

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: FEMA TRAILER
FORMALDEHYDE PRODUCTS
LIABILITY LITIGATION

Docket No. MDL-1873(N)
New Orleans, Louisiana
Friday, July 17, 2009

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

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1 P R O C E E D I N G S

2 (FRIDAY, JULY 17, 2009)

08:46:46 3 (TELEPHONE CONFERENCE)

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THE COURT: Hello. Good morning. Who all do we have on the line? Let's do a quick role call.

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MR. WOODS: Justin Woods.

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MR. MILLER: Henry Miller and Jonathan Waldron.

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12:12:44 10

MR. GEIGER: Ernie Geiger and Carson Strickland for Forest River.

12:12:47 11

MR. KURTZ: David Kurtz and Karen Whitfield for Shaw.

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THE COURT: Anybody else?

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12:13:05 14

MR. D'AMICO: Frank D'Amico and Aaron Ahlquist on behalf of Lyndon Wright.

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THE COURT: Anybody else? All right. And on my end here I have the court reporter, Karen, and my law clerk Amanda.

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We have pending this motion to amend the complaint with regard to the, I think it's the third bellwether, Lyndon T. Wright v. Forest River, Inc., 09-2977. This was a motion for leave to

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file first supplemental and amended complaint and in it, as I understand the briefing and the complaint itself, there is some allegations regarding injury to the plaintiff caused by mold and inhalation of substances that are mold related, as opposed to inhalation or exposure to formaldehyde. Am I correct in that?

12:15:40 25

MR. D'AMICO: This is Frank D'Amico, may I address the

12:15:51 1 court on that issue?

12:15:54 2 THE COURT: Just tell me if that's the intent of the
12:16:00 3 complaint, that's what it seems to say. Is that not correct?

12:16:07 4 MR. D'AMICO: Yes. Can I tell you why we made those
12:16:15 5 allegations?

12:16:17 6 THE COURT: Not yet.

12:16:24 7 MR. D'AMICO: Okay.

12:16:28 8 THE COURT: Let me tell you the problem with that is that
12:16:39 9 this case is called in re: FEMA Trailer Formaldehyde Products
12:16:49 10 Liability Litigation. The MDL was designed to handle common
12:16:56 11 allegations from several districts relative to formaldehyde
12:17:02 12 exposure. I have set five bellwether trials so that we can get
12:17:08 13 results which can be -- from which we can broadly extrapolate some
12:17:17 14 prediction or prophecy or general notion of how the vast majority
12:17:43 15 of these cases are going to be determined, if all of them were
12:17:48 16 tried separately. My concern is that --

12:17:52 17 And by the way, out of the five we have picked, this is
12:17:58 18 the first and only case where mold exposure as a component claim
12:18:10 19 for compensation has been made. My understanding of the expert
12:18:13 20 reports was that mold was found in some of the subject trailers was
12:18:22 21 simply evidence of moisture which contributed to the amount of
12:18:28 22 formaldehyde in the air which the plaintiff or the various
12:19:06 23 plaintiffs would have been exposed to, but not a cause of the
12:19:15 24 injury itself.

12:19:15 25 So I am very concerned about injecting an entirely new

12:19:25 1 claim for injury based on mold exposure, which is directed against
12:19:36 2 one defendant, in this case Shaw. I don't think that result tells
12:19:52 3 us anything about how the MDL can be resolved. If it is to be
12:19:59 4 resolved, in this venue. Certainly that claim, if it's intended to
12:20:14 5 be asserted and certainly if Mr. Wright believes that's the cause
12:20:19 6 of his injury, that case can be tried when all of these cases are
12:20:29 7 broken up and sent back out of the MDL and that would be my intent.

12:20:48 8 MR. D'AMICO: Judge, can I address it now?

12:20:54 9 THE COURT: Go ahead.

12:20:55 10 MR. D'AMICO: You may have read our brief which we've
12:21:00 11 outlined the CDC findings. In that the CDC found that 21 percent
12:21:09 12 of all trailers they tested had mold, significant amounts of mold.
12:21:24 13 You may have also looked at a document that FEMA circulated to all
12:21:31 14 of the housing residents warning them of the confounding factors
12:21:42 15 and what to do about mold in their trailers. And what they state
12:22:01 16 in that warning is that the symptoms may not last when you're away
12:22:22 17 from your home but reappear, they reappear, the indoor pollutants
12:22:58 18 that may include formaldehyde or other pollutants consisting of
12:23:16 19 dust, mold and smoke. Those factors have been well-known to the
12:23:26 20 government and scientific community for years.

12:23:29 21 This is a formaldehyde case but as a defendant Forest
12:23:35 22 River has pointed out in its opposition to our supplemental and
12:23:43 23 amended petition, they intend to pursue the issue of mold and
12:23:56 24 smoking in the Lyndon Wright case as confounding factors that may
12:24:10 25 have affected his health. And because of that factor --

12:24:20 1 Look, the plaintiffs have tried every way possible not to
12:24:27 2 talk about mold. We don't want to have to talk about the smoking
12:24:33 3 or dust or mold and we would like the court to keep all of those
12:24:50 4 factors out and just try bellwether plaintiffs that are purely
12:24:59 5 formaldehyde cases, but your Honor hasn't done that. Your Honor
12:25:17 6 did not exclude cases where smokers were involved and your Honor
12:25:22 7 has not excluded cases where mold may be involved, and I think for
12:25:28 8 good reason. Because in this case, in this MDL we know from the
12:25:45 9 CDC at least --

12:25:49 10 THE COURT: It's never been raised that mold was
12:26:00 11 involved. It's never been raised on any of the bellwether
12:26:03 12 selections that I have made that, well, Judge, this case has the
12:26:16 13 coinciding factors of formaldehyde and mold. That was not a
12:26:21 14 criteria for picking. It was raised that this person's a smoker,
12:26:28 15 that one is not, and that would be, of course, something that the
12:26:37 16 defendants would not be held responsible for if a smoker, if
12:26:47 17 plaintiff's health was affected by a history of smoking.

12:26:53 18 But it was not part of the bellwether criteria that,
12:26:59 19 well, this case contains a claim for mold exposure.

12:27:06 20 Go ahead, I'm sorry to interrupt you, but go ahead.

12:27:10 21 MR. D'AMICO: Well, Judge, we did not get to select who
12:27:16 22 the plaintiffs would be, unfortunately.

12:27:20 23 THE COURT: Wait, wait. That's news to me.

12:27:36 24 MR. D'AMICO: Judge, we would like to have had a criteria
12:27:41 25 where we had certain statistical analysis and we could look at the

12:28:06 1 greater group and try to select certain plaintiffs who were
12:28:14 2 representative of certain things.

12:28:18 3 THE COURT: Justin, do you want to step in here? How did
12:28:25 4 we wind up with Mr. Wright? That brings me to the point of my
12:28:36 5 e-mail, maybe we need somebody else.

12:28:42 6 MR. WOODS: I am not certain that we knew at the time
12:28:46 7 that we came to agreement on Lyndon Wright that we knew that mold
12:29:01 8 would be an issue in his claim. I believe that that occurred,
12:29:07 9 Frank, please correct me if I'm wrong, I believe that came about --

12:29:27 10 MR. D'AMICO: After he was selected sometime in May.

12:29:31 11 MR. WOODS: After he was selected.

12:29:33 12 MR. D'AMICO: He was selected on April 8th, we met with
12:29:37 13 him, reviewed his case, went over facts, and the defendants point
12:29:47 14 out it's not stated in his plaintiff fact sheet, mold is not stated
12:30:04 15 in the plaintiff fact sheet so we didn't have any notice.

12:30:10 16 THE COURT: I saw that, I asked for that and it's not
12:30:16 17 stated.

12:30:18 18 MR. D'AMICO: But I don't think there is a line on there
12:30:25 19 or anything that would require him to say that. But I asked for
12:30:34 20 the fact sheet for that reason, not that he was trying to hide it.

12:31:37 21 THE COURT: I understand your point.

12:31:40 22 MR. D'AMICO: We didn't find out until after he was
12:31:43 23 selected. Now faced with the fact that he is selected and the
12:31:56 24 defendants certainly have stated to you that they want to go into
12:32:09 25 the mold and the smoking, how do we allow the defendants to raise

12:32:33 1 it as a confounding factor and the plaintiffs aren't allowed then
12:32:42 2 to speak and find out in fact it is causes of his injuries?

12:32:53 3 THE COURT: That's a good question and we're going to get
12:33:00 4 them to answer that as soon as you're finished.

12:33:23 5 MR. D'AMICO: That's the point. I don't think it's
12:33:29 6 disrupting your orderly fashion of handling this MDL if we do kick
12:33:41 7 out the mold case. My statistical analysis showed that about 15 to
12:33:50 8 20,000 of the known plaintiffs will have mold in their trials, so
12:33:59 9 do we want to exclude 15 to 20,000 of this potential pool of
12:34:10 10 plaintiffs and just kick them to the rear and cash them out?

12:34:23 11 I don't think that helps the court do what you've stated
12:34:28 12 you want to do on this call, so to try to get some guidance and try
12:34:40 13 to bring resolution to the whole case the problem is that we -- the
12:35:06 14 problem isn't the claim or the group of people who have a mold
12:35:12 15 exposure that they believe supports an award of damages, the
12:35:20 16 problem is that it is one of the bellwethers that is going to be
12:35:30 17 fast approaching in the coming months, I think this one is set for
12:35:36 18 December, that's the problem.

