

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
2009 MAY -8 PM 3: 26

IN RE: FEMA TRAILER

* * * * * MDL NO. 1875

LORETTA G. WHYTE
CLERK 

FORMALDEHYDE

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PRODUCT LIABILITY LITIGATION

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SECTION "N-5"

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JUDGE ENGELHARDT

THIS DOCUMENT IS RELATED TO
ALL CASES

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MAG. JUDGE CHASEZ

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JOINT REPORT NO. 10 OF LIAISON AND GOVERNMENT COUNSEL

Plaintiffs' Liaison Counsel ("PLC"), Manufacturing Defendants' Liaison Counsel ("MDLC"), Individual Assistance/Technical Assistance Contractor Defendants' Liaison Counsel ("IALC") subject to a full reservation of rights and defenses, and U.S. Government Counsel ("GC") respectfully submit this Joint Report No. 10.

I. REPORT OF CLAIMS AND CASE INVENTORY:

PLC and MDLC report that a total of 123 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:

Charles Bagneris, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02888, filed February 27, 2009.

Charlie Age, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-02892, filed March 3, 2009.

Selina M. Brouillette, et al v. United States of America, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03200, filed April 1, 2009.

Vicki Bickham, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03205, filed April 1, 2009.

Loreal Brench, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03249, filed April 8, 2009.

Jose Sampson, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03250, filed April 8, 2009.

Earline Castanel, v. Recreation by Design, LLC, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03251, filed April 8, 2009.

Linda Bosarge, et al v. Dutchmen Manufacturing, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03252, filed April 8, 2009.

Glen Andrews, et al v. Monaco Coach Corporation, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03253, filed April 8, 2009.

Shantell Blouin, et al v. Coachmen Recreational Vehicle Company of Georgia, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03254, filed April 8, 2009.

Brea Anderson, et al v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03255, filed April 8, 2009.

Barbara Duncan, et al v. Thor California, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03304, filed April 16, 2009.

Isaac Thornton, et al v. Forest River, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03305, filed April 16, 2009.

Barbara Jacques, et al v. DS Corp. d/b/a Crossroads RV, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03306, filed April 16, 2009.

Tracey Page, et al v. R-Vision, Inc., et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03307, filed April 16, 2009.

Lola R. Bass, et al v. Recreation by Design, LLC, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03315, filed April 17, 2009.

Elray Clark, et al v. Keystone RV Company, et al, filed in the United States District Court for the Eastern District of Louisiana, Docket No. 09-03374, filed April 27, 2009.

Paul Fountain, et al v. United States of America, et al, filed in the United States District Court for the Western District of Louisiana, Docket No. 09-00466, filed on March 23, 2009.

William Barker, et al v. Forest River, Inc., et al, filed in the United States District Court for the Middle District of Louisiana, Docket No. 09-0205, filed on April 9, 2009.

Jack Carrier, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Middle District of Louisiana, Docket No. 09-0201, filed on April 9, 2009.

Gladys Dukes, et al v. Forest River, Inc., et al, filed in the United States District Court for the Middle District of Louisiana, Docket No. 09-0211, filed on April 13, 2009.

Sherna Lumar, et al. v. Jayco Enterprises, Inc., et al, filed on April 9, 2009 in the United States District Court for the Middle District of Louisiana, Docket No. 09-201.

Barbara Anderson v. Forest River, Inc., et al, filed on April 9, 2009 in the United States District Court for the Middle District of Louisiana, Docket No. 09-203.

Ernesto Cinco et, al v. Gulf Stream et, al, filed on April 9, 2009 in the United States District Court for the Middle District of Louisiana, Docket No. 09-206.

Ernestine Saul et, al v. Keystone RV Company et, al, filed on April 9, 2009 in the United States District Court for the Middle District of Louisiana, Docket No. 09-210.

MISSISSIPPI:

Donna Flynn v. United States of America, et al, filed in the United States District Court for the Southern District of Mississippi, Docket No. 09-257, filed April, 8, 2009.

Anthony Bartel, et al v. Gulf Stream Coach, Inc., et al, filed in the United States District Court for the Southern District of Mississippi, Docket No. 09-281, filed on April 29, 2009.

Leslie Kujawa, et al v. Keystone RV Company, et al, filed in the United States District Court for the Southern District of Mississippi, Docket No. 09-282, filed on April 29, 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 4164 completed PFS to the Defendants to date.

The PSC to date has cured 1301 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).

