

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

IN RE: FEMA TRAILER * MDL NO. 1873
FORMALDEHYDE *
PRODUCT LIABILITY LITIGATION * SECTION "N-5"
* JUDGE ENGELHARDT
THIS DOCUMENT IS RELATED TO *
ALL CASES * MAG. JUDGE CHASEZ
*

JOINT REPORT NO. 9 OF LIAISON AND GOVERNMENT COUNSEL

Plaintiffs' Liaison Counsel ("PLC"), Manufacturing Defendants' Liaison Counsel ("MDLC") and U.S. Government Counsel ("GC") respectfully submit this Joint Report No. 9.

I. REPORT OF CLAIMS AND CASE INVENTORY:

PLC and MDLC report that a total of 95 actions now have been filed, or transferred into, this MDL. PLC and MDLC are unaware of any other actions filed in other districts that currently are awaiting transfer into the MDL. The following complaints were filed since the last Joint Report:

LOUISIANA:

Michelle Abram, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02963, filed March 2, 2009.

Quiana C. Acker, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02962, filed March 2, 2009.

Henry M. Alexander, Jr., et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02974, filed March 2, 2009.

Marion Alexander, et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02957, filed March 2, 2009.

Samuel Alexander, et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02976, filed March 2, 2009.

Daphne Alford, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02966, filed March 2, 2009.

Annie Mae Anderson v. Keystone Industries, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02930, filed March 2, 2009.

Shevon Banister v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02948, filed March 2, 2009.

Andrea Baquet, et al v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02961, filed March 2, 2009.

Kirk P. Baptist, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-09275, filed March 2, 2009.

Janice Bastain, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02950, filed March 2, 2009.

Tanya R. Bates, et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02932, filed March 2, 2009.

Diana Bell, et al v. Keystone RV Company, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02967, filed March 2, 2009.

Willie Muton Bell, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02959, filed March 2, 2009.

Geraldine Boatner, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02965, filed March 2, 2009.

Kenneth Bourgeois, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02973, filed March 2, 2009.

Tyra Brown, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02951, filed March 2, 2009.

Kesha Cain v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02952, filed March 2, 2009.

Leslie Carter v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02956, filed March 2, 2009.

Johnnie John Celestine, III, et al v. Keystone RV Company, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02954, filed March 3, 2009.

Margie Clark v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02890, filed February 27, 2009.

Valerie Cooper, et al v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02921, filed March 2, 2009.

Robert Couch v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02970, filed March 2, 2009.

Curtis Crawford v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02893, filed February 27, 2009.

Ethel Demolle, et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02941, filed March 2, 2009.

Robert Devlin, et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02917, filed March 2, 2009.

Carolyn Doiron v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02889, filed February 27, 2009.

Adrian R. Domino v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02934, filed March 2, 2009.

Cornelia Domino, et al v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02960, filed March 2, 2009.

John Leander Edinburgh, et al v. Keystone RV Company, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02955, filed March 3, 2009.

Travis Everidge, Sr., et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02938, filed March 2, 2009.

Jessie Farria, et al v. Forest River Industries, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02939, filed March 2, 2009.

Glenn G. Ferrier v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02935, filed March 2, 2009.

Pearlette Ford, et al v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02969, filed March 2, 2009.

Drusilla Galloway, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02964, filed March 2, 2009.

Greer Gibson, et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02958, filed March 2, 2009.

Randy J. Green and Carl Delcambre v. Fleetwood Enterprises, Inc. and Fleetwood Canada, Ltd., filed in the United States District Court for the Western District of Louisiana, Docket No. 08-01107, filed December 12, 2008.

John Guillory v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02891, filed February 27, 2009.

Stephanie Hansen v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-2910, filed March 2, 2009.

Edna Harrison, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02908, filed March 2, 2009.

Patricia Hart v. Keystone RV Company, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02887, filed February 27, 2009.

Thelda Hart v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02947, filed March 2, 2009.

Jonathan A. Ijoko v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02971, filed March 2, 2009.

Kim Joseph, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02943, filed March 2, 2009.

Andre Lott, et al v. Forest River Incorporated, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02936, filed March 2, 2009.

Verna Major v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02949, filed March 2, 2009.

Dempsey J. Markey, et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02968, filed March 2, 2009.

Garnette J. Martin, et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02925, filed March 2, 2009.

Calvin Parker, Sr., et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02931, filed March 2, 2009.

Stephanie A. Pizani v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02944, filed March 2, 2009.

Carolyn Robinson, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02940, filed March 2, 2009.

Gloria Roche, et al v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02953, filed March 2, 2009.

