written report completed in accordance with Fed. R. Civ. P. 26(a)(2)(B) and/or the disclosure required by Fed. R. Civ. P. 26(a)(2)(C) must be served on or before 4/1/2026.

(iii) Experts time for deposition and preparation shall be paid by the noticing party. Furthermore, the noticing party will pay the entire deposition fee and preparation time within 1 week of receiving the invoice.

(3) All expert discovery, including expert depositions, must be completed by ___5/1/2026__.

OTHER DISCOVERY ISSUES

(1) This Court has already entered a protective order and ESI protocol that governs these cases. See Pretrial Order Nos. 7, 10, MDL Dkt. 39 and 50. The protective order in place also addresses the protection of inadvertent production of privileged materials. See Pretrial Order No. 7. ¶ 5, MDL Dkt. No. 39.

PROPOSED MOTION SCHEDULE

The parties propose the following deadlines for filing motions:

(1) Amended Complaints must be filed and served by 10/15/2025.

(2) Non-Dispositive Motions

- a. All other non-dispositive motions related to fact discovery must be filed and served by TBD by the Trial Court .
- b. All other non-dispositive motions, including motions related to expert discovery, must be filed and served by TBD by the Trial Court .
- c. General causation has been established in the MDL and therefore no motions on Daubert related to general causation will be accepted. Further, no Rule 702 motion shall be allowed for any expert that has been accepted by a court after challenges under Rule 702 for the expert's methodology or qualifications without leave of court.

(3) Dispositive Motions:

- a. The parties anticipate that they may file the following motions that may resolve the case or narrow the issues:
- b. All dispositive motions must be filed and served by TBD by the Trial Court .

TRIAL

(1) Plaintiffs suggest the case will be ready for transfer to the Trial Court no later than 6/1/2026 .

(2) The anticipated length of the jury trial is 10 court days .

Dated: September 10, 2025

Respectfully Submitted,

Gabriel A. Assaad

(pro hac vice)

MCDONALD WORLEY

1770 St. James Place, Suite 100

Houston, TX 77056
(713) 523-5500
gaassaad@mcdonaldworley.com

Kyle W. Farrar
(MN #0397942)
FARRAR & BALL
1117 Herkimer
Houston, TX 77008
(713) 221-8300
kyle@fbtrial.com

Genevieve M. Zimmerman (MN #330292)
MESHBESHER & SPENCE, LTD.
1616 Park Avenue South
Minneapolis, MN 55404
(612) 339-9121
gzimmerman@meshbeshher.com

Attorneys for Plaintiffs