12:35:39 19 If we want to have a bellwether that specifically
12:35:44 20 involves a mold claim in order so that we can get a representative
12:35:54 21 sample, we can try Mr. Wright's case, but it was not designed to be
12:36:02 22 one of the first of the bellwethers. So maybe we need to put
12:36:09 23 Mr. Wright on ice and go ahead and pick another one to try in
12:36:36 24 December and try a mold case. The problem is we've got deadlines
12:36:45 25 that have already come and we haven't heard from the defense yet,

12:36:53 1 but I sure hope that when they're allowed to speak they're not
12:37:02 2 going to say, yeah, we intend to bring out that his injuries were
12:37:26 3 not the cause of formaldehyde, they were caused by mold. Because
12:37:31 4 if they are arguing that then they are opening the door to both
12:37:39 5 plaintiff and defendant expert representing the effects of mold.

12:37:49 6 MR. WOODS: I can tell you, your Honor, that I believe
12:37:54 7 that that will be the position.

12:37:56 8 THE COURT: Well, let's hear from them.

12:38:04 9 MR. GEIGER: Judge, this is Ernie Geiger. First of all,
12:38:17 10 the issue of mold may be raised first by this plaintiff, Judge, but
12:38:34 11 this is not or shouldn't have been a new issue to the plaintiffs.
12:38:41 12 It may not have been in their fact sheet but we finished deposing
12:38:49 13 Mr. Wright Friday a week ago and Mr. Wright clearly indicated that
12:39:07 14 he knew about this issue, knew about it when he moved into the
12:39:21 15 trailer, complained about it early on --

12:39:48 16 THE COURT: He knew about mold? You say this issue.

12:39:52 17 MR. GEIGER: Yes. And it never appeared in any fact
12:39:58 18 sheet. I don't know if he's had a chance to read what we filed
12:40:12 19 last night.

12:40:14 20 THE COURT: I haven't. And quite honestly, you know,
12:40:20 21 following something in response to my e-mail really, you know, I
12:40:31 22 don't know why we keep clogging up the record.

12:40:39 23 But go ahead.

12:40:46 24 MR. GEIGER: Because it became an issue with your e-mail.

12:40:52 25 THE COURT: In response to my e-mail but that's not a

12:40:59 1 motion. Go ahead -- wait. I want to finish hearing what
12:41:34 2 Mr. Geiger says.

12:41:40 3 Are we going to argue about the effect of mold on this
12:41:47 4 plaintiff, are the defendants going to argue that the plaintiff's
12:41:55 5 injuries were caused not by formaldehyde but rather by mold, and,
12:42:05 6 therefore, the plaintiff should recover zero, is that going to be
12:42:33 7 the defense strategy?

12:42:38 8 MR. GEIGER: Judge, I will tell you that when I first
12:42:42 9 learned of the mold issue I went to my experts and asked them the
12:42:52 10 effect. Frank told me that my expert, one of the experts hired by
12:43:05 11 the defendant said it had an effect in a deposition last week -- I
12:43:16 12 mean this week. I didn't attend it but the response I got back
12:43:29 13 late last night was, no, Dr. Cole didn't say that mold could cause
12:43:40 14 asthma.

12:43:52 15 So the answer to your question is, Judge, since he just
12:43:57 16 raised this, I've just raised it with my experts.

12:44:16 17 THE COURT: Right.

12:44:22 18 MR. GEIGER: I can't tell you. I certainly know now from
12:44:31 19 taking a deposition he's been exposed to mold not only in this case
12:44:49 20 in his trailer, but he's been exposed to mold in all of his
12:44:59 21 employment history outside of the use -- outside of the time in the
12:45:09 22 trailer because he is an HVAC maintenance engineer when he did that
12:45:29 23 at City Hall, so his exposure to other things at other locations
12:46:08 24 and whether or not they have an effect on his health going to be an
12:46:14 25 issue, sure they are, Judge.

12:46:17 1 I mean, he was exposed to other chemicals when he was a
12:46:23 2 maintenance mechanic at CDC, he was exposed to other chemicals when
12:46:36 3 he was a maintenance engineer at the Hyatt, he was exposed to mold
12:46:42 4 at both of those locations. He changed filters at those locations,
01:01:49 5 we found all of that out on Friday. So are those going to be
01:01:49 6 issues relative to his health, well, of course they are.

01:01:54 7 THE COURT: But then won't the defendants agree then that
01:01:59 8 if we're going to talk about the effect of mold on this plaintiff
01:02:04 9 that plaintiffs should then be allowed to make a claim for the
01:02:12 10 effect of mold that was caused, perhaps -- obviously they've got to
01:02:18 11 meet their burden of proof -- but mold that was exposure that was
01:02:24 12 caused by a defendant or defendants?

01:02:55 13 MR. KURTZ: The answer to that question is no.

01:02:59 14 THE COURT: Why not in light of what Mr. Geiger just
01:03:06 15 said?

01:03:10 16 MR. KURTZ: First of all, Judge, I mean, we do not, we
01:03:15 17 are not going to contend that mold in his trailer is a cause of
01:03:21 18 whatever health effects that he is currently suffering. Now,
01:03:32 19 Mr. Geiger listed a bunch of other locations and this person's work
01:03:43 20 and experiences outside of work history outside of the trailer are
01:03:49 21 relevant to this case. And if he is picking up health problems
01:04:20 22 from other locations, then that's pretty relevant.

01:04:25 23 But mold within this trailer we don't think is relevant
01:04:30 24 to this case. We don't think that he should be allowed to amend
01:04:38 25 his pleadings to add something new at this late date.

01:04:48 1 THE COURT: If mold, if any injury for this plaintiff is
01:04:53 2 going to be attributed to his exposure to mold and not formaldehyde
01:04:59 3 then all of his exposure to mold is going to be relevant. I don't
01:05:05 4 see how you can say, well, it's only relevant if it caused it
01:05:13 5 outside of my client's actions but it's not relevant if my client
01:05:21 6 caused mold to be present where the plaintiff resided. You can't
01:05:28 7 have it both ways.

01:05:30 8 I'm telling you I did not want to have a mold claim as
01:05:38 9 part of one of these bellwether trials, I don't think that that is
01:05:43 10 the way to go. But if we are going to litigate the effect of mold,
01:06:01 11 we are going to litigate the effect of mold wherever it comes from
01:06:08 12 and whoever caused it to be present.

01:06:13 13 MR. D'AMICO: Judge, I have no information right now from
01:06:17 14 any of my experts that they are going to say that the exposure to
01:06:23 15 mold caused any of his present health conditions, if that's where
01:06:34 16 you think we are going with this.

01:06:37 17 THE COURT: I hear what you're saying, but I hear
01:06:42 18 Mr. Kurtz saying something different, am I correct?

01:06:47 19 MR. KURTZ: If you heard that from me, I didn't say that
01:07:23 20 very well. I am saying that his other work experiences, not
01:07:31 21 necessarily mold, but whatever he is getting exposed to could be
01:07:38 22 relevant. I don't think that mold has any part in this case
01:07:43 23 whether it's from within the trailer or without it.

01:07:50 24 THE COURT: Okay. Well, there are two ways we can do
01:08:09 25 this: One is that we not have a mold exposure claim in this case.

01:08:15 1 That's entirely up to plaintiffs whether they want to continue on
01:08:20 2 with Mr. Wright and litigate the formaldehyde exposure claim, there
01:08:32 3 will be no expert opinion from any expert regardless of who calls
01:08:37 4 them saying that mold in any way contributed or caused the injury
01:08:44 5 that Mr. Wright complains about. That's one way to go. That would
01:08:50 6 require the plaintiff, in essence, to abandon a claim for injury
01:09:09 7 caused by mold if he has one.

01:09:13 8 I am not requiring him to do that and I am not going to
01:09:17 9 rule that he can't bring that claim because it is time barred at
01:09:23 10 this point based on the scheduling order.

01:09:29 11 The other way to do this, if Mr. Wright insists that he
01:10:10 12 does have a claim based on mold exposure which was caused by one or
01:10:16 13 more of the defendants in this case, is that we can pull him out of
01:10:26 14 the bellwether rotation, maybe put him next summer, and we will try
01:10:34 15 the combination formaldehyde/mold with expert opinions from both
01:10:41 16 sides about mold exposure, but it won't be the December bellwether.
01:10:50 17 We will substitute somebody else who has solely a formaldehyde
01:10:58 18 claim in the bellwether spot for December, the Forest River
01:11:04 19 bellwether spot.

01:11:06 20 So those are the two options that we have. But I am not
01:11:10 21 going to hear anybody cite mold as the cause for his injuries if
01:11:32 22 the plaintiffs can't do it, the defendants can't do it, so I don't
01:11:38 23 want to have any expert testimony that talks about mold exposure as
01:11:43 24 a contributing cause to his injury. So where does that leave us?

01:11:49 25 MR. D'AMICO: This is Frank D'Amico. I understand your

01:11:57 1 position and I don't take issue with it. The only problem is we're
01:12:03 2 not able to abandon the issue of mold based on the fact that it is
01:12:10 3 a known confounding factor, and to satisfy the scientific method
01:12:16 4 our experts have to, they must do a differential diagnosis. And,
01:12:58 5 look, it may turn out that we do the speciation and mold testing
01:13:14 6 that mold is not a factor in his case. But unless we test it to
01:13:25 7 find out, we won't know that answer.

01:13:34 8 And if we tell our experts that, look, you can't follow
01:13:36 9 the scientific method, you can't do a differential diagnosis, you
01:14:09 10 are not allowed to rule out other confounding factors, they are
01:14:16 11 going to look at me and say, Frank, I am not going to testify in
01:14:26 12 your case.