III. MOTION PRACTICE

The following Motions are pending:

- | | |
|-----------------|--|
| Doc. No. 1192 | Manufactured Housing Defendants' Joint Rule 12(b)(6) Motion to Dismiss Based on Federal Preemption |
| Docket No. 1324 | CH2M HILL Constructors, Inc.'s and Shaw Environmental, Inc.'s Motion to Dismiss in the <i>Aldridge</i> matter |
| Docket No. 1388 | Gulf Stream Coach, Inc.'s Motion for Protective Order Regarding Re-Testing of Plaintiffs' Emergency Housing Unit |

Docket No. 1396 Fleetwood Enterprises, Inc.'s Motion for Protective Order Regarding Re-Testing of Plaintiffs' Temporary Housing Unit

Docket No. 1400 United States of America's Motion to Strike Jury Trial Request

Docket No. 1401 Fleetwood Enterprises, Inc.'s Motion to Dismiss All Manufactured Housing Claims

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.

The United States has completed and provided responses to PLC's matching requests.

The PLC continues to provide amendments to the initial request for matching as received from plaintiff counsel.

VI. BELLWETHER TRIALS

A. The scheduled dates for the four trials are as follows:

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

B. The four Bellwether cases are as follows:

1. *Alan Alexander and Christopher Cooper v. Gulf Stream Coach, Inc.*, Fluor and FEMA is scheduled for September 14, 2009.
2. *Shalaih Jenkins and Craig Jenkins, Sr. o/b/o Craig Jenkins, Jr. v. Fleetwood, Fluor and FEMA* is scheduled for October 26, 2009.
3. *Lyndon Wright v. Forest River, Shaw and FEMA* is scheduled for December 7, 2009.
4. *Diana Bell v. Keystone, Shaw and FEMA* is scheduled for January 11, 2010.

C. The PSC will file individual amending complaints for each of the four Bellwether cases in the near future.

D. A fifth Bellwether trial against Recreation by Design will be scheduled for late March or early April 2010. The PSC and Recreation by Design will make their nominations for a Bellwether plaintiff by May 8, 2009.

VII. RECENT BANKRUPTCY ISSUES

A. 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.). On April 21, 2009, the bankruptcy court lifted the automatic stay permitting the second Bellwether trial, set for October 26, 2009 to proceed. *(Attached is the order from the United States Bankruptcy Court for the Central District of California Riverside Division)*

VIII. MASTER DISCOVERY

A. General Discovery

1. PSC has served master discovery on Gulf Stream, Fleetwood, Forest River and Keystone. The written responses and document production are due shortly. The parties are working on the approach to handling electronic discovery.
2. PSC has served written discovery on the United States. The written responses and document production are due on May 11, 2009.
3. PSC has served written discovery on some of the Bellwether IA/TAC contractors.

B. Insurance Discovery

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. Defendants' Discovery

1. The four manufacturers have issued written discovery requests to the Bellwether plaintiffs.

IX. NOTICE OF PUBLICATION

Pursuant to the Court's Order (Doc. No. 1190), the parties (PSC, Manufacturing Defendants and Government) will place a notice to the residents in the following publications:

Galveston County Daily News, Galveston, TX

Houston Chronicle, Houston, TX

The Advocate, Baton Rouge, LA

Times-Picayune, New Orleans, LA

Daily Advertiser, Lafayette, LA

American Press, Lake Charles, LA

The Sun Herald, Gulfport, MS

Press-Register, Mobile, AL

X. MISCELLANEOUS

The Liaison Counsel has circulated a draft Jury Questionnaire Form, and the United States, has provided Liaison Counsel with comments and input regarding the draft.

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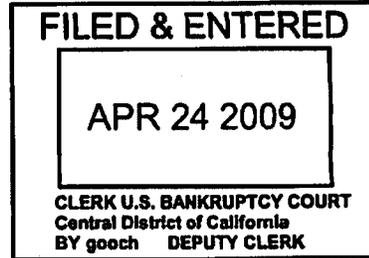
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5 Proposed Attorneys for
6 Debtors and Debtors in Possession

7
8 UNITED STATES BANKRUPTCY COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10 RIVERSIDE DIVISION

11
12 In re
13 FLEETWOOD ENTERPRISES, INC., et al.,
14 Debtors.

