

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re Zurn Pex Products Liability Litigation	§	
	§	Court File No. 08-MDL-1958
	§	(ADM/RLE)
This document relates to:	§	
All Cases	§	ORDER REGARDING FITTING
	§	STORAGE AND DESTRUCTIVE
	§	TESTING
	§	
	§	
	§	

This matter came before the Honorable Ann D. Montgomery during the pretrial/status conference held on February 24, 2009. All appearances of counsel were noted on the record.

The named plaintiffs and proposed class representatives (“Plaintiffs”) and defendants Zurn Pex, Inc. and Zurn Industries, LLC (“Defendants”) (together, the “Parties”) have agreed on the following protocol for storing, examining and destructively testing the Zurn Pex, Inc. brass fittings from the field that are returned to or have come into the possession of the Parties:

1. All of the fittings have been or will be sent to a repository, Materials Evaluation & Engineering, Inc. (“MEE”) at 13805 1st Ave N. Ste 400, Plymouth, MN 55441, for cataloguing and storage.

2. Except as otherwise stated in paragraph 4 below, there will be no destructive testing or any physical alteration of the fittings stored at MEE by any of the parties or their representatives.

3. Except as otherwise stated in paragraph 4 below, the fittings must remain at MEE until: (1) conclusion of this MDL proceeding and all related actions, (2) further Order of this Court otherwise, or (3) written agreement of the Parties.

4. Subject to the following conditions, the Parties have each selected 45 fittings for further investigation and destructive testing to be completed by their own expert(s) at a facility of their choice:

- A. none of the fittings came from the property of a plaintiff currently named as a putative class representative;
- B. all fittings are from resolved claims or instances where the underlying claim documentation indicates that the claim value is less than \$1,500.00 or there was no specified claim value asserted; or
- C. there is no known documentation tying the fitting to a particular claim or incident.

5. A list of the 45 fittings selected by Defendants and Plaintiffs is attached hereto as Exhibit A.

6. As part of this process, the Parties agreed that they would share non-opinion related data, findings, and photographs of the investigation and testing done by their respective experts. The Parties are directed to meet and confer to determine a schedule for the disclosure of this information. Opinions of experts will be disclosed pursuant to CMO 3 or any order of the court modifying that schedule.

7. The Parties are directed to retain the fittings they selected and are directed to maintain all photographs, visual representations, test results, and other data generated as part of this further investigation and destructive testing process. All such information will be made available to the opposing party following a reasonable request for

production of such information and evidence. All such information and evidence shall be retained pursuant to the terms of paragraph 3 above.

8. The cost of using MEE as a fitting repository will be split equally between the Parties.

After being fully advised by the Parties of their fitting storage and destructive testing agreement as described above (the “Storage and Destructive Testing Agreement”):

IT IS HEREBY ORDERED:

1. the Storage and Destructive Testing Agreement is approved in all respects;
and

2. the destruction of fittings, if done in accordance with the Storage and Destructive Testing Agreement as described in this order, is approved and will not constitute improper spoliation of evidence.

Dated: March 30, 2009

s/Ann D. Montgomery

Ann D. Montgomery
United States District Court Judge

Exhibit A

PLAINTIFFS' SELECTIONS

1. MEE-44
2. MEE-58
3. MEE-60
4. MEE-61
5. MEE-135
6. MEE-137
7. MEE-139
8. MEE-253
9. MEE-254
10. MEE-265
11. MEE-267
12. MEE-270
13. MEE-300
14. MEE-304
15. MEE-360
16. MEE-471
17. MEE-544
18. MEE-788
19. MEE-971
20. MEE-982
21. MEE-1079
22. MEE-1095
23. MEE-1106
24. MEE-1231
25. MEE-1237
26. MEE-1263
27. MEE-1264
28. MEE-1265
29. MEE-1272
30. MEE-1285
31. MEE-1339
32. MEE-1500
33. MEE-1506
34. MEE-1626
35. MEE-A0006-01
36. MEE-A0006-02
37. MEE-A0012-02
38. MEE-A0024
39. MEE-A0050-01
40. MEE-B0003-01
41. MEE-B0004
42. MEE-B0005
43. MEE-B0007-12
44. MEE-B0007-14
45. MEE-B0007-16

DEFENDANTS' SELECTIONS

1. MEE-25
2. MEE-131
3. MEE-132
4. MEE-255
5. MEE-338
6. MEE-356
7. MEE-386
8. MEE-390
9. MEE-488
10. MEE-490
11. MEE-502
12. MEE-951
13. MEE-997
14. MEE-1000
15. MEE-1157
16. MEE-1158
17. MEE-1187
18. MEE-1189
19. MEE-1241A
20. MEE-1241B
21. MEE-1358
22. MEE-1384
23. MEE-1386
24. MEE-1522A
25. MEE-1522B
26. MEE-A0022-12
27. MEE-A0023-07
28. MEE-A0023-08
29. MEE-A0023-18
30. MEE-A0012-12
31. MEE-A0012-14
32. MEE-A0012-28
33. MEE-A0012-29
34. MEE-A0013-05
35. MEE-A0013-07
36. MEE-A0031-01
37. MEE-A0033
38. MEE-A0034
39. MEE-A0043-21
40. MEE-A0044-06
41. MEE-A0044-23
42. MEE-A0050-16
43. MEE-A0050-17
44. MEE-A0052-11
45. MEE-B0007-05

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