01:14:28 13 THE COURT: Frank, all of that is well and good, and I
01:14:33 14 encourage you all to continue to get expert opinions that are
01:14:41 15 rendered in good faith after all necessary investigation. I am not
01:14:52 16 in any way suggesting that you short shirt that process for the
01:15:11 17 sake of meeting the requirements of a bellwether trial. What I am
01:15:16 18 saying is that that can be another bellwether trial that
01:15:22 19 incorporates mold exposure as a factor of the plaintiff's injuries.
01:16:38 20 If that's what your expert tells you, then that's what the expert
01:16:43 21 can testify to.

01:16:45 22 But I need a formaldehyde case in December and this
01:16:51 23 apparently is not it.

01:16:53 24 MR. GEIGER: Judge, if you get rid of the Lyndon Wright
01:17:03 25 case because the plaintiffs now want to substitute this assertion

01:17:12 1 or this additional allegation of negligence, that leaves us four
01:17:27 2 months to get prepared for trial. And, Judge, that's just not
01:17:35 3 enough time, it's just not fair to the defendants. It took us
01:17:46 4 three months just to get the workup ready for Wright and now with
01:17:53 5 the plaintiff's expert reports due on Monday, granted you wouldn't
01:18:01 6 do that, Judge, but under the present schedule, I would suggest to
01:18:08 7 you, Judge, that we are all very busy and give us four months, and
01:18:51 8 its starting new with this particular newly selected plaintiff and
01:18:59 9 we don't even know the realm of people we can select from, we are
01:19:23 10 not going to have enough time to get this case done in December.

01:19:29 11 THE COURT: I understand that. I understand that and,
01:19:35 12 you know, I am not going to tell Mr. Wright that he can't bring a
01:19:40 13 mold exposure claim if that's the claim that he's got. If I have
01:19:47 14 to adjust the calendar, I will, only to the extent that we have to
01:19:54 15 accommodate additional discovery time.

01:19:59 16 You know, I am surprised that this hasn't come up before
01:20:05 17 when nobody said that he has not a formaldehyde claim but in
01:20:18 18 addition to that he has a mold exposure claim. I don't understand
01:20:23 19 how this could have come up so late. From what Mr. D'Amico is
01:20:33 20 telling me, there are many people out there, a percentage of these
01:20:43 21 people that do have a mold claim, so why is it coming up in July of
01:20:45 22 2009 and the MDL has been around now for some, at least here for
01:21:16 23 some 20 months?

01:21:18 24 MR. WOODS: Your Honor, it's been coming up, I believe,
01:21:51 25 in all of the individual bellwether plaintiff depositions. Mold I

01:21:59 1 believe we all have identified or has been on the radar as a
01:22:04 2 possible compounding factor. So it's been there. It's only in
01:22:12 3 Mr. Wright's case where it is truly an evident problem that needs
01:22:31 4 to be dealt with. And because Frank tells you there are
01:22:36 5 approximately 13,000 individuals that will be asserting that same
01:22:41 6 sort of claim, isn't it just possible for the court to continue
01:22:46 7 with Mr. Wright's trial on the particular date chosen and that it
01:23:01 8 will address Mr. Wright's trial, it will address individuals that
01:23:18 9 have a formaldehyde/mold claim?

01:23:22 10 THE COURT: Well, but we have expert reports that are due
01:23:27 11 and we have a whim that it wasn't formaldehyde alone that caused
01:23:41 12 his injuries, that it was mold.

01:23:47 13 Where are you all on expert reports on mold?

01:24:02 14 MR. D'AMICO: Judge, the experts are not able to do the
01:24:06 15 reports on this deadline, we're filing a motion for a continuance
01:24:16 16 trying to get all sides to agree to it. But the only way the
01:24:27 17 defendants would agree to a continuance of the existing deadlines
01:25:00 18 is if we got a continuance of the trial. It's our belief we don't
01:25:07 19 need a continuance of the trial and we can go with a two-week
01:25:13 20 extension of the reports so that we can get a date from the
01:25:22 21 government to actually go out and do the testing on the trailer.
01:25:51 22 Once that's done, two weeks after the testing is complete we would
01:26:01 23 have our expert reports.

01:26:11 24 THE COURT: Anybody want to comment on that?

01:26:24 25 MR. MILLER: This is Henry Miller from the government.

01:26:28 1 Two things that I would say, that I think mold has always been in
01:26:34 2 the background of this litigation; I mean, in a certain sense a lot
01:26:43 3 of the occupants have indicated mold and that happened during the
01:26:54 4 class cert deposition or the class cert representative deposition.

01:26:57 5 What is new here is that this is the first time the
01:27:05 6 plaintiffs are alleging that a defendant is liable for the mold in
01:27:08 7 the trailers. And that's the issue here. It's not that we haven't
01:27:48 8 been aware and mold was potentially a confounding factor; if
01:27:56 9 someone has asthma, mold can potentially be a confounder of that
01:28:06 10 asthma. What Frank has done in this case is put it dead center and
01:28:25 11 made it the claim at issue.

01:28:25 12 THE COURT: Right, for compensation.

01:28:26 13 MR. MILLER: That's the real issue.

01:28:36 14 As for testing protocol, I believe that Frank and I have
01:28:42 15 worked out the test protocol now, we're just waiting to get the
01:29:00 16 input from the other defendants; because the way with this
01:29:06 17 destructive testing, Frank can't go do his protocol -- it's a
01:29:13 18 three-step process, they have to do ambient air testing, and the
01:29:25 19 defendant needs to air it out, and the defendant manufacturers have
01:29:48 20 to do their jacking test or Shaw has to do their jacking test and
01:29:57 21 then it's probably going to be a co- or joint taking apart or
01:30:18 22 destruction of the unit.

01:30:22 23 So it's basically taking just a little bit longer than we
01:30:28 24 had hoped to work out the protocol, but we have everything
01:30:35 25 resolved. The little brouhaha that happened with the Fleetwood

01:30:54 1 thing involving FEMA wanting some additional protection in the
01:31:09 2 protocol, Aaron and I worked with that and I think resolved that
01:31:18 3 yesterday. But still subject to the other defendants approval and
01:31:30 4 agreement.

01:31:30 5 MR. GEIGER: So that's where we're at, your Honor. And
01:31:50 6 as far as the update from Forest River, we believe that by the end
01:31:56 7 of the day on Monday we should be in a position to give you the
01:32:06 8 additional testing protocol from our side.

01:32:10 9 THE COURT: So this unit still needs to be tested?

01:32:15 10 MR. D'AMICO: Judge, we have been asking for a date to
01:32:21 11 test, we circulated our protocol June 9th and we have been waiting
01:32:34 12 for dates to do the testing and comments from everybody. We
01:32:40 13 finally worked everything out with the government but we still have
01:32:55 14 not received any comment from Forest River or Shaw.

01:33:00 15 MR. GEIGER: That's not true, you've gotten a lot of
01:33:05 16 comments.

01:33:06 17 MR. D'AMICO: We've gotten comments but not suggestions.

01:33:15 18 MR. MILLER: That's not true --

01:33:18 19 THE COURT: Wait, wait. We can't have more people
01:33:23 20 talking. We have a court reporter here and I have three people
01:33:29 21 talking at one time.

01:33:33 22 MR. MILLER: We have had some input from the defendants,
01:33:38 23 we just don't have their test protocol to insert into the protocol.
01:33:54 24 Unlike the other protocols where you can have one protocol from the
01:34:01 25 plaintiffs and one from the defendants where they would go one and

01:34:09 1 then the other, here you need one protocol because in the end the
01:34:25 2 unit is being destroyed.

01:34:25 3 And so we're just waiting to get the defense protocol,
01:34:31 4 but we have had input from the defense counsel, there are some
01:34:39 5 objections that they've raised and we've been trying to deal with
01:34:45 6 those.

01:34:47 7 THE COURT: Can we not on whatever time schedule we
01:35:17 8 agree, if the testing, if the hay is not in the barn with regard to
01:35:23 9 the testing, can we not test for mold while we're testing for
01:35:28 10 formaldehyde?

01:35:29 11 MR. D'AMICO: We can, that's what we suggested in our
01:35:34 12 protocol.

01:35:36 13 MR. GEIGER: You ruled that no multi-testing would be
01:35:41 14 permitted on this case.

01:35:45 15 THE COURT: When I did not have a claim before me for
01:35:51 16 damages relative to mold inhalation. All I had was an expert who
01:35:58 17 was going out and doing mold, some reference in an expert report to
01:36:14 18 mold testing. That's why I ruled that way because no one was
01:36:21 19 asserting a claim for mold exposure.

01:36:25 20 MR. MILLER: Obviously the protocol at this point since
01:36:29 21 the testing hasn't gone forward, it can be amended. I would
01:36:41 22 suggest that I don't think, at least from the government's
01:36:51 23 perspective, we have a mold expert on board.

01:36:57 24 THE COURT: So you have to get somebody else?

01:37:01 25 MR. MILLER: I don't know if we would, your Honor, one

01:37:06 1 way or the other, I haven't looked into it. It hasn't been an
01:37:22 2 issue to date and it's what Frank's amended complaint brings up and
01:37:32 3 the way this court resolves this one way or the other we'll have to
01:37:40 4 get a report to look at.

01:37:47 5 MR. GEIGER: That would be true for us. I don't know if
01:37:58 6 I need one, I just don't have one yet. I would have to go get one.

01:38:08 7 THE COURT: All right. And you've got a plaintiff
01:38:13 8 deadline of July 22nd; is that right, Frank?

01:40:20 9 MR. D'AMICO: Yes.

01:40:22 10 THE COURT: And I've got an August 21st deadline for the
01:40:28 11 defendant's reports.

01:40:31 12 MR. GEIGER: Yes, your Honor.

