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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: FEMA TRAILER  
FORMALDEHYDE PRODUCTS  
LIABILITY LITIGATION

DOCKET MDL NO. 1873 "N"  
NEW ORLEANS, LOUISIANA  
FRIDAY, AUGUST 7, 2009, 10:00 A.M.

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TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS  
HEARD BEFORE THE HONORABLE KURT D. ENGELHARDT  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: GAINSBURGH BENJAMIN DAVID  
MEUNIER AND WARSHAUER  
BY: GERALD E. MEUNIER, ESQUIRE  
2800 ENERGY CENTRE  
1100 POYDRAS STREET, SUITE 2800  
NEW ORLEANS LA 70163

LAMBERT & NELSON  
BY: LINDA J. NELSON, ESQUIRE  
701 MAGAZINE STREET  
NEW ORLEANS LA 70130

LAW OFFICES OF FRANK J. D'AMICO, JR.  
BY: FRANK JACOB D'AMICO, JR., ESQUIRE  
622 BARONNE ST.  
NEW ORLEANS, LA 70113

THE BUZBEE LAW FIRM  
BY: ANTHONY G. BUZBEE  
1910 ICE COLD STORAGE BUILDING  
GALVESTON, TEXAS 77550

1 APPEARANCES CONTINUED:

2 BENCOMO & ASSOCIATES  
3 BY: RAUL R. BENCOMO, ESQUIRE  
4 639 LOYOLA AVENUE, SUITE 2110  
5 NEW ORLEANS LA 70113

6 REICH & BINSTOCK  
7 BY: DENNIS C. REICH, ESQUIRE  
8 4265 SAN FELIPE, SUITE 1000  
9 HOUSTON TX 77027

10 LAW OFFICE OF DANIEL E. BECNEL, JR.  
11 BY: ROBERT BECNEL, ESQUIRE  
12 MATTHEW B. MORELAND, ESQUIRE  
13 106 SEVENTH STREET  
14 RESERVE LA 70084

15 FOR THE DEFENDANTS:  
16 DUPLASS ZWAIN BOURGEOIS MORTON  
17 PFISTER & WEINSTOCK  
18 BY: JOSEPH G. GLASS, ESQUIRE  
19 THREE LAKEWAY CENTER  
20 3838 N. CAUSEWAY BOULEVARD, SUITE 2900  
21 METAIRIE LA 70002

22 UNITED STATES DEPARTMENT OF JUSTICE  
23 CIVIL DIVISION -- TORTS BRANCH  
24 BY: HENRY T. MILLER, ESQUIRE  
25 P.O. BOX 340, BEN FRANKLIN STATION  
WASHINGTON DC 20004

U.S. DEPARTMENT OF JUSTICE  
BY: JONATHAN R. WALDRON, ESQUIRE  
1331 PENNSYLVANIA AVENUE NW  
WASHINGTON DC 20004

SAPORITO & HAYES  
BY: JERRY L. SAPORITO, ESQUIRE  
639 LOYOLA AVENUE, SUITE 2100  
NEW ORLEANS LA 70113

1 APPEARANCES CONTINUED:

2 NELSON MULLINS  
3 BY: RICHARD K. HINES, V, ESQUIRE  
4 201 17TH STREET NW, SUITE 1700  
5 ATLANTA GA 30363

6 GIEGER, LABORDE & LAPEROUSE  
7 BY: ERNEST P. GIEGER, JR., ESQUIRE  
8 JASON D. BONE, ESQUIRE  
9 701 POYDRAS STREET, SUITE 4800  
10 NEW ORLEANS, LA 70139

11 BAKER DONELSON BEARMAN  
12 CALDWELL & BERKOWITZ  
13 BY: MICHAEL D. KURTZ, ESQUIRE  
14 201 ST. CHARLES AVENUE, SUITE 3600  
15 NEW ORLEANS LA 70170

16 ALSO PRESENT: CHARLES PENOT, ESQUIRE  
17 BRENT MAGGIO, ESQUIRE  
18 TARA GILBREATH, ESQUIRE

19 BEN MAYEAUX, ESQUIRE  
20 JOE RAUSCH, ESQUIRE  
21 ROSE HURDER, ESQUIRE

22 MATTHEW LINDSAY, ESQUIRE  
23 ANNE BRIARD, ESQUIRE  
24 KRIS WILSON, ESQUIRE

25 LAMONT DOMINGUE, ESQUIRE  
JACK BENJAMIN JR., ESQUIRE  
STEPHANIE SKINNER, ESQUIRE

DAVID McMILLAN, ESQUIRE  
LYNN GARRISON, ESQUIRE  
ROSE SHER, ESQUIRE

DOMINIC GIANNA, ESQUIRE  
TOM COUGIL, ESQUIRE  
LAWRENCE CENTOLA, ESQUIRE

1 APPEARANCES CONTINUED:

2 PETER TOAFFE, ESQUIRE  
3 DAVID BACH, ESQUIRE  
4 PAUL LEE, ESQUIRE

5 CARSON STRICKLAND, ESQUIRE  
6 JOHN EFFER, ESQUIRE  
7 JOSH KELLER, ESQUIRE

8 ROBERT SHEESLEY, ESQUIRE  
9 CAROLYN SINNOCK, ESQUIRE  
10 CLAY GARSIDE, ESQUIRE

11 CHRIS PRUEDO, ESQUIRE  
12 QUINCEY CROCHET, ESQUIRE  
13 DENNIS REID, ESQUIRE

14 JOHN HAINKEL, ESQUIRE  
15 AMANDA VANDERHAEN, ESQUIRE  
16 KEA SHERMAN, ESQUIRE  
17 G. ZIMMER

18 OFFICIAL COURT REPORTER: CATHY PEPPER, CCR, RMR, CRR  
19 500 POYDRAS STREET, ROOM B406  
20 NEW ORLEANS LA 70130  
21 (504) 589-7779

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**P-R-O-C-E-E-D-I-N-G-S**

MORNING SESSION

FRIDAY, AUGUST 5, 2009

(COURT CALLED TO ORDER)

THE DEPUTY CLERK: All rise.

