

## 1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF LOUISIANA

3 \*\*\*\*\*

4 IN RE: FEMA TRAILER  
5 FORMALDEHYDE PRODUCTS  
6 LIABILITY LITIGATION7 DOCKET MDL NO. 1873 "N"  
8 NEW ORLEANS, LOUISIANA  
9 FRIDAY, MAY 13, 2011

10 10:00 A.M.

11 THIS DOCUMENT IS RELATED  
12 TO ALL CASES

## 13 \*\*\*\*\* STATUS CONFERENCE

## 14 \*\*\*\*\* TRANSCRIPT OF PROCEEDINGS

15 HEARD BEFORE THE HONORABLE KURT D. ENGELHARDT

16 UNITED STATES DISTRICT JUDGE

17  
18 SUSAN A. ZIELIE, RPR, FCRR  
19 OFFICIAL COURT REPORTER  
20 UNITED STATES DIST COURT  
21 EASTERN DIST OF LOUISIANA  
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25                  OF JUSTICE  
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9                  CHARLES PENOT, JR., ESQ.

1                   NEW ORLEANS, LOUISIANA; FRIDAY, MAY 13, 2011

2                   10:00 A.M.

3                   THE COURT: You all may be seated. It looks  
4 like the crowd has thinned a bit.

5                   It's reconfigured for other matters.

6                   Is there anyone in the hallway? Would one  
7 of you all just peek out and make sure if anyone's out  
8 there.

9                   While they're making their way in, thank you  
10 all for your patience against. We're going to try to  
11 give you a quick update as to where we are on a variety  
12 of issues. And there's a lot going on I think in the  
13 MDL right, now even though it may not appear from the  
14 record that we're as active as we were. But we do have  
15 bellwethers scheduled, we'll talk about those. We also  
16 have some other things that are in the works right now  
17 that I think are within the scope and the intent of  
18 having the MDL, this matter being put into an MDL.  
19 We'll try to give you an update on that as well. And  
20 think we have some instructions that I think are  
21 important for those of you who are in attendance to try  
22 to follow, or at least to try to tell others who are not  
23 in attendance that these items were stressed today.  
24                   Mr. Meunier, would you like to begin with  
25 the report?

1                   MR. MEUNIER: Good morning, Your Honor. May  
2 it please the Court, Jerry Meunier, co-liaison counsel  
3 for plaintiffs.

4                   Your Honor, the joint report, as usual, has  
5 been submitted to you in proposed form. There will be  
6 certain edits and corrections made before it is put into  
7 the record.

8                   THE COURT: Is this sound system on? It  
9 doesn't seem like it's on.

10                  MR. WEINSTOCK: Just project.

11                  MR. MEUNIER: I will project.

12                  Judge, the first section of the report, as  
13 usual, just gives a statement of the inventory, the case  
14 inventory. There are an estimated 5,000 actions which  
15 have now been filed in or transferred into the MDL.

16                  The next session deals with plaintiff fact  
17 sheets. And we have had extensive discussion with Your  
18 Honor this morning about the fact that many plaintiff's  
19 counsel are seriously concerned about the ability they  
20 have to respond to a number of deficiency letters which  
21 are being received on numerous cases as part of the  
22 ongoing process to correct deficiencies in the profile  
23 forum. Or fact sheet. And, at the outset, we want to  
24 make a distinction between situations where plaintiffs  
25 have simply failed to submit any fact sheet and

1 situations where some fact sheet has been provided but  
2 is deemed deficient.

3 The situation where the plaintiff has not  
4 submitted any fact sheet remains one in which that  
5 plaintiff is exposed, under this Court's orders and the  
6 standing protocol, exposed to a motion to dismiss with  
7 prejudice. That has not changed in any of the  
8 discussions we've had. There is still the mandate to  
9 provide a fact sheet within a certain period of time  
10 from filing of a case.

11 But moving to the question of fact sheets  
12 that are deemed deficient, as we've discussed with Your  
13 Honor this morning, there's a tension between the need  
14 of the defendant group to obtain what they consider to  
15 be relevant information on claims through the deficiency  
16 process. And the concern of the plaintiff's group that  
17 the MDL mission should not be to expend an inordinate  
18 amount of energy and time on individual claimed  
19 discovery, as you would normally do for litigation  
20 purposes, but rather that the MDL mission, past the  
21 resolution of common issues, should be to facilitate  
22 what amounts to a unique unit for global resolution.  
23 And so out, off that tension, we've had discussion with  
24 the Court about ways and means of having deficiencies  
25 addressed but in a more limited fashion. And I will try

1 to state what I understand to be the current agreement,  
2 with the Court's help.