01:40:33 13 MR. D'AMICO: Judge, another issue, and I think Henry
01:40:40 14 Miller has been raising it over and over again. The Fleetwood
01:40:48 15 experts are due today and those are the same people in Fleetwood as
01:41:00 16 in Wright, in the Forest River/Wright trial.

01:41:06 17 MR. GEIGER: But, Judge, I understand that I've been
01:41:10 18 raising this issue for two weeks to get an identity of the experts
01:41:17 19 that were going to be called because the plaintiffs are asking for
01:41:27 20 an extension of their expert reports. I had understood they were
01:41:32 21 going to be the same experts that were in the Gulf Stream case and
01:41:40 22 they said, oh, same experts in the Gulf Stream and Fleetwood case.
01:41:51 23 Well, I haven't seen a Fleetwood report or Fleetwood experts --

01:42:17 24 I got a list yesterday and there are three new medical
01:42:23 25 experts and one new warning expert that have now been identified.

01:42:35 1 I haven't seen a report from any of those people. So I would need
01:42:49 2 time to scramble to get new injury causation experts and in some
01:43:03 3 areas that we had not seen before.

01:43:08 4 THE COURT: All right.

01:43:10 5 MR. D'AMICO: All I can respond, Judge, is that the new
01:43:14 6 experts he is talking about are just fact specific position, it's
01:43:23 7 not like we're using new experts, we're using identically the same,
01:43:41 8 same experts, just the short-ended version of the Fleetwood trial,
01:43:52 9 not new experts. Each plaintiff is going to be fact specific
01:44:11 10 positions. I mean, you can't have the same positions for every
01:44:18 11 bellwether trial plaintiffs so those are going to change.

01:44:25 12 MR. GEIGER: I've gone through every bit of his medical
01:44:54 13 records and three of those physicians never treated Mr. Wright
01:45:01 14 until I think they were retained by the plaintiffs. They can
01:45:06 15 correct me if I'm wrong, but these are retained experts by the
01:45:12 16 plaintiffs, not his prior treating physician.

01:45:19 17 THE COURT: When are we going to get the plaintiff expert
01:45:41 18 reports? They're due on the 22nd, so what's up with that? Are we
01:45:52 19 getting plaintiff's expert reports on the 22nd, are we ready to
01:46:00 20 give that?

01:46:03 21 MR. D'AMICO: I don't think we can. I think we can give
01:46:07 22 the medical expert reports on the 29th but we need to do some
01:46:13 23 testing because this whole issue of the confounding issue of mold
01:46:20 24 needs to be addressed; and I tried to discuss that earlier and told
01:46:31 25 him we can give a preliminary report, but it turns out the

01:46:59 1 speciation of mold that can aggravate asthma, those reports would
01:47:18 2 have to be amended to reflect that information.

01:47:29 3 MR. GEIGER: I understand that as long as I have time to
01:47:34 4 react to it.

01:47:37 5 THE COURT: Sorry, Henry.

01:47:41 6 MR. MILLER: Judge, even if the plaintiff from the very
01:47:47 7 beginning had been asking for damages that were mold related, we
01:47:53 8 still would have opposed mold testing at this point in time because
01:47:59 9 what is the point of hiring a bunch of mold experts to go out to a
01:48:14 10 trailer that's been sitting out in a field in Louisiana through the
01:48:20 11 winter, summer, all seasons for 18 months? God knows what kind of
01:48:38 12 mold is growing in that thing. I mean, no useful data are going to
01:48:47 13 come out of that expenditure of money on mold testing at this point
01:48:55 14 in time.

01:48:56 15 Regardless of the court's ruling on whether or not mold
01:49:03 16 can be added to Mr. Wright's claim, we would strongly object to
01:49:07 17 proceeding with any actual mold testing.

01:49:37 18 THE COURT: Well, you might be right about that and that
01:49:42 19 sounds like the subject of a Daubert motion. It may well be that a
01:49:52 20 test at this point in time is pretty meaningless seems to me, and
01:50:07 21 that's the subject of a Daubert motion and that will be the subject
01:50:12 22 of the merits of it, not the admissibility.

01:50:17 23 MR. KURTZ: To a finer point on that, Judge, that mold
01:50:35 24 testing is going to normally complicate what we have to achieve
01:50:54 25 between now and trial. It's going to make it relatively, not

01:51:14 1 relatively, it's going to make it impossible for us to evaluate all
01:51:27 2 of the different claims that are being made as they interact with
01:51:47 3 one another, we're going to have to expend a lot of money between
01:52:02 4 now and then on mold experts only to have a Daubert motion at the
01:52:11 5 very end. I don't think it should be treated in an "in limine"
01:52:23 6 motion fashion, I think it should be treated up front because we
01:52:53 7 all know you can't go get useful data on a trailer that's been
01:53:08 8 sitting out in a field for 18 months.

01:53:17 9 THE COURT: Does everybody agree with that?

01:53:32 10 MR. D'AMICO: I do not agree.

01:53:37 11 THE COURT: I didn't think so. Go ahead, Henry.

01:53:57 12 MR. D'AMICO: It's the same people who are going to be
01:54:00 13 dealing with mold. The toxicologist is going to talk about the
01:54:10 14 exposure to formaldehyde and any confounding affect by any
01:54:52 15 confounders. It's the same person, you couldn't go out and hire
01:55:06 16 new experts. I am not going to go out and hire a mold expert, it's
01:56:25 17 the same toxicologist. I don't know whether they're getting a new
01:56:37 18 expert. We're trying to find out if the guy has an allergic
01:57:00 19 reaction to mold or not. That's a skin test. He is either
01:57:44 20 allergic or he isn't. If he's not allergic to mold, it's not a
02:00:21 21 confounder; if he's allergic to mold, we need to know that so we
02:00:36 22 can defend against their claim that mold exposure at work caused
02:00:47 23 his asthma to be worse, not formaldehyde.

02:00:49 24 We are just trying to do a complete differential
02:00:56 25 diagnosis to adequately flush out the details of this case and

02:01:15 1 we're trying to meet the scientific method. To do that we need to
02:01:29 2 exclude possible confounders. I hope he is not allergic to mold
02:01:37 3 that way when the defendants have, oh, his asthma is bad because he
02:01:53 4 works around mold at work, we can say, no, it isn't because we
02:02:00 5 tested him for mold and he is not allergic to it.

02:02:08 6 But that may not be the case. He may have an allergic
02:02:18 7 reaction to mold, therefore, we need to know what speciation of
02:03:16 8 mold may or may not have existed from the trailer that may or may
02:03:27 9 not have contributed to his problems that are primarily, we allege,
02:03:37 10 are caused from the exposure to the formaldehyde.

02:05:44 11 THE COURT: All right.

02:05:48 12 MR. MILLER: Two things, first, I think Frank is getting
02:06:05 13 a little bit off the issue. On the differential diagnosis, nothing
02:06:15 14 prevents his expert from doing that differential diagnosis.

02:06:26 15 The issue is whether the plaintiffs can allege -- whether
02:07:21 16 the plaintiffs can allege a claim against Shaw essentially for the
02:07:30 17 mold that's in the unit.

02:07:32 18 THE COURT: Right, I understand that.

02:07:35 19 MR. MILLER: The second issue is, this is -- we had a
02:07:40 20 discussion, the parties, we exchanged e-mails as I framed the
02:08:02 21 issue, I thought the issue is distinctly framed, is that if the
02:08:48 22 plaintiff right now needed an extension on their expert witness
02:08:58 23 reports, that's the first thing, they basically told us they can't
02:09:11 24 get final expert reports even for their medical doctors as of the
02:09:22 25 date because those medical doctors and the other people need to

02:09:30 1 have the test results.

02:09:36 2 THE COURT: I understand that.

02:10:00 3 MR. MILLER: Anything that they get now is going to be
02:10:07 4 preliminary. So if we would go depose them at this point, as Ernie
02:10:16 5 points out, we're going to have to redepose if they issue a
02:10:44 6 supplemental report, if they in any way change or modify their
02:10:50 7 opinions.

02:10:55 8 The second issue we had was that basically if you start
02:11:00 9 moving some of these deadlines back too far, a week or two more,
02:12:27 10 there's not much flexibility in these schedules, we are dealing
02:12:35 11 with very tight deadlines. You basically, the government's
02:12:38 12 position -- and I won't speak for anyone else -- if it gets pushed
02:13:15 13 back more than a week or two, the government believes you have to
02:13:21 14 move the trial date.

02:13:24 15 And the third issue is if the court does not anticipate
02:13:54 16 and is not going to move the trial date, something has to give.
02:13:58 17 And if it's not going to be the trial date, then basically you
02:14:22 18 can't be injecting these new issues and plaintiffs have got to get
02:14:30 19 their reports done pretty promptly.

02:14:38 20 And part of that is to the extent we've been trying to
02:15:07 21 work with this destructive testing, we don't have a template in
02:15:49 22 place so we've had to work through that. We've been working
02:15:57 23 diligently to that, both plaintiffs and the United States, to get
02:16:05 24 that template in order. But I think that the parties, although you
02:16:15 25 had indicated that you were going to allow destructive testing, the

02:16:29 1 way the orders had come out this was a belief at least that the
02:16:37 2 destructive testing wouldn't take place with any of these
02:16:44 3 bellwether units. So no one has been working on getting the
02:17:18 4 protocol finalized until we got our order on that.

02:17:26 5 And so since then we have been working very diligently to
02:17:33 6 do that. That's the real crux of the issue. The issue here then
02:17:40 7 when you deal with the mold, to the extent that Frank gets to amend
02:18:38 8 his complaint -- and I agree with the court and I agree with
02:18:43 9 Frank -- mold is, in fact, an issue and his client wants to claim
02:18:59 10 it, then he should be allowed to do so, he doesn't become a
02:19:13 11 bellwether claimant and he has claim.

