

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

IN RE: FEMA TRAILER	*	MDL NO. 1873
FORMALDEHYDE	*	
PRODUCT LIABILITY LITIGATION	*	SECTION "N-4"
	*	JUDGE ENGELHARDT
	*	MAG. JUDGE ROBY

THIS DOCUMENT IS RELATED TO ALL CASES

JOINT REPORT NO. 6 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. 6.

I. REPORT OF CLAIMS AND CASE INVENTORY:

MDLC reports that a total of 28 actions now have been filed, or transferred into, this MDL. MDLC is unaware of any other actions filed in other districts that currently are awaiting transfer into the MDL. MDLC further reports that there currently are approximately 871 plaintiffs named in all actions pending, or awaiting transfer into, the MDL. The following claims were filed since the last Joint Report:

LOUISIANA:

Trang Dang and Binh Pham individually and on behalf of their deceased minor daughter, Dynasty Tran, Civil District Court, Orleans Parish, State of Louisiana, Docket No. 08-7558, filed on July 22, 2008. Removed to United States District Court, Eastern District of Louisiana, on August 12, 2008.

FEMA estimates that approximately 10,000 to 11,000 persons have filed administrative claims against the United States Government/FEMA, which appear to pertain to the allegations giving rise to this MDL.

II. WRITTEN DISCOVERY

A. Discovery from the Private Parties

PLC still operates a central claims office located at 4731 Canal Street, New Orleans, Louisiana. PLC advises that it has delivered 962 completed Plaintiff Fact Sheets to the Defendants to date. Defendants forwarded an extensive deficiency letter regarding this production and plaintiffs are attempting to remedy those deficiencies. PLC has cured 417 deficiencies to date. Since August 15, plaintiffs have produced less than 100 completed fact sheets.

B. Document Discovery from the United States

The United States provided its written discovery responses to the private parties on August 29, 2008. The United States has produced approximately 25,000 pages of documents regarding: (1) FEMA's purchase of temporary housing units; (2) individual assistance/technical assistance contracts (IA/TAC) between FEMA and its four IA/TAC Contractors; and (3) documents FEMA has previously produced to Congress, with the exception of material that is privileged or protected by the Privacy Act. The United States is in the process of preparing a privilege log.

On August 22, 2008, PLC identified one-hundred and one (101) class representatives [Docket No. 666-2]. The United States has agreed to produce these persons' FEMA individual

assistance (IA) files to the private parties on a rolling basis. To date, the United States has produced approximately 6,900 pages of IA files for the following sixty-nine (69) persons:

Diane Brown
Joan Culler
Tevin Jefferson
Leroy Hargrove, Jr.
Amy C. Alfonso (Stephen Alfonso)
Maryann N. Alfonso (Stephen Alfonso)
Elisha A. Dubuclet
Rommell E. Griffin, II
Orlando C. Jaime Vadi
Bobby S. James
Shirley G. LeBeau
LaKeesha N. Lightell
LaTonya S. London
Adrina N. McCray
Stephanie A. Pizani
Rayfield Robinson
Sherri Thomas
Homer Brister
Mable Crossley-Brister
Barbara A. Dillon
Damon D. Gordon (Shelia Gordon)
Sylvia J. Keyes
Nicole Esposito
Heather Lee Robertson-Durand
Gina M. Smith
Sherry Trollinger
Keena Magee (Kierra Wilson)
Portia Bradford
Randy Bradford
Hazel K. Heechung
Constance Jordan (Brunica Jordan)
Kendra Vason (Tyrone Battle)
Betty White (Erin McConnell)
Dione Davis (Trinity Guesnon)
Edward Ballet, III (Edward IV, Egypt, Derrell Ballet)
Carrie LeBeau
Renay M. Gardener
Eric A. Smith
Stephanie Pujol (Joseph Pujol)
Letecheia C. Acker (Dakyre Smith)
George B. Posey
Shirley Sinclair

Rose Lee Bright
Sandra Anderson
Thomas Bergens
Marcie Beverly
Kevin Bland
Trina Brown
Jerome Culler
Corey Davis
Simone Frank
Trichonda Green
Leo Haas
Damian Hargrove, Jr.
Douglas Hill, III
Thelma Howard
Glenda Moreland
Penny Robertson
David W. Semien, Sr.
Angela Sullivan
Johnny White
Joannette Williams
Sandra Williby
Natley Mitchell
Peter Daunoy, III
Juanita Bridges
John Adams
Shelia Smith (o/b/o Michael Tracy)
Kendra Battie
Jocelyn Beasley (o/b/o Heavenly Beasley)

The United States has also received from FEMA IA files for the following twenty-three (23) class representatives. PLC has not provided the United States with Privacy Act releases for these persons. Upon receipt of Privacy Act releases the United States will produce these persons' IA files to Liaison counsel.