THE COURT: Good morning. This is the status conference for the MDL-1873, *In Re: FEMA Trailer Formaldehyde Product Liability Litigation*.

Before we begin with the reporting from liaison counsel, I want to thank all of you for the change in schedule. When we were last here, we had agreed that we were going to have this conference on July 31st, and I had a conflict on my calendar, so I apologize for changing the date, and I appreciate your indulgence in that regard.

Let me start with a few housekeeping matters first, and I know counsel is going to touch on some of these things. First of all, Pretrial Order Number 40, and for those of you who are not familiar with them by number, it is the order that sets forth the procedure for filing new complaints, including multiple plaintiffs, hopefully matched to a particular manufacturing defendant. If you haven't looked at Pretrial Order Number 40, whether you're a plaintiff or defendant, you need to look at Pretrial Order Number 40. It applies to all actions, not just to

1 those that precipitated the entry of that particular order. It  
2 applies to all actions, so you need to be very familiar with  
3 that. And it sets forth a procedure for filing new claims and/or  
4 if they are not matched already to a defendant at the time of  
5 filing, for that process to take place on a hopefully expedited  
6 basis.

7           Also, on the plaintiff side, if you are filing a  
8 complaint for a plaintiff who has not been matched to a  
9 particular manufacturer or a group of plaintiffs that are not  
10 matched to a particular manufacturer, you need to state clearly  
11 in boldface capital letters underneath the case heading, you need  
12 to state, "**PLAINTIFFS UNMATCHED TO MANUFACTURER DEFENDANTS.**"

13 That appears in Pretrial Order Number 42 in the record, so you  
14 really need Numbers 40 and 42. If you have not read those two,  
15 you need to get copies of them and abide by them.

16           On unmatched plaintiffs, we are not going to  
17 prepare and issue summons for those defendants. If you're filing  
18 a complaint for a plaintiff or plaintiffs and you are having to  
19 undergo the matching process, after you file the complaint, we  
20 will not be issuing summons to all of the defendants that you  
21 have named because as we appreciate the circumstance, you have  
22 named certain defendants out of an abundance of caution who are  
23 not truly going to be defendants in your case. So rather than  
24 undergo the expense on both your part as well as the defendants'  
25 part of having to respond to an action that that particular

1 defendant does not belong in, we will not issue summons in those  
2 cases until you have made that match pursuant to Pretrial Order  
3 Number 40. So, again, the key numbers here are 40 and 42; look  
4 at them and that will be the process that we follow.

5           Okay. We do have the Joint Report Number 12, which  
6 has not yet been entered into the record. I've reviewed it with  
7 counsel earlier this morning. There are some changes that need  
8 to be made to it before it's entered, but we'll go through its  
9 provisions with you at this time. If you have questions as we go  
10 through, please feel free to ask either me or the appropriate  
11 counsel.

12           Which one of you wants to begin? Mr. Glass.

13           MR. GLASS: Joe Glass on behalf manufacturing Liaison  
14 counsel.

15           Before we start, I think it was appropriate, as  
16 Your Honor pointed out, many of us knew that Mr. Jim Carroll, a  
17 colleague, had a heart attack a couple days ago, and  
18 unfortunately the Court informed us today that he passed away.  
19 So he is a friend and a colleague to all of us in this room, and  
20 we should keep his family and him in our thoughts and prayers.

21           MR. MEUNIER: Yes, all plaintiffs' counsel want to join  
22 in, Judge. Jim was a friend, and for many years appeared on the  
23 opposite side for a long time in maritime cases and then later in  
24 other cases. And it would be hard to come up with the name of a  
25 guy who was just a finer man and a truer professional. And our

1 thoughts and prayers go out to his family at this time.

2 THE COURT: I appreciate your bringing that up. For  
3 those of you who did not know or practice with Jim Carroll, he'll  
4 be sorely missed. He's a fine lawyer. He was very active in  
5 this case in many respects and there is actually an obituary in  
6 the paper this morning. If you want to take a look at it, I'm  
7 sure his family would appreciate it.

8 And on a professional level, I know he's certainly  
9 going to be missed. He's a very ethical and professional lawyer  
10 who is going to be missed in the legal community here and also in  
11 this particular case. I know several counsel were relying on him  
12 and working with him very closely, so he'll be missed in this  
13 case for sure.

14 MR. GLASS: With that sobering news, we'll start with  
15 Joint Report Number 12. The report of the claims in the case  
16 inventory. As we report to the Court, there are 443 actions now  
17 filed or transferred into this MDL.

18 Since the last joint report on pages 1 through 7,  
19 we've listed out that inventory. Plaintiffs' liaison counsel has  
20 also notified us of the fact that there were about 50 actions  
21 that have been filed in various state courts throughout  
22 Louisiana. These actions were added as an Exhibit A, listed out  
23 in that Exhibit A.

24 And we've also been informed that since the  
25 government, certain of the defendants have filed removals in



1 those cases based on the government contractor defense.

2           The plaintiffs' counsel has informed us that  
3 individual counsel will remand or attempt to remand some of those  
4 cases back to the respective state courts.

5           THE COURT: We have in Exhibit 1 or Exhibit A, however  
6 it's designated here, we have suits that have come in from the  
7 14th JDC, the 16th, the 19th, the 22nd, 24th, 25th, and 34th,  
8 along with Civil District Court for the Parish of Orleans.

9           If you would, when you do get this Joint Pretrial  
10 Submission Number 12, you might want to double check to make  
11 certain that the action that you are involved in is listed on  
12 here. Or if it is an action that was instituted in federal  
13 court, that it's listed on pages 1 through 7 of the joint report.