02:19:48 12 I don't see how -- the court notes you add an issue at
02:19:56 13 that late date --

02:19:58 14 We deal with mold cases in our office and it's a whole
02:20:06 15 different bailiwick, that's different experts who come on board and
02:20:26 16 address those issues. There is some crossover, but mold and
02:20:31 17 formaldehyde are not the same thing. And so --

02:20:35 18 We're kind of stuck in a dilemma here with all of us
02:21:12 19 trying to accomplish what the court wants to achieve, but I am not
02:21:34 20 sure we can do that and satisfy the due process of Mr. Wright if
02:21:41 21 he, in fact, wants to seek mold as a claim or cause of action
02:22:01 22 against Shaw.

02:22:03 23 THE COURT: Frank, can you get your preliminary expert
02:22:08 24 reports, all of them, to counsel by July 27th?

02:22:12 25 MR. D'AMICO: Can we have the 29th?

02:22:15 1 THE COURT: Well, I mean every day counts. You can't do
02:22:21 2 it by the 27th? I asked you about the 27th.

02:22:46 3 MR. D'AMICO: Those same experts are doing reports for
02:22:52 4 Fleetwood today and we have to turn around and get these out and we
02:23:31 5 need some information on Mr. Wright yet. If we can get the 29th
02:23:41 6 I'll do it.

02:23:43 7 THE COURT: All right. And let me ask the defendants.
02:23:48 8 With those preliminary expert reports, I understand your point
02:23:55 9 about wanting to get their final expert reports before you take
02:24:02 10 depositions, how helpful will it be to get the preliminary reports?

02:24:25 11 MR. GEIGER: Better than nothing.

02:24:30 12 THE COURT: Well, I understand that.

02:24:31 13 MR. GEIGER: I don't know what the supplement is if it's
02:24:41 14 the same? It's very difficult, Judge, to say how helpful they're
02:25:02 15 going to be if I hear a whole lot here, Judge, to say how helpful
02:25:48 16 they're going to be if I hear a whole lot more when I get a
02:25:56 17 supplemental report.

02:25:58 18 THE COURT: When you go to get the full reports, assuming
02:26:08 19 you get the preliminary on the 29th, when can we expect you to get
02:26:53 20 the full reports? Assuming you get preliminary on the 29th, when
02:27:07 21 can we expect you to get full reports?

02:28:46 22 MR. D'AMICO: I still don't have a test for the trailer,
02:28:57 23 that's what hinges, they need to test speciation of the mold; and
02:29:07 24 depending on what we find, it takes about a week to speciate that.
02:29:24 25 As soon as we get that we'll get the speciation in another week and

02:29:30 1 another week or two we can have a full report. It just depends
02:29:52 2 when Henry can give us a date to do the test.

02:30:16 3 THE COURT: What are the dates we are talking about?
02:30:21 4 Henry mentioned you all had been communicating, what are the dates?

02:30:30 5 MR. D'AMICO: We don't have any dates yet.

02:30:53 6 MR. MILLER: What we're talking about is we need to get
02:30:57 7 the issue put, the --

02:31:05 8 THE COURT: When can we get the protocol from the
02:31:49 9 defendants? Can we not get that within the next few days?

02:32:11 10 MR. MILLER: I will defer to them.

02:32:17 11 THE COURT: That's what I'm asking them.

02:32:22 12 MR. GEIGER: Judge, I would normally say yes --

02:32:30 13 THE COURT: Why do we not have it already, maybe that's a
02:32:34 14 better question?

02:32:36 15 MR. KURTZ: We do not. We do not have it already, at
02:32:56 16 least on behalf of Shaw, I can't speak for Ernie, but, you know, we
02:33:05 17 were not thinking about what has to be done for mold, that was not
02:33:10 18 part --

02:33:12 19 THE COURT: We're talking about putting mold aside, why
02:33:31 20 do we not have a protocol for testing, even not counting the mold,
02:33:39 21 what you did think was in the case, why do we not have a protocol?

02:33:48 22 MR. GEIGER: Judge, you will have my protocol for air
02:33:55 23 sampling and my protocol for the HVAC testing by Monday at five
02:34:16 24 o'clock.

02:34:17 25 THE COURT: All right.

02:34:18 1 MR. GEIGER: And part of that delay, your Honor, is
02:34:27 2 because there was a discussion about jacking -- not jacking, when
02:34:32 3 are we going to jack, what are we going to jack, how are we going
02:34:39 4 to do what when, so that's part of the answer.

02:34:45 5 THE COURT: I understand. Can we not get all of the
02:35:00 6 defendants' protocol by Monday, close of business on Monday?

02:35:16 7 MR. MILLER: Your Honor, essentially talking about Ernie,
02:35:24 8 I need to figure out how long it will take the defendants to do
02:35:39 9 their testing. But what we roughly estimate is that all testing
02:35:45 10 should be done within three weeks after the commencement.

02:35:50 11 So the plaintiffs would commence by sending a person out
02:36:15 12 to check the door -- inspect, close the unit up, they then do their
02:36:31 13 ambient testing, open the doors later, that takes two days. After
02:36:40 14 that the defendants have to compliment their protocol which
02:36:54 15 basically air conditions the unit, does whatever they do. That
02:37:14 16 takes about another 72 hours or three days to do the ambient air
02:37:32 17 testing then.

02:37:33 18 After that the parties will doing the jacking test, all
02:37:43 19 done, sign off on the ambient air, do the jacking, whatever they do
02:37:54 20 with that. The jacking is done. At that point the parties will
02:38:02 21 then tear the unit apart, tear it apart and throw the stuff into
02:38:30 22 the dumpster, that will basically take two to three days, however
02:38:36 23 much time.

02:38:38 24 THE COURT: That's all fine but the question is finding
02:38:42 25 out when that's going to start.

02:38:47 1 MR. MILLER: And we should be able to start it, if we get
02:38:49 2 the protocol all lined up and finished, they should be checking for
02:39:11 3 the plaintiffs to lock it up at the end of next week. You can
02:39:22 4 start the three weeks starting hopefully at the end of the next
02:39:28 5 week, that's what my hope would be.

02:39:39 6 MR. GEIGER: If you want to start on the 24th, that's
02:39:44 7 fine with me. But the plaintiff's true air testing takes a week,
02:40:13 8 three days lockup and two days testing. That's a week. My air
02:40:19 9 testing takes a week just like the plaintiffs' does, so that's two
02:40:29 10 weeks. Now I understand the manufactures HVAC testing takes at
02:40:43 11 least a day, mine is going to take, I think my preliminary estimate
02:40:54 12 is three days, so that's four days. So now you've got to jack it,
02:41:03 13 do the destructive testing. I don't think you're going to jack it
02:41:26 14 and do the destructive testing in a day.

02:41:29 15 So I really believe it's going to take a little closer to
02:41:45 16 four weeks total than it is going to be three.

02:41:51 17 MR. MILLER: And that's fine, Judge. Aaron and I had
02:41:57 18 discussed since we did not get input with Ernie when we came up
02:42:10 19 with the three weeks, I would probably defer to Ernie better at
02:42:28 20 what his testing will be when we start.

02:42:30 21 THE COURT: Let's do this: On the 29th, by the 29th
02:42:36 22 plaintiffs are going to have to provide their preliminary expert
02:42:44 23 reports and they're going to be complete in terms of who is going
02:42:55 24 to be the expert and what they're going to opine about and any
02:43:03 25 preliminary opinions they're going to have. Can we do that?

02:43:10 1 MR. D'AMICO: Yes.

02:43:12 2 THE COURT: By Monday, the close of business on Monday,
02:43:21 3 all parties, including all of the defendants, will have set forth
02:43:30 4 their protocol for testing such that the testing can begin.
02:43:35 5 Anybody have a problem with that?

02:43:37 6 MR. KURTZ: My only problem with that is I can give my
02:43:53 7 air testing protocol and certainly my HVAC testing protocol. It's
02:44:16 8 a little difficult for me to give you my mold testing protocol, but
02:44:24 9 I am sure I can work it in if I need to do it while we are doing
02:44:35 10 this three-week testing.

02:44:37 11 THE COURT: Why don't we do that. Not to cut you off,
02:44:42 12 but let me back that date up then. Why don't we give you
02:44:53 13 plaintiffs until the 29th -- wait. Let me look at my calendar.

02:44:59 14 MR. GEIGER: Judge, I don't know that mold testing is as
02:45:04 15 important to me as it is to other parties, but I would at least
02:45:16 16 want more time than Monday to go hire somebody to find that out.

02:45:28 17 MR. KURTZ: Judge, this is David. If you could give us
02:45:38 18 the flexibility to insert mold testing into the protocol that is
02:45:45 19 developed on Monday at a later date, then we will be able to work
02:45:51 20 with that. I don't see why our mold expert, whoever it is, and we
02:45:58 21 don't have one yet, couldn't go out during some of the other
02:46:13 22 testing that is outlined in this protocol. So I can't imagine it
02:46:46 23 injecting further delay.

02:46:51 24 THE COURT: Now we're getting somewhere. Why don't we go
02:46:53 25 ahead and stick with Monday for the protocol with the understanding

02:47:06 1 that if the plaintiffs in submitting their preliminary reports have
02:47:13 2 issues relative to mold, which we think that based on the pleadings
02:47:21 3 they will, you will have the opportunity to include mold testing,
02:47:26 4 which you can add beyond Monday and there will not be an objection
02:47:39 5 to you including that testing.