3 Number one, it will not be necessary for any  
4 defendant to send more than one deficiency letter.

5 However, by next Friday, the parties having discussed it  
6 among themselves, will advise the Court as to the number  
7 of deficiencies or deficiencies fields, if you will,  
8 which are --

9 MR. WEINSTOCK: You might want to call them  
10 key data fields.

11 MR. MEUNIER: Key data fields which are  
12 designated to be needed at this time by the defendants  
13 for the purposes of settlement evaluation and  
14 discussion.

15 It will be expected that the plaintiff  
16 counsel will advise, likewise, as to the time needed  
17 realistically to furnish what is deemed as deficient  
18 information in those key data fields only.

19 All of this will be done without prejudice  
20 to the right of the defendants to have follow-up  
21 discovery at the appropriate time on the remaining  
22 deficiencies. But the focus in the near term will be on  
23 those data fields, and we will have a deadline agreed to  
24 hopefully for those data fields, and we will presumably  
25 have the Court presented with an order which reflects

1 the agreement of counsel on how to proceed in that  
2 fashion.

3 THE COURT: Mr. Weinstock.

4 MR. WEINSTOCK: Yes.

5 THE COURT: By the way, if anybody still  
6 can't hear and you'd like to move into the jury section  
7 here, these seats over here, please feel free to  
8 relocate. I think everybody's talking loud enough, but  
9 of course I'm closer to them than you all are. If  
10 anybody wants to sit up here, you're more than welcome.

11 MR. WEINSTOCK: Currently, Your Honor, the  
12 system where we've been dealing with pursuant to PTO 86  
13 was to provided the Court and the plaintiffs with the 16  
14 data fields that would ultimately go into a database and  
15 could be used for settlement purposes.

16 This does not preclude defendant from  
17 ultimately getting a complete and satisfactory fact  
18 sheet for every plaintiff, but it does postpone that  
19 moment until a later point in time.

20 Now that it's become clear that the Court  
21 thinks it's best to limit the deficiency process to the  
22 key data fields, the defendants are to go back and  
23 figure out if those 16 are sufficient, if we need to add  
24 to those 16. Confer with the plaintiffs and present to  
25 the Court what we can agree upon by next Friday. And,

1 if we can't agree on something, present that to the  
2 Court as well.

3                   Those are the data fields that the  
4 plaintiffs will have to cure currently right now  
5 pursuant to PTO 2 and 32 in the time limits allotted.  
6 Those time limits may be subject to change.

7                   They will not have to do a complete cure of  
8 the deficiency. They have the option to do so; because,  
9 if we're still here at this time next year, they're then  
10 going to go back and cure all those deficiencies without  
11 a second notice. So, when you send out your letter now,  
12 my suggestion would be to do a complete deficiency  
13 letter, and they'll be required if and when that stay  
14 ends. Next April, if we're still here, they'll be  
15 required to cure the complete deficiency at that time.

16                  THE COURT: Let me see if I can state it  
17 maybe a little bit more directly. If you're on the  
18 defendant's side of this case, you should do two things.  
19 Number one, you should send deficiency notices, complete  
20 deficiency notices as scheduled, as set forth in the  
21 Court's orders, and it should highlight the deficiencies  
22 that you were planning to highlight any way with regard  
23 to the fact sheets. So it doesn't change the exercise.  
24 The defendants will send one deficiency letter, you will  
25 not need to send an another deficiency letter layer. So

1       this doesn't impact what you're doing with regard to  
2       deficiency notices.

3                     The second thing that you need to do is to  
4       consider, and try to be conservative, about what you  
5       consider to be the most critical pieces of information  
6       of the plaintiff fact sheet that your  
7       client/carrier/whoever else is involved in any type of  
8       evaluation of these claims would like to know in order  
9       to participate in a settlement negotiation in the MDL.  
10      Now, that should be as few as possible. In other words,  
11      the critical fields of data off of the plaintiff fact  
12     sheet, and then Mr. Weinstock is going to gather that  
13     information -- you'll hear from him shortly by email or  
14     whatever means he chooses. You will then have the  
15     opportunity to designate which fields that your client  
16     has told you to be critical pieces of information for  
17     that purpose alone.