14           MR. GLASS: It's my understanding that there are going  
15 to be continually a number of filings that will be coming in, so  
16 you probably will not see some of yours in the most recent  
17 filings. But please go through liaison counsel, notify them if  
18 they have been filed, and notify the appropriate parties so that  
19 we can try to keep track of all of these filings.

20           THE COURT: Okay.

21           MR. MEUNIER: Let me just add, Judge, the PSC is  
22 prepared now with nearly 500 lawsuits filed, including those in  
23 state court, to prepare a census and a spreadsheet for the Court  
24 and for opposing counsel that will name plaintiffs who have filed  
25 suit, line them up in all match cases with a manufacturer as well

1 as a contractor as well as the government and give the civil  
2 action number a case number. And we will publish, when that is  
3 prepared, we'll publish that to all plaintiffs' counsel. It's an  
4 important informational profile of a case that we think will help  
5 all of us going forward, and I'm pleased to say that  
6 Matt Moreland of the PSC has agreed to take the lead on that  
7 project.

8 THE COURT: Good. That will be helpful, I'm sure.

9 All right. The next part of the report relates to  
10 plaintiff fact sheets. Mr. Meunier, do you want update us on  
11 that.

12 MR. MEUNIER: Yes, Your Honor. We have now delivered  
13 5,256 plaintiff fact sheets to the defendants. We've cured 1,447  
14 deficiencies which were cited by the defendants.

15 I want to remind plaintiffs' counsel that  
16 particularly with the recent increase in filings, that in turn  
17 means, pursuant to this Court's previous orders, that deadlines  
18 are in place for the completion of plaintiff fact sheets. Once  
19 you have named yourself as a plaintiff in a lawsuit, you are  
20 obliged by the orders of this Court's MDL procedure to complete a  
21 fact sheet within a certain period of time.

22 I want to reiterate that the PSC stands ready  
23 through its claims office to make available to any plaintiff's  
24 counsel appropriate training and guidance on the completion of  
25 fact sheets. We're not in a position to do the fact sheets for

1 every plaintiff lawyer, but we're in the position to show them  
2 how it's done. And with the deadlines looming, it's important  
3 that they take advantage of that as soon as possible.

4 THE COURT: I think I've said this every time we've had  
5 one of these conferences, and I'll take say it again, even though  
6 you may be tired of hearing it: It's critical on the plaintiffs'  
7 side that you have a completed fact sheet. You'll be helping  
8 yourself and your client tremendously if you can get that done on  
9 the front end and get all of that information. You'll really be  
10 expediting things and make it a lot easier on everybody else in  
11 the case in order those things handled.

12 When I mentioned Pretrial Order Number 40 at the  
13 outset, that delay for matching, when you, if you haven't read  
14 it, when you read it, you'll see what I'm talking about, the  
15 delay period for you to make a match starts when that case  
16 arrives here in the Eastern District. Although you should do it  
17 as soon as possible, preferably before you file, if you can find  
18 out, if you can make that match, that would be great.

19 But once the case hits the Eastern District and  
20 gets lodged in the MDL, that is when the time delay for matching  
21 begins as opposed to when you file it, if you're filing in state  
22 court or in other another district. But please don't wait until  
23 it gets here and then assume that then you're on the clock. You  
24 really should do it as soon as possible.

25 So the two things I think so far we've talked about

1 is as always the plaintiff fact sheet, which is critical, and the  
2 matching to the extent that that is over and above what the fact  
3 sheet calls for. You really need to try to get those two things  
4 done posthaste.

5           Let's talk about motion practice. I have earlier  
6 this morning spoken with counsel to try to update the listing  
7 that they've given me. The Court has disposed of certain matters  
8 within the last few days, and so they are going to update it. We  
9 still have an arm full of motions that are still pending, and  
10 we'll get to those as promptly as we can.

11           Mr. Glass.

12           MR. GLASS: Yes, Your Honor. Just to emphasize one  
13 particular point that will greatly assist the Court: Whenever  
14 motions are filed, please identify whether they are opposed or  
15 unopposed. It short circuits the Court having to track down and  
16 determine that information and will allow for the more quickly,  
17 the disposal of those particular motions.

18           It's also my understanding that they're more  
19 relevant to the first bellwether trial but the motion for summary  
20 judgment deadline that was currently set for Monday has now been  
21 pushed back to Friday for the parties with the understanding that  
22 the parties are going to speak to each other and kind of give a  
23 heads-up as to what's coming so that the plaintiffs don't get  
24 jammed in that particular case.

25           THE COURT: Did it get pushed back to Friday or the

1 following Monday?

2 MR. MILLER: The following Monday.

3 MR. GLASS: The 17th, I believe.

4 THE COURT: For the first bellwether trial, the motion  
5 deadline was this coming Monday, the 10th, and I've conferred  
6 with counsel and we've agreed to extend that by one week, to the  
7 17th.

8 MR. MEUNIER: Your Honor, I would just mention for those  
9 here, plaintiffs' counsel in particular, who are tracking  
10 activity in the case, there are over 20 motions listed as  
11 pending. But what plaintiff counsel should understand is that  
12 the vast majority are particular to cases, particularly  
13 bellwether cases.

14 On the other hand, there are some motions which by  
15 title you can readily discern are common issue motions. And as  
16 we discussed with you this morning, with the arrival of now the  
17 *Alexander* case as the first case, it turns out that there are  
18 going to be some motions and issues raised that are going to by  
19 nature be common issue motions that are going to affect other  
20 cases.

21 So I just want to urge plaintiff counsel not to  
22 assume that because a motion may have the *Alana Alexander* caption  
23 that it only pertains to something you need for the case. That's  
24 not necessarily true. So any plaintiff lawyer should be alert to  
25 all of the motions that are filed, even those that are particular

1 to a case.

