

**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 FOR AUGUST 6 STATUS
CONFERENCE**

The parties respectfully submit the following Agenda and Joint Status Update for their status conference with Magistrate Judge Schultz on Aug. 6, 2026.

AGENDA

1. Plaintiff Fact Sheets

Seventh order to show cause (Dkt. 3434)

Defendants' Motion to Dismiss for Failure to Comply with Court Orders or Fed. R. Civ. P. 41(b) (Dkt. No 3495)

2. Status Update

Number of cases in the MDL / trial candidate cases

State court cases

Canadian action

Non-case-specific discovery

Other pending motions/orders/R&Rs

Appeals

STATUS UPDATE

1. Number of Cases in the MDL / Trial Candidate Cases

On August 3, 2026, there were 8,394 cases pending in this MDL.

Wave 2 Cases

In late 2023, the parties selected 34 trial candidate cases pursuant to a protocol negotiated under the supervision of the former special settlement master, Hon. James M. Rosenbaum (Ret.). These “Wave 2” cases remain pending in the MDL or transferee district courts as of Aug. 3, 2026:

Plaintiff	Court	Trial	Notes
<i>Boncher</i>	E.D. Pa.	11/6/26 (retrial)	Previous trial resulted in mistrial on 5/2/25 following three days of deliberation. Settlement pending.
<i>Cage</i>	S.D. Ohio	Not set	Settlement pending.
<i>Clark (fka Butler)</i>	S.D. Ohio	Not set	Settlement pending.
<i>Goffinet</i>	S.D. Ohio	Not set	Settlement pending.
<i>Moore</i>	D. Minn.	Not set	Removed from calendar based on product ID issue.
<i>Sooter</i>	N.D. Ill.	Not set	Settlement pending.

On December 22, 2025, the Hon. William F. Jung of the Middle District of Florida dismissed *Robinson*, Case No. 8:24-00828-WFJ-AAS, without prejudice for failure to comply with MDL Pretrial Order No. 23. The parties in *Robinson* have jointly informed the 11th Circuit that the matter has been resolved and moved to stay the briefing schedule.

On March 19, the court in *Billitteri*, Case No. 2:24-cv-00651-APG-BNW (D. Nev.) excluded plaintiff's case-specific medical causation expert and granted summary judgment for 3M. Plaintiff filed a motion for reconsideration (fully briefed) and a notice of appeal. The Ninth Circuit stayed the appeal pending resolution of the motion for reconsideration. The plaintiff in *Ciolino-Terzoli*, Case No. 2:24-cv-00669 (D. Nev.), dismissed her case with prejudice and without a settlement payment, on June 15.

Wave 3 Cases

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. 2549.) On June 27, the Court issued an order dividing the cases into three groups. (Dkt. 2866.) On Sept. 16, the Court issued an order replacing dismissed cases with 28 new cases and creating a fourth group. (Dkt. 3048.) On Nov. 21, the Court issued an order replacing dismissed cases with 22 new cases and creating a fifth group. (Dkt. 3224.) Judge Schultz has issued scheduling orders for all five groups. At the request of one or both parties, several cases have been moved to later workup groups.

Notable updates include the following:

Group 1: The parties made their expert disclosures in *Bernard*, *Wise*, *Keithley*, *Huberty*, *Clement*, *Schenkel*, and *Serra*. On Aug. 3, Judge Schultz issued an R&R recommending that 3M's Rule 12(c) motion be granted in *Keithley*. With the Court's leave, an early summary judgment motion based on the statute of limitations was filed in *Craft*. The motion is fully briefed and expert deadlines are stayed pending resolution of that motion. Plaintiffs in *Bernard* and *Wise* are deposing 3M's experts. The Court granted the

parties' stipulation to extend expert discovery in these cases until Aug. 15. On July 28, these plaintiffs filed an objection to Judge Schultz's orders on expert "bias" discovery.

