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**VIA ELECTRONIC CASE FILING**

May 24, 2017

The Honorable Joan N. Ericksen  
United States District Court Judge  
United States District Court, District of Minnesota  
300 South Fourth Street, Suite 12W  
Minneapolis, MN 55415

Re: *In re Bair Hugger Forced Air Warming Products Liability Litigation*  
MDL No. 15-2666-JNE-FLN

Dear Judge Ericksen:

Plaintiffs challenge Jeffrey Knuteson and Jeffrey Collins as representative cases for Bellwether trials. Both choices are appropriate because each plaintiff presents a fact pattern that is representative of the overall group of plaintiffs in this litigation, namely, surgical site/periprosthetic infections following hip or knee procedures allegedly involving perioperative use of the Bair Hugger patient warming system and resulting in additional medical procedures to clean and/or remove the implants. Plaintiffs' arguments to the contrary are nothing more than veiled attempts to strike those cases presenting clear alternative causes. However, as the Court will recall, Defendants advised from Day 1 in this litigation that causation would be the focal point of each case. Alternative cause will be a necessary and central part of each and every case.

Bellwether cases, if they are to be meaningful to the parties, must be representative of the docket. As described below, Plaintiffs' challenges to the Knuteson and Collins cases do not relate to actual representativeness, but rather to the strength of the cases from the Plaintiffs' perspective.

1. Plaintiff Jeffrey Knuteson

Defendants have already addressed Plaintiffs' challenge with respect to Mr. Knuteson's current health (letter of Jerry Blackwell, dated May 18, 2017), and will not repeat their position here. Plaintiffs further claim that Mr. Knuteson is not representative because he was diagnosed with an infection following wound dehiscence. ["Dehiscence" is a wound complication in which the wound ruptures along the surgical incision.] Plaintiffs do not claim that the dehiscence "caused" the joint infection, leaving at best a dangling "factoid" detached from any good explanation for why it should impact Bellwether selection.

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There is nothing unrepresentative about a wound dehiscence, a post-surgical development that is hardly uncommon. A dehiscence is not a cause of an infection – the quintessential question here – and is at best an after-the-fact complication of an already infected wound and/or another pathway for bacteria to enter the body. Every wound will have some form of sequela for every single Plaintiff. Plaintiffs find no support for their position in the Plaintiff Fact Sheets they cite either, relying on data nowhere to be found in those Plaintiff Fact Sheets. They claim the fact sheets show that 3.5% of all cases involve an infection following wound dehiscence when the fact sheets have no specific questions identifying wound dehiscence at all, let alone any support for a 3.5% figure. *In fact, ironically, Mr. Knuteson's own Plaintiff Fact Sheet makes no reference whatsoever to "dehiscence."* [See attached Exhibit A.] If Plaintiffs contend Mr. Knuteson's surgical site infection was caused by a dehiscence and not the Bair Hugger blanket, they should dismiss the case. The case otherwise is as representative as any other based upon best available information.

## 2. Plaintiff Jeffrey Collins

Plaintiffs' challenge to Mr. Collins rests upon the fact that he had an additional procedure (arthroscopy to remove scar tissue) between his total knee replacement and his diagnosis of infection in that knee. Yet, again, there is no evidence to show that this is an aberration that makes his case non-representative. People who need joint replacements will often times have many problems requiring additional procedures on their joints. Indeed, Mr. Collins has a history of procedures, including arthroscopy, on the subject knee prior to his total knee replacement. Plaintiffs present no evidence to demonstrate that the majority of other plaintiffs have no intervening procedures between the joint replacement surgery and the eventual diagnosis of a joint infection or that this is distinction that should make any difference. In fact, one of plaintiffs' other Bellwether choices, Mr. Gareis, had an additional procedure (injection) between his total hip replacement and the date of his alleged infection. Mr. Collin's subsequent procedure does not make his case non-representative.

Respectfully submitted,

/s/Jerry W. Blackwell

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**Counsel for Defendants 3M Company and Arizant Healthcare, Inc.**

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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

This Document Relates To:  
All Actions

MDL No. 15-2666 (JNE/FLN)  
[Proposed]  
PRETRIAL ORDER NO. :  
PLAINTIFF FACT SHEET

Plaintiff: Jeffrey Knuteson

This Plaintiff Fact Sheet must be completed pursuant to the Pretrial Order by each plaintiff or their personal representative. Section IX must be completed by loss of consortium plaintiffs.