2 THE COURT: By way of example, the Court currently has  
3 under advisement the government's motion pursuant to 12(b) (1)  
4 and 56, on the discretionary function issue, I understand that a  
5 week from Monday or hopefully sooner there will be some motion  
6 practice to be filed by the third-party contractors relative to  
7 the government contractor defense. And I think what Mr. Meunier  
8 is referring to is a ruling on those motions, even though it may  
9 be in the context or attached to a bellwether case, might well be  
10 and likely logically will be applicable to the issue as it's  
11 raised in other cases.

12 Anything else on the pending motions? Let's move  
13 on then to the mobile housing unit track.

14 MR. MEUNIER: As the Court knows, there is a non-led  
15 track established with respect to the manufacturers of mobile  
16 housing units which are subject to HUD regulation. And through a  
17 recent decision by Your Honor at the request of the parties, that  
18 track has been extended. There is contemplated the selection of  
19 a bellwether plaintiff in the trial on the merits. As to that  
20 group of defendants, however, the Court has agreed with us  
21 requesting that that be deferred.

22 I just also need to make mention, even though it's  
23 not expressed in the report, that there is an important appeal  
24 issue with respect to this part of the case. This Court has  
25 ruled that the plaintiffs' tort cases are preempted with respect

1 to certain HUD regulations applicable to manufactured housing.

2           The plaintiffs have asked the Fifth Circuit to  
3 review that on an interlocutory basis. We are awaiting word as  
4 to whether the Fifth Circuit will agree to do that.

5           Certainly any plaintiff attorney who is either  
6 filing those cases, are already involved with those cases, needs  
7 to be aware of the pendency of that appeal, as well as the fact  
8 that we have now extended the time to go forward on the merits in  
9 this MDL.

10           THE COURT: Okay.

11           MR. MEUNIER: I think the next section, Judge, you've  
12 already alluded to, which is matching and the importance of  
13 matching. I want to encourage all plaintiff counsel to be  
14 mindful of the requirements for information needed in order to  
15 conduct a successful matching process. The government does need  
16 to have certain information. That information is to be  
17 channelled to the government through the PSC and through liaison  
18 counsel.

19           As this Court has already said more than once  
20 today, and it's important to emphasize, when a suit is filed  
21 naming a plaintiff, there now is triggered, particularly in  
22 unmatched plaintiff cases, a deadline by which to complete the  
23 matching process. So if counsel, out of an abundance of caution  
24 have filed unmatched plaintiff cases, they need to be aware that  
25 there is certain information that we need to match and they've

1 got a deadline in place by which to match or else those cases are  
2 subject to dismissal consistent with the Court's earlier analysis  
3 on the lack of standing when you don't match a plaintiff.

4 THE COURT: And to be specific, according to this  
5 report, plaintiffs' counsel should provide to the United States  
6 the claimant's full name, the FEMA ID number, which would be  
7 very, very helpful if you have that, Social Security number, date  
8 of birth, and address or state where the trailer unit was  
9 installed, the FEMA unit was installed.

10 If you have a client who lived in more than one  
11 unit, you should provide as much information as possible as to  
12 both. And as Mr. Meunier just indicated, submit that through  
13 liaison counsel so that we don't have information flooding in to  
14 those with the government who are assisting in this task. It  
15 will all come through a single avenue.

16 Mr. Miller?

17 MR. MILLER: Thank you, Your Honor. I would point out  
18 to all of the plaintiffs' counsel who have claimants and are  
19 seeking to match, that we have been doing this in a timely manner  
20 except for two which we had a week delay on; but we're turning  
21 this around within 30 days. We are throwing a substantial amount  
22 of government resources to achieve this so that you'll get this  
23 information. But it is imperative that you get this in as soon  
24 as possible because hurricane season is upon us, and once that  
25 happens, these FEMA resources are going to have to be rededicated



1 to disaster response and there is a substantial chance that there  
2 is going to be extended delays, possibly, in providing this  
3 information. So please get this information in as quickly as  
4 possible. You're also running up on a statute of limitations  
5 deadline, so you need this information.

6 THE COURT: Thank you, Mr. Miller. Mr. Glass.

7 MR. GLASS: The next item in the report is the  
8 bellwether trials, and of course we all know that there are five  
9 sets. They are listed out. Subsection B of that section  
10 indicates that there have been amendments in several of the  
11 bellwether cases to incorporate the specific allegations. I  
12 don't think there is anything that really needs to be added to  
13 that.

14 THE COURT: Yes, there have been amended complaints or  
15 will be filed amendment complaints relative to each of the  
16 bellwethers in order to segregate out the particularities of the  
17 allegations, vis-à-vis each manufacturer in each of those  
18 bellwethers and each third-party contractor.

19 Those bellwether trial dates are currently  
20 September 14th in the *Alexander* matter, October 26th in the  
21 *Dubuclet* matter or what we have been calling the *Dubuclet* matter,  
22 December 7th in the *Wright* matter and January 11th in the *Bell*  
23 matter.

24 There has been a fifth one that has been calendared  
25 for May 17th, *Carrie Smith versus Recreation By Design, L.L.C.*

1           Those are presently the bellwether trial dates. I  
2 have urged counsel and we will continue to work very, very hard  
3 at getting each of these cases tried within a two-week span, a  
4 five-day trial week; so in other words, ten trial days starting  
5 on those dates I just gave.

6           My goal is to have the case tried in a two-week  
7 span, and counsel have been working hard to try to whittle the  
8 cases down such that they could fit and be exposed to the jury  
9 during that window.

10           There is a motion pending that suggests that some  
11 alteration of this schedule might be in order, and I've spoken to  
12 counsel about that; however, we have not made any decisions with  
13 regard to that. I think it's unlikely that the first bellwether  
14 trial on September 14th will be continued or in any way altered.