Group 2: With the Court's leave, 3M filed an early summary judgment motion based on the statute of limitations in *Krapfl*. The motion is under advisement and expert deadlines are stayed. The Court denied 3M's request for leave to file early summary judgment motions in *Enos* and *Wood*. Expert disclosures are complete in those two cases.

Group 4: The parties made their expert disclosures in *Daughdrill*, *McGowan*, and *Weiss*. Plaintiffs in *Daughdrill* and *McGowan* are deposing 3M's experts. They have filed a motion to compel responses to their expert "bias" discovery in these cases as well.

Group 5: The fact discovery deadline has passed, but in several cases the parties are conducting additional fact discovery after the deadline by agreement. 3M will be filing summary judgment motions based on product ID in *Ellis*, 25-0972, and *Adams*, 25-0985. The parties jointly request that expert deadlines be stayed in these two cases pending resolution of the summary judgment motions. Plaintiffs in the Meshbesher-Kaster Lynch cases in Group 5 have filed objections (Dkt. 3544, 3545) to Judge Schultz's orders on allocation of treater deposition fees and the deposition of 3M's expert Dr. Dustin Williams.

2. State Court Cases

There are eight pending state court cases:

Plaintiff	Court	Trial Date	Notes
<i>Kelso</i>	Harris County, TX	Retrial 1/18/27	Defense verdict 3/24. New trial granted 6/26, scheduled for 1/18/27, which is stayed but reserved pending outcome of 3M's petition for writ of

			mandamus. 3M's petition for writ of mandamus filed 7/28.
<i>Moore</i>	Philadelphia Common Pleas, PA	Trial ready 11/2/26	Hospital also named as a defendant. In expert discovery.
<i>Capoferri, et al.</i>	Ramsey County, MN	8/1/27	10 plaintiffs asserting personal injury and consumer protection claims. In discovery. Parties have submitted a proposed amended schedule to align with the new trial date.
<i>Friedrich</i>	Ramsey County, MN	Trial ready 7/19/27	Putative class action alleging consumer protection claims. Settlement pending.
<i>Sedberry</i>	Bernalillo County, NM	8/23/27	Hospital also named as a defendant. In discovery.
<i>Bergstraser</i>	Ramsey County, MN	Not set	Providers also named as defendants. In discovery.
<i>Barry</i>	Lewis and Clark County, MT	Not set	Settlement pending.
<i>George</i>	Lewis and Clark County, MT	Not set	Settlement pending.

3. Canadian Action

On June 22, 2016, Defendants were served with a Canadian putative class action, *Driessen v. 3M Canada Co., 3M Co. & 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.

4. Non-Case-Specific Fact and Expert Discovery

On December 19, 2025, the Court heard the parties' positions on custodians and search terms (Dkt Nos. 2816, 2849, 2942, 3153, 3290). The Court gave directions to the parties on the record. The parties submitted letter briefs on custodians on March 10. The Court directed the parties to meet and confer. 3M provided additional information on potential custodians on July 14. An update call is set to take place on August 5, 2026.

The Court took under advisement the issue of production of various insurance policies held by Defendants as it relates to this litigation. The Court ordered disclosure of insurance coverage applicable to Groups 3-5 in the scheduling orders for those cases.

5. Other Pending Motions/Orders/R&Rs

Defendants filed their Omnibus Motion for Summary Judgment or, in the Alternative, for a Special Case Management Order on Aug. 8. (Dkt. 2945.) Plaintiffs opposed. (Dkt. 3017.) Plaintiffs request oral argument.

The Court granted in part 3M's 16th PTO 23 motion to dismiss on April 22. (Dkt. 3393.) 3M's 17th and 18th PTO 23 motions to dismiss (Dkts. 3248 and 3394) are under advisement. 3M anticipates filing a 19th PTO 23 motion later this month.