Taslya Santacruz v. Keystone Industries, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02972, filed March 2, 2009.

Carrie Sapp, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02942, filed March 2, 2009.

Shirley A. Sinclair, et al v. Keystone Industries, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02923, filed March 2, 2009.

Montrelle Jackson Sinegar, et al v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02926, filed March 2, 2009.

Gina Smith, et al v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02909, filed March 2, 2009.

Angela Sullivan, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02915, filed March 2, 2009.

Carl M. Tasker v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02945, filed March 2, 2009.

Ariel Torregano, et al v. Fleetwood Enterprise Incorporated, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02937, filed March 2, 2009.

Allen Trosclair, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02933, filed March 2, 2009.

Hattie Wagner v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-2916, filed March 2, 2009.

Isreal Williams v. Fleetwood Enterprises, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02946, filed March 2, 2009.

Lyndon T. Wright v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02977, filed March 2, 2009.

II. PLAINTIFF FACT SHEETS (PFS)

The PSC still operates a central claims office located at 4731 Canal Street, New Orleans, Louisiana. PLC advises that it has delivered 3543 completed PFS to the Defendants to date.

The PSC to date has cured 803 deficiencies cited by Defendants pursuant to PreTrial Order No. 2 (Doc No. 87). Pre-Trial Order No. 32 (Rec Doc. 1180) was entered on March 18, 2009 amending specific instructions and deadlines as found in Pre-Trial Order No. 2 (Rec. Doc. 87).

The parties have discussed, and hope to agree to, a process for the claimant verification of substantive PFS changes made necessary in the curing of such deficiencies.

- A. The *Bauer* plaintiffs (2503) have filled out fact sheets.

B. The Plaintiffs have agreed to sort the fact sheets by defendant.

III. MOTION PRACTICE

The following Motions are pending:

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| Docket No. 1095 | Plaintiffs' Motion for Court Ordered Notice of Denial of Class Certification. |
| Docket No. 1097 | Manufacturers' Response and Opposition to Plaintiffs' Motion for Court Ordered Notice of Denial of Class Certification. |
| Docket No. 1098 | Government's Response and Opposition to Plaintiffs' Motion for Court Ordered Notice of Denial of Class Certification. |
| Docket No. 1137 | Plaintiffs' Reply Memorandum. |
| Docket No. 1145 | Parties' Joint Proposed Scheduling Orders for Trials 1 to 4. |

IV. MOBILE HOUSING UNIT MANUFACTURERS SEPARATE "TRACK"

The PSC and the Non-Litigation Track defendants consistent with Pre Trial Order No. 24 (Doc. No. 2002) are on Non-Litigation Track and have submitted reports regarding efforts made by the parties to determine whether an amicable resolution of the claims is possible.

V. MATCHING PLAINTIFF TO DEFENDANT MANUFACTURER AND FEMA CONTRACTOR

PSC has issued written discovery that requests that the United States provide Plaintiffs with the vehicle identification number of the emergency housing units ("EHUs") that were issued to them by FEMA. PLC has instructed all Plaintiffs' counsel that to have their clients matched, the request for matching should: (1) be submitted in groups of approximately 500 claimants (or a lesser amount if the plaintiff counsel represents less than 500 persons); (2) include a list containing necessary search information in an Excel and PDF spreadsheet format; and (3) for each family of occupants, provide only the name of the head of household or adult family

members – no children or other minors should be included. Information that the Plaintiffs' counsel should provide to the United States is the claimant's (a) full name; (b) FEMA ID Number; (c) social security number; (d) date of birth; (e) and address/State where EHU was installed. To extent Plaintiffs are aware of the bar code number assigned to their issued unit, that information should also be provided to FEMA.

To date, the United States has responded to request from eight plaintiffs' counsel within time allowed under Fed. R. Civ. P. for responding to written discovery, and has two requests that are being processed. The PSC intends to supplement the formal discovery with additional matching requests as the information is received from other counsel.

On March 6, 2006, PSC issued to the United States matching request from three counsel (Designated Exhibit L – Waltzer & Associates; Exhibit N – Gill, Ladner & Priest, PLLC; and, Exhibit O – Pius A. Obioha & Associates). None of these counsel provided their clients FEMA identification numbers. The United States informed PSC that the requests were deficient, and requested that they resubmit the requests with the claimants' FEMA identification numbers.

VI. BELLWETHER TRIALS

Several of the Manufacturing Defendants have raised concerns regarding the process for selection of bellwether trial candidates.

