

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>JANICKI DRYWALL, INC.</p> <p style="text-align:center">v.</p> <p>CERTAINTEED CORP., USG CORPORATION UNITED STATES GYPSUM COMPANY, NEW NGC, INC., LAFARGE NORTH AMERICA INC., GEORGIA-PACIFIC LLC, AMERICAN GYPSUM COMPANY, LLC, TIN INC. d/b/a TEMPLE-INLAND INC., PABCO BUILDING PRODUCTS, LLC.</p>	<p>CIVIL ACTION NO. 12-7106</p>
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**PRETRIAL ORDER NO. 1 AND
REPORT OF PRETRIAL CONFERENCE**

On February 5, 2013, the Court held a Rule 16 pretrial conference in the above captioned case and numerous other “related” cases that have been filed in this district.

AND NOW, this 7th day of February, 2013, this Order and Report will confirm several organizational and scheduling decisions from the conference, and the Court wishes to express appreciation to all counsel for plaintiffs and defendants, who prepared various proposed items for the conference agenda, and met and conferred to attempt to resolve several disputes.

The record of the conference contains details about all of the items summarized below.

1. The Court Orders consolidation, for pretrial purposes only at this time, of “related” cases filed in this district. Lists of the cases of which the Court has knowledge are attached as Exhibits A and B. Counsel are urged to advise the Court, by communication with Deputy Clerk Joanne Bryson at 267-299-7520, of any omissions from the attached list, and as new cases are filed. After the initial filing of a complaint, all additional filings shall be in the above-captioned case, which is the first case filed in this district.

Cases filed on behalf of so called “indirect purchasers” are consolidated with each other, and are listed in Exhibit B.

2. The Court rejected defendants’ request for a stay of all proceedings until plaintiffs filed a consolidated complaint because creating interim leadership positions will help management of these cases, and exchanging initial discovery requests will advise all parties about the possible scope of discovery.

3. Exchanging discovery requests, and conferring about them, may also assist the parties in determining the extent of their preservation obligations. The costs of preservation can be very substantial, particularly in an antitrust case, and judges should assist parties in reaching a fair resolution of the extent and expense of preservation necessary in a particular case.

4. As a result of agreement reached at the conference, and without prejudice to any further orders on the topic of lead counsel or liaison counsel, the Court will appoint H. Laddie Montague, Jr., Esquire, Kit Pearson, Esquire, and Eugene Spector, Esquire as interim co-lead counsel for plaintiffs.

5. The Court appoints Whitney Street, Esquire as interim lead counsel for indirect purchaser plaintiffs.

6. The Court appoints H. Laddie Montague Jr., Esquire as interim liaison counsel for all plaintiffs.

7. The Court appoints Steven Bizar, Esq., as interim lead counsel and liaison counsel for all defendants.

8. The duties of interim lead counsel and interim liaison counsel will be as described in the Manual for Complex Litigation, 4th Edition.

9. Plaintiffs will file a consolidated complaint no later than March 4, 2013. This

complaint will not be considered an amended complaint as that term is used in Rule 15, Fed.R.Civ.P.

10. On March 4, 2013, plaintiffs will serve their Initial Disclosures, as required by Rule 26(a)(1), a single set of document requests pursuant to Rule 34, and up to 20 interrogatories, addressed to each defendant, pursuant to Rule 33.

11. Defendants shall serve their Initial Disclosures, a single set of requests for documents, and up to 20 interrogatories, addressed to each plaintiff, by March 18, 2013.

12. Plaintiffs and Defendants have 21 days after service to file consolidated or separate objections to the discovery requests. The Court urges counsel to make their objections as specific as possible to the allegations of the consolidated complaint, and urges the parties not to rely exclusively on so called “boilerplate” terms, such as “overly burdensome” and “not reasonably calculated to lead to the discovery of admissible evidence,” without stating specific facts or making more specific objections. The Court advises counsel of its recent decision in Vaughn v. LA. Fitness, 285 FRD 331 (2012) concerning a “discovery fence” and cost shifting, which may be applied in these cases if appropriate.

