

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: ZURN PEX PLUMBING PRODUCTS ) MDL NO. 08-1958  
LIABILITY LITIGATION ) (ADM/RLE)  
)  
) Courtroom 13 West  
) Tue., February 24, 2009  
) Minneapolis, Minnesota  
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**P R E T R I A L C O N F E R E N C E**

BEFORE THE HONORABLE ANN D. MONTGOMERY  
UNITED STATES DISTRICT JUDGE

**TIMOTHY J. WILLETTE, RDR, CRR, CBC, CCP**  
Official Court Reporter - United States District Court  
1005 United States Courthouse  
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Minneapolis, Minnesota 55415  
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1 (9:00 a.m.)

2 **P R O C E E D I N G S**

3 **I N O P E N C O U R T**

4 THE COURT: Good morning. Please be seated.

5 THE CLERK: The Court calls the case of  
6 In re: Zurn PEX Litigation, File Number Civil 08-1958.

7 Would counsel note their appearances, please.

8 MR. RAITER: Shawn Raiter on behalf of the  
9 plaintiffs.

10 THE COURT: Good morning, Mr. Raiter.

11 MR. RUDD: Good morning, your Honor. Gordon Rudd  
12 for Plaintiffs.

13 MR. SHELQUIST: Good morning, your Honor. Rob  
14 Shelquist on behalf of Plaintiffs.

15 THE COURT: Good morning.

16 Counsel?

17 MR. BLACK: David Black on behalf of Plaintiffs.

18 THE COURT: Good morning.

19 Mr. O'Neal?

20 MR. O'NEAL: Jim O'Neal for the defendants.

21 MR. CONNOLLY: Your Honor, Dan Connolly as well  
22 for the defendants.

23 THE COURT: This matter is on the calendar this  
24 morning for purposes of a pretrial conference. I understand  
25 that there's been a proposed Pretrial Order No. 3.

1           Mr. O'Neal, I received your letter, and with the  
2 exception of page 3, the class certification hearing "on or  
3 after" which you think you should be "on or before," I take  
4 it -- I read your letter as stating you have no objection to  
5 the order, is that right?

6           MR. O'NEAL:   That's correct, your Honor.

7           THE COURT:   And I take it you don't have any  
8 problems with making that change?

9           MR. RAITER:   The only issue with that change, your  
10 Honor, is that the expert depositions end on November 1st.

11          THE COURT:   Okay.

12          MR. RAITER:   So we've set the "on or after" date  
13 45 days after those depositions would have been completed.  
14 The "on or before" designation makes it a little difficult to  
15 get our papers in before -- giving the Court 45 days if we  
16 use that time frame to get the expert depositions completed,  
17 get the transcripts and then get the motion filed, so that --

18          THE COURT:   Well, what if we made it "before" but  
19 bumped the date back a little bit?  Would that satisfy --

20          MR. RAITER:   Yeah, that would be fine.  We're just  
21 going to be close if we use that schedule.

22          THE COURT:   Okay.  December 30th?

23          MR. RAITER:   Sure.

24          THE COURT:   That would give you another 15 days.

25          No problem with that, is there, Mr. O'Neal?

1 MR. O'NEAL: It's how I want to spend Christmas.

2 THE COURT: Well, there's lots of empty time we  
3 have trouble filling, those late days in December, but I  
4 think we'll get it taken care of then.

5 Anything else by way of the pretrial order,  
6 Mr. Raiter?

7 MR. RAITER: No, other than you'll see that last  
8 page of the pretrial order, your Honor, has an ongoing status  
9 conference paragraph.

10 THE COURT: We need to set a date for that, I  
11 guess.

12 MR. RAITER: Yeah, and you can decide how  
13 frequently we should be doing that.

14 THE COURT: It's easy to see when you've been so  
15 noncontentious.

16 (Laughter)

17 THE COURT: As things heat up, perhaps not so  
18 frequently. I don't know. What do you think, every two  
19 months, three months?

20 MR. RAITER: I'd say every two months.

21 THE COURT: Sixty days or so?

22 MR. O'NEAL: I agree.

23 THE COURT: Gertie, do we have a 60-day date?

24 THE CLERK: I don't have my book, but I can run  
25 back.

1 THE COURT: Okay. While she's getting her book,  
2 maybe we can go ahead.

3 I think, Mr. Raiter, you were going to give me a  
4 bit of a progress of upcoming activities or status report.

5 MR. RAITER: Yeah. I think we -- and Mr. O'Neal  
6 certainly can supplement this.

7 From the plaintiffs' side, I just made a few  
8 slides. It's really just an overview of what we've done,  
9 what we have to do, and then a few of the issues that I think  
10 are going to be before you.

