

## Federal, state courts side with 3M on key damages motion

March 29, 2018

A federal court, as well as a Minnesota state court, have denied motions by plaintiffs' attorneys to add claims for punitive damages to the bellwether trial pool cases and 56 cases pending in a Minnesota state court, a significant victory for 3M in its defense of the 3M™ Bair Hugger™ warming system.

Judges in the U.S. District Court for Minnesota and the Ramsey County District Court in St. Paul separately noted that plaintiffs failed to show scientific proof that the 3M Bair Hugger warming system causes surgical site infections or that 3M disregarded patient safety.

"Plaintiffs' core contention is that the Bair Hugger system presents a high probability of injury to patients by causing surgical site infections," the Ramsey County court wrote in its August 18 ruling. "But Plaintiffs present no evidence that any scientific study – including those studies relied upon by Plaintiffs and their experts – has ever concluded that the Bair Hugger patient warming system causes increased surgical site infections."

In its earlier July 27 ruling, the federal court ordered attorneys for 3M and the plaintiffs to meet and propose a procedure to determine whether the federal decision in favor of 3M should apply to all of the cases in the multi-district litigation. For now, the decision only applies to the five bellwether cases that will serve as a litmus test for the overall litigation. The first of those trials is scheduled to begin in February 2018.

The court orders echoed arguments made by 3M: that the small number of research studies used by plaintiffs as the core of their cases show no direct correlation between the Bair Hugger System and patient infections.

"Indeed," the federal ruling noted "incorporating the studies relied on by reference in the pleadings, the Court observes that each study disclaims any direct correlation between the presence of bacteria and an increase in the risk of surgical site infections. There is no reasonable inference that could be drawn by a factfinder that presence of bacteria in the device would result in an increased infection risk of the surgical site itself."

The federal court concluded: "Plaintiffs have failed to plausibly allege on the face of their proposed pleading that Defendants acted with deliberate disregard for the rights and safety of others."

In its comprehensive ruling, the state court noted the role played by 3M competitor Scott Augustine in the litigation. "Plaintiffs cite eight studies published between 2009 and 2013," the court wrote. "Nearly all of these studies were either co-authored by an employee of Defendants' competitor and longtime antagonist, Scott Augustine, and/or indicate that they were sponsored by Augustine. Even so, not one of these studies concludes that the Bair Hugger system causes surgical site infections."