18                   If you are on the plaintiff's side, if you  
19     have clients that you're representing, you have two  
20     scenarios right now. If you have not submitted a fact  
21     sheet at all for a particular plaintiff, then you really  
22     have a lot of work to do soon, because you should be  
23     working on those. And, frankly, you should have already  
24     submitted a fact sheet, so you're delinquent in the  
25     sense that you don't have a fact sheet that should have

1 already been provided.

2                   The second contingency is that you have  
3 submitted a fact sheet but the fact sheet that you have  
4 submitted doesn't provide certain data as requested on  
5 the fact sheet. If that's the case, then you will  
6 receive a complete deficiency notice from the relevant  
7 defendant, or defendants if it's a third party, a  
8 third-party contractor, and you should respond in short  
9 order within the time that is going to be decided and  
10 will be circulated. But you should respond in short  
11 order with the particular fields that are deemed to be  
12 the most critical. You will be told which items those  
13 are.

14                  Quite honestly, if you're going to have to  
15 go back and recontact a client plaintiff, you're  
16 probably better off trying to capture all of the  
17 deficient information on one occasion so you don't have  
18 to recontact them later. If for some reason your case  
19 is remanded, then to just go after those fields, and  
20 then pre-remit getting the rest of the information.

21                  So if you've done a fact sheet and you get a  
22 deficiency notice, you should try to cure the entirety  
23 of the deficiency. But you should especially try to  
24 capture those critical data fields that will hopefully  
25 get your client, that particular plaintiff, included in

1 any settlement discussion, as part of the MDL.

2                   What we're trying to do is lessen the burden  
3 on everybody but preserve the right of the parties to  
4 litigate these claims in the event they can't be settled  
5 in the MDL. So defendants, by specifying limited  
6 fields, you're not in any way foregoing the right to get  
7 each and every piece -- I think it works now.

8                   MR. MEUNIER: You don't have to start over.

9                   THE COURT: You're not foregoing the right  
10 to get each and every piece of information that you  
11 would otherwise get on the plaintiff's fact sheet.

12 Okay?

13                   Does anybody have any questions about why  
14 we're doing it that way and what it is you're supposed  
15 to be doing? On either side?

16                   It's very important that we do it -- let me  
17 go back even further. If you're on the plaintiff's  
18 side, you should have been doing fact sheets pursuant to  
19 the pretrial orders that required them to begin with.  
20 So, that part of it, there's nothing new on that part of  
21 it. You were having to do the facts sheets now for at  
22 least a couple years, if not all along. So, if you  
23 haven't done that, then you're way behind in the game,  
24 and you run the risk of getting that plaintiff's claim  
25 dismissed for failure to fill out a fact sheet. Okay?

1                   MR. WEINSTOCK: Your Honor, if I could just  
2 add, what the defendants could expect is, if you go back  
3 last Thursday, I believe I circulated a list of the 16  
4 question and answers that would be converted to data  
5 field. I will recirculate that. And then we will talk  
6 about, in both the smaller and larger group, about what  
7 may or may not be added to that list.

8                   MR. MEUNIER: Thank you, Judge.

9                   Your Honor, the next section of the report  
10 lists a number of motions which are pending in the draft  
11 that was reviewed with the Court this morning. Your  
12 Honor did point out that there are several on the list  
13 in the draft joint report which have now been acted  
14 upon. We will correct, when we file the final version  
15 of the joint report, we will correct in the record the  
16 listing of pending motions to eliminate those that have  
17 been acted upon.

18                  There are several matters on appeal. As  
19 also discussed in that same section of the joint report,  
20 the appeal from the Alexander jury verdict was argued in  
21 the Fifth Circuit on April 26th, and we now await a  
22 decision from the panel.

23                  The appeal from this Court's dismissal of  
24 Christopher Cooper's FTCA claim, likewise, has been  
25 argued orally in the Fifth Circuit. That argument was

1       on March 1st of 2011. And we await a decision from the  
2 panel on that appeal.

