

**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 SEPTEMBER 9, 2026
STATUS CONFERENCE**

The parties respectfully submit the following Agenda and Joint Status Update for their status conference with Magistrate Judge Schultz on Sept. 9, 2026.

AGENDA

1. Plaintiff Fact Sheets

8th order to show cause (Dkt. 3603) – *Lasater*, 26-2010; *Stevens*, 26-2011

Proposed 9th order to show cause

2. Status Update

MDL/trial candidate cases

State court cases

Canadian action

Non-case-specific discovery

Other pending motions/orders/R&Rs

Appeals

STATUS UPDATE

1. MDL / Trial Candidate Cases

On Sept. 4, 2026, there were 8,406 cases pending in this MDL, including cases subject to settlements that have not been dismissed.

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.). Five Wave 2 cases pending in transferee district courts are settled in principle: *Boncher* (E.D. Pa.), *Cage* (S.D. Ohio), *Clark (fka Butler)* (S.D. Ohio), *Goffinet* (S.D. Ohio), and *Sooter* (N.D. Ill.). *Robinson* (M.D. Fla.) was dismissed by the district court and then settled in principle on appeal. The plaintiff in *Billitteri* (D. Nev.) filed a motion for reconsideration of the court's grant of summary judgment in favor of 3M, and has appealed to the 9th Circuit. The appeal to the 9th Circuit has been stayed pending the outcome of the plaintiff's pending motion for reconsideration. The remaining Wave 2 case, *Moore*, was removed from the calendar due to product ID issues.

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. (Dkt. 2549). On June 27, the Court issued an order dividing the cases into three groups. (Dkt. 2866). Since then, the Court has created three additional groups to replace dismissed cases. (Dkts. 3048, 3224, 3606.) Notable pending motions and updates include:

Craft (Group 1). With the Court's leave, 3M filed an early summary judgment motion based on the statute of limitations in *Craft*. That motion is fully briefed.

Keithley (Group 1). On Aug. 3, Judge Schultz issued an R&R recommending that 3M's Rule 12(c) motion be granted in *Keithley*. The Court stayed the case while the parties conduct settlement negotiations. The Court then denied 3M's Rule 12(c) motion without prejudice to renewal of that motion upon lifting of the stay. *Keithley*, 18-0877 (Dkt. 48).

Bernheim Kelley Cases (Groups 1 and 4). Plaintiffs represented by Bernheim Kelley continue to depose 3M's experts in *Bernard* and *Wise* (Group 1) and *Daughdrill* and *McGowan* (Group 4). Members of Plaintiffs' leadership are participating in depositions of 3M's experts who have issued general causation opinions in these cases. The parties have agreed to conduct expert discovery in these cases through Sept. 30. There are two pending objections to Judge Schultz's expert discovery orders. Bernheim Kelley filed an objection to Judge Schultz's orders on expert "bias" discovery. (E.g., *Bernard*, 24-3322, Dkt. 36.) Members of Plaintiffs' leadership filed an objection to Judge Schultz's order on the deposition of 3M's expert Dr. Williams. (Dkt. 3545.) Both objections are fully briefed.

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. Following the conclusion of discovery, 3M filed motions for summary judgment in *Wood* and *Enos* on Sept. 8.

Group 5: Meshbeshier and Kaster Lynch Farrar & Ball have filed an objection (Dkt. 3544) to Judge Schultz's order on allocation of treater deposition fees in their cases. The objection is fully briefed. The parties stipulated to a stay of expert discovery in *Adams* and

Ellis based on product ID issues. *Johnson*, *Kleppe*, *Rojas*, *Sherrod*, and *Taliaferro* were dismissed by order or stipulation since the last status conference. Judge Schultz recommended dismissal of *Ashby* on Aug. 28.

Group 6: The parties are conferring on the Group 6 scheduling order and will be ready to discuss at the status conference. One case (*Lane*) has been dismissed.

