

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: SORIN 3T : MDL DOCKET NO. 2816  
HEATER-COOLER SYSTEM : Civil Action No. 1:18-MD-2816  
PRODUCTS LIABILITY :  
LITIGATION (NO. II) :  
: Hon. John E. Jones III  
:  
: THIS DOCUMENT RELATES TO:  
: **ALL CASES**  
:

**CASE MANAGEMENT ORDER NO. 2**  
**RE: INITIAL CASE MANAGEMENT CONFERENCE**

**February 26, 2018**

The court wishes to express clearly its expectations that professionalism, courtesy, and civility will endure throughout these proceedings. Because of the high level of competence and experience that attorneys ordinarily bring to this type of litigation, the court is confident that this objective will be achieved without judicial intervention. Counsel are expected to familiarize themselves with the Manual for Complex Litigation Fourth (“MCL 4th”) so that they may suggest procedures that will facilitate the expeditious, economical, and just resolution of this litigation. Counsel are also required to review the Local Rules for the Middle District of Pennsylvania, which may be found on the court’s website at [www.pamd.uscourts.gov](http://www.pamd.uscourts.gov).

It appearing that the above-caption action will merit special attention as complex litigation, **IT IS HEREBY ORDERED THAT:**

1. **INITIAL CASE MANAGEMENT CONFERENCE:** An initial case management conference is scheduled for **May 31, 2018, at 10:00 a.m.** in Courtroom No. 2, Ninth Floor, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania.
  - a. **Purpose:** The conference will be held for the purposes specified in Federal Rule of Civil Procedure 16 and 26 and will be subject to the sanctions prescribed by Rule 16(f).
  - b. **Attendance:** Lead counsel for each of the parties must either attend the conference or submit a written statement granting decision-making authority to counsel for another party. To minimize costs and facilitate a manageable conference, parties with similar interests are expected to agree to the extent practicable on a single attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation; and attendance at the conference will not waive objections to jurisdiction, venue, or service.
  - c. **Other Participants:** Persons who are not named as parties in this litigation but may later be joined as parties are invited to attend in person or by counsel.
2. **PROPOSED CASE MANAGEMENT PLAN:** Lead counsel for each of the parties shall confer prior to the initial pretrial conference and seek consensus to the extent possible to develop a proposed case management plan and to create an agenda for the conference. Counsel shall file the proposed case management plan and agenda on or before **May 16, 2018.** Counsel should discuss and include in the case management plan and agenda at least the following matters:
  - a. The feasibility of consolidating all cases into a single action or into several groups of actions composed of similar cases. Counsel shall also discuss the feasibility of consolidated treatment of issues applicable to all actions or groups of actions as well as the propriety of dismissing duplicative actions or realigning the parties. Pertinent to

this discussion are any material differences in the substantive law applicable to each action.

- b. The scope of discovery and procedures for resolving discovery disputes. To the extent possible, Counsel shall agree to a joint proposed discovery plan under Rule 26(f) and a suggested schedule under Rule 16(b) for joinder of parties, amendment of pleadings, consideration of any class action allegations, motions, and trial. Should counsel reach an impasse precluding a joint discovery plan and schedule, counsel shall indicate with specificity the reason why an agreement could not be made and the parties' respective positions on a proposed discovery plan and schedule.
  - c. Procedures or protective orders for the handling of claims of confidentiality and privilege.
  - d. Proposed mediation procedures.
  - e. A list of those attorneys who will be present at the initial conference.
3. **PRELIMINARY REPORTS:** Plaintiffs and Defendants shall each submit to the court by or before **May 16, 2018** a collective preliminary report not to exceed twenty-five pages in length. These reports will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered into evidence against a party in later proceedings. These preliminary reports shall be mailed to undersigned's chambers at Federal Building, 228 Walnut Street, PO Box. 983, Harrisburg, Pennsylvania, to the attention of "IN RE: Sorin – Preliminary Report." The report shall address, to the extent practicable, the following:
- a. The factual and legal background of the cases.
  - b. The procedural posture of the transferred cases and of potential tag-along cases.
  - c. The factual and legal issues that the parties currently view as critical.
  - d. The identity of any other related actions pending in state or federal courts and their current status, to the extent known.

- e. A list of any pending motions in the cases.
  - f. Recommendations on what committees, if any, should be established, and how appointments to those committees should be made.
  - g. Recommendations on what information should be included on the public website that the court intends to create for this litigation.
  - h. Any other relevant information the parties believe will be helpful to the court in establishing a case management plan for this litigation.
4. **LIAISON COUNSEL:** Prior to the initial conference, and to the extent they have not already done so, counsel shall confer and seek consensus on the selection of a candidate for the position of liaison counsel who will be charged with essentially administrative matters. The parties shall provide a proposed order regarding appointment of the same. Appointment of liaison counsel shall be subject to the approval of the court. If the parties cannot agree upon the appointment of liaison counsel, the court will address the matter at the initial conference.
5. **LEAD COUNSEL:** The court intends to appoint plaintiffs' lead counsel and/or a plaintiffs' steering committee. Applications for these positions must be filed with the Clerk's office on or before **May 16, 2018**. The court will only consider attorneys who have filed a civil action in this litigation. The main criteria for these appointments are (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. Applicants should also set forth attorney fee proposals, rates, and percentages that applicants expect to seek if the litigation succeeds in creating a common fund.
6. **FILING AND SERVICE:** Consistent with Paragraph 3 of Case Management Order 1, all papers shall be electronically signed and filed. The electronic filing of a document shall be deemed to constitute proper service on all parties. Discovery materials and other documents not filed with the court shall be served on Lead and Liaison Counsel of the party being served by electronic mail, whenever practicable. Where the size and/or nature of the documents at issue renders service by electronic mail impractical, however,

any such documents may be served on Lead and Liaison Counsel of the party being served by U.S. Mail.

7. **ATTORNEY LIST:** At the initial case management conference, the parties shall present a Master Attorney List for the purpose of designating one attorney for each party separately represented in this litigation.
8. **EMERGENT MATTERS:** In the event of any emergent circumstance that requires Court intervention prior to the initial conference, counsel are directed to file a letter on the docket apprising the court of the situation. As part of that letter, counsel shall file a statement certifying that counsel has made a good faith effort to resolve the issue without court intervention. The statement shall contain a detailed explanation for the need of court intervention.

s/ John E. Jones III  
John E. Jones III  
U.S. District Judge