15           The others create some scheduling issues which I've  
16 talked to counsel about this morning and will certainly keep you  
17 apprised of any changes in that schedule. But as of right now,  
18 they are set on the dates that I just said, and those will appear  
19 under Roman numeral VI of the joint report that's going to be  
20 filed.

21           MR. MEUNIER: Judge, may I point something out on the  
22 amendments. We talked about this in chambers and I think it's  
23 important for plaintiff's counsel to be aware. Pursuant to a  
24 ruling that you made consistent with federal law, it's not  
25 possible in a pending case to, by amendment assert for the first

1 time claims against FEMA. For example, you can't by amendment  
2 add plaintiffs to an existing case and say, These plaintiffs now  
3 want to go forward against FEMA because their case has become  
4 ripe. It's logical, it's practical, unfortunately it's not  
5 doable legally. And that's consistent with a ruling this Court  
6 has made in one of the bellwethers, the *Dubuclet* case.

7 Mr. Miller has made it known to us this morning,  
8 and to you, that he's finding that there are amendments to  
9 existing cases being presented which seek to do that, and I just  
10 want to urge all plaintiff counsel to be aware of the Court's  
11 legal ruling in *Dubuclet*, the consequence of which is that if a  
12 plaintiffs' FEMA case becomes ripe, it is necessary for that  
13 plaintiff to file a new independent complaint rather than to  
14 amend that plaintiff by name into an existing complaint.

15 And I hope that plaintiffs' counsel are aware of  
16 that so we don't go through the unnecessary part of an amendment  
17 that doesn't have effect and then you've not pursued your remedy  
18 under the FDCA.

19 THE COURT: Does anybody have any questions about that?  
20 It's an important point and it may sound like a legal  
21 technicality, but my appreciation of it is that it is  
22 jurisdictional in nature. The government raised the motion.  
23 I've ruled on it. And it's an important point, although as  
24 Mr. Meunier just suggested it, it might seem illogical to you or  
25 counterintuitive based upon common practice. I think it's an

1 important point that you really need to be familiar with.

2 MR. SCHMIDT: I'm Douglas Schmidt. I have a question  
3 and I guess you could answer this. Mr. Miller could help. In  
4 the State of Mississippi, there is a two-year statute of  
5 limitation. In Louisiana there is one. Now, it's my  
6 understanding with FEMA that they have a two-year window to  
7 notify the I-95 or some statutory period.

8 If you pick up a client, let's say, in November of  
9 this year and his case is ripe because there is a two-year  
10 statute against the manufacturers, does he lose his right to go  
11 against FEMA because of the I-95 issue?

12 THE COURT: Mr. Miller, would you like to state the  
13 government's position on that.

14 MR. MILLER: Certainly, Your Honor.

15 THE COURT: I'm not going to issue an advisory ruling.  
16 It's a good question, though. But I'll go ahead and let the  
17 government weigh in on what the argument might be one way or the  
18 other.

19 MR. MILLER: There are several law review journal  
20 articles that you can look up on this, but the statute of  
21 limitations for the government is not controlled by any state  
22 law. The statute of limitations for the government is that you  
23 have to file an administrative claim within two years of the  
24 accrual of your action, which is controlled all by federal law,  
25 not state law.

1           After your claim is denied, you can then file suit  
2 after you've filed your administrative claim, which is a standard  
3 Form 95. You can complete the standard Form 95.

4           Six months after you file that, you can file a  
5 lawsuit or institute an action, commence an action.

6           After the government issues a denial letter, you  
7 have to file your suit within six months, and if you do not file  
8 within six months, you'll be forever barred.

9           So there are essentially two statute of limitations  
10 provisions related to the FDCA: One, filing your administrative  
11 claim within two years of the accrual of the claim, and once a  
12 denial letter is issued, filing or commencing your action within  
13 six months of that issuance of the denial letter.

14           THE COURT: Does that answer your question?

15           MR. SCHMIDT: Mostly. I do have a follow-up.

16           THE COURT: Okay.

17           MR. SCHMIDT: Now, he said two years is accrual of the  
18 action. Now, are we talking about when the plaintiff learned of  
19 the action or are we talking about when Katrina hit? And  
20 that's --

21           THE COURT: That sounds like --

22           MR. MILLER: We're not talking about when Katrina hit.  
23 I can answer that.

24           There is a pending motion relating to Christopher  
25 Cooper. It addresses the legal standard and I suggest,

1 Mr. Schmidt, you read that motion.

2 MR. MEUNIER: In fact, the opposition brief for the  
3 plaintiffs is due today. So we're very much aware of this legal  
4 matter, and the Court will be asked to rule.

5 THE COURT: So liaison counsel will give us guidance on  
6 that.

7 MR. MEUNIER: I can tell you what the --

8 THE COURT: Give him a docket number and he can  
9 certainly check the docket and read the arguments that are made  
10 in there. Of course, something filed later today doesn't yet  
11 have a number but you can read the motion.

12 MR. MEUNIER: The defendants' motion is document number  
13 2317.

14 THE COURT: 2317 in the record.

15 MR. SCHMIDT: That's almost a towed car article.

16 MR. GLASS: Mr. Miller is going to be filing his  
17 intervention for a contingency fee contract, too.

18 The next section is section 7, severance and  
19 bellwether plaintiffs under Rule 21. And it's my understanding  
20 that the Court has requested that all the defense counsel in the  
21 bellwether trials issue or file a motion by next week to have the  
22 claims of the individual plaintiffs in those suits severed from  
23 the vehicle that they are currently in.

24 THE COURT: Counsel for each of the manufacturing  
25 defendants in each of the bellwethers shall file a Motion to

1 Sever, which will be unopposed and the Court will enter promptly.  
2 My appreciation of that is to make certain that those cases are  
3 in the proper procedural posture in order to go forward as a  
4 bellwether trial.