Defendants filed motions for judgment on the pleadings based on the statute of limitations and repose for certain plaintiffs alleging injuries in these states. Judge Schultz has issued R&Rs on several of these motions:

Master Docket	Individual Cases/Plaintiffs' Counsel	State	Status
2985	<i>Culpepper</i> , 17-2893 (Farris Riley & Pitt); <i>Miles</i> , 17-3223 (Brown & Crouppen)	Alabama	Judge Schultz recommended granting 3M's motion. (Dkt. 3447.) Objection (Dkt. 3489) fully briefed.
2997	<i>Menefee</i> , 18-1078 (Randall J. Trost, P.C.); <i>Cox</i> , 17-1425 (Brown & Crouppen); <i>Wongus</i> , 17-3643 (Pendley, Baudin & Coffin)	Virginia	Judge Schultz recommended granting 3M's motion. (Dkt. 3449.) Objection (Dkt. 3487) fully briefed.
3066	<i>Hugo</i> , 17-2172 (Pendley, Baudin & Coffin)	Idaho	Judge Schultz recommended granting 3M's motion. (Dkt. 3445.) Objection (Dkt. 3485) fully briefed.
3086	<i>Zann</i> , 18-1494 (Brown & Crouppen); <i>McIlrath</i> , 18-2182 (Brown & Crouppen); <i>Hurkmans</i> , 17-4099 (Pendley, Baudin & Coffin)	Michigan	Judge Schultz recommended granting 3M's motion. (Dkt. 3448.) Objection (Dkt. 3486) fully briefed.
3102	<i>Cook</i> , 17-1115 (Pendley, Baudin & Coffin/Olinde Firm); <i>Zirretta</i> , 25-1681 (Walston Legal); <i>Ramirez</i> , 17-4976 (Davis & Crump); <i>Patton</i> , 25-1520 (Walston Legal)	Texas	Plaintiffs also sought leave to amend. Motions fully briefed. The Court heard argument on Dec. 2.
3163	<i>Cromartie</i> , 18-3297 (Davis & Crump); <i>Morrison</i> , 18-2186 (Brown & Crouppen); <i>Ashurst</i> , 25-1184 (McDonald Worley ¹)	North Carolina	Judge Schultz granted Cromartie and Morrison's motions for leave to amend on 7/28. (Dkt. 3549.) 3M reserves the right to move to dismiss the amended complaints.

¹ The motions were mooted as to Langdon & Emison's and McDonald Worley's cases by 3M's settlements with those firms.

3169	<i>Hall</i> , 16-2386 (Miller Firm); <i>New</i> , 19-0050 (Nachawati Law); <i>Fleet</i> , 23-0477 (Langdon & Emison)	Tennessee	Judge Schultz recommended granting 3M's motion on 7/28. (Dkt. 3546.)
3179	<i>Minor</i> , 17-2033 (Brown & Crouppen); <i>Paine</i> , 18-0069 (Fitzgerald Law); <i>Taplin</i> , 17-2848; <i>Arnold</i> , 24-2280 (Langdon & Emison)	Oklahoma	Minor, Paine, and Taplin sought leave to amend. Fully briefed.
3186	<i>Carosone</i> , 17-2921 (Brown & Crouppen); <i>Panipinto</i> , 23-2415 (Langdon & Emison); <i>Passante</i> , 23-2432 (Meshbesher)	New York	Judge Schultz recommended granting 3M's motion on 7/22. (Dkt. 3537.)
3262	<i>Best</i> , 25-1919 (Walston); <i>Brady</i> , 25-1808 (Walston)	Mississippi	Judge Schultz recommended granting 3M's motion on 7/27. (Dkt. 3543.)
3268	<i>Lorenzen</i> , 25-1933 (Walston); <i>McCracken</i> , 25-1805 (Walston); <i>Dahl</i> , 25-1902 (Walston)	South Dakota	Judge Schultz recommended granting 3M's motion on 8/3. (Dkt. 3562.)
3274	<i>French</i> , 18-1218 (Brown & Crouppen); <i>Bures</i> , 25-1864 (Walston); <i>Stahlnecker</i> , 25-1869 (Walston)	Nebraska	Judge Schultz recommended granting 3M's motion on 7/29. (Dkt. 3556.)
3280	<i>Arjona</i> , 25-1497 (Walston); <i>Harris</i> , 17-2634 (Brown & Crouppen); <i>Wood</i> , 17-4690 (Davis & Crump)	Kansas	Judge Schultz recommended granting 3M's motion on 8/4. (Dkt. 3563.)