The United States remains concerned that the procedure adopted by the Court for selection of the initial plaintiffs required the United States to agree to a Scheduling Order for a trial prior to the plaintiff filing suit against the United States or the United States submitting a response to the Complaint. The United States proposed that the initial plaintiffs be selected from among plaintiffs who had been selected by Plaintiffs' Steering Committee as class representatives and had already filed suit against the United States. As such, in participating in

the selection of the bellwether plaintiffs, the United States reserves its potential objections to inclusion of plaintiffs if the selection renders the United States unable to adequately investigate the claims, prepare and present in a timely manner jurisdiction issues to the Court for resolution, and does not allow the government sufficient time to identify, prepare and present its defenses to the plaintiff's claims.

The PSC will be prepared to respond to these concerns at the March 20, 2009 status conference.

VII. RECENT BANKRUPTCY FILINGS

A. Defendants Monaco Coach Corporation and R-Vision, Inc. filed a Chapter 11 bankruptcy proceeding on March 5, 2009 in the United States Bankruptcy Court for the District of Delaware. *See* Rec. Doc. Nos. 1157 and 1158 (Notices of Bankruptcy Filing by Monaco Coach Corporation and R-Vision).

B. Defendant Fleetwood Enterprises, Inc. filed a Chapter 11 bankruptcy proceeding on March 10, 2009 in the United States District Court for the Central District of California. *See* Rec. Doc. No. 1167 (Notice of Bankruptcy Filing by Fleetwood International, Inc.).

C. As noted in previous Joint Reports, Pilgrim International, Inc. and Patriot Homes also have filed for bankruptcy protection. Oakwood Homes, LLC has also filed for bankruptcy protection.

The PSC has filed a motion to lift the automatic stay in the Patriot Homes bankruptcy proceeding and are endeavoring to file similar motions in each other pending bankruptcy proceeding.

VIII. TRIAL SCHEDULE

A Notice of Submission of Liaison and Government Counsel's Proposed Scheduling Orders for the First Four Trials (Doc. No. 1145) has been submitted. The proposed dates for the first four trials are as follows:

- A. September 14, 2009 (Doc. No. 1145-2);
- B. October 26, 2009 (Doc. No. 1145-3);
- C. December 7, 2009 (Doc. No. 1145-4); and
- D. January 11, 2010 (Doc. No. 1145-5).

Appropriate scheduling deadlines according to the proposed trial dates were also provided in the record documents referenced for each trial date. Each trial will be a single plaintiff claim against one of four manufacturers (Gulf Stream Coach, Inc., Fleetwood Enterprises, Inc.¹, Forest River, Inc. and Keystone RV Company) and one of the three (3) FEMA contractors who installed units on sites located in the jurisdiction of the Eastern District of Louisiana (Shaw Environmental, Inc., Fluor Enterprises, Inc. and CH2M Hill Constructors, Inc.). The Court, pursuant to the procedure set forth in Pre Trial Order No. 28 (Doc. No. 1096), will select the trial plaintiffs.

IX. MASTER DISCOVERY

- A. General Discovery
 - 1. PSC has begun requesting 30(b)(6) deposition dates. Electronic discovery issues need to be addressed.
- B. Insurance Discovery

¹ Fleetwood's status as a trial defendant is uncertain in light of its bankruptcy.

Primarily through 30(b)(6) depositions, the PSC will conduct discovery of the defendants' relevant information concerning insurance coverage for the matters at issue in this litigation. The PSC contemplates that such discovery will proceed as a separate "Insurance Coverage Discovery Track" simultaneously with the General Discovery Track.

C. Bellwether Trial Plaintiff Selection Discovery

The PSC has made available for deposition one (1) individuals to provide testimony to defendant, Forest River, Inc. for the limited purpose of curing allegedly deficient PFS forms submitted to defendant, Forest River, Inc. This agreement was reached so that Forest River, Inc.'s selection of potential bellwether trial plaintiffs can take place by the Court's deadline of March 23, 2009. The PSC and defendant, Forest River, Inc also have reached an agreement regarding the limited areas of inquiry. These depositions will be completed by March 20, 2009.

X. MASTER COMPLAINT

The PSC proposes to make further amendments to the Master Complaint based upon the filing of new underlying actions, in order to provide the Court with an administrative vehicle for motion practice and the disposition of common issues. This matter is addressed in a Pretrial Order submitted by the parties for consideration by the Court.

XI. MISCELLANEOUS

Many of the potential bellwether trial plaintiffs resided in EHU's that were not tested for formaldehyde emissions and/or content. If such is the case, after selection of the bellwether trial plaintiffs the parties will need to cooperate for purposes of locating the EHU for testing.

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