13. Counsel advised that proceedings have been initiated before the Judicial Panel on Multidistrict Litigation (“JPMDL”), pursuant to 28 U.S.C. § 1407, and a hearing is scheduled on March 21, 2013. Some counsel have advised that they will request the JPMDL to transfer all cases to the undersigned, who advised counsel of prior experience as an attorney and a judge with antitrust cases and multidistrict litigation.

14. The Court will grant defendants an extension of time until 30 days after the JPMDL determines the transferee judge for these cases, to answer, plead or otherwise move in response to the consolidated complaint.

15. If the JPMDL has designated the undersigned as transferee judge, or has not yet determined who the transferee judge will be, then this Court will hold a further pretrial conference on April 16, 2013 at 2:00 p.m. in Courtroom 3A. A limited number of out of town counsel may participate by telephone. The Court will require that designated representatives of plaintiffs and defendants meet and confer prior to the conference, to discuss preservation, a protective order, and objections that have been served to the written discovery served pursuant to this Order.

16. The service of discovery, objections to discovery, and discussions about discovery, are without prejudice to defendants' filing a Rule 12 Motion in response to the consolidated complaint. The Court does not anticipate requiring any party to provide documents or answer interrogatories until after an Answer or Rule 12 motion is filed in response to the consolidated complaint.

17. Counsel advised that all parties initiated a "litigation hold" so as to preserve documents, electronically stored information, etc. Any party that objects to preservation should file a motion as soon as possible stating the reasons for objections.

18. The undersigned advised counsel of a number of relationships I have had with various parties and counsel in this case. Counsel who wish to move for recusal shall, within fourteen (14) days, deliver a letter to Michael Kunz, Clerk of this Court, who will then forward the letter(s) to the me on an anonymous basis, redacting the identification of the party, attorney and/or law firm who sent the letter. The Court will rule promptly on any request for recusal.

BY THE COURT:

/s/ Michael M. Bayslon

MICHAEL M. BAYLSON, U.S.D.J.

EXHIBIT A

INITIAL LIST OF RELATED CASES - DIRECT PURCHASERS

12-7161	NEW DEAL LUMBER & MILLWORK CO., INC. V. USG CORPORATION
13-20	SIERRA DRYWALL SYSTEMS, INC.
13-31	CACERES DRYWALL CORPORATION V. NATIONAL GYPSUM
13-249	GRUBB LUMBER COMPANY, INC. V. USG CORPORATION
13-567	IVYLAND BUILDERS, LLC v. USG CORPORATION
13-620	OREGON STATE DRYWALL, LLC V. CERTAINTEED CORP.

EXHIBIT B

LIST OF RELATED CASES - INDIRECT PURCHASERS

Robert Pitter, et al. v. CertainTeed Corp., et al.	Civil Action No. 13-384
Howard Glaser v. CertainTeed Corp., et al.	Civil Action No. 13-559
Afam Agbodike v. CertainTeed Corp., et al.	Civil Action No. 13-607

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ORDER

AND NOW, this 12th day of February, 2013, it is hereby **ORDERED** that Exhibit A to the Court's Pretrial Order No. 1 and Report of Pretrial Conference (ECF 59) is amended to read as follows:

EXHIBIT A

INITIAL LIST OF RELATED CASES - DIRECT PURCHASERS

12-7161	NEW DEAL LUMBER & MILLWORK CO., INC. V. USG CORPORATION
13-20	SIERRA DRYWALL SYSTEMS, INC.
13-249	GRUBB LUMBER COMPANY, INC. V. USG CORPORATION
13-563	IVYLAND BUILDERS, LLC v. USG CORPORATION
13-620	OREGON STATE DRYWALL, LLC V. CERTAINTEED CORP.

BY THE COURT:

/s/ **Timothy J. Savage** for

MICHAEL M. BAYLSON, U.S.D.J.