Courtney Alfred (Christopher Thomas)
Marcelio Ayala
Veronda Barnes (Jasmine Barnes)
Pemela Benoit (Christopher Benoit)
Brian Darby
Percy Evans
Jacqueline Dedeaux
Ella Flowers
Crystal L. Gumm

Mary Harris
Joseph Jack
Linda (Davis) Luchter
Centra Myers
Craig Ray
Margarita Solis
Libby Sylve (Hailey Sylve)
Betty Thomas
Enna Williams
Faye Williams
Donovan Delone
Adelia Hawkins
Brian Darby
Lillian Foley
Shontay Fontenot (Hailey, Jonathan, Justin Fontenot)

To date, FEMA has not been able to locate IA files for the following six (6) persons based on the identifying information provided by PLC, or based on the lack of any identifying information provided. Upon receipt of further identifying information, FEMA will perform an additional search for these persons' IA files:

Shane Banker
Barry Dominguez
Linda Maydonado-West
Brittney Miller
Maria Parker (Tyler Ardoin)
Cherish Stephens

The United States has outstanding requests for FEMA IA files for the following four (4) class representatives. The United States will produce these remaining IA files on a rolling basis and estimates that they will be produced within ten (10) to fifteen (15) days:

Amaris McGallon
David Semien, Jr.
Sandra Semien (Danielle Semien)
Lillian Foley / Lillian Foley (Samuel Foley)

III. TESTING OF TRAILERS

The testing of Temporary Housing Units, both occupied and unoccupied/never occupied, continues at numerous locations. Defendants completed the testing of 836 never occupied and previously occupied units at fourteen FEMA locations by September 2, 2008. Although testing is still ongoing, FEMA is not precluded from the destruction of units beginning with approximately 11,000 damaged units.

Defendants have completed testing of 111 currently occupied units by the date of this report and are continuing that testing.

FEMA continues to accommodate both PLC and DLC's reasonable requests for testing so long as the testing does not interfere with normal FEMA operations. FEMA has continued to make all staging sites available to PLC and DLC, with the exception of certain limited site closures due to recent hurricane events.

A. Never Occupied Testing:

Plaintiffs were able to accomplish as much testing as possible within the guidelines of Pre-Trial Orders # 3 and 4.

B. Currently Occupied Unit Testing:

1. Defendants

Plaintiffs continue to provide occupied units for testing on a weekly basis. Plaintiffs test these units on one day and Defendants test the units on the following day. The occupied unit testing is going slowly as only a few units are set up for testing each week. Defendants are creating a priority occupied unit list which it will forward shortly to Plaintiffs in an effort to identify additional occupied units for Plaintiffs which Defendants are prepared to test, to move the occupied unit testing forward at greater speed.

2. Plaintiffs

Plaintiffs and Defendants continue to work diligently to coordinate the testing of occupied units. Since the entry of Document #689 on August 26, 2008, the parties have coordinated testing of currently occupied units pursuant to the Court's order.

C. Formerly Occupied Testing:

1. Defendants

Testing of 723 formerly occupied units located by FEMA was completed by the Joint Defense Group by September 2, 2008. Testing continues due to weather issues, locating additional units and equipment shortages specifically due to a lack of generators due to Hurricanes Gustav and Ike.

2. Plaintiffs

With regard to previously occupied units currently located on FEMA property, plaintiffs' testing of these units is ongoing. However, plaintiffs are still encountering certain logistical problems at the sites. Many units are not accessible without being moved to permit testing and FEMA has been slow to move these units. Further, the unit inventory supplied by FEMA to Plaintiffs' testing teams is often very inaccurate which has caused further delays.

3. United States

FEMA continues to accommodate both PLC and DLC's reasonable requests for testing so long as the testing does not interfere with normal FEMA operations. FEMA has continued to make all staging sites available to PLC and DLC, with the exception of certain limited site closures due to recent hurricane events.