3                   There are two other appeals, which are  
4 really companion appeals, and those are the ones taken  
5 from Your Honor's dismissal of all Mississippi and all  
6 Alabama FTCA claims, and those appeals in the Fifth  
7 Circuit have now been fully briefed. Briefing was  
8 completed on April the 18th. And we await the  
9 scheduling of oral argument on those appeals.

10                  There is also an appeal brought in the Fifth  
11 Circuit from the jury verdict in the bellwether trial of  
12 Earline Castanel. But no briefing and obviously no oral  
13 argument has occurred yet as to that appeal.

14                  Your Honor, the next section of the report  
15 deals with the manufactured housing, so called  
16 non-litigation track cases. This Court on April 5th  
17 preliminarily approved a proposed class settlement  
18 brought on -- a settlement involving all the occupants  
19 of manufactured housing units. The Court's approval  
20 included approval of a notice to prospective or punitive  
21 class members. The notification process has been  
22 commenced. And the fairness hearing for the Court to  
23 consider whether to approve under Rule 23 that proposed  
24 class settlement is currently scheduled to begin in this  
25 court on August 22nd of this year at 9 a.m.

1                   Anything else?

2                   And we do encourage counsel to look at the  
3 preliminary approval document or order in the record  
4 which is record document 20669 to be informed as to all  
5 other pertinent deadline dates that they must comply  
6 with in the processing of the non-lit proposed class  
7 settlement.

8                   THE COURT: Okay.

9                   MR. MEUNIER: The next section deals with  
10 matching. As Your Honor noted this morning, we've now  
11 matured to a point where we don't have to talk about  
12 matching ongoingly from start to finish in these  
13 meetings and discussions. The last chance matching  
14 process continues. And, under that protocol, certain  
15 plaintiffs who remain unmatched are subject to motions  
16 to dismiss with prejudice by the defendants. And we  
17 know that and the Court knows that those motions in some  
18 cases already have been filed and in some cases granted.

19                   As we discussed this morning, the procedure  
20 we hope that is followed is that, when the defendants  
21 come to the point of wanting to file a motion to dismiss  
22 an unmatched plaintiff, that they would contact counsel  
23 for the plaintiff to see if the motion is unopposed. If  
24 there is reason to oppose it, given the importance of  
25 what's at issue, we assume that there will be opposition

1 memoranda filed and perhaps even a request for oral  
2 argument so Your Honor can hear the circumstances of  
3 that particular case.

4 THE COURT: If there's opposition to motions  
5 to dismiss, make certain that you're able to state that  
6 comprehensively and very specifically on the record. I  
7 know there's sort of a visceral response of: Gee, I  
8 really wish you would not dismiss my client's claim.  
9 But you need it give me a particular reason.

10 As Mr. Meunier just pointed out, we are now  
11 beyond the matching phase, which this is probably the  
12 first status conference we've had where we have not  
13 discussed continued matching efforts with Mr. Miller on  
14 behalf of government and the third-party contractors,  
15 the complications that arise in matching a third-party  
16 contractor. So we're finally to the point where a  
17 matching should no longer be an issue.

18 So, if you do have an opposition to a motion  
19 to dismiss, you're going to be very, very specific as to  
20 why the claim should not be dismissed. As Mr. Meunier  
21 indicated, there will be some communication to find out  
22 whether or not a particular motion to dismiss is  
23 opposed. And, as a result of that, I would expect, if  
24 there's going to be an opposition, you should be able to  
25 articulate particular grounds as to why the motion to

1 dismiss should not be granted.

2                   Most of the ones that we've seen so far -- I  
3 say most of them, a good number of them -- have been  
4 unopposed because we've done all we can do to try to  
5 match. We've tried to facilitate using the efforts and  
6 records of the defendants even to try to have,  
7 especially with the government, to try to match people  
8 to defendants.

9                   So, if you really don't have a suggestion as  
10 to how you could possibly match, and you represent a  
11 plaintiff, and you've followed all of avenues that we've  
12 provided, then unfortunately that particular claimant's  
13 action in this MDL is probably going to be dismissed.