02:47:42 6 MR. GEIGER: That's agreed.

02:48:01 7 THE COURT: So let's stick with the 29th going to be the
02:48:09 8 plaintiffs submit their preliminary reports. The protocol for all
02:48:20 9 testing is going to be done, is going to be provided by the close
02:48:37 10 of business Monday with that one exception, and that exception
02:48:43 11 applies only to the defendants with regard to mold testing
02:48:52 12 protocol.

02:48:52 13 We are not going to have anybody else on the plaintiffs'
02:48:57 14 side go out and get another expert or an additional protocol, not
02:49:08 15 going to happen.

02:49:15 16 MR. D'AMICO: We agree.

02:49:21 17 THE COURT: All right. Now, in terms of the plaintiffs
02:49:31 18 final reports, assuming testing can begin in the last week of July
02:49:42 19 or on August the 2nd I guess or 3rd, if we're talking about four
02:49:48 20 weeks that pretty much takes us through the month of August; is that
02:49:56 21 not correct?

02:49:57 22 MR. D'AMICO: That's correct.

02:50:03 23 MR. GEIGER: Correct.

02:50:05 24 THE COURT: When can we get the plaintiffs' final reports
02:50:09 25 after that final testing?

02:50:11 1 MR. D'AMICO: I say we need two weeks after that, so
02:50:22 2 September 15th.

02:50:25 3 MR. GEIGER: You agreed earlier to September the 1st.

02:50:31 4 MR. D'AMICO: Well, but, Ernie, you just told the court
02:50:37 5 it would take four weeks.

02:50:44 6 THE COURT: That's for their testing, yours is going to
02:50:50 7 be finished.

02:50:53 8 MR. D'AMICO: Ours takes three weeks and do the
02:50:59 9 speciation of mold which takes another week, so we're still looking
02:51:07 10 at four weeks. So I would need two weeks to complete the reports,
02:51:14 11 we can do it by September 10th.

02:51:25 12 MR. KURTZ: Judge, the original proposal Mr. Geiger said
02:51:38 13 was for September 1st, injected into that because of no small part
02:51:53 14 that those deadlines do, it jams us on the fourth bellwether trial.
02:52:03 15 There are all kinds of overlapping deadlines. If we have expert
02:52:08 16 reports being issued that late in this case, it's really going to
02:52:14 17 hamper our ability to handle the fourth bellwether.

02:52:26 18 THE COURT: I understand that. Why don't we say the
02:52:37 19 plaintiffs will have final completed expert reports, comprehensive
02:52:41 20 reports prepared and exchanged by September the 8th. Defendants
02:52:56 21 final completed expert reports will be due on October the 1st.
02:53:01 22 Does that help or hurt?

02:53:05 23 MR. GEIGER: If we start the testing on the, August --
02:53:40 24 no, why are we going to start August 2nd?

02:53:45 25 MR. MILLER: We will start it as quickly as we can. The

02:53:49 1 August 2nd date will be the drop-dead late.

02:54:06 2 THE COURT: That's correct. I said August 2nd but I am
02:54:10 3 hoping you can do it the week of the 27th of July.

02:54:24 4 MR. GEIGER: If you do -- it's the 27th of July, I can
02:55:40 5 look at my calendar, it's one week, you'll be finished by the 21st
02:56:18 6 of August with testing. If he does his mold testing first, I mean,
02:56:48 7 why can't the original proposal by the plaintiffs was they would
02:57:00 8 have their expert reports by September 1st and the defendants would
02:57:06 9 have theirs by October 1st.

02:57:09 10 THE COURT: If we start the testing on July 27th, do we
02:57:18 11 know definitive we can do that?

02:57:24 12 MR. MILLER: Your Honor, I would say yes, and the reason
02:57:29 13 why that all plaintiffs need to do is send someone out to inspect
02:57:47 14 the trailer to close the windows, to put witness tape because they
02:57:55 15 seal the units up for 72 hours before they test it. If they get
02:58:04 16 started on the Friday they can start Monday on the ambient air, the
02:58:15 17 22nd.

02:58:17 18 THE COURT: Let's start on the 27th if we all think
02:58:35 19 that's doable, let's plan on the 27th. That would back everything
02:58:41 20 up a week, which would be good, September 1st would be for the
02:58:46 21 plaintiffs and we'll make September 24th, I guess, for the
02:58:52 22 defendants. Or September 25th, which is a Friday. Can we do that?

02:59:02 23 MR. MILLER: Your Honor, the answer from the government
02:59:04 24 is whatever you order we will do.

02:59:18 25 I will note given that this is on the record that the

02:59:24 1 United States is going to object to any extension of these
02:59:29 2 deadlines because I think it interferes with our ability to prepare
02:59:35 3 for the various trials.

02:59:37 4 THE COURT: Right, I understand you guys are limited.

02:59:48 5 MR. MILLER: I just need to state that for the record.

02:59:52 6 THE COURT: I understand that and you guys don't have as
02:59:57 7 many people and you're spread thin already. I understand that.
03:00:05 8 And if that becomes a problem, certainly logistic problem, go ahead
03:00:21 9 and raise that with me and I'll see what I can do to accommodate
03:00:33 10 you.

03:00:34 11 MR. MILLER: Let me point out, to put this into context,
03:00:40 12 it's become a logistic problem, I missed for the first time in 22
03:00:53 13 years in practicing at the Department of Justice we missed a
03:01:02 14 deposition because we didn't get it on the calendar. We are doing
03:01:19 15 four to five depositions a day, we will have done 50 depositions
03:01:40 16 this month for the Gulf Stream trial. I suspect we're going to be
03:01:51 17 doing the same amount for each of the succeeding trials.

03:01:56 18 The amount of work that is being injected here is a
03:02:07 19 nominal amount, at the same time being in the Gulf Stream trial for
03:02:14 20 two weeks is going to take me out of the league and the ability to
03:02:30 21 direct other persons who will be doing the follow-up trials or at
03:02:35 22 least monitoring those. So it's putting us in a very, very
03:02:41 23 difficult position.

03:02:42 24 But I will note my objection for the record and I'll
03:02:46 25 insert those there, but we will obviously comply with whatever the

03:02:53 1 court orders.

03:03:01 2 THE COURT: I know that you all are doing, all of you, in
03:03:12 3 terms of time and the fact that this is, you know, a huge amount of
03:03:18 4 work to be done so I am not insensitive to it. As the problems
03:03:31 5 develop, let me know and we'll try to accommodate you so that we
03:03:41 6 can get this done.

03:03:42 7 Can we go ahead and agree, for now at least, that
03:03:48 8 September 1st is going to be the plaintiff's deadline for final
03:04:00 9 comprehensive expert reports and opinions and September 25th is
03:04:09 10 going to be for defendants?

07:37:06 11 MR. MILLER: Your Honor, over the government's objection.

07:37:17 12 MR. D'AMICO: The only thing I would ask is can we get to
07:37:23 13 Friday, September 4th?

07:37:26 14 THE COURT: No, September 1st is good.

07:37:30 15 MR. D'AMICO: Okay. We'll live with it, Judge.

07:37:37 16 THE COURT: You're going to have to. Everybody, as Henry
07:46:55 17 described, everybody is trying to meet deadlines and we can always
07:47:04 18 add-on more time and be working on this for a long time but I don't
07:47:10 19 see why. We've been at this quite awhile, I don't see why we can't
07:47:19 20 get it done now on the plaintiff side. You've made an allegation
07:47:33 21 about mold, I hope under Rule 12 you've got some basis to make that
07:47:42 22 allegation. You should already have a lot of information on that.
07:47:58 23 You're asking me to allow this amended complaint, I hope you've
07:48:07 24 already done your homework to a large degree.

07:48:17 25 MR. D'AMICO: We have, Judge.

07:48:20 1 THE COURT: Then you don't need the extra days.

07:48:25 2 MR. D'AMICO: I want to ask for a clarification on
07:48:28 3 something, Judge. Obviously there's no reason to give preliminary
07:48:36 4 reports on the experts who are doing the testing. Some of those
07:48:44 5 are just medical testing who are going to be jacking HVAC stuff. I
07:48:55 6 think the defendants would all agree that that would be pretty
07:49:05 7 futile to give a preliminary report for somebody who is going to be
07:49:18 8 doing the testing.

07:49:20 9 THE COURT: Anybody want to respond to that? What are
07:49:25 10 your expectations?

07:49:31 11 What I would like to see and what I envision, and maybe I
07:49:39 12 am misunderstanding, but what I am understanding is a report that
07:49:46 13 describes the task is going to be for the expert, what he or she
07:50:05 14 intends to do to accomplish that task and if we can render any type
07:50:19 15 of an opinion or preliminary analysis based on whatever documents
07:50:30 16 we have that they render that. Is that not what we understand the
07:50:37 17 preliminary report to be and that the testing is going to elaborate
07:50:45 18 on all of that and add opinions that are gleaned from test results?

07:51:09 19 MR. GEIGER: That's my understanding.

07:51:11 20 MR. D'AMICO: I am a little confused because Al Millet,
07:51:22 21 for instance, who is a general construction guy, he's been deposed
07:51:31 22 already in Gulf Stream. He is going to be doing work for
07:51:59 23 Fleetwood, he is also going to be doing work in this case. I think
07:52:00 24 all the defendants really want to know is what did he find when he
07:52:07 25 went out and did the jacking. I mean, we've all talked about the

07:52:16 1 protocol ad nauseam which talks about what he anticipates doing. I
07:56:25 2 think the final report is the final culmination of his protocol.

07:56:33 3 I mean, I am not trying to complicate things, Judge, if
07:56:40 4 that's what you want I'll give a preliminary report that basically
07:57:11 5 regurgitates the protocol.