In completing this Fact Sheet, you are under oath and must provide information that is true and correct to the best of your knowledge. Please answer every question, and do not leave any blanks throughout this Fact Sheet. If you cannot recall all of the details requested, please provide as much information as you can. If a question is not applicable to you, please state "Not Applicable" or "N/A." If any information you need to complete this Fact Sheet is in the possession of your attorney or other representative, please consult with that attorney or representative so that you can fully and accurately respond to the questions. If you do not have room in the space provided to complete your answer, please attach as many sheets of paper as necessary to fully answer the questions. You are obligated to supplement your responses if you learn that they are incomplete or incorrect in any material respect. No answer requires any waiver of privilege.

As used herein, the term "communication" and/or "correspondence" shall mean and refer to any oral, written or electronic transmission of information, including, without limitation, meetings, discussions, conversations, telephone calls, memoranda, letters, e-mails, text messages, conferences, or seminars or any other exchange of information.

As used herein, the term "identify" or "identity" with respect to persons, means to give, to the extent known, the person's full name, their present or last known addresses and phone numbers.

As used herein, the term "person" means natural person, as well as corporate and/or governmental entity.

As used herein, "your attorney" refers to the attorneys that represent you individually in this lawsuit.

As used herein, the terms "Relating to," "relate to," "referring to," "refer to," "reflecting," "reflect," "concerning," or "concern" shall mean evidencing, regarding, concerning, discussing, embodying, describing, summarizing, containing, constituting, showing, mentioning, reflecting, pertaining to, dealing with, relating to, referring to in any way or manner, or in any way logically or factually, connecting with the matter described in that paragraph of these demands, including documents attached to or used in the preparation of or concerning the preparation of the documents.

**NOTE TO PEOPLE IN A REPRESENTATIVE CAPACITY**

If you are completing this form in a representative capacity, only the information in Section I asks for information about you, individually. Throughout the rest of the Plaintiff Fact Sheet, the questions seek information about the person who you claim was injured, or on whose behalf you bring this lawsuit. Other than in Section I, when a question asks for information about “you” or the “plaintiff,” please provide information about the person you claim was injured or on whose behalf you have brought this lawsuit.

I. CASE INFORMATION

1. Name of person completing this form : Jeffrey Knuteson
  
2. State the following for the civil action which you filed :
  - a. Current case caption : Jeffrey Knuteson v. 3M Company
  - b. Current case number : 0:16-cv-01088
  
3. State the name, address, telephone and facsimile numbers, and e-mail address of the principal attorney representing you :
  - a. Name : Yvonne M. Flaherty
  - b. Firm : Lockridge, Grindal Nauen P.L.L.P.
  - c. Address : 100 Washington Avenue South, Suite 2200, Minneapolis, MN 55401
  - d. Telephone : 612-339-6900 Fax : 612-339-0981
  - e. E-mail : ymflaherty@locklaw.com
  
4. If you are completing this questionnaire in a representative capacity (e.g., on behalf of an estate, or incapacitated or deceased person), please state the following information about yourself :
  - a. Name :
  - b. Any other names (e.g., maiden name or alias) you have used or by which you have been known and the dates you used those names :
  - c. Your Address :
  - d. Individual or estate you are representing, and in what capacity you are representing the individual or estate :
  - e. If you were appointed as a representative by a court, state the court :
  - f. Date of Appointment :
  - g. State your relationship with the represented person claimed to be injured :
  - h. If you represent a decedent's estate, state the date and the address of the place of death :

II. PERSONAL INFORMATION (re Person claiming injuries)

1. State the following regarding your personal information :

a. First Name : Jeffrey

Middle Name : L

Last Name : Knuteson

b. Any other names (e.g., maiden name or alias) you have used or by which you have been known and the dates when you used those names :

N/A.

c. Social Security Number : [REDACTED]

d. Address : [REDACTED]

e. State how long you have lived at your present address : 11 years.

f. Identify all persons who lived with you at the time of the events alleged in the Complaint, and their relationship to you : Janene Knuteson, wife; Kevin Knuteson, son.

2. Driver's license number and state issuing license : [REDACTED]; Wisconsin

3. Date and place of birth : [REDACTED] Madison, Wisconsin

4. Sex : Male

5. If you have Medicare, please state your HICN number (if known) :

6. Identify each address at which you have resided during the last ten (10) years, and list the approximate years when you started and stopped living at each one :

Address	Date of Residence Start	Date of Residence End
[REDACTED]	01/01/2009	
[REDACTED]	01/01/2001	01/01/2009

7. Are you currently, or have you ever been, married?

Yes

If "yes," for each spouse, please state the following:

Name and Address (if different from yours) of Spouse	Spouse's Date of Birth	Date Marriage Began	Date Marriage Ended	How Marriage Ended
Janene Knuteson	[REDACTED]	01/01/1978		N/A.

8. For each of your children, please state their name and year of birth :

Children Name	Year of Birth
Kevin Knuteson	[REDACTED]

9. Identify the following information for each school, college, university, vocational school, or other educational institution you have attended beginning with high school :

Name of School	City and State	Dates of attendance Start	Dates of attendance End	Degree Awarded	Major or Primary Field
LaFollette High School	Madison, WI	09/01/1969	06/01/1973	Diploma	general education

10. For your current employer (if you are not currently employed, your last employer) and each employer for the last ten (10) years, state the following to the extent you can recall :

Name and Address of Employer	Approx. Dates of Employment Start	Approx. Dates of Employment End	Occupation/Job Title	Reason for Leaving
I have not been employed in the last 10 years				

11. Have you ever served in any branch of the military?

Yes

Branch(es) and date(s) of service I served in the Navy

If yes, were you ever discharged for any reason relating to your medical or physical condition?

Yes

If yes, state what that condition was : Back injury

12. Have you ever been rejected from military service for any reason relating to your medical or physical condition?

No

13. Have you been convicted of a felony or a crime involving a dishonest act or false statement in the last ten (10) years?

No

14. Do you recall ever visiting a website, blog, etc., regarding the use of patient warming systems during surgery, or any risks or benefits to patient warming in general or by device type? If so, identify the website, blog, etc., you visited and the location of any copy of the information you reviewed if it still exists:

No



15. Do you recall ever posting or writing anywhere on the internet in a public forum about Defendants, any patient warming system or device, or the injuries you allege were caused by Defendants' product, including but not limited to, posting on a personal website, blog, Facebook account, Linked In account, or other social media?

No

16. Do you have any drawings, journals, slides, diaries, notes, letters, or emails which refer to your health or well being relating to your surgery, alleged injury, and your life after your alleged injury?

No

III. SURGERY INFORMATION

To the extent responsive information to the questions below is available in medical records in your possession or in the possession of your attorneys, please produce such records.

1. Do you have information that a Bair Hugger™ Patient Warming System (“Bair Hugger system”) was used during the surgery allegedly connected to the infection at issue?

Yes

If “yes,” please describe that information? See attached medical records from December 11, 2009 procedure.

When did you first discover this information? 2016

How did you learn this? I defer to my attorney on this issue.

Provide the Serial or Model Number of the device used : Unknown.

Where is this product now? Unknown.

2. Other than based upon information from a consulting expert, do you have information as to whether the operating room (where the surgery at which you claim you were injured was performed) utilized a laminar air flow system at the time of your surgery?

Do not know.

3. State the following information related to the surgery or surgeries at which you claim you were injured by a Bair Hugger system (answer separately for each surgery at issue) :

Surgery Details : 1

**Hospital Name :**

University of Wisconsin Hospital - MAdison

**Date of surgery :**

12/11/2009

**Location of surgery :**

600 Highland Ave, Madison, WI 53792

**Identify the physician performing the surgery :**

Dr. John Heiner

**Type of surgery :**

Left total hip arthroplasty

**Reason for surgery :**

Degenerative joint disease

**Your height and weight at the time of surgery :**

6'2", 254 lbs

**List all medical conditions or diagnoses (for example, high blood pressure or diabetes) that you had at the time you went into surgery :**

Chronic lower back pain, hypertension, increased cholesterol

**Identify any infections you had, if any, during the 6 months before you had surgery :**

None

**Identify all persons with whom you had discussions about the risks of surgery, and describe the risks discussed :**

Dr. Heimer told me about the general risks of surgery and anesthesia.

**Identify the type of microbe, bacterium, virus, or organism, you allege caused the infection that is the subject of this lawsuit (if known) and the basis for your knowledge if not subject to privilege :**

Gram positive cocci, MSSA

4. Has anyone, excluding any retained medical or scientific expert or your attorneys, expressed the opinion or otherwise told you that the Bair Hugger system caused the infection or injury that is the basis for this lawsuit?

No

5. Are you aware of any non-privileged tests or inspections that have been conducted of the Bair Hugger system allegedly used at your surgery, or of any other Bair Hugger device?

No

**IV. GENERAL MEDICAL INFORMATION**

1. Identify the following vital statistics :

Current (last) height : 6 feet, 2 inches

Current (last) weight : 248 Pounds

2. Identify the name and address of your current (last) family and/or primary care physician :

Family Name	Address	Primary care Physician
	South Park Street Madison, WI	Dr. Andre Montarfy

3. Identify all healthcare providers with whom you have consulted or treated beginning seven (7) years before the surgery at which you claim you were injured by a Bair Hugger system through the present, and for each provider, state the following information :

Doctor or Healthcare Provider's Name	Specialty	Address	Years of Visits Start	Years of Visits End	Reasons for Seeing this Provider
Dr. Heiner	Orthopedics	600 Highland Ave Madison, WI 53792			

4. For each hospital, clinic, surgery center, healthcare facility, physical therapy or rehabilitation center where you have received medical treatment (in-patient, out-patient, urgent care or emergency room) from the time seven (7) years before the surgery at which you claim you were injured by a Bair Hugger system to the present, state the following information :

Name	Address and Telephone Number	Admission Start Date	Admission End Date	Reason for Admission
University of Wisconsin Hospital - Madison	600 Highland Ave Madison, WI 53792			

5. List all of the medications (prescription and over the counter) you currently take.

6. For each prescription medication you have taken at least once a month over the course of four months or more at any time during the last seven (7) years prior to the surgery, other than the ones above, identify the following information :

7. Identify the following for each pharmacy, drugstore, or other facility or supplier (including, but not limited to, mail order pharmacies) that has dispensed medication to you in the past five (5) years :

8. Identify all dental procedures you had beginning 6 months prior to and continuing through 6 months after the

surgery during which you claim you were injured by the Bair Hugger system. For each procedure, provide the following information :

9. Have you ever used tobacco in any form from the time five (5) years before the surgery at which you claim you were injured by the Bair Hugger system to present?

No

10. For the time period starting one (1) year before the surgery at which you claim you were injured by the Bair Hugger system to the present, have you been treated as an in-patient or out-patient for drug or alcohol abuse or addiction?

No

V. INSURANCE AND OTHER CLAIM INFORMATION

1. Identify any person, insurance company (including any Medicare Advantage Organization), or other entity, including Medicare or Medicaid, that provided medical coverage to you (either directly or through a group, including any employer) or paid medical bills on your behalf at any time, beginning five (5) years before your alleged injuries through the present.

Name of Entity	Policy Number	Name of Policy Holder or Insured (if not you)	Approx. Dates of Coverage
Anthem BCBS			

2. Have you ever filed a worker's compensation claim in the last ten (10) years?

No

3. Have you ever been out of work for more than thirty (30) days in any one or more of the last ten (10) years, for any reasons related to your health excluding maternity leave?

No

4. Have you ever filed social security disability claims (SSI or SSD) or filed a disability claim with a private insurer?

Yes

If "yes," please state :

Approximate year of the claim :

Nature of disability :

Was the claim denied?

5. Have you ever filed a lawsuit or made a claim, other than the present lawsuit, relating to any bodily injury in the last ten (10) years?

If "yes," please state:

Approximate date the lawsuit or claim was filed or made :

Court/State where the lawsuit was filed :

Name of the Defendant, if known :

Brief description of the claims asserted :

6. Have you ever filed for bankruptcy subsequent to the date of the surgery in which you claim you were injured by the Bair Hugger system?

No



VI. CURRENT CLAIM INFORMATION

1. Do you allege that you suffered physical and/or bodily injury related to use of a Bair Hugger system?

Yes

If "yes" : describe each bodily injury :

Pain, I developed an infection requiring 2-stage revision of the hip.

State the approximate date on which you first became aware of the injury(ies) (regardless of whether you associated the injury with the use of a Bair Hugger system) :

April 30, 2010.

If you are currently experiencing any symptoms related to an alleged injury that you attribute to use of a Bair Hugger system, describe your symptoms and any treatment you are currently receiving :

I continue to experience pain. There is fluid still in the joint.

Describe any activities that you can no longer perform, or cannot perform as well, since the time you allege you were injured :

Describe any other physical harm or consequences you suffered as a result :

2. Do you allege that use of a Bair Hugger system worsened or aggravated a previously existing injury or condition?

No

3. Do you claim damages related to emotional distress or psychological injuries as a result of use of a Bair Hugger system?

No

4. If you are claiming damages related to emotional distress, provide the following information for any psychiatrist, psychologist, or any other mental healthcare professional who has ever treated you, or who you are currently seeing, for any alleged emotional distress or psychological injuries described in the previous question :

5. Have you read or seen any written, televised, or internet-based advertising or labeling material related to a Bair Hugger system other than in consultation with your attorney?



No

6. In connection with the surgery at which you claim you were injured, were you given any oral or written information or warnings concerning the Bair Hugger system?

No

7. Have you or has anyone acting on your behalf (other than your attorney) had any communications with any Arizant or 3M representative regarding your surgery with and/or claim of injuries from use of a Bair Hugger system?

No

8. Did any representative of Arizant or 3M ever tell you that you got a warranty related to the Bair Hugger™ Patient Warming System or otherwise represent to you the expected performance of the Bair Hugger system?

No

9. Please describe any communications, correspondence, or interactions between You and any representative of Augustine Temperature Management, including but not limited to Dr. Scott Augustine.

None

VII. ECONOMIC DAMAGES

1. Are you making a claim for loss of past wages or income?

If "yes," state the following :

Approximate time you lost from work :

Approximate income you claim you lost :

State your approximate total earned income (including any salary, bonus, and benefits) for each year, beginning three years prior to the injury you allege is related to the use of a Bair Hugger system through the present :

2. Are you making a claim for loss of future wages, income, or earning capacity?

If "yes," state the following :

Approximate amount of lost future wages or income you are claiming : \$

Basis for calculation of lost future wages or income :

3. Have you paid out-of-pocket medical expenses that are related to any condition that you allege was caused by a defect in a Bair Hugger system?

If "yes," state the approximate total amount of out-of-pocket medical expenses incurred :

\$

4. For any expenses claimed above, have they been reimbursed or reduced by any third party?

If "yes," identify who reimbursed or reduced these expenses :

5. To your knowledge, has your insurer, or any other entity or person (including the government or a governmental agency or program), paid or incurred any medical expenses related to any condition that you allege was caused by the Bair Hugger system?

Yes

If "yes," identify the name and approximate dates during which your insurer, or other entity or person, paid or incurred any such medical expenses.

6. Provide a statement of the nature and approximate amount of any other economic damages you claim in this lawsuit :

VIII. PERSONS WITH KNOWLEDGE

1. Identify each person (other than your healthcare providers or attorneys) who possesses important information about the facts of your lawsuit, including your injuries and current medical conditions, to the extent not already listed :
2. Has anyone (other than your healthcare providers or attorneys) provided you with a verbal or written statement about the facts or circumstances relating to this lawsuit, including the use of patient warming systems or the conduct or representations of Defendants?  
If "yes," please identify the person, state when they gave you this statement and summarize its contents :

IX. LOSS OF CONSORTIUM PLAINTIFFS

1. State the following :

a. Your name :

b. Any other names (e.g., maiden name or alias) you have used or by which you have been known and the dates you used those names :

c. Your Social Security Number :

d. Your address :

e. State how long you have lived at your present address :

2. Sex : Female

3. Identify each address at which you have resided during the last five (5) years, and list when you started and stopped living at each one :

4. Are you currently, or have you ever been, married to the primary plaintiff in this action?

If "yes," please state when and where you were married, how long you were married, and when and how the marriage ended (if it did) :

5. Do you have any children with the primary plaintiff?

If "yes," please identify their names and years of birth :

6. Describe separately and in detail each and every loss of care, services, companionship, counsel, advice, assistance, comfort, consortium, or any similar loss you are claiming :

X. DOCUMENTATION

1	20161219111235Knuteson, Jeffrey - COMBINED MED RECS UPLOADED.pdf	12/19/2016 12:12:37 PM
2	20161223093113Knuteson, Jeffrey - Authorization.pdf	12/23/2016 10:31:14 AM
3	20161227112652Knuteson, Verification.pdf	12/27/2016 12:26:53 PM

**Authorizations** : Please sign and attach to this Fact Sheet the authorizations for release of records appended hereto.

**Documents within your possession** : if you have any of the following materials in your possession, please attach a copy to this Fact Sheet.

All diagnostic tests and test results, including original films or video of ultra sounds, MRIs, x-rays, CT scans, etc., taken during the time from ten (10) years before the surgery at which you allege you were injured by use of a 3M<sup>TM</sup> Bair Hugger<sup>TM</sup> Patient Warming System to the present.

Copies of all documents from physicians, healthcare providers, or others related to the surgery at which you claim you were injured, any patient warming system, or your recovery from surgery.

Any documents that reflect, show or establish the use of a Bair Hugger system during the surgery at which you claim you were injured.

All documents related to, concerning, or constituting product use instructions, product warnings, package inserts, warranties, guarantees, or other materials provided to you that relate to the Bair Hugger system.

All non-privileged statements obtained from or given by any person having knowledge of facts relevant to your specific case.

All documents relating to the surgery at which you claim you were injured, including, but not limited to medical records, medical bills, prescriptions, diaries, notes, rehabilitation instructions, etc., whether made by you or any other person or entity.

All documents regarding the health risks or hazards associated with or possibly arising from surgery, which you received or generated in connection with or at any time before the surgery at which you claim you were injured.

All documents in your possession that you believe were provided to you by any Defendant (unless they first were given to you by your attorney), related to the claims in your case.

All documents and things in your possession that relate to any Defendant and were in your possession before

the surgery at which you claim you were injured, related to the claims in your case.

If you claim to have suffered a loss of earnings, or lost earnings capacity, your federal tax returns and W-2s for each year, beginning three years prior to the injury you allege is related to the use of a Bair Hugger system through the present.

If you claim any loss from medical expenses, copies of all bills from any physician, hospital, pharmacy, or other healthcare provider.

Decedent's death certificate (if applicable).

Re: *In re Bair Hugger Forced Air Warming Devices Products Liability Litigation*  
 MDL No. 2666

**Jeffrey Knuteson v. 3M Company et. al**  
 Court File No. 16-1088 (D. Minn.)

PFS Section	Plaintiff's Supplemental Response
Section II – 11	Plaintiff served in the Navy from approximately 1972 through 1973.
Section IV - 3	Plaintiff first saw Dr. Heiner in November of 2009.  Plaintiff believes he last saw Dr. Heiner approximately 2 months ago.
Section IV – 7	University of Wisconsin 777 Highland Avenue Madison, WI 53705 Dates of use – approximately 2009-2010  The Medicine Shop 4205 Monona Drive Monona, WI 55118 Dates of use – approximately 2010 to present.
Section IV -8	Plaintiff believes he had dental procedures during the designated time frame.  Plaintiff does not recall the dental clinic.
Section V-5	No.
Section V- 6	Plaintiff disputes Defendants designation of this section as deficient. Plaintiff has reviewed responses submitted and believes all questions of this section are complete.
Section VI -1	Plaintiff disputes Defendants designation of this section as deficient. Plaintiff has reviewed responses submitted and believes all sub-questions of this section are complete.
Section VII – 1	No.
Section VII -2	No.
Section VIII - 2	No.