11 THE COURT: Okay.

12 MR. RAITER: You'll see the first page. We've got  
13 the recent developments and work that has been completed.  
14 Both sides have been exchanging written discovery requests  
15 and responding to those requests.

16 Since we last met we've had six depositions taken  
17 by the plaintiffs, three taken by Zurn. Zurn has requested  
18 some others that we are in the process of rescheduling as  
19 have the plaintiffs requested some other depositions that  
20 we're going to reschedule.

21 Zurn has requested water testing from the class  
22 representative properties and we've allowed that to go  
23 forward and that has also been under way. Several of those  
24 have been completed already.

25 THE COURT: Okay.

1           MR. RAITER:   We've been spending a great deal of  
2 time, Mr. Connolly and myself in particular, trying to work  
3 through some destructive testing protocol which I think on  
4 our agenda we placed as the last issue.

5           A couple of things that have come up since we were  
6 here last relate to other competitor fittings, and I raise  
7 that because in this case Zurn has in several submissions to  
8 the Court indicated, well, these are F1807 fittings and we  
9 sell these just like everybody else does. And since we were  
10 here last a couple of interesting things have happened and it  
11 certainly impacts the plaintiffs' view of class certification  
12 and how we're going to conduct discovery from here until the  
13 time that we present the motion to you.

14           The first is, one of the long-standing suppliers of  
15 PEX systems in the North American market, Rehau, has  
16 withdrawn these F1807 fittings from the market, they've  
17 stopped selling those fittings, and we've put in this packet  
18 some information about that. That comes after Rehau has been  
19 the subject of some significant litigation elsewhere in the  
20 country, in particular by Pulte Homes, where they have over  
21 6,000 homes with Rehau systems in Nevada in particular, and  
22 Pulte is removing those Rehau fittings, which again are the  
23 same style fittings that Zurn uses here from the market. So  
24 we believe that's interesting and it's certainly something  
25 we're going to be looking into in terms of commonality of the

1 problems and what we believe are design and materials  
2 defects.

3 The second issue is just another case that just  
4 popped up and that's a case in Hawaii, and it involves Watts,  
5 which is another competitor of Zurn's, again, which makes  
6 F1807 fittings with yellow brass as Zurn does. In that case,  
7 you'll see that the allegation is that these fittings have  
8 high zinc content and that they're dezincifying and therefore  
9 failing prematurely. In that particular case it's a single  
10 condominium of 250 units and the amount at issue there is  
11 about \$15 million. It's interesting to us because Zurn has  
12 taken this position that our fittings are like everybody  
13 else's, so we're going to be looking more into that.

14 In the very end of this packet, your Honor, we just  
15 have some photos of some of the fittings that we had  
16 reviewed. Both Zurn and Plaintiffs have had a chance now to  
17 review fittings that Zurn has in its possession and then any  
18 fittings that were under our control as well we submitted to  
19 a neutral third-party source. We looked at those fittings  
20 separately. We sent our people in, they sent their people  
21 in.

22 Some of these are some photos of some of these  
23 fittings and the cracking on the interior part of the  
24 fittings, and as we talk about this destructive testing  
25 protocol that we at least want to raise with you today, I

1 wanted to give you some of these pictures to help explain  
2 what it was that we were going to be doing with those  
3 fittings, and if it makes sense I can start with that unless  
4 -- on the destructive testing protocol unless Jim wants to  
5 respond to anything about progress or work to be done.

6 MR. O'NEAL: I think I'd like to say something.

7 MR. RAITER: Sure.

8 THE COURT: Okay.

9 MR. O'NEAL: As Shawn -- Mr. Raiter said, we have  
10 been engaged in depositions. Right now that does not seem to  
11 be, you know, in any kind of difficulty. We're following the  
12 Case Management Order 3 protocols as to depositions.

13 There are a couple of issues that may be coming up.  
14 Right now we are engaged in a meet-and-confer process with  
15 Mr. Raiter's office about some privilege issues that may come  
16 to your attention.

17 In addition, we served discovery on the plaintiffs  
18 seeking information as to the number of failures that they  
19 know about and I think it's important that the parties share  
20 this kind of specific information so we can get a handle on  
21 what the problem is, if there is one, and what the problem is  
22 not and we don't have a lot of vague allegations without  
23 really seeing what the parties have. We produced our claim  
24 files redacted per Judge Erickson's order. I'm going to be  
25 meeting and conferring with Mr. Raiter in the future on this

1 issue and that's another one that may come up before you, but  
2 I think we are on track. It's going to be a busy spring, but  
3 I think we'll be able to follow the schedule that's been  
4 outlined.