On July 10, the Court granted Plaintiffs' request for leave to file a motion to amend the Master Long Form and Short Form Complaints. (Dkt. 3524.) On July 28, Judge Schultz issued an R&R recommending that the Court order briefing on an expedited basis "on the question whether a Lone Pine/Docket control order should be issued, to be taken under

advisement on the papers.” (Dkt. 3551.) Plaintiffs note the issue was already briefed as part of Defendants’ Omnibus Motion for Summary Judgment or, In the Alternative, for a Special Case Management Order (Dkt. 2945), and Plaintiffs’ Opposition to the same in 2025 (Dkt. 3017), and will file a formal objection to Dkt. 3551 pursuant to the Local Rules.

Plaintiff Fact Sheets

On Dec. 8, the Court issued an order to address the backlog of PFS deficiencies. (Dkt. 3247.) Pursuant to the Dec. 8 order, 3M submitted a set of PFSs for review by the Court on Jan. 30. The Court issued an order on March 2 (the “Backlog Order”) requiring plaintiffs in 46 cases to serve an amended, verified PFS correcting deficiencies identified in the Court’s order by May 1. (Dkt. 3350.) On June 10, the Court denied 3M’s informal request for the Court to recommend dismissal of plaintiffs who failed to comply with the Backlog Order. (Dkt. 3456.) On June 25, 3M filed its formal Motion to Dismiss for Failure to Comply with Court Orders or Fed. R. Civ. P. 41(b) (Dkt. 3495), which is noticed to be heard at the Aug. 6 status conference.

On Aug. 4, the Court denied 3M’s Motion to Dismiss (Dkt. 3054) for Failure to Comply with Court Orders, noting the majority of the 2,069 cases 3M sought dismissal of have settled. (Dkt. 3565)

On May 29, Judge Schultz issued a seventh PFS order to show cause, requiring compliance by the Aug. 6 status conference. (Dkt. 3434.) 3M anticipates submitting a proposed R&R on the seventh Order to Show Cause as well as a draft eighth order to show cause following the conference.

6. Appeals

Appeals were filed from the Court's orders granting summary judgment in *Pelican*, 25-2937 (8th Cir.), *Jones*, 25-2937 (8th Cir.), and *Skinner*, 25-3059 (8th Cir.). The parties filed a notice of settlement in *Pelican* and *Jones* on Aug. 3. Briefing in *Skinner* remains stayed pending completion of the settlement process and stipulation to dismiss.

Plaintiffs in *Garcia*, 17-cv-4466, and *Hawthorne*, 17-cv-3803, appealed the Court's dismissal of their cases for noncompliance with Pretrial Order No. 23. Plaintiffs-Appellants' reply brief is due Aug. 6.

On Jan. 22, the plaintiff in *Anderson*, 17-cv-0101, a *pro se* trial candidate case, appealed the order dismissing his case to the Eighth Circuit. The Eighth Circuit summarily affirmed on May 21, and (on Mr. Anderson's motion) extended the time to file a petition for rehearing until Aug. 3. As of the date of this filing, no petition for rehearing has been posted on the docket.

As noted above, an appeal was filed from the Middle District of Florida's order of dismissal in *Robinson*. The parties in *Robinson* have notified the 11th Circuit of their settlement. Also as previously noted, the plaintiff in *Billitteri* appealed the grant of summary judgment in favor of 3M. The Ninth Circuit stayed the appeal pending resolution of the plaintiff's motion for reconsideration.

Dated: August 5, 2026

Respectfully submitted,

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