

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re: BAIR HUGGER FORCED AIR  
WARMING DEVICES PRODUCTS  
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/FLN)

This Document Relates To:  
All Actions

**PRETRIAL ORDER NO. 3:  
Initial Pretrial Conference Agenda**

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In Pretrial Order No. 2 (Dkt. No. 8), the Court set the Initial Pretrial Conference for Thursday, February 18, 2016, at 9:30 a.m., in Courtroom 12W, 12th Floor, U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, and advised that an agenda and information regarding the procedure for the conference would be forthcoming. The Court hereby enters the following Order setting forth the agenda for the Initial Pretrial Conference, which should be read in the context of the Court's Pretrial Order No. 1 (Dkt. No. 7):

1. Introductions
2. The Court's objectives
3. Number and status of cases transferred into the MDL/Master Service List, and expectations concerning the ultimate number of cases
4. Cooperation among counsel
5. Protocol for appropriate contact with the Court
6. Selection of Plaintiffs' Lead and Liaison Counsel, including Plaintiffs' leadership structure

The Court received submissions proposing a Plaintiffs' counsel leadership structure consisting of Co-Lead Counsel, an Executive Committee, Liaison Counsel, and a Steering Committee. From the parties' submissions, the Court understands that attorneys from the following law firms seek appointment to the position of Co-Lead Counsel: Levin Papantonio, P.A., Ciresi Conlin LLP, and Meshbesh & Spence, Ltd.; that attorneys from the following law

firms seek appointment to the Executive Committee: Andrews & Thornton, LLC, Kennedy Hodges, LLP, Pendley, Baudin & Coffin, LLP, and Kirtland and Packard, LLP; that David Szerlag from Pritzker Olsen seeks appointment as Liaison Counsel; and that attorneys from the following law firms seek appointment to the Steering Committee: Kelly, Bernheim & Dolinsky, LLC; Goldenberg Law, PLLC; Bachus and Schanker; Hausfeld LLP; Bowersox Law Office; The McGartland Law Firm; Davis & Crump; O'Mara Law Group; DeGaris Law Group; Childers, Schlueter & Smith, LLC; Kaster, Lynch, Farrar & Ball LLP; Kershaw, Cutter & Ratinoff LLP; Schlichter, Bogard & Denton, LLP; and Michael Hingle & Associates, LLC. Each counsel desiring appointment must appear at the Initial Pretrial Conference and be prepared to discuss why he or she should be appointed to the desired position.

In the "Plaintiffs' Counsel Report and Recommendation for MDL Leadership Structure" submitted by Ben W. Gordon, Jr., J. Michael Papantonio, Anthony J. Nemo, Genevieve M. Zimmerman, Michael V. Ceresi and Jan M. Conlin, counsel indicated on page 2 of that submission that they are prepared to submit a case management report to the Court. The Court will accept that report, which would be helpful to have for review by at least three days before the Initial Pretrial Conference.

7. Defendants' Lead Counsel

The Court received Defendants' Submission Regarding Leadership Structure, dated February 3, 2016, advising that Blackwell Burke P.A. will act as Defendants' Lead Counsel. The Court also received Defendants' Supplemental Submission Regarding Leadership Structure, dated February 5, 2016.

8. Overview of related state court proceedings

The Court would like an overview of related state court proceedings, including identification of all such proceedings, a brief update of the status of each, and recommendations regarding coordinating issues with any such cases. The Court contemplates that the proposed Liaison Counsel might prepare to discuss this topic.

9. Common benefit order
10. Additional pretrial orders (including, but not limited to, rules and procedures, preservation order, and protective order of confidentiality)
11. Plaintiffs' initial disclosures
12. Master pleadings
13. Pending motions
14. Official Court Website:  
<http://www.mnd.uscourts.gov/MDL-Bair-Hugger/index.shtml>

As noted in Pretrial Order No. 1, the Court has created and will maintain a website devoted to the Bair Hugger Forced Air Warming Devices Products Liability Litigation, which can be found at the address listed above. The Court contemplates that once plaintiffs' leadership structure has been selected, Plaintiffs' Lead Counsel and Defendants' Lead Counsel will confer with the Court regarding the content of the website, including preparing a brief written summary indicating their joint understanding of the facts involved in the litigation and the important factual and legal issues. The Court contemplates that this summary will replace or supplement the website's "Introduction." In the event the parties cannot agree on the written summary, the parties should note what they agree on and what they do not agree on.

15. Status conferences

The Court will convene status conferences in its discretion. Status conferences will be regularly scheduled by the Court to permit substantial advance notice to all parties. Except as otherwise provided herein, and to accommodate the schedules of the Court and the parties, all

arguments or hearings on any motion will be scheduled to coincide with calendared status conferences. Any hearing or oral argument deemed necessary by the Court on motions that require a ruling on an expedited basis will be scheduled with notice of at least five business days. If circumstances warrant, the Court may shorten a notice period.

The next status conference is scheduled for Thursday, March 24, 2016 at 9:30 a.m., in Courtroom 12W, 12th Floor, U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415. For future status conferences, counsel for each side shall meet and confer in advance of the status conference and provide the Court, within four business days before each status conference, an agreed upon Agenda and Status Conference Report, and provide a brief—one or two paragraph—summary of the party's positions as to any disputed issues. The Agenda and Status Conference Report shall be submitted to the chambers email at joanericksen\_chambers@mnd.uscourts.gov.

If it proves useful to the Court and parties, the Court will meet in chambers with Plaintiffs' Lead Counsel and Defendants' Lead Counsel 45 minutes before each status conference.

Beginning in April 2016, unless otherwise ordered by this Court, status conferences shall be held on the third Thursday of each month at 2:00 p.m. in Courtroom 12W, 12th Floor, U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415.

16. Scheduling recommendations, including discovery recommendations and case management recommendations that will promote the efficient administration of this case

As soon as Plaintiffs' Lead and Liaison Counsel are established and the appropriate leadership structures are established for the parties, the Court will address discovery guidelines, including deposition protocol and guidelines, as well as drafting a Plaintiffs' Fact Sheet.

17. Disputed issues known to the parties

18. Use of telephonic conferences
19. Next considerations
20. Concluding remarks

The Court DIRECTS the Clerk to send a copy of this Order to the Clerk of the Judicial Panel on Multidistrict Litigation, and counsel of record.

Dated: February 9, 2016

s/ Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge