

**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. 5:
DIRECT FILING**

The purpose of this Order is to minimize delays associated with transfer of actions involving Bair Hugger claims pending or originating in other federal district courts to this Court and to promote judicial efficiency. This Order is intended solely to facilitate administrative convenience without otherwise altering the substantive or procedural rights of the parties, except as otherwise provided for below. Therefore, pursuant to the parties' joint submission to the Court, it is **HEREBY ORDERED** that:

1. With regard to the determination of the applicable procedural law for any action directly filed in this District pursuant to this Order and/or Pre-Trial Order #1, Minnesota's procedural law shall apply.
2. With regard to the determination of the applicable substantive law for any action filed in this District pursuant to this Order and/or Pre-Trial Order #1, in the event of a dispute between the parties concerning the applicable substantive law, the Court will apply Minnesota choice-of-law rules unless the Plaintiff clearly identifies the following information in the initial complaint: (1) current residence; (2) date and location of surgery plaintiff claims Bair Hugger was used; and (3) the appropriate

venue where the action would have been filed if direct filing in this District were not available. If the Plaintiff identifies that information, then the choice-of-law rules from the appropriate venue shall apply.

3. The direct filing of actions in MDL No. 2666 in the District of Minnesota is solely for purposes of pretrial discovery and related proceedings. The District of Minnesota shall not be deemed the “transferor court” solely by virtue of an action having been filed in this District pursuant to this Order. At the conclusion of all pretrial discovery and proceedings, this Court, pursuant to 28 U.S.C. § 1404(a), may transfer any case filed directly in this District to a federal district court of proper venue as defined in 28 U.S.C. § 1391, based on recommendations or stipulation of the parties to that case, or following its determination after briefing by the parties.

4. Each Complaint filed under this Order shall make reference to this Order in the Complaint.

5. Local Rule 83.5(d) is hereby waived for such cases, as previously outlined in Pre-Trial Order #1.

6. The filing of such a Complaint subjects the attorney to the Local Rules of this Court, including, but not limited to, Local Rule 83.6.

Dated: April 29, 2016

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