14                  MR. MEUNIER: And of course, Your Honor, one  
15 of the benefits of the matching process for case  
16 management purposes was to come up with a unified  
17 spreadsheet that would show the Court and show all  
18 litigants which plaintiffs are matched to which  
19 manufacturers and which contractors. And, as discussed  
20 in this same section of the joint report, the PSE was  
21 charged with the responsibility of forwarding  
22 spreadsheet data in that regard to the defendants, which  
23 was done. Although we did not warrant completeness  
24 because we are relying, on many cases, on plaintiff's  
25 counsel who may not even be members the committee.

1       Nonetheless, we have furnished that material, both to  
2       the defendants and to special master Dan Balhoff. And  
3       we produced a revised master spreadsheet pursuant, to  
4       the Court's orders PTO 68, in particular, on March 31st  
5       of 2011. And that's an ongoing effort, Judge.

6                  But, at the end of the day, I think one of  
7       the important common missions, if you will, of the MDL  
8       will have been to create a consensus which can be used  
9       going forward and remand if necessary to know who goes  
10      where, with what defendant group, for litigation  
11      purposes.

12                 Judge, Section VI of the report is our  
13      outline of the bellwether and summary trials. The  
14      bellwether trials, both summary jury trials and  
15      otherwise. There was a trial set for this coming  
16      Monday, as the Court knows, which was to be a summary  
17      jury trial, plaintiff vs. KZ RV and Fluor. The Court  
18      has entered an order of the dismissal of that plaintiff  
19      case against KZ RV pursuant to a pending settlement  
20      proposal. Counsel for Fluor will be submitting a  
21      revised order to reflect the fact that that plaintiff's  
22      case has not been resolved or there is no propose to  
23      resolve it as to the Defendant Fluor. And so, to that  
24      extent, that trial against Fluor is continued without  
25      date at this time.

1                   The remaining trials are set forth in the  
2 order, in the joint report. The next trial will be a  
3 summary jury trial on June -- is it 13?

4                   THE COURT: 13th.

5                   MR. MEUNIER: 2011. And that is a case  
6 against Coachman RV Company. The Court has selected the  
7 bellwether plaintiff Anthony Dixon to proceed in that  
8 summary jury trial.

9                   The next summary jury trial, the next trial,  
10 bellwether trial, will be August 1st of 2011. That also  
11 is a summary jury trial against the defendant  
12 manufacturer Jayco, Inc., and the bellwether plaintiff  
13 selected is Quiniece Lambert-Dolliole.

14                   And then the final bellwether trial which is  
15 scheduled at this time is a trial against Sun Valley and  
16 CH2M Hill, which is set for October 17, 2011. Charles  
17 Marshall has been selected as the bellwether trial; and,  
18 in the event he does not proceed, Sonya Andrews has been  
19 designated as a replacement bellwether trial.

20                   THE COURT: And, since our last conference,  
21 we had one summary jury trial that was held, that the  
22 results of which are confidential at this point?

23                   MR. MEUNIER: Correct, Your Honor. At this  
24 point, the results remain confidential.

25                   The summary jury trial in question was

1 against Dutchman, the manufacturer Dutchman, which is  
2 part of the group of companies in the case affiliated  
3 with Thor Industries.

4 THE COURT: Right.

5 MR. MEUNIER: Your Honor, the report in  
6 Section VII discusses the status of claims against the  
7 United States. We've already mentioned the pendency of  
8 Fifth Circuit appeals from this Court's dismissal of the  
9 Mississippi and Alabama plaintiff, cases against FEMA  
10 brought under the FTCA.

11 On May 18 of last year, this Court also  
12 dismissed, pursuant to the government's motion, all  
13 ordinary or simple negligence claims brought under the  
14 FTCA by Louisiana plaintiffs, preserving only the gross  
15 negligence or willful and wanton misconduct claims of  
16 Louisiana plaintiffs as to FEMA. The PSE did pursue  
17 interlocutory appeal certification with this Court, but  
18 the Fifth Circuit did deny our petition for an  
19 interlocutory appeal. And so the Court's ruling, at  
20 least as to Louisiana plaintiffs cases against FEMA,  
21 remains in that posture in this Court, those claims are  
22 limited to gross fault, gross negligence claims only.

23 THE COURT: I'm not sure if you or any  
24 number of you would agree with me on this, but I would  
25 think that the Fifth Circuit's treatment of the Alabama

1 and Mississippi statutes, to the extent that they carve  
2 out certain claims or at least discuss a standard of  
3 care, might be insightful as to what the Circuit's  
4 feeling would be with regard to the Louisiana statute.  
5 Although the statute is different from the other two  
6 states, it might give some insight as to what the  
7 Circuit's attitude might be towards the types of  
8 statutes involved, which are all in the nature of  
9 immunity statutes for tort actions based upon emergency  
10 circumstances as a general proposition.