5 MR. MEUNIER: Your Honor, the next section of the report  
6 deals with bankruptcy and in particular the bankruptcy of  
7 Fleetwood, and the reason we pinpoint that one is that there are  
8 other bankruptcy filings by certain manufacturers, but in the  
9 case of Fleetwood there is now an announced bankruptcy claim  
10 deadline of August 28th. The bankruptcy case is proceeding in  
11 California in bankruptcy court there. The PSC has bankruptcy  
12 counsel engaged, and we are working with our counsel to determine  
13 exactly what the nature of the responsibility is for information  
14 to be put in the bankruptcy claim form.

15 Our hope is that in many cases, the claimants'  
16 information has already been gathered for purposes of either a  
17 Form 95 for the FTCA case against FEMA or the plaintiff fact  
18 sheet. So it may simply be a transfer of information to a new  
19 form.

20 I don't want to make it sound easier than it is,  
21 but I do want to confirm that we are going to be publishing to  
22 all plaintiff counsel some educational information about that,  
23 and if you have a Fleetwood client, it's important that you not  
24 let the August 28th deadline go without that client filing the  
25 bankruptcy claim form that's required.

1           We are not, as a PSC, assuming responsibility for  
2 completing or submitting the bankruptcy claim forms of Fleetwood  
3 claimants, but we are going to provide education as to how that's  
4 done.

5           THE COURT: That's very, very important for those of you  
6 who have plaintiffs who resided in Fleetwood-manufactured units.  
7 Since we were just talking about time delays and time barred and  
8 that type of issue, August 28th, which is a few short weeks away,  
9 what, three weeks from today, is the deadline with regard to the  
10 bankruptcy proceedings. So you absolutely have to give that your  
11 immediate attention.

12           All right. Master discovery?

13           MR. GLASS: Your Honor, as laid out in the report,  
14 obviously discovery is in full swing. General discovery, there  
15 have been some issues on the electronic discovery that Magistrate  
16 Chasez has been dealing with.

17           The United States has also responded to the  
18 plaintiffs' steering committee's initial written discovery. And  
19 they will respond within the time allowed by the rules.

20           Additional requests for files have been filed at  
21 the IA/TAC disaster files for each of the certain plaintiffs. I  
22 think the number is about 5,000, if I'm not mistaken. The  
23 government has filed an opposition to that request. It's  
24 already, been, I think, discussed a little bit. Did you want to  
25 add anything to that?



1           MR. MILLER: It's, the plaintiffs have filed written  
2 discovery for 5,000 IA files. The United States responded to  
3 that discovery request, which was not an answer that the  
4 plaintiffs' steering committee wanted, and they filed a Motion to  
5 Compel. The initial motion was struck as deficient, but I  
6 believe they filed one, either last night or early this morning.

7           THE COURT: Okay.

8           MR. GLASS: There is also carryover from some earlier  
9 reports on insurance discovery. There has been some insurance  
10 discovery in each of the individual bellwether plaintiffs' cases  
11 and a lot it was completed early on. But that is still, there is  
12 still a discovery track available for that discovery.

13           And, of course, Gulf Stream Coaches, bellwether  
14 trial number 1, all of the written reports for the experts have  
15 been exchanged. It's my understanding that we've completed all  
16 of the expert depositions. We're working on a trial plan with  
17 the magistrate after this conference, which we hope to be able to  
18 submit to the Court by the middle of next week.

19           Discovery is scheduled to be completed as of today,  
20 but the parties have agreed to continue with depositions as  
21 agreed upon by the parties as ordered by the Court.

22           THE COURT: Okay. Anything to add relevant to the  
23 discovery?

24           MR. MEUNIER: No, Your Honor.

25           MR. GLASS: Additionally, obviously, as we talked about

1 earlier, the bellwether discovery or the discovery in the other  
2 bellwether trials is continuing and the parties are working  
3 closely to try and avoid conflicts on those issues.

4 THE COURT: Okay.

5 MR. GLASS: As far as miscellaneous?

6 MR. MEUNIER: Judge, in the miscellaneous category of  
7 the report, and specifically at page 15, it's paragraph C,  
8 reference is made to the United States having now announced its  
9 intention to dispose of or sell certain temporary emergency  
10 housing units that were involved in the post-Katrina/post-Rita  
11 response. And pursuant to our request and to this Court's  
12 earlier ruling, the government is obliged to first announce and  
13 publish the identity of the units to be sold. That then triggers  
14 a deadline by which we are to furnish information as to those  
15 units that we wish to test, and then there is a deadline for the  
16 testing.

17 I want all plaintiffs' counsel to be alert to the  
18 fact that on Monday, July 27th, at 10:12 a.m., they got an e-mail  
19 from our office, and that e-mail carried with it the government's  
20 list, which is document number 2315. If you haven't looked at  
21 that e-mail and that list, do so now, because today, in fact, we  
22 are obliged to advise the government of the identities of the  
23 units on that list that we wish to test.

24 We already know about some and there will be a list  
25 given to the government today. But any plaintiff counsel that

1 has not paid attention to this needs to do so before this  
2 afternoon so we can include on the list of units to be tested,  
3 assuming that's the desire of counsel, that information. The  
4 government is holding these units. They've been put in the queue  
5 to be disposed of. We're told that it's imperative that we tell  
6 them now and we intend to do that, tell them which ones need to  
7 be tested.

8           And then there is a pretty short fuse for the  
9 testing, so we need to jump on that, too. The deadline for  
10 testing these units is August 30th.

11           THE COURT: This relates back to something that came up  
12 last year and I think we discussed in our general status  
13 conference, that as of Labor Day of last year, and of course now  
14 we're over 11 months down the road here, but the government had  
15 expressed a desire to begin to dispose of trailer units, mobile  
16 home units that are costing taxpayer dollars to store. And the  
17 government has now indicated an intent or has designated certain  
18 units which they would like to dispose of promptly. And they  
19 have filed into the record a notice, and that's what Mr. Meunier  
20 is talking about, that certain of the units will be destroyed  
21 absent some further request from the plaintiffs, which would have  
22 to be today insofar as the government has indicated that  
23 particular units are now on the chopping block here.