5 THE COURT: All right. Do we think we have the  
6 numbers of cases that we're going to have, or are there more  
7 in the pipeline? Maybe "pipeline" isn't the right expression  
8 with this case.

9 MR. RAITER: I think there will be more, your  
10 Honor. Without telling you how exactly I know that, I  
11 believe you'll see some more. I don't think you'll see --

12 THE COURT: Are we talking about a few or -- under  
13 a dozen?

14 MR. RAITER: I think under a dozen. I mean, part  
15 of this is that you've got an issue with lawyers not wanting  
16 to start to overlap and be the second or third filed in the  
17 same state, so I've spoken to some lawyers who have called  
18 who have issues. Once they understand there are putative  
19 class actions pending, they basically tell me, "Well, then  
20 I'm going to just stand down for now and see how that plays  
21 out." But there are some other states in which we believe  
22 there are a fair number of failures occurring and we believe  
23 that there will be other cases coming.

24 I don't believe that that would impact this  
25 schedule right now, because I think the approach to the

1 certification in a phased setting really addresses that, that  
2 we can get going on the cases that we have in front of us  
3 that are sort of teed up and then as others come in, they may  
4 or may not raise the same type of issues. But my guess is  
5 you'll see some additional cases, but probably not more than  
6 a dozen.

7 THE COURT: All right.

8 MR. RAITER: The destructive testing protocol --  
9 by way of background, Zurn produced for inspection several  
10 thousand fittings that were in its possession, and Zurn, what  
11 it has done is, as I understand it, by and large, when they  
12 have paid a warranty claim or made what they call a marketing  
13 concession -- and they call a marketing concession something  
14 that comes in as a warranty claim. They don't think it's  
15 covered under their warranty, but they pay it anyway. So I  
16 might call that a warranty claim, they might call it  
17 something different, but --

18 THE COURT: Or a euphemism.

19 MR. RAITER: The claims have been paid in some  
20 setting.

21 A number of these fittings, as we understand it,  
22 are retained by Zurn after Zurn has paid something to a  
23 claimant. Now, that's not completely true, because we also  
24 know that some of these fittings came from us that were  
25 supplied to us by plumbers or homeowners, and then we also

1 know that Zurn may have some fittings in its possession for  
2 which it has not paid a claim or has not been even asked to  
3 pay a claim, but a failed fitting comes in, they look at it  
4 and they retained it. They made those available for  
5 inspection, we made ours available for inspection.

6 We both agree that we need to do more work on a  
7 testing and scientific basis to get to the bottom of exactly  
8 why these fittings are failing, and we have agreed between  
9 ourselves at least that we would each take 45 of the  
10 approximately 2,000 fittings and we would take those 45  
11 fittings for unilateral destructive testing or further  
12 analysis.

13 The agreement that we have is that we would share  
14 the hard data that comes from that testing, so anything my  
15 people do in terms of --

16 THE COURT: The testing is going to be by  
17 different companies?

18 MR. RAITER: It would be by our own experts,  
19 right.

20 THE COURT: And their own experts.

21 MR. RAITER: And their experts, exactly, so each  
22 of our respective experts.

23 Some of this work is really fairly duplicative.  
24 What they'll do will be the same as what we do in a lot of  
25 respects in terms of how you analyze these cracks and what's

1 in the cracks.

2 And what they'll actually do is take the fittings,  
3 probably cut them in half, take a look at them and they start  
4 to do microscopic analysis of the cracking and they focus in  
5 on what is happening with the cracks. They focus in on what  
6 residue is left on the cracks that might help tell us what  
7 the process is and how these things are failing.

8 When you do that, they take photographs. They take  
9 microscopic photographs, they take various kind of chemical  
10 analyses, and we've agreed that we'll share those things with  
11 each other for these 45 fittings. We won't share what our  
12 experts' opinions are, but we'll share hard data and  
13 information that we have so that really --

14 THE COURT: And the pictures, I take it.

15 MR. RAITER: Exactly, including the pictures.  
16 We'll retain those fittings even after they've been  
17 destructively examined. We'll still retain them for anybody  
18 to look at, so their experts later on could look at the 45 we  
19 pulled apart and we can look at theirs. And importantly, the  
20 issue here is really do we have any spoliation problem with  
21 third parties and that's why we've been spending a whole  
22 bunch of time on this.