11 MR. MEUNIER: I think you're correct, Judge.  
12 There are common legal questions in the case of  
13 Louisiana, Mississippi and Alabama. And I think, with  
14 the presentation of the appeals with the respect to  
15 Mississippi and the Alabama, the plaintiffs and FEMA are  
16 certainly going to be teaming up arguments about  
17 applicability of those statutes, which in turn, as you  
18 say will influence perhaps the situation in the  
19 Louisiana situation as well.

20 THE COURT: My appreciation of those issues  
21 too, the arguments are largely based on policy choices  
22 which are outlined pretty much in the statute history.  
23 So I think the Circuit's comments and Alabama and  
24 Mississippi, unless they expressly state nothing stated  
25 here has anything to do with the Louisiana statute,

1 which they from time to time do, I think they'll  
2 certainly help out in what they might do had they taken  
3 the Louisiana statute.

4 MR. MEUNIER: So I think it's fair to say --  
5 and I know Mr. Miller's here, that the status of this  
6 litigation against FEMA is dependent at this point  
7 largely on appellate court practice and what will happen  
8 in those pending appeals.

9 Your Honor, we do continue in the joint  
10 report in this case in Section IX to reference the  
11 settlement against Fleetwood. This was not a proposed  
12 class settlement but rather an individual release driven  
13 settlement against that bankrupt entity and its  
14 insurers. The special master in the Fleetwood  
15 settlement, Dan Balhoff, has now issued his  
16 recommendations on methodology and allocation of the  
17 settlement fund, and this Court approved those  
18 recommendations on March 9th.

19 The special master, now having been approved  
20 in his allocation proposal, has communicated to each  
21 plaintiff counsel representing individuals who occupied  
22 Fleetwood units what the proposed settlement allocation  
23 is to each individual plaintiff. Those allocation  
24 letters were mailed out to counsel on March 22nd. And  
25 we now are receiving or we know that the responses are

1 being made to the allocation. The claimants had  
2 actually until actually April 8th to file objections.  
3 And, under the protocol, will now proceed to address  
4 those objections primarily or chiefly through the  
5 services of the Special Master Balhoff.

6 THE COURT: Okay.

7 MR. MEUNIER: Your Honor, the remainder of  
8 the report is simply related to other efforts at  
9 settlement. John Perry is appointed as a mediator for  
10 global settlement discussions with all defendant  
11 manufacturers.

12 In addition, Dan Balhoff, as just mentioned,  
13 is not only special master in Fleetwood but he has also  
14 agreed to step forward as a member of Mr. Perry's group  
15 to assist us with mediation discussions involving other  
16 defendant manufacturers. And those discussions have  
17 taken place.

18 As indicated in the report, at the end of  
19 April, there were mediated discussions through Mr.  
20 Balhoff with counsel for Sunnybrook RV and its insurers,  
21 as well as with Sun Valley, Inc., and its insurers. In  
22 both cases those insurers are the same, Colony National  
23 and Westchester Surplus Lines.

24 And, as this Court knows, one of the motions  
25 that is pending before you is a motion on behalf of

1 plaintiffs to stay under the All Writs Act a declaratory  
2 judgment action which has been brought by those insurers  
3 in the state court of Indiana. And we believe that, as  
4 long as these discussions on possible settlement  
5 continue, it's helpful to just leave matters status quo  
6 on that. Because obviously the same counsel who are  
7 involved in that state court action seeking declaratory  
8 judgment are counsel with whom we're having discussions  
9 about possible settlement.

10 THE COURT: Okay. And that really applies  
11 to any manufacturer. If you're a counsel for any  
12 manufacturing defendant who has not yet had a bellwether  
13 trial but you have had the results, you're able to use  
14 the results of the bellwether trials. If you would like  
15 to start or pursue settlement negotiations with  
16 plaintiff's counsel in order to conserve fees and costs  
17 hence forth, please feel free to contact either Mr.  
18 Perry or Mr. Balhoff, both of whom are acting with the  
19 Court's authority as special masters to facilitate a  
20 settlement discussion. They're experienced in this  
21 particular litigation with a framework that might work  
22 for you and your clients. Please don't wait until  
23 others do it. If you feel like you and your client and  
24 your client's carriers or those involved in terms of  
25 resolution are interested in pursuing a resolution

1 sooner rather than later, there's nothing stopping you  
2 from beginning that process. So I would encourage you  
3 all to do that.

