

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION

IN RE: FEMA TRAILER  
FORMALDEHYDE  
PRODUCT LIABILITY LITIGATION

MDL NO. 1873  
SECTION "N-4"

JUDGE ENGELHARDT  
MAG. JUDGE ROBY

THIS DOCUMENT IS RELATED TO ALL CASES

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JOINT REPORT NO. 3 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. 3.

**1. REPORT OF CLAIMS AND CASE INVENTORY**

MDLC reports that a total of 21 actions now have been filed, or transferred into, this MDL. MDLC is unaware of any other actions filed in other districts which currently are awaiting transfer into the MDL. MDLC further reports that there currently are 857 plaintiffs named in all actions pending, or awaiting transfer into, the MDL.

FEMA estimates that approximately 4,000 persons have filed administrative claim against the United States Government/FEMA which appear to pertain to the allegations giving rise to this MDL.

**2. STATUS OF DEFENDANTS NAMED IN MASTER COMPLAINT**

A total of nine entities named as manufacturing defendants in the Master Complaint have come forward with information that they were not manufacturers of mobile housing units or

travel trailers which were provided by FEMA to the displaced victims of Hurricanes Katrina and/or Rita. Appropriate steps are being taken to effectuate the voluntary dismissal of these entities under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, supported by an appropriate affidavit executed on behalf of each such entity.

These entities include: Superior Homes, LLC; Stinnett Holiday RV Center; Integrity Midwest, Inc. d/b/a US Adventure RV; Golden West Homes, Inc.; Design Homes, Inc.; Clayton Homes of Lafayette, Inc.; Oakwood Homes, LLC; Morgan Buildings & Spas, Inc. and Philips Products, Inc. Voluntary dismissals with appropriate affidavits attached already have been filed in the cases of Design Homes, Inc., Clayton Homes of Lafayette, Inc. and Superior Homes, LLC.

In some cases, a newly-named defendant may be substituted for the dismissed entity. In all cases, the voluntary dismissal will be without prejudice (in the event discovery provides a basis for allegations against the entity in question).

**3. FILING OF EDLA ACTION TO SERVE AS UNDERLYING ACTION FOR MASTER COMPLAINT**

An issue has arisen as to whether the Master Complaint filed on March 18, 2008 properly named as both plaintiffs and defendants parties not previously named in underlying actions in this MDL. To address this concern, plaintiffs now have filed an EDLA action in the MDL, the allegations of which provide an underlying action with respect to all named parties and allegations that were introduced for the first time through the Master Complaint. With the filing of this EDLA action, therefore, there now will be an underlying action for all of the named plaintiffs, named defendants and allegations set forth in the Master Complaint.

**4. WRITTEN DISCOVERY**

PLC and MDLC propounded written discovery on May 1, pursuant to Pretrial Order No.

2, ¶IB. PLC also propounded written discovery on that date to the defendant United States/FEMA, although the latter was not yet a party as of the time of Pretrial Order No. 2. It is the position of PLC that the defendant US/FEMA is obliged to respond to this written discovery.

Under Pretrial Order No. 2, discovery responses are due on July 1.

The private parties have discussed arrangements necessary for the production of information requested in the aforesaid written discovery which exists in electronic format.

PLC and MDLC also have discussed compliance with the requirement of Pretrial Order No. 2, ¶IB that defendants' master written discovery "not seek information that is duplicative of information called for in the Plaintiff Fact Sheet...." PLC submits that the Plaintiff Fact Sheet represents the appropriate device for individual claim discovery, pending the designation of bellwether trial plaintiffs.

#### **5. PLAINTIFF FACT SHEETS (PFS)**

Pursuant to Pretrial Order No. 5, PLC has provided to defendants a tentative timetable for providing executed PFS, specifically for individuals other than named plaintiffs. Specifically, PLC hopes to establish a staffed and functional claims office for the execution of PFS by June 1, 2008. Assuming appropriate staffing and operation as of that date, PLC will endeavor to furnish by July 16, 2008 not only PFS executed by the named plaintiffs (as required by Pretrial Order No. 2, ¶IIC), but also for several hundred additional claimants not yet named as plaintiffs herein. Thereafter, again on the same assumptions as to staffing and operation, the PLC hopes to be able to produce PFS to defendants on a rolling basis, at the rate of approximately 800 PFS per month.

#### **6. TESTING OF TRAILERS**

The testing of unoccupied/never-before-used mobile homes and travel trailers in the custody of the defendant US/FEMA has commenced. There are logistical issues which the

parties are seeking to resolve as expeditiously as possible. The PLC has raised concerns about the condition of certain units at various sites operated by US/FEMA that may adversely affect their testing protocol. The US/FEMA requests that the May 30 deadline to test unoccupied never-before-used units remain fixed. The parties will be prepared to answer more specific questions the Court may have as to how these issues might impact certain Court-ordered deadlines in place for completion of the testing activity.

MDLC has requested that PLC allow the manufacturing defendants' experts to conduct tests of all units which have been tested by or on behalf of plaintiffs. PLC has agreed to do so; and the parties are discussing an appropriate protocol to arrange for this outcome. To the extent such testing involves units currently occupied by plaintiffs, PLC submits that it is important to accommodate these residents to the fullest extent possible.

**7. CONFIDENTIALITY ORDER**

Pretrial Order No. 2, ¶F, directed that the parties confer and suggest a proposed Confidentiality Order to govern discovery herein. With the appearance of the US/FEMA as defendant (with respect to certain named plaintiffs), ongoing discussions between PLC and MDLC concerning this order now have been extended to include input from GC as well. The parties expect to submit either an agreed-upon Order, or competing versions of same which will allow the Court to resolve differences, by the date of the next status conference.

**8. CLASS CERTIFICATION**

Pretrial Order No. 6 sets forth a schedule for the discovery and development of class certification issues under Rule 23 of the Federal Rules of Civil Procedure. A Class Certification Subcommittee has been appointed by the PLC to undertake the effort for plaintiffs in this regard, so that these deadlines can be satisfied and the question of class certification heard or submitted

to the Court by November 19, 2008, as specified in Pretrial Order No. 6.

**9. NEXT STATUS CONFERENCE**

The next general status conference in this matter will be 20<sup>th</sup> day of June, 2008, at 10:00 a.m.

Respectfully submitted:

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