

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

TEAM SCHIERL COMPANIES and
HEARTLAND FARMS, INC., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

ASPIRUS, INC. and ASPIRUS NETWORK,
INC.,

Defendants.

No. 3:22-cv-00580-jdp

Hon. James D. Peterson, U.S.D.J.

Hon. Anita M. Boor, U.S.M.J.

JOINT STATUS REPORT

Plaintiffs Team Schierl Companies and Heartland Farms, Inc. and Defendants Aspirus, Inc. and Aspirus Network, Inc., submit this joint status report, as directed by the Court on January 22, 2026. ECF No. 239.

1. Plaintiffs' Position

Plaintiffs understand from their recent discussions with Defendants that Defendants plan to move for summary judgment on the grounds that, without Dr. Leitzinger's overcharge opinion, Plaintiffs are unable to demonstrate proof of antitrust injury, an essential element to both their Section 1 and Section 2 Sherman Act claims. *See Agnew v. Nat'l Collegiate Athletic Ass'n*, 683 F.3d 328, 335 (7th Cir. 2012) (Section 1); *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 481-82 (7th Cir. 2020) (Section 2). Given the Court's ruling excluding Dr. Leitzinger's opinion and the difficulties that poses for Plaintiffs' case, Plaintiffs believe it would be most efficient for the parties to initially brief summary judgment on this issue only, because if the Court agrees with Defendants' position on this issue, that would end the case and there would be no need to brief and

argue the many other complex antitrust issues on which both Plaintiffs and Defendants could move for summary judgment, nor to brief and argue Plaintiffs' and Defendants' anticipated merits-related *Daubert* motions. A grant of summary judgment on the injury issue, then, would allow the Court to quickly dispose of this case, Defendants to obtain a final judgment in their favor, and Plaintiffs to perfect their right to appeal.¹

Defendants do not explain why anyone would benefit from making the parties and the Court spend hundreds of hours briefing, arguing, and deciding multiple summary judgment and *Daubert* motions, collectively raising dozens of other issues, instead of just entering judgment on a dispositive one. Indeed, the Court recognized the needlessness of doing so in its decision denying class certification, where the Court explained that because “[t]he predominance issue is dispositive, [] the court will deny the motion for class certification on that basis without reaching the other issues.” ECF No. 230 at 19. The same principle applies here.

Plaintiffs respectfully submit that the Court's suggested deadline of February 25 for dispositive motions is an appropriate date for a narrow motion for summary judgment on the issue of antitrust injury, and that the Court should stay other deadlines pending resolution of that motion. Were the Court to deny such a motion—*i.e.*, rule that Plaintiffs can prove their case without Dr. Leitzinger's overcharge model—Plaintiffs propose a subsequent, general summary judgment proceeding 30 days after such a ruling, on the same time intervals in the Court's suggested schedule, *see* ECF No. 239.

¹ For the judgment in this case to be final, and thus ripe for appeal, Plaintiffs understand that they would need to dismiss their request for injunctive relief. *See Blue Cross & Blue Shield United of Wis. v. Marshfield Clinic*, 152 F.3d 588, 591 (7th Cir. 1998) (holding that an antitrust plaintiff was “entitled to an injunction even if it cannot prove damages”). Plaintiffs will do so, with prejudice, if this proposal is adopted by the Court.

2. Defendants' Position

Defendants agree with the schedule in the Court's January 22, 2026 Order. Dkt. 239. In its Order, the Court stated that it was prepared to enter that schedule "absent well-founded objections from the parties." *Id.* Plaintiffs raise no well-founded objections, but only a proposed alternative that they believe will allow them to quickly "perfect their right to appeal" on the same issue as to which the Seventh Circuit just denied their Rule 23(f) petition. Their proposal should be rejected for two separate reasons.²

First, even if Plaintiffs could create appellate jurisdiction with their expected loss to a limited summary judgment motion, any appeal should be taken from a complete summary judgment record. Defendants plan to move for summary judgment on multiple independent grounds, not limited to Plaintiffs' inability to prove the essential element of antitrust injury. And even as to that specific element, there are multiple reasons why Plaintiffs cannot prove antitrust injury beyond their inability to substantiate their claim of overcharge damages. All of Defendants' grounds for summary judgment should be presented to the Court in a single motion and be part of the record on any appeal. Defendants also intend to file a *Daubert* motion directed to Plaintiffs' merits expert which will raise issues directly related to their motion for summary judgment, which also should be before the Court and part of the record on any appeal.