4                   Because, what's going to happen at some  
5 point, is those that are able to settle their claims  
6 in-globo as part of the MDL are going to do so. And, if  
7 you've been sitting on the sidelines, and you only have  
8 a small number of units and you've been watching Mr.  
9 Weinstock and some of the other attorneys for the larger  
10 players here, your cases may wind up getting remanded  
11 and you may -- your client's going say: Well, I thought  
12 we were in the MDL, I thought this was going to work  
13 out, now I've got to defend 15 claims here, 10 claims  
14 over here and now I'm back in state court. Don't wait  
15 for that to happen before you take advantage of Mr.  
16 Perry and Mr. Balhoff's services as special masters in  
17 this case.

18                   I strongly encourage to you visit with your  
19 clients and all involved in evaluating the claims to try  
20 to have that conversation sooner rather than later, and  
21 they will be in touch with Mr. Meunier in so far as a  
22 response from the plaintiff's side.

23                   MR. MEUNIER: And, Your Honor, just to add  
24 to that, we have been requested at different times to  
25 hold strictly confidential even the raising of the

1 subject of settlement on behalf of a given defendant.  
2 And we honor those requests and believe them to be  
3 important. So counsel who wish to proceed with  
4 discussions can be assured that, if they want to it kept  
5 confidential that they have even reached out through the  
6 mediator to us, then that is certainly a protocol we  
7 have followed and will continue to follow.

8 THE COURT: That's good to know.

9 I guess my point, in short, is, in addition  
10 to what Mr. Meunier just pointed out, my point in short  
11 is it that, if your client sees its role in the MDL as  
12 sort of a tag-along or somebody who is -- you'll be  
13 called upon later to respond, you may -- the person that  
14 you're tagging along with, the defendant that you're  
15 tagging along with, may wind up resolving the claims, in  
16 which case you're going to be front and center, and you  
17 will not have had the learning curve the person you  
18 think is the primary counsel has, and that person's  
19 claims are now going to be resolved. So please don't  
20 wait for somebody else to do something. If you feel  
21 like now is the time to have that conversation, your  
22 clients can greatly benefit by starting that process  
23 sooner rather than later.

24 And that's the whole idea of the earlier  
25 discussion we had with the plaintiff fact sheets, is to

1 try to get you the information, your clients the  
2 information they need to have sooner rather than later,  
3 so that they can have that type of an evaluation while  
4 we still have the MDL to work through.

5 Mr. Weinstock, did you want to add anything  
6 to what Mr. Meunier has covered here?

7 MR. WEINSTOCK: Nothing, Your Honor, except  
8 that we've agreed on the next day would be I believe  
9 would be July 15.

10 THE COURT: Yeah. Friday, July the 15th,  
11 will be the next conference. Same schedule, 8:30 for  
12 the committees and 10.

13 But, before we conclude, of course, Mr.  
14 Kurtz, did you have anything for the third-party  
15 contractors?

16 MR. KURTZ: No, Your Honor.

17 THE COURT: And, Mr. Miller?

18 MR. MILLER: No, Your Honor.

19 THE COURT: Let me open the floor to any  
20 further discussions about anything we've either covered  
21 as part of the report that Mr. Meunier has presented or  
22 anything else that we've not covered. Any other topic  
23 in the MDL that anyone would like to discuss, now would  
24 be the time to go ahead and raise it. Questions,  
25 comments, issues? Anybody else?

1 (No Response.)

2 THE COURT: Thank you all for coming. We'll  
3 have a lot more to report on July the 15th.

4 (10:37 a.m., Proceedings Concluded.)

5

6

7 CERTIFICATE

8

9

10 I, Susan A. Zielie, Official Court Reporter, do  
11 hereby certify that the foregoing transcript is correct.

12

13

14 /S/ SUSAN A. ZIELIE, RPR, FCRR

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16 Susan A. Zielie, RPR, FCRR

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