23 What we have are some fittings where we don't know  
24 the provenance exactly of the fitting, and we've tried to --  
25 where we don't know exactly where they came from, we've tried

1 to set those aside and not include those in the 45 that each  
2 of us have selected. Why my people selected the 45, of  
3 course, is kind of our work product and why they selected  
4 their 45 is kind of work product, but what we decided to do  
5 was try to make sure that later on we don't have some  
6 claimant come forward and now assert a new claim against Zurn  
7 and say, "I want my fitting back and I have a lawsuit against  
8 you" or, "I'm going to bring a lawsuit against you" and they  
9 come to learn that we've spoliated their piece of evidence.  
10 We think we've addressed that by making sure that the  
11 fittings that we have chosen are fittings that we can track  
12 where they were from, who they were from and what the general  
13 resolution was of those claims. That's not completely true.  
14 We have a couple of claims where we don't know the dollar  
15 value. We're not quite sure perhaps what happened with the  
16 claim.

17 I'm not sure, your Honor, that what we're proposing  
18 to do would truly prejudice anyone if we took one of their  
19 fittings and had really pretty high-level review done by  
20 either their people or our people, we retain all of that  
21 information, we retain the fitting itself. I mean, I query  
22 whether there would be a spoliation issue there where there's  
23 any prejudice. But because the majority of these fittings  
24 seem to be from claims that have been resolved by Zurn, I  
25 think some of that fear is reduced, and so what we're

1 proposing to do is take these fittings and do the further  
2 testing.

3 We've also made sure that none of these fittings  
4 are fittings from a class representative's property so that  
5 they're not unilaterally destroying one of my class  
6 representative's fittings and I'm not unilaterally destroying  
7 them either. We're going to probably have to address that  
8 later, what we do with class representative fittings,  
9 because --

10 THE COURT: None of those are going to be  
11 tested --

12 MR. RAITER: None of those are going to be tested  
13 here, certainly none that we could identify. Now, we've been  
14 having to work through Zurn because remember the redaction  
15 issue. I don't know whose fittings these are, so I have to  
16 tell them the number of fittings that I've selected. They  
17 then come back and tell us, "Okay. We think these are fine,"  
18 "We don't think they're okay," and --

19 THE COURT: How far have you come along in that  
20 process?

21 MR. RAITER: Well, I think we have the agreement.

22 THE COURT: The 45s?

23 MR. RAITER: We have the 45s, yeah, and that  
24 requires several requests, because --

25 THE COURT: I understand.

1           MR. RAITER:    -- I've made a request and they say,  
2    "These five don't work.  Pick five more."  So I think we're  
3    there, but what we wanted to certainly do as we have been  
4    working through this for several months, we wanted to make  
5    sure that we were before you and we were at least telling you  
6    that this is what we propose to do and make sure that if you  
7    had some concerns about the process, you let us know that.  
8    And really it boils down to will we have a problem if one of  
9    these claimants comes forward later and claims that we've  
10   somehow prejudiced their ability to bring a claim against  
11   Zurn or anyone else for that matter.

12                        So that's where we are.  I'll let Dan Connolly  
13   speak about the issue as well.

14           THE COURT:   All right.  Mr. Connolly?

15           MR. CONNOLLY:  Yes, your Honor.  I worked with  
16   Mr. Raiter on this topic and as he indicated, it was  
17   difficult.  Just a couple points of clarification.

18                        There are several thousand fittings at the central  
19   repository that we had.  Many if not most of those are not  
20   failed fittings.  They were all returned in bags and bunches,  
21   so there are a much lesser number, in the thousand to \$1500  
22   range that have cracked or leaked.

23                        Mr. Raiter's approximately right that we -- I think  
24   he indicated that we know the provenance of all the fittings.  
25   There are some that we don't.  For instance, there are some

1 plumbers who would take them out of homes and put them in  
2 boxes and not tag them and bag them, so we don't have an  
3 identification.

4 THE COURT: And probably never well.

5 MR. CONNOLLY: And probably never will. So those  
6 were one of the categories of fittings that we deemed were  
7 fair for the 45. So we don't know where they came from and  
8 never will be able to track them down. The same is true --  
9 there were some boxes of fittings that are likely from  
10 resolved claims, but it's uncertain what the provenance of  
11 them was at Zurn. So both sides, there are some unidentified  
12 fittings.

13 The second -- obviously the spoliation claim is one  
14 that could be offered against Zurn, but it's also one against  
15 Plaintiffs, so we're both interested in trying to make sure  
16 that this process is done correctly.