² Plaintiffs' qualified proposal to "dismiss" their injunctive relief claim cannot be squared with their statements to the Court just 25 days ago that "Plaintiffs will, at a minimum, continue litigating this case on the merits on their own behalf to seek an injunction" and that "Plaintiffs are not abandoning anything and are not willing to dismiss any claim at this juncture." Dkt. 234, Joint Status Rpt. at 2; *see also id.* at 2 n.1. Given Plaintiffs' newfound desire to streamline their case, Defendants asked Plaintiffs during the parties' January 27 meet-and-confer to agree to dismiss with prejudice their abandoned Section 2 claim and their unpled and unsupported request for injunctive relief. Plaintiffs are unwilling to do so and instead propose a conditional "dismiss[al]" of the injunctive relief claim while reintroducing their undeveloped Section 2 claim.

Second, Plaintiffs' proposal contemplates a second round of summary judgment and *Daubert* briefing if Plaintiffs were to prevail as to the narrow issue they want to be addressed first in isolation, either in this Court or on appeal. If that were to happen, their proposed piecemeal approach would unnecessarily multiply the proceedings and impose undue burdens on this Court and the Court of Appeals.

For the foregoing reasons, Defendants respectfully request that the Court enter its proposed schedule and reject Plaintiffs' proposal.

Dated: January 30, 2026

Respectfully submitted,

/s/ Timothy W. Burns
Timothy W. Burns
Nathan M. Kuenzi
BURNS BAIR LLP
10 E. Doty Street, Suite 600
Madison, WI 53703
Phone: (608) 286-2808
tburns@burnsbair.com
nkuenzi@burnsbair.com

Daniel J. Walker
Robert E. Litan
BERGER MONTAGUE PC
1001 G Street, NW, Suite 400E
Washington, DC 20001
Phone: (202) 559-9745
dwalker@bergermontague.com
rlitan@bergermontague.com

Eric L. Cramer
Zachary D. Caplan
Sarah R. Zimmerman
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Phone: (215) 875-3000
ecramer@bergermontague.com
zcaplan@bergermontague.com
szimmerman@bergermontague.com

Jamie Crooks
Michael Lieberman
Amanda R. Vaughn
FAIRMARK PARTNERS LLP
400 7th Street NW, Suite 304
Washington, DC 20004
Phone: 619-507-4182
jamie@fairmarklaw.com
michael@fairmarklaw.com
amanda@fairmarklaw.com

Counsel for Plaintiffs and the Proposed Class

Daniel Conley
Nathan Oesch
QUARLES & BRADY LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
T: 414-277-5000
daniel.conley@quarles.com
nathan.oesch@quarles.com

Matthew Splitek
QUARLES & BRADY LLP
33 East Main Street, Suite 900
Madison, Wisconsin 53703
T: 608-251-5000
matthew.splitek@quarles.com

/s/ Zachary M. Johns
Steven A. Reed (*pro hac vice*)
Zachary M. Johns (*pro hac vice*)
R. Brendan Fee (*pro hac vice*)
Vincent C. Papa (*pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
2222 Market Street
Philadelphia, PA 19103-2921
T: 215-963-5000
steven.reed@morganlewis.com
brendan.fee@morganlewis.com
zachary.johns@morganlewis.com
vincent.papa@morganlewis.com

Kenneth M. Kliebard (*pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive
Chicago, IL 60606-1511
T: 312-324-1000
kenneth.kliebard@morganlewis.com

Ryan Kantor (*pro hac vice*)
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541
T: 202-739-3000
ryan.kantor@morganlewis.com

*Attorneys for Defendants,
Aspirus, Inc. and Aspirus Network, Inc.*