



Insurance Company, RSUI, North River Insurance Company, Fireman's Fund Insurance Company and Liberty Mutual Insurance Company for Class Certification of a Louisiana Homeowner Class for Damages and Declaratory Relief in *Silva* [Rec. Doc. 5567], and thereafter on March 11, 2011, a substituted Motion for Class Certification [Rec. Doc. 8125]. On September 27, 2010, Plaintiffs filed a Motion for Class Certification of a Florida Homeowner Class and a Louisiana Homeowner class for Property Damage Against Knauf in *Payton* [Rec. Doc. 5612], and thereafter on March 18, 2011, a substituted Motion for Class Certification [Rec. Doc. 8197].

On December 2, 2010, the Court issued a Minute Entry directing counsel to submit a joint discovery, briefing, and hearing schedule for these motions, as well as a list of all state court cases with conflicting class actions and the presiding judges [Rec. Doc. 6516]. On January 12, 2011, this Court issued a Scheduling Order [Rec. Doc. 6958] regarding class certification hearings. On February 2, 2011, the parties agreed the January 12<sup>th</sup> Scheduling Order was unworkable and that a new scheduling order was necessary to account for the Plaintiffs' substitution of class representatives. Due to additional substitutions and changes by Plaintiffs to the class representatives at issue, this Court issued a series of orders extending the deadline for intervention until March 14, 2011. *See* [Rec. Doc. 7761].

Pursuant to the Court's direction, the parties again attempted to draft a joint scheduling order, but were unable to resolve a number of disputed issues. *See* [Rec. Doc. 7794]. The Court scheduled a hearing on the issue on March 16, 2011, and heard from the parties on oral argument. *See id.* The Court has considered the proposed scheduling orders submitted by the

parties, the briefs submitted, and the cogent arguments presented at the hearing. Accordingly, pursuant to the authority granted in *In re: Chinese-Manufactured Drywall Products Liability Litigation*, MDL 2047, IT IS ORDERED that the present Order amends and replaces the previous Scheduling Order [Rec. Doc. 6958] for the conduction of discovery related to the issue of class certification and the final briefing and hearing of Plaintiffs' motions to certify class action in the above captioned matters. The details and deadlines of the Order follow.

1. **Interventions.** Any interested party, including assignees of homeowner claims, who seeks to intervene in one of the above referenced Motions for Class Certifications shall be subject to the terms, conditions and deadlines set forth in this Order. Any such party seeking to intervene shall file appropriate pleadings with the Court prior to March 14, 2011.

2. **Motions to Amend Class Representatives.** Plaintiffs must file all motions to amend the class representatives in any of the above references motions for class certification so that such motions may be set for hearing on March 23, 2011.

3. **Discovery to Class Representatives and Fact Witnesses.** Commencing as of the date this Order is entered, Defendants shall be entitled to propound additional written discovery upon the designated class representatives. This discovery shall not be duplicative of information previously provided in the Plaintiff Profile Form provided by the class representative. Further, Defendants shall be entitled to take fact witness depositions regarding five (5) class member properties, i.e., the owner(s) of the properties, per class (for a total of 15 class member properties), excluding class representatives, as designated by defendants with respect to class certification issues. The depositions shall be limited to one day per deponent. Depositions of class representatives shall be completed by April 29, 2011 and any other designated witnesses by May 6, 2011. If additional fact witnesses are disclosed by either party,

such disclosure shall be made in sufficient time prior to the class certification hearing so that a reasonable opportunity to take discovery is provided to the other side, without prejudice to any party

4. **Disclosure/Discovery of Plaintiffs' Experts.** To the extent Plaintiffs rely upon any experts, Plaintiffs shall furnish to Defendants expert reports in accordance with Fed.R.Civ.P. 26(a)(2)(B) or Affidavits (which may have already been provided in the original filed motions) and dates of availability of their experts for depositions by March 31, 2011. Defendants shall complete the depositions of Plaintiffs' experts by May 20, 2011.

5. **Designation of Fact Witnesses.** Plaintiffs, Defendants and Intervenors shall all designate fact witnesses who may be called to testify at the class certification hearing(whether live or by deposition) by April 8, 2011.

6. **Disclosure/Discovery of Defendants' Experts.** To the extent Defendants rely upon any experts, Defendants shall furnish to plaintiffs expert reports in accordance with F.R.C.P. 26(a)(2)(B) or Affidavits and dates of availability of their experts for depositions by May 13, 2011. The Plaintiffs shall complete the depositions of the Defendants' experts by June 3, 2011.

7. **Opposition to Motion to Certify Class Action.** Defendants shall file their Memorandum in Opposition to each Motion to Certify Class Action together with exhibits, affidavits and depositions by June 10, 2011.

8. **Plaintiffs' Memorandum in Reply.** By July 1, 2011, plaintiffs shall file their Memorandum in Reply to each of the Defendants' Memorandum in Opposition to Motions to Certify Class Action. Supporting affidavits or depositions may be referenced and/or attached only if the affiants/deponents were timely designated in accordance with this Order.

9. **Daubert Challenges.** To the extent any party files a *Daubert* challenge to any experts, such motion shall be filed prior to June 3, 2011 so that briefing can take place and the Court can schedule a hearing, if necessary, in advance of the hearing date on the Motions to Certify Class Actions. The parties are encouraged to meet and confer in advance to avoid the filing of unnecessary motions relating to *Daubert* challenges.

10. **Exhibit and Witness Lists:** On or before July 7, 2011, Plaintiffs and Defendants shall serve upon their opponents a list of all exhibits and witnesses which may or will be used at the certification hearing, and all designated deposition testimony which may or will be used at the certification hearing.

11. **Agenda and Procedure for Class Certification Hearing.** By July 12, 2011 the parties shall file with the court a joint agenda and proposed procedure for the class certification hearing. The agenda shall include a listing of all witnesses, an identification of all documents or things to be used at the hearing, an indication of any objections to evidence and the reason or basis for such objections, and any time limits for oral argument. The parties shall meet and confer in sufficient time prior to July 12, 2011 to confect the submission. A pre-hearing conference will be held by the Court on July 27, 2011, at 3:30 p.m. to finalize the agenda and the procedures to be followed at the class certification hearing.

12. **Hearing.** The hearing on each of the Motions to Certify Class Actions shall commence on August 23, 2011, at 9:00 a.m. and continue from day to day thereafter through August 24, 2011, as needed.

NEW ORLEANS, LOUISIANA, this 29th day of March, 2011.

  
UNITED STATES DISTRICT COURT JUDGE