24           Mr. Miller?

25           MR. MILLER: Yes. For all counsel, the docket number to

1 look at is docket number 2315. That is the official notice that  
2 the government filed. I would note that about a week to 10 days  
3 before that I provided to liaison counsel an Excel spreadsheet  
4 version of that document, and that spreadsheet will allow you to  
5 search by VIN number or barcode number and it will identify the  
6 location of the facility where those units are located to assist  
7 you in your searches for those documents.

8 I would further note that this applies to both the  
9 defense counsel, defendant manufacturers IA/TACs, as well as the  
10 plaintiffs' counsel and would request that when the plaintiffs'  
11 liaison counsel provide me with a list they provide it to the  
12 IA/TAC liaison counsel and the defense manufacturing liaison  
13 counsel. So if you're going to test, you can mutually agree on  
14 when the testing, and you can monitor each other's testing if you  
15 believe it's necessary or appropriate.

16 FEMA will be taking generally the lead in making  
17 the units available, and Jan Jones from FEMA, a trial counsel  
18 from FEMA, will primarily be in charge of arranging that since  
19 the Department of Justice counsel is primarily dealing with the  
20 trials that are going to be going on very shortly.

21 THE COURT: All right.

22 MR. MILLER: Also, all of the plaintiffs' and defense  
23 counsel should be aware that there is an indemnity hold harmless  
24 agreement that all persons who enter a FEMA facility must sign  
25 and execute in advance.

1           Secondly, as a result of various dealings with  
2 these inspections, we have developed certain requirements and  
3 rules that all parties must comply with when they are in FEMA  
4 facilities. I urge everyone who goes onto the FEMA facility to  
5 read these very closely. FEMA security guards are big, they are  
6 armed, and they will escort you off the facility if you violate  
7 these. It's very clear and you have to comply with it, so I  
8 encourage you that you do so.

9           THE COURT: This has come up in the context of testing  
10 for the bellwethers, so I think some of the attorneys that are  
11 involved in the bellwether trials are very familiar with these  
12 provisions. Some of them have been controversial and the Court  
13 has been made aware of certain of them. But I think that now we  
14 have established a protocol that everyone would be expected to  
15 follow, so you need to be familiar with that if any of you intend  
16 to participate in that process.

17           Mr. Glass?

18           MR. GLASS: The last two miscellaneous provisions that  
19 we haven't talked about, just to keep everybody in the loop, with  
20 the influx of filings, we're working on a possibility of some  
21 kind of open-ended extension to deal with getting the appropriate  
22 responsibilities and preservation defenses for the amount of  
23 filings and in light of the other time concerns that are  
24 occurring right now.

25           Secondly, due to some issues that came up with some

1 witnesses who also happen to be plaintiffs in other suits, we're  
2 trying to work on making sure there is a procedure in place so  
3 that liaison counsel ensures all counsel of record are receiving  
4 all notices, filings, pleadings and other documents.

5 THE COURT: Mr. Meunier, do you want to add anything?

6 MR. MEUNIER: No, Your Honor.

7 THE COURT: Let me point out by way of a general  
8 announcement, the Court has determined that the bellwether trials  
9 will utilize nine jurors in those trials, in hopes that all nine  
10 will deliberate. But if we do lose a juror or two, which I think  
11 is unlikely, we would be able to continue the trial with less  
12 than nine and more than six.

13 But the choice has been made to go with nine jurors  
14 and the challenges have been divided. Perhaps counsel has  
15 disclosed that to you, the challenges have also been divided.

16 The Court has issued and has now collected  
17 completed questionnaires for all persons in the jury pool. We  
18 have almost 200 prospective jurors who have filled out  
19 questionnaires and another 20-something that have yet to do so,  
20 but will hopefully do so shortly.

21 I will have the completed jury questionnaires  
22 provided to counsel involved in each of the bellwethers so that  
23 we can begin to familiarize ourselves with not only the potential  
24 jurors but any particular cause issues or challenges for cause  
25 that the Court can resolve prior to the date of the trial.

1           So that process is well underway. We will continue  
2 to do that. We will also have a preliminary jury charge  
3 conference with regard to the first bellwether on Tuesday,  
4 August 18th. That will involve those counsel who are going to be  
5 trying that particular bellwether case along with liaison  
6 counsel.

7           So things are well underway with regard to all of  
8 them, but the first bellwether we're getting close on. In that  
9 regard, I discussed with counsel this morning when we could have  
10 our next status conference. And obviously, given that it's  
11 August 7th and the first bellwether is on September 14th, and  
12 assuming that we do start on the 14th, it will be very difficult  
13 to have another conference between now and then. Moreover, if we  
14 do have another conference between now and then, I'm not sure  
15 that there will be anything that's particularly newsworthy that  
16 would cause us to want to gather here again.

17           Having said that, I'm very sensitive to those of  
18 you who are not on committees that you do need to stay in the  
19 loop and you want to stay in the loop and you need information.  
20 I think liaison counsel and the committees have been doing a  
21 pretty good job of making information available, but my  
22 preference would be to meet sooner or more frequently rather than  
23 less frequently, but given that we have a bellwether starting on  
24 the 14th, we will probably have to schedule the next meeting, and  
25 rather than me pick a date today, I'll confer with counsel and it

1 will probably be sometime in the first half of October the next  
2 time we convene here.

3           If you have questions or you feel as though you  
4 need some information in the meantime, of course, feel free to  
5 contact liaison counsel and get updated. If we do run into a  
6 problem where we have to have another status conference, a  
7 general status conference, then I certainly intend to do that if  
8 it looks like it would be productive. But it's going to be  
9 difficult to have one between now and September 14th.