07:57:16 6 THE COURT: Well, it's got to be more than the protocol.
07:57:21 7 His task, if that's the case, then he's basically a fact witness
07:57:29 8 that goes out and checks on things and makes measurements and
07:57:35 9 recites what the results of that is, are going to be.

08:05:25 10 MR. D'AMICO: I see what you're saying.

08:05:36 11 THE COURT: What we need to know is if somebody is going
08:05:41 12 to be an expert, we need to know: (A) who it is; (B) what are
08:05:54 13 their qualifications, all of their qualifications, CV, what field
08:06:05 14 are they being tendered in, what is their assigned task, what is it
08:06:31 15 that they are going to opine on, and then if they can state what
08:06:38 16 methodology or perhaps this is where your protocol comes in, how
08:07:45 17 are they going to go about formulating such an opinion.

08:07:49 18 And if they have any preliminary opinions at this point
08:08:00 19 based upon a review of documents, deposition transcripts, anything
08:08:05 20 else they should provide that. Any opinions that they can render
08:08:13 21 on a preliminary basis they should provide.

08:08:16 22 Then the report that is going to be issued on September
08:08:23 23 1st is going to be the "full blown" here is all that we did, here
08:08:44 24 is the finding that we've made, this is what we've discovered, this
08:08:54 25 is how we went about discovering it, the methodology involved, and

08:09:02 1 now finally, here are our opinions based upon all of that research
08:09:19 2 and testing and methodology, here are the opinions we intend to
08:09:24 3 render in court before a jury.

08:09:37 4 MR. D'AMICO: Okay.

08:09:37 5 THE COURT: That's how I envision it. You all tell me if
08:09:42 6 I am missing the boat, but that is how I am envisioning the
08:09:49 7 process. The defendants in response to their preliminary opinions
08:10:00 8 had been able to decide what experts they're going to need and what
08:10:09 9 opinions they're going to need to elicit. We haven't set a
08:10:23 10 deadline, I don't know that it's necessary, for preliminary reports
08:10:37 11 from defendants' experts because they will largely be based on what
08:10:44 12 the plaintiffs do.

08:10:46 13 What you will get by September 25th is a comprehensive
08:10:52 14 report from the defendants' experts that contain all of the same
08:11:09 15 similar type information that I've described for the September 1st
08:11:19 16 report, then we can depose those people.

08:11:26 17 MR. MILLER: If I can interject here. What Frank can do
08:11:40 18 to streamline this is Al Millet's, plaintiff's expert in Gulf
08:12:08 19 Stream, he is being deposed right now as we speak. The plaintiffs
08:12:13 20 can probably just take his expert report from the Gulf Stream case,
08:12:18 21 which includes all of that information, and just note his specific
08:12:31 22 opinions that he issued for the Gulf Stream case and then submit
08:12:37 23 that.

08:12:40 24 THE COURT: Well, that would be efficient if we can do
08:12:43 25 that. We are going to have some recurring characters.

08:12:53 1 MR. MILLER: And fourthly, considering ones which are the
08:13:13 2 ones I believe Frank are talking about inspecting the units, unless
08:13:20 3 he brings in people on board, that would seem a fairly efficient
08:13:29 4 and effective way to do it.

08:13:32 5 I would also point out a second point, that as Mr. Kurtz
08:13:39 6 identified, those units have been sitting at a FEMA storage lot and
08:13:47 7 they're not being maintained. They are sitting there wasting away
08:14:03 8 and deteriorating and their value is decreasing as they're sitting
08:14:17 9 there. I believe from the depositions, and these parties haven't
08:14:22 10 been participating in those, the government has, that plaintiff's
08:14:27 11 only expert has indicated that current condition of these units is
08:14:35 12 not indicative of the condition when they were being occupied.

08:15:03 13 THE COURT: That's understood and your experts are going
08:15:08 14 to have to figure out a way to opine based upon some type of
08:15:27 15 available information. That obviously is the first line of a
08:15:34 16 cross-examination I can see, if an expert is going to base his or
08:15:48 17 her testimony solely on what they saw in August of 2009.

08:15:57 18 MR. MILLER: Or that mold present there is even the same
08:16:07 19 mold that was present when the trailer was occupied.

08:16:12 20 THE COURT: That's exactly right.

08:16:27 21 MR. MILLER: Frank should examine this very carefully
08:16:36 22 because in a certain sense their experts are locked up with some
08:16:37 23 opinions in the Gulf Stream case, which I think he is going to find
08:16:43 24 is pretty inconsistent with what he is arguing now.

08:16:49 25 THE COURT: I agree with you just as the plaintiff would

08:17:00 1 not be able to sustain his burden of proof by saying that in August
08:17:06 2 of 2009, mold X was present without any proof whatsoever that it
08:17:19 3 existed to any extent while the plaintiff lived in the trailer, and
08:17:31 4 likewise, a defense expert report that says mold, this mold was
08:17:42 5 present on August the 6th, 2009 and it did not contribute. You
08:18:00 6 know, you're right, that's going to be a problem that the experts
08:18:06 7 have to overcome.

08:18:09 8 MR. MILLER: Just wanted to point it out because I think
08:18:19 9 we might be going up --

08:18:22 10 THE COURT: I agree with you it's clearly a problem in
08:18:27 11 meeting a burden of proof when it's with regard to an affirmative
08:18:32 12 defense or when it's the plaintiffs' case in chief. But that's
08:18:50 13 what --

08:18:50 14 MR. MILLER: That's what they want to allege and that's
08:18:53 15 their case.

08:18:54 16 THE COURT: We'll see what he does to try to meet that
08:19:00 17 burden of proof. The question is can he allege it, and at this
08:19:07 18 point in time if we have time to do the testing and if it's a
08:19:22 19 representative sample of plaintiffs, then I am satisfied -- which I
08:19:35 20 was not when we started this conference, I was not satisfied that
08:19:42 21 this was representative of any portion of the bellwether -- of the
08:19:50 22 entirety of the plaintiffs such that it belonged in a bellwether
08:19:57 23 trial.

08:19:57 24 My second concern was if it did belong in a bellwether
08:20:06 25 trial, we would not have time to incorporate any treatment of the

08:20:11 1 issue because it had been raised so late. But since we have not
08:20:26 2 tested this trailer but we're about to do that, seems like we can
08:20:33 3 go ahead and get that done.

08:20:36 4 MR. D'AMICO: Judge, I think and we know there are
08:20:42 5 problems with speciation, we know other mold culture grow out
08:22:27 6 afterward, but we believe there would be trace evidence of some
08:22:36 7 initial stages of mold growth. And we believe we can speciate by
08:22:45 8 doing an adequate examination.

08:22:48 9 We know that there will be challenges from the defense
08:23:00 10 and whether or not we've met our burden of proof and whether or not
08:23:05 11 it meets scientific methodology, but that's an issue for another
08:23:11 12 day.

08:23:14 13 THE COURT: All right. Assuming that the defendants
08:23:20 14 decide that they would like to have a protocol for mold testing
08:23:25 15 that will not be forthcoming on Monday, when would we think that we
08:23:34 16 could get that? I am asking defense counsel, I would like to put a
08:23:48 17 deadline on that. Can we get that July the 31st or August the 2nd?

08:24:03 18 MR. KURTZ: It's hard for me to commit to July 31st
08:24:14 19 because we don't have a mold expert, I have to go find somebody and
08:24:22 20 then work with a protocol. I will make a best effort to achieve
08:24:28 21 July 31st. And if the court wants to put that in an order then,
08:24:34 22 you know, we will do our best to accommodate it. But I can't
08:24:41 23 commit to that date.

08:24:44 24 THE COURT: We are going to put August the 2nd and if you
08:24:50 25 can get it earlier, that would be great. If you can't get it by

08:25:01 1 August the 2nd then you'll have to let us know why and how much
08:25:23 2 progress you've made on it. But we would like to have it, that
08:25:30 3 testing done during this few weeks in August heeding up to the
08:25:36 4 plaintiffs' reports.

08:25:38 5 MR. KURTZ: Yes, sir. We will perform the mold testing
08:25:41 6 in a way that will not disrupt the protocol that is circulated on
08:25:48 7 the next Monday.

08:25:53 8 THE COURT: Okay. All right. That's fine. We'll go
08:26:04 9 ahead and put August 2nd to get a mold testing protocol from the
08:26:11 10 defense if they choose to do that, they would go ahead and give us
08:26:17 11 a protocol by August the 2nd which is a date one week after the
08:26:25 12 plaintiff begins to complete their protocol on July the 27th.

08:26:36 13 MR. D'AMICO: August the 2nd is a Sunday.

08:26:44 14 THE COURT: I'm sorry, August 3rd, the following Monday,
08:26:49 15 the 3rd.

08:26:50 16 MR. MILLER: We also need the plaintiffs' protocol for
08:26:57 17 the mold testing, your Honor, we don't have that.

08:27:08 18 THE COURT: I thought we had that. Frank, when can you
08:27:22 19 get that?

08:27:23 20 MR. D'AMICO: Haven't we provided that? Aaron?

08:27:31 21 MR. AHLQUIST: No.

08:27:31 22 MR. D'AMICO: I thought we provided the mold.

08:27:35 23 THE COURT: I thought you had, too.

08:27:37 24 MR. D'AMICO: It's in this, I think we already provided
08:27:43 25 it.

08:27:44 1 THE COURT: Why don't we double check. If we haven't for
08:27:52 2 some reason, let's get it over today to all involved.