FEMA has provided PLC and DLC with its inventory information, on a rolling basis, beginning in February, 2008, and has made all of its staging sites available to them from that

time. FEMA's inventory information apparently does not contain the level of detail desired by PLC, such as place of manufacture. Nevertheless, FEMA has given both PLC and DLC access to all sites so that the private parties can determine which units they would like to test.

IV. DEPOSITION DISCOVERY

Plaintiffs have taken the following depositions:

1. Bourget's of the South
2. Fleetwood Enterprises
3. Gulf Stream Coach
4. Forest River
5. Morgan Building & Spas, Inc. and Morgan Building System, Inc.
6. Dr. Michael Bonner
7. Coachmen Industries, Inc. and Coachmen RV Co., LLC
8. Starcraft
9. The Shaw Group
10. North American Catastrophe Services, Inc.
11. Bechtel National, Inc.
12. Circle B Enterprises
13. The United States, through Representatives of FEMA
14. CH2M Hill

Defendants have taken the following depositions:

Class Representatives:

1. Juanita Bridges
2. Eric Albert Smith
3. Dione Davis o/b/o Trinity Guesnon
4. Stephen A. Alfonso
5. Stephanie Pujol
6. Elisha Duboclet o/b/o Timia Duboclet
7. Sylvia Keyes
8. Gwen Jefferson
9. Jerome Culler
10. Leroy Hargrove, Jr.

Plaintiffs' Experts:

1. Dr. Judd E. Shellito
2. Dr. Kenneth Paris
3. Stephen Smulski
4. Gerald McGwin

5. Dr. William Stein

Regarding the scheduling and taking of depositions of class representatives who live outside the metro New Orleans area as well as Plaintiff experts outside of the metro New Orleans area, PSC has asked the defendants to notice such depositions where the deponent lives (if outside the metro area) or to, at a minimum, reimburse at least half of the travel expenses for the deponent to conduct the deposition in New Orleans. Such request regarding reimbursement of travel expenses has been met with much resistance.

Defendants have offered to travel to the home cities of the Plaintiffs' experts. Plaintiffs have declined to provide a list of which Plaintiffs need to be deposed outside of the New Orleans area. Several Defendants have agreed to depose those Plaintiffs near their home city. Since no master list will be provided, naturally this must proceed on an ad hoc basis.

V. MOTION PRACTICE

MDLC currently have pending a Motion to Strike Class Representatives (Docket No. 546) and a Motion to Enforce Pre-trial Order No. 8 by Designating 56 Proposed Class Representatives (Docket No. 637).

VI. MISCELLANEOUS

On September 22, 2008, Pilgrim International, Inc. filed a Chapter 7 Bankruptcy in South Bend. It is important to note that Pilgrim International, Inc. represents a large market of share of inventory of temporary housing units at issue in this litigation (as detailed in the August 13, 2008 correspondence to the Court by Joseph Glass).

BY: s/Gerald E. Meunier
GERALD E. MEUNIER, #9471
PLAINTIFFS' CO-LIAISON COUNSEL
Gainsburgh, Benjamin, David, Meunier &
Warshauer, L.L.C.

2800 Energy Centre, 1100 Poydras Street
New Orleans, Louisiana 70163
Telephone: 504/522-2304
Facsimile: 504/528-9973
gmeunier@gainsben.com

s/Justin I. Woods
JUSTIN I. WOODS, #24713
PLAINTIFFS' CO-LIAISON COUNSEL
Gainsburgh, Benjamin, David, Meunier &
Warshauer, L.L.C.
2800 Energy Centre, 1100 Poydras Street
New Orleans, Louisiana 70163
Telephone: 504/522-2304
Facsimile: 504/528-9973
jwoods@gainsben.com

s/Andrew D. Weinstock
ANDREW D. WEINSTOCK, #18495
DEFENDANTS' LIAISON COUNSEL
Duplass, Zwain, Bourgeois,
Pfister & Weinstock
3838 N. Causeway Boulevard, Suite 2900
Metairie, Louisiana 70002
Telephone: 504/832-3700
Facsimile: 504/837-3119
andreww@duplass.com

s/Michelle G. Boyle
HENRY T. MILLER
Senior Trial Counsel
MICHELLE G. BOYLE, Va. Bar No. 73710
Trial Attorney
ATTORNEYS FOR THE UNITED STATES OF
AMERICA
United States Department of Justice
Civil Division - Torts Branch
P. O. Box 340, Ben Franklin Station
Washington, D.C. 20004
Telephone: 202/616-4447
Michelle.Boyle@usdoj.gov