10           We'll get the date to you as soon as we pick it,  
11 and it will be the same format where we start at 8:45 with the  
12 committees. We will have our conference at 10:00 a.m. here.

13           Before we break, out of all that we've covered  
14 today, are there any questions about anything we have talked  
15 about?

16           Mr. Schmidt?

17           MR. SCHMIDT: Yes, Your Honor, I have a question in  
18 regards to the August 28th deadline for bankruptcy court. You  
19 know, we filed these unmatched plaintiff lawsuits, and Mr. Miller  
20 is going to cooperate with us, obviously. He said within 30 days  
21 or sooner, to get us the information. But, that's going to give  
22 us a problem with the August 28th federal court, what if some of  
23 those are delinquent?

24           THE COURT: That is definitely a problem. I'm not going  
25 to order that the bankruptcy court extend the date. The problem



1 is that it's an uncertain date here. I mean, we have people who  
2 will be filing actions through the fall, perhaps. And perhaps  
3 even longer than that. That's why I have been saying every time  
4 we've had a conference here since day one, I have been saying you  
5 have got to get your plaintiffs matched to a defendant. Because  
6 we all knew that either through bankruptcy court or through my  
7 pen or through the laws of prescription or statute of  
8 limitations, the day would come when a claim is no longer going  
9 to be a valid claim due to the fact that it's legally stale.

10           The first date to come up, unfortunately, is this  
11 August 28th date. The bankruptcy court has to have a bar date  
12 and that's the date that's been selected. So if you haven't  
13 matched and you still have some concerns, I mean, I'm not going  
14 to tell you what is the prudent course of action because that's  
15 for you to decide. Perhaps you want to take the issue up with  
16 liaison counsel, and he may have some advice for you, but you're  
17 very perceptive to identify that as a problem.

18           MR. MEUNIER: I don't practice bankruptcy law and I  
19 don't have the answer, but I've got to believe our bankruptcy  
20 counsel will have some ideas on perhaps requesting that that  
21 bankruptcy judge acknowledge that if someone comes along after  
22 August 28th and can truly demonstrate that there was no way  
23 through whatever diligence could be exercised that they could  
24 have known they were in a Fleetwood unit before August 28th and  
25 only found out later that a later filing would be permitted. But

1 we will have to check with our counsel.

2 MR. SCHMIDT: One other thing. I had a lawyer ask me  
3 for a continuance for 30 days or something like that on the  
4 August 28th, September 30th, but Mr. Miller already said in  
5 30 days he is going have it to us. So why can't we do a motion  
6 to --

7 THE COURT: Let me back up a little bit because I want  
8 to be clear and certainly any counsel here can correct me on  
9 this. The bar date that was set in the bankruptcy court is one  
10 that is commonly set for any of you that have been involved in  
11 bankruptcy law. There is a bar date for claims against the  
12 debtor, and it's one that the bankruptcy court is going to  
13 choose, and in this case, it's August 28th. Can it be extended?  
14 That's for you all to research and seek an extension.

15 But to be clear, the commencement period for you to  
16 match doesn't start when you file the lawsuit. So don't tell the  
17 bankruptcy judge in California that, Well, Judge Engelhardt and  
18 Mr. Miller put on this show way back on August 7th, and I  
19 couldn't have even matched until after I filed suit and then  
20 Mr. Miller promised me, I'm not picking on you and I'm not  
21 paraphrasing you, but I could see someone making the argument  
22 that with, Well, gee whiz, because you're going to have some  
23 people who aren't going to file these actions, as I said, until  
24 the fall. And then they are going to say, Well, my 30 days  
25 started, Bankruptcy Judge, how could you bar my claim because I

1 didn't find out who my defendant was until 30 days after I filed.  
2 I didn't file them until October.

3           So that's not going to be the argument because I  
4 think that judge will probably first ask why did you not attempt  
5 to make a match until you were butted up against the August 28th  
6 date? The presumption is going to be that a match could have  
7 been made earlier and perhaps much earlier, and perhaps, and I  
8 know what you all are dealing with, but in California, the judge  
9 may say, Well, why did you not know who the manufacturer was if  
10 you had a claim? They may not be as sensitive to the  
11 circumstances of Katrina and the assignment of units and this  
12 whole exercise that we have been conducting here. So understand  
13 that they set a date and that's the date that you're going to  
14 have to deal with in that court.

15           Mr. Miller?

16           MR. MILLER: Your Honor, just to make it very clear, the  
17 United States has offered to match up claimants with units since  
18 April of 2008.

19           THE COURT: Right.

20           MR. MILLER: This has been ongoing. The fact of the  
21 matter is is that no request was submitted for matching until  
22 January of 2009. And so this is not, there is a whole bunch of  
23 issues here. And so this is not, as you're identifying,  
24 Mr. Schmidt, if you put a request in now, we get it, we will  
25 respond to that generally within 30 days. There has been a

1 couple of instances where it took a little bit longer. But  
2 generally within 30 days we'll provide you with that information  
3 to the extent it's in our database. That's all I'm saying we'll  
4 match up. We're not promising to match everybody up if they  
5 haven't submitted a request for it by August 28th.

6 THE COURT: Thank you. Anything else about what we've  
7 covered? I'm going to take any more questions you have about  
8 what we've covered and then we'll open the floor to anything else  
9 that you might want to discuss. Does anybody else on any of the  
10 topics that we have talked about that you haven't had the  
11 opportunity to ask? All right.

12 Does anybody else have any other issue that they  
13 would like to raise at this time for either me or for counsel?

14 Thank you all again for your indulgence on today  
15 and for all of your attention here this morning. Could I see  
16 liaison counsel real quick.

17 (WHEREUPON, the proceedings at 11:04 a.m. were  
18 concluded.)

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## REPORTER'S CERTIFICATE

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