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; plaintiff's opposition due 9/14.
<i>Moore</i>	Philadelphia Common Pleas, PA	Trial ready 11/2/26	Hospital also named as a defendant. 3M's motions to exclude Dr. Elghobashi and Dr. David under <i>Frye</i> standard were heard 9/1 and denied 9/2. Trial-setting conference set for 10/8 for assignment of trial date.
<i>Capoferri, et al.</i>	Ramsey County, MN	8/2/27	10 plaintiffs asserting personal injury and consumer protection claims. In discovery.
<i>Friedrich</i>	Ramsey County, MN	Stayed	Putative class action alleging consumer protection claims. Settlement pending; case stayed.

<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. The parties continue to confer.

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 Group 3-5 in the scheduling orders for those cases.

The parties completed the *de bene esse* deposition of Dr. Elghobashi and stipulated that the deposition of Dr. Jarvis in Kelso may be used as the *de bene esse* deposition permitted by the Court's order (Dkt. 3409). The deposition of Dr. David is set for Oct. 7.

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 17th PTO 23 motion to dismiss on Aug. 12. (Dkt. 3592.) 3M's 18th PTO 23 motion to dismiss (Dkt. 3394 and 3628) is under advisement. 3M filed its 19th PTO 23 motion on Aug. 27 (Dkt. 3628) and anticipates filing its 20th PTO 23 motion 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:

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.) Court adopted the R&R. (Dkt. 3642.)
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.) Court adopted the R&R. (Dkt. 3639.)

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	Judge Schultz recommended granting 3M's motion on Aug. 6. (Dkt. 3573). Objection (Dkt. 3616) fully briefed.
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 and recommended denial of 3M's motion without prejudice. (Dkt. 3549.) Court adopted the R&R. (Dkt. 3641.)
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 based on statute of repose on 7/28. (Dkt. 3546.) No objection filed.
3179	<i>Minor</i> , 17-2033 (Brown & Crouppen); <i>Paine</i> , 18-0069 (Fitzgerald Law); <i>Taplin</i> , 17-	Oklahoma	Judge Schultz recommended granting 3M's motion on 8/5. (Dkt.

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

	2848; <i>Arnold</i> , 24-2280 (Langdon & Emison)		3571.) Objection (Dkt. 3615) fully briefed.
3186	<i>Carosone</i> , 17-2921 (Brown & Crouppen); <i>Panipinto</i> , 23-2415 (Langdon & Emison); <i>Passante</i> , 23-2432 (Meshbeshier)	New York	Judge Schultz recommended granting 3M's motion on 7/22. (Dkt. 3537.) Objection (Dkt. 3572) fully briefed.
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.) Objection (Dkt. 3486) fully briefed.
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.) Objection (Dkt. 3608) fully briefed.
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.) Objection (Dkt. 3600) fully briefed.
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) Objection (Dkt. 3610) fully briefed.

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.) Plaintiffs anticipate filing their motion later this month.

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 filed an objection (Dkt. 3590) and 3M responded (Dkt. 3619).

Plaintiff Fact Sheets

PFS orders to show cause. On May 29, Judge Schultz issued a 7th PFS order to show cause, requiring compliance by the Aug. 6 status conference. (Dkt. 3434.) After that status conference, Judge Schultz issued an R&R recommending dismissal of four actions. (Dkt. 3604.) The Court adopted that recommendation on Sept. 1. (Dkt. 3640.) On Aug. 13, Judge Schultz issued an 8th PFS order to show cause, requiring compliance by the Sept. 9 status conference. 3M anticipates submitting a proposed R&R on the 8th order to show cause as well as a draft 9th order to show cause following the conference.

“Backlog” order. On Aug. 13, Judge Schultz issued an R&R recommending dismissal of 16 cases for failure to comply with the court’s Mar. 2 order requiring certain plaintiffs to serve a verified amended PFS correcting deficiencies previously identified by the court. (Dkt. 3601). Two plaintiffs (*Melancon*, 18-3322, and *Fondren*, 19-0771) filed objections. 3M’s response to those objections is due Sept. 9.

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. The appeal is fully briefed and neither side requested oral argument.

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. No petition for rehearing was filed.

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: September 8, 2026

Respectfully submitted,

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