08:27:57 3 MR. KURTZ: There were a couple of remarks that you made
08:28:02 4 and I feel like I have to do something like Mr. Miller did on
08:28:15 5 behalf earlier for the government and that is preserve an objection
08:28:31 6 to the record for the introduction of mold into one of these
08:28:37 7 bellwether cases. I don't think they're a considerable size of the
08:28:46 8 fraction that have been filed that make mold complaints, I didn't
08:28:56 9 read every one of them, but most of them that I've read do.

08:29:03 10 To my knowledge this is the only one specifically that
08:29:13 11 makes a mold claim, and I heard what Frank said about CDC and
08:29:33 12 15,000 complaints, to my knowledge no one has filed mold suits
08:29:44 13 within the MDL, so I feel we have to preserve an objection for the
08:29:50 14 record into the introduction of mold into the MDL.

08:29:55 15 THE COURT: I understand that and as I told you at the
08:30:03 16 outset --

08:30:03 17 I was also very interested as to how mold -- and you're
08:30:11 18 right, mold has been in the background of this but it has never
08:30:16 19 been offered as a claim for which damages were sought and for which
08:30:22 20 injury was caused. It's never been alleged, that's why my prior
08:30:35 21 rulings were, if an expert talks about mold in any of the
08:30:41 22 bellwethers -- and that is still the rule, by the way, for all of
08:30:49 23 the other bellwethers, it can only be referred to as evidence of
08:30:56 24 moisture as it would affect the formaldehyde level in the units.

08:31:06 25 So to be clear, our conversation today pertains only to

08:31:11 1 Mr. Wright's claim in the December bellwether. Because I have not
08:31:33 2 seen mold -- you're right, I have not seen mold alleged as a
08:31:42 3 specific cause of injury for which a defendant could be held
08:31:46 4 responsible if the plaintiffs were successful in meeting that
08:31:55 5 burden. But I am going to allow it in this case given that we can
08:32:04 6 get the testing done and given that this may be, sounds like there
08:32:14 7 are other plaintiffs out there who might want to make a mold
08:32:18 8 allegation -- this is not a unique, it's not unique that mold has
08:32:24 9 come up in connection with this case, it is unique or I should say
08:32:35 10 that this is the first time we broached the issue of it being a
08:32:41 11 cause for some damages for which compensation is sought.

08:32:45 12 MR. MILLER: This is Henry Miller. I just want to make a
08:32:56 13 couple of points very clear from the government's perspective.
08:33:00 14 What in my opinion is happening when this MDL started the
08:33:08 15 defendants in the case were the manufacturers and potentially the
08:33:16 16 United States and the MDL court certified the formaldehyde issue.
08:33:32 17 None of the maintenance issues were at issue in the litigation.

08:33:41 18 But when you expand to mold, now any issue that relates
08:33:49 19 to maintenance that could potentially be a confounding factor on
08:34:02 20 these person's health is going to basically be injected into the
08:34:21 21 trial because the IA/TAC contractor and the fellow contractor are
08:34:34 22 responsible for maintenance. So once we added the IA/TAC
08:34:42 23 contractor as defendants, we're now expanding this case so now this
08:34:49 24 case is going to envision any and all types of injuries that could
08:35:42 25 have been the result of faulty maintenance and that would not just

08:35:48 1 be mold but something else, for example, a gas leak.

08:35:55 2 THE COURT: No --

08:35:56 3 MR. MILLER: And I understand the court's position, but
08:36:03 4 that is essentially from my perspective when I see and hear what's
08:36:12 5 happening that's the first issue. And the government objects to
08:36:19 6 that expansion of the litigation in that sense.

08:36:23 7 Secondly, the government objects, for the record, that
08:36:30 8 its decision of the mold at this late date given the December trial
08:36:49 9 unduly prejudices the government and interferes with our ability to
08:36:57 10 adequately prepare and defend the government's defenses in this
08:37:06 11 case. I do understand if it's added that it's added, but I think
08:37:12 12 all of the deadlines need to be moved back and I don't think it's
08:37:18 13 reasonable to expect the parties, the defendants to come up with
08:37:23 14 mold experts by August 2nd.

08:37:27 15 I mean, when you have a mold case, it is a separate
08:37:32 16 action and you go out and find experts and you figure out what it
08:37:49 17 is, we're literally being given essentially ten days while I have
08:37:59 18 two other cases in front of it that I am preparing and have expert
08:38:05 19 reports due on expert depositions going on. And I do not believe
08:38:17 20 that that is fair and appropriate and so, therefore, I object not
08:38:25 21 necessarily on adding the mold cases if the court wants to do that
08:38:38 22 on that ground, I object on the MDL ground.

08:38:47 23 But if the court is going to allow the amendment, I think
08:39:05 24 you have to change all of the deadlines in this case, including the
08:39:11 25 trial deadline. And that's the objection I am making.

08:39:15 1 With that said obviously we will do our best to comply
08:39:20 2 with the court's orders.

08:39:23 3 THE COURT: File a motion with regard to any other
08:39:35 4 deadlines that need to be changed, file a motion if you need to do
08:39:42 5 that and I will certainly be willing to change over deadlines short
08:39:52 6 of changing the trial date. If we get further down the road where
08:40:05 7 this is going to be a problem and we can't meet the trial date, we
08:40:13 8 will take that issue up at the appropriate time. I don't see right
08:40:19 9 now that we need to continue the trial date.

08:40:28 10 But if there are other deadlines other than these expert
08:40:29 11 deadlines, file a motion and we'll address those. I understand all
08:40:39 12 of that.

08:40:46 13 Insofar as mold allegations are concerned, that will be
08:40:49 14 the only bellwether where that is going to be a component. So
08:41:00 15 plaintiffs, if any other bellwether -- I assume it's not going to
08:41:22 16 be for any of the first two bellwether trials since those deadlines
08:41:29 17 have already come and gone -- but if any of the bellwether
08:41:35 18 plaintiffs that have been identified for the January and I think
08:41:42 19 the one after that, the fifth bellwether are going to make a mold
08:41:49 20 allegation, you need to replace them with somebody else. And I am
08:41:54 21 telling you that now on July the 17th so that we don't have this
08:42:01 22 happen again. This will be the only bellwether that relates to a
08:45:18 23 mold allegation. Am I clear on that?

08:45:22 24 MR. GEIGER: Understood, your Honor.

08:45:26 25 THE COURT: Tell me soon like within the next day or two

08:45:46 1 if one of those other people is going to have a mold allegation,
08:45:52 2 because if that's the case, we can now substitute a new bellwether
08:46:01 3 plaintiff now and not have to worry about trying to patch things
08:46:13 4 together to get expert reports relative to mold. So double check
08:54:32 5 that.

08:54:32 6 And I have the same concern about expanding beyond
08:54:43 7 formaldehyde, my responsibility was to try to handle in a
08:55:12 8 multidistrict fashion complaints about formaldehyde exposure. The
08:55:17 9 problem with not handling the mold at this point that in order to
08:55:27 10 hopefully achieve a resolution of all of these cases I've got to be
08:55:33 11 able to pick up that piece to the extent that it is not unique to
08:55:39 12 this plaintiff alone but that it may be a common component to a
08:56:09 13 larger group of plaintiffs.

08:56:11 14 MR. D'AMICO: And, Judge, I would say that that's the
08:56:32 15 point if I felt that was an oddball case and it was one of a rarity
08:56:49 16 I would not be proposing that we go forward with this case. I
08:57:06 17 would say, look, we have an anomaly, let's kick him out. All of
08:57:15 18 our statistical analysis and what CDC showed, just like you did in
08:57:33 19 this selection process, one is going to be a mold case and that's
08:57:39 20 what we found.

08:57:41 21 THE COURT: Frank, all I can tell you, cautionary word,
08:57:45 22 if you do not have an expert who can help you with your burden of
08:58:00 23 proof, I would expect you to abandon the claim with regard to mold
08:58:29 24 exposure.

08:58:30 25 MR. D'AMICO: Absolutely. And the only reason I am

08:58:35 1 addressing, if you look at the attachment from FEMA about important
08:58:55 2 information about formaldehyde residents, they warn that other
08:59:12 3 pollutants, mold and smoke --

08:59:22 4 THE COURT: All of that is well and good, but you need
08:59:35 5 testimony to meet your burden of proof that this man --

08:59:42 6 MR. D'AMICO: Judge --

08:59:48 7 THE COURT: Frank, would you let me talk, please. That
08:59:53 8 this plaintiff suffered an injury as a result of not just any mold
09:00:03 9 but mold that was present in his unit while he lived in it and not
09:00:17 10 mold from any other source. So you better be prepared to meet that
09:00:26 11 burden. And if you can't, I would expect you to abandon the claim,
09:00:45 12 sooner rather than later.

09:00:48 13 MR. D'AMICO: Absolutely, Judge.

09:00:51 14 THE COURT: All right. What else, anything else?

09:00:56 15 All right. Like I said, we have a transcript of this but
09:01:04 16 we will issue an order with the upshot of what we've accomplished
09:01:10 17 here today. And I appreciate all of your hard work on this, I know
09:01:16 18 it's difficult and I know it's a daily thing that you all are
09:01:22 19 putting a lot of time in on it, but let's see if we can get it done
09:01:37 20 and try to avoid any other Johnny-come-lately issues that were not
09:01:47 21 the subject of some allegation.

09:01:56 22 All right. Thank you all.

09:01:58 23 MR. MILLER: Thank you, your Honor.

09:02:02 24 MR. GEIGER: Thank you, your Honor.

09:02:04 25 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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REPORTER'S CERTIFICATE

I, Karen A. Ibos, CCR, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.



Karen A. Ibos, CCR, RPR, CRR
Official Court Reporter