

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**IN RE: FEMA TRAILER
FORMALDEHYDE PRODUCTS
LIABILITY LITIGATION**

* MDL NO. 1873
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* SECTION “N” (5)
*
* JUDGE ENGELHARDT
* MAGISTRATE CHASEZ
*

**THIS DOCUMENT IS RELATED TO:
ALL CASES**

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**PLAINTIFFS STEERING COMMITTEE’S OBJECTIONS TO GULF STREAM’S
SECOND BELLWETHER TRIAL NOMINEES**

The Plaintiffs Steering Committee (“PSC”) respectfully submits its objections to Defendant Gulf Stream Coach’s nominees for a second bellwether trial involving Gulf Stream, as follows.

BACKGROUND

There are 13,550 plaintiffs with claims against Gulf Stream in federal courts.

The Court’s Pre Trial Order No. 46 stated that a second Gulf Stream bellwether trial will begin Sept. 13, 2010.

Under Pretrial Order 46, Gulf Stream was to pick 20 who “have been matched and who could be bellwether plaintiffs.” The order continues, “only plaintiffs who have FEMA-ripe claims are eligible to serve as bellwether trial plaintiffs.” The order further required that a bellwether plaintiff certify that they understand the requirements of a bellwether plaintiff and be able to participate in pretrial and trial activities. The PSC was to pick one from this list.

On or about November 30, 2009, Gulf Stream provided the PSC with Gulf Stream’s

nominees.

On December 29, 2009, the Court granted the PSC an extension to January 20, 2010, to select from the nomination list, so that the PSC could have an opportunity to review the nominees' FEMA Individual Assistance files before making their selection.

On January 20, 2010, the Court instructed the PSC to submit objections to Gulf Stream's nominee list by January 23, 2010.

OBJECTIONS AND REASONS

The PSC's objections fall in several categories as described below.

- The PSC objects to several nominees, based on the fact that the vast majority of the nominees' trailers, which were tested, posted very low results. From the PSC's testing database, the median test result for all Gulf Stream trailers is .16 ppm. However, 19 of Gulf Stream's nominees are below .1 ppm. Many of those were tested by Bureau Veritas for the Centers for Disease Control in December 2007 and January 2008. The CDC's Director acknowledged that these test were low. *See* FEMA Press Release, February 14, 2009, <http://www.fema.gov/news/newsrelease.fema?id=42606> ("Since these levels were found in December and January, and we know that higher temperatures can cause formaldehyde levels to go up, we think it's wise for people to be relocated before the hot weather arrives in the summer.")
- Several of the nominees' claims against FEMA may be time barred based on the Court's rulings on FEMA's statute of limitations defenses.
- Two nominees could not be contacted despite numerous attempts.
- Some nominees are not able to serve as a bellwether plaintiff because they are elderly or have medical issues.
- The claims of three nominees¹ have been dismissed.

¹ These claims were dismissed after Gulf Stream made the nomination, so the PSC is not faulting Gulf Stream for nominating them. The decision to dismiss their claims had been made before the nomination, and had nothing to do with the fact that they had been nominated. Indeed, the PSC does not fault Gulf Stream for any of the problems with these nominees, aside from the fact that all nominees' trailers tested well below the median test result.

- One nominee lived in a trailer manufactured by another defendant for a long period of time, before he resided in a Gulf Stream trailer.

1. Age, Charlie

Mr. Age is 83 years old. The PSC has spoken to Mr. Age and the PSC does not believe that he is physically or mentally able to serve as the bellwether plaintiff.

2. Ashford, Mary

On her Plaintiff Fact Sheet (PFS), Ms. Ashford first reported his symptoms starting on April 2007. Mr. Ashford's Form 95 claim form was submitted on May 26, 2009.² Her trailer tested at .026 ppm by Bureau Veritas, considerably less than the median test result.

3. Ashford, Willie

Mr. Ashford is 76 years old. He also had previous exposure to asbestos and previous litigation involving that exposure. Also, his trailer tested at .026 ppm by Bureau Veritas, considerably less than the median test result.

4. Bellazar, Warren

On his PFS, Mr. Bellazar reported symptoms beginning in January 2006. He submitted his Form 95 claim form in October 2008. Also, his trailer was not tested.

² The PSC recognizes that the key issue is when FEMA received the claim form, not when it was sent. This fact only makes it more likely that Ms. Ashford, and other similar nominees, will have timing issues on their Form 95. Also, the PSC recognizes that the Court has looked to the date that the resident attributed symptoms to the trailer as the trigger date for the statute of limitations, not just when the symptoms began. However, history has shown that most plaintiffs attributed symptoms to the trailer shortly after encountering the symptoms.

5. Camp, Anthony

On his PFS, Mr. Camp reported symptoms beginning in April 2006. He submitted his Form 95 claim form on May 26, 2009. Also, his trailer tested at .005 ppm by Bureau Veritas, considerably lower than the median test result.

6. Carter, Ruth

Mr. Carter is 80 years old. Also, her trailer tested at .061 ppm by Bureau Veritas, less than half the level of the median test result.

7. Deane, Doris

Her trailer tested at .03 ppm by Bureau Veritas, considerably less (five times) than the median test result. Otherwise, she would be a suitable bellwether trial plaintiff.

8. Gibson, Dorothy

Ms. Gibson resided in a trailer for two months—April 2006 to May 2006. She submitted her Form 95 in December 2008, two and a half years after she moved out.

9. Gibson, Ulysses

Mr. Gibson resided in a trailer for two months—April 2006 to May 2006. He submitted his Form 95 on December 10, 2008, two and a half years after she moved out.

10. Landry, Wayne

Mr. Landry reports that he cannot serve as a bellwether trial plaintiff.

11. Lewis, Robin

Ms. Lewis moved into her trailer in March 2007. Her Form 95 was filed in May 2009. Also, her trailer tested at .079 ppm, roughly half the median test result.

12. Mackey, Marilyn

The PSC has been unable to contact Ms. Mackey.

13. Mackey, Wilford

The PSC has been unable to contact Mr. Mackey.

14. Oatis, Corey

Mr. Oatis moved into his trailer in October 2005 and moved out in February 2006. He filed his Form 95 on February 28, 2008. Also, his trailer tested at .081 ppm, roughly half the median test result.

15. Ordon, Loleita

Ms. Orton's suit has been dismissed.

16. Porter, Daniel

Mr. Porter reported in his PFS that his symptoms began in June 2006. He filed his Form 95 claim form in November 2008. Further, his trailer was not tested.

17. Riley, Romaine

Ms. Riley reported in her PFS that symptoms began in February 2006. He filed his Form 95 claim form in October 2008. Further, her trailer was not tested.

18. Spencer, Ned

Mr. Spencer lived in a Skyline trailer from October 2005 to February 2007. He lived in a Gulf Stream trailer from February 2007 to May 2008. Further, his trailer was not tested.

19. Tolbert, Bobbie

Ms. Tolbert's suit has been dismissed.

20. Washington, Stella

Ms. Washington's suit has been dismissed.

Respectfully submitted:

**FEMA TRAILER FORMALDEHYDE
PRODUCT LIABILITY LITIGATION**

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing upon all counsel of record by placing same in the United States mail, properly addressed and with first-class postage, or by facsimile or other electronic transmission on January 22, 2010.

s/Justin I. Woods
JUSTIN I. WOODS