CASE NO. 09-14254-MJ

Chapter 11

[Jointly Administered]

15 ORDER GRANTING RELIEF FROM
16 AUTOMATIC STAY AS TO FEMA
LITIGATION

17 **Hearing:**

18 Date: April 21, 2009

19 Time: 1:30 p.m.

20 Place: Courtroom 302
3420 Twelfth Street
Riverside, CA 92501

21 Judge: Honorable Meredith A. Jury

22 Upon consideration of the motion (the "Motion") of Fleetwood Enterprises, Inc., and its
23 affiliated debtor entities, as debtors and debtors in possession in the above-captioned jointly
24 administered chapter 11 cases (collectively, the "Debtors" or "Fleetwood"), pursuant to Section 362
25 of the Bankruptcy Code, for an order granting relief from the automatic stay so that they may proceed
26 with the bellwether trial in the FEMA Litigation currently scheduled for October 26, 2009; and upon
27 consideration of the Motion, the Declaration of Richard K. Hines, the supporting papers and the files
28 and records in these cases, and upon the arguments and testimony presented at a hearing before the

1 Court (the "Hearing"); and any objections to the Motion having been withdrawn or overruled on the
2 merits; and the Court having jurisdiction to consider the Motion and the relief requested therein in
3 accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested
4 therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this
5 Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been
6 provided; and it appearing that no other or further notice need be provided; and the Court having
7 determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors
8 and all parties in interest; and the Court having determined that the legal and factual bases set forth in
9 the Motion establish just cause for the relief granted herein; and upon all of the proceedings had
10 before the Court and after due deliberation and sufficient cause appearing therefor,

11 **IT IS HEREBY ORDERED THAT:**

- 12 1. The Motion is granted in its entirety.
- 13 2. The automatic stay that has been in place since March 10, 2009, ("the Petition Date"),
14 is lifted forthwith for the limited purpose of allowing the specific Debtors who are defendants in the
15 consolidated proceeding that is currently pending before the United States District Court for the
16 Eastern District of Louisiana, entitled *In Re: FEMA Trailer Formaldehyde Product Liability*
17 *Litigation*, United States District Court for the Eastern District of Louisiana, New Orleans Division,
18 MDL No. 1873, Section N(4) ("the FEMA Litigation"), to participate in the bellwether trial currently
19 scheduled for October 26, 2009 ("Bellwether Trial").
- 20 3. The Debtors are permitted to take all actions necessary to prosecute the defense of the
21 claims asserted against the Debtors and their estates to be tried in the Bellwether Trial and the
22 Bellwether Trial may proceed pursuant to the orders and rulings of the presiding court in the FEMA
23 Litigation.
- 24 4. Without waiving the requirements or application of 11 U.S.C. Sections 501 and 502
25 and Rules 3001-3003 of the Federal Rules of Bankruptcy Procedure, to the extent of newly filed
26 lawsuits, if any, the Debtors are permitted to assert "preservation of defenses "as provided in case
27 management orders entered in the FEMA Litigation, provided that those actions are consolidated into
28

1 the FEMA Litigation and then be stayed as provided in the case management orders entered in the
2 FEMA Litigation.

3 5. Without waiving the requirements or application of 11 U.S.C. Sections 501 and 502
4 and Rules 3001-3003 of the Federal Rules of Bankruptcy Procedure, to the extent of any newly filed
5 Plaintiff Fact Sheets, if any, filed in conjunction with newly filed lawsuits or separately, the Debtors
6 are permitted to respond with a "deficiency letter" as appropriate and as provided in case
7 management orders entered in the FEMA Litigation.

8 6. Nothing in this Order shall relieve any creditor, claimant or any other party that may
9 hold a claim against the Debtors' estate from the requirement that, to the extent required by the
10 Bankruptcy Code and Federal Rules of Bankruptcy Procedure, the claimant file a timely proof of
11 claim in these bankruptcy cases.

12 7. Any claims liquidated through the FEMA Litigation shall solely be subject to
13 disposition pursuant to the Bankruptcy Code as administered by this Court and any settlement or
14 compromise of any claims in the FEMA Litigation shall be approved by this Court pursuant to Rule
15 9019 of the Federal Rules of Bankruptcy Procedure.

16 8. All incurred but unpaid prepetition and postpetition defense costs, expenses or fees
17 covered under the "Pollution Legal Liability Select Policy" issued by American International
18 Specialty Lines Insurance Company (an affiliate of AIG), which names the Debtors and Fleetwood
19 Canada Ltd. as insureds (the "AISLIC Policy") and which covers claims asserted in the FEMA
20 Litigation and costs incurred in connection with the defense of the FEMA Litigation, shall be paid
21 forthwith and all defense costs, expenses or fees incurred going forward shall be paid in the ordinary
22 course as they are incurred as provided in the AISLIC Policy.

23 9. The Court shall retain jurisdiction with respect to any matters, claims, rights or
24 disputes arising from or related to the implementation of this Order.

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10. The provisions of Rules 4001(a)(3) and 6004(h) of the Federal Rules of Bankruptcy Procedure are hereby waived and this order granting relief from stay shall become effective immediately upon entry.

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DATED: April 24, 2009

United States Bankruptcy Judge