17 Mr. Raiter said that there are none from named  
18 plaintiffs, and that's true -- well, as best we can tell. As  
19 I've indicated to him, there are a couple of fittings that  
20 they selected for testing that are from the state of a named  
21 plaintiff, but we just got that in -- Zurn got it in as a  
22 North Carolina fitting, for instance, and so wasn't able to  
23 say does this belong to a named plaintiff or not. But  
24 presumably again we have the same problem, that we'll never  
25 be able to tell that. They're in the best position to know

1 whether or not their plaintiffs have ever sent in a fitting  
2 and I presume that they don't have a problem with that, so  
3 we're fine with that.

4 The other criteria that we used is, if the  
5 underlying claim was under a thousand dollars, in that event  
6 we were satisfied that the underlying spoliation issue would  
7 not be so egregious as to warrant further litigation.

8 And the other problem that we had is that there are  
9 some claims -- and Mr. Raiter alluded to this -- where there  
10 was never a dollar number set to whatever the underlying  
11 damage was. We're uncertain whether those were resolved. If  
12 we were able to find papers that indicated they were  
13 resolved, we would indicate it's a resolved claim and  
14 obviously there would be no problem there. There are several  
15 fittings that I've identified from Mr. Raiter which we are  
16 unable to tell what the underlying dollar figure is as far as  
17 the claim because the person submitted the claim but didn't  
18 ever identify what the damage was.

19 THE COURT: Okay. I see there are lots of  
20 different categories.

21 MR. CONNOLLY: Yeah, and that's why it was such a  
22 time-consuming process and we've worked together as best we  
23 can on this. And obviously both sides were able to work off  
24 of the states and locales because that was never redacted.  
25 It was just the individual --

1           THE COURT:    Is there anything on the fittings  
2 themselves that helps the tracing process?

3           MR. CONNOLLY:   No.  There's no serial number.  The  
4 only thing that -- identifying marks on it are the  
5 manufacturer and the ASTM standard to which it's  
6 manufactured.

7           THE COURT:    So once you get a fitting, absent that  
8 you have no way of knowing where it went or --

9           MR. CONNOLLY:   If it wasn't tracked or marked in  
10 the initial process, it's impossible to now try to decipher  
11 that, or virtually impossible.

12          THE COURT:    Are they made in batches?

13          MR. CONNOLLY:   They are made in batches in  
14 different countries, but they're not coded for the batches.  
15 They are coded by the manufacturer.  The overseas  
16 manufacturer does provide some stamping on it that allows you  
17 to identify --

18          THE COURT:    How many different locations in the  
19 world are they made in?

20          MR. CONNOLLY:   Three?

21          MR. O'NEAL:    I think there have been five.

22                         And also, initially the fittings were machined by  
23 Zurn PEX itself down in Texas, but starting in around 2000  
24 they started entering into outsourcing of the manufacturing.

25          THE COURT:    Okay.  All right.  I can see the

1 problems. It sounds like you're moving the right direction,  
2 though.

3 MR. RAITER: I'm not certain how you'd like to  
4 address this. Do you -- should we proceed as we have agreed?  
5 Do you want us to present something to the Court so that you  
6 would issue an order approving the process that we've  
7 discussed?

8 THE COURT: Well, I suppose that there's some  
9 safety to you in my approving the process from future  
10 spoliation claims, so, yeah, it seems to me that probably  
11 would be a good idea for you to describe your process much as  
12 you have today and I'll sign off on it and I think that seems  
13 to make sense. Obviously what I will be looking for is the  
14 same thing you are, anyone that has a future claim, are they  
15 going to be able to get their fitting back, and to the extent  
16 we can trace it to where it was used, those probably aren't  
17 good ones for the destructive testing. I mean, it looks to  
18 me that you've done a good job of selecting categories where  
19 there'd be the least exposure to claims and that seems to  
20 make sense.

21 MR. RAITER: Yeah. I think the issue --

22 THE COURT: But I'm also, I guess -- I want to  
23 throw in -- and I'm sure that this has been guiding it --  
24 that it should be some sort of random sampling too so that if  
25 they all happen to fit in that category, but they were all

1 manufactured at one spot, that doesn't seem to be helpful.

2 MR. RAITER: As I've indicated, we made our  
3 selections with various goals in mind and --

4 MR. O'NEAL: It wouldn't be fair to characterize  
5 it as random, it's quite intentional, but I think both sides  
6 have an interest in --

7 THE COURT: Covering the universe sort of.

8 MR. RAITER: Yeah. And we know which fittings  
9 they selected, they know which fittings we selected, so we're  
10 going to have 90 fittings.

11 THE COURT: I bet you can figure out each other's  
12 patterns or strategies for picking certain fittings, but  
13 we'll leave that for another day.

14 MR. RAITER: When you see the photos of them, your  
15 Honor, it's not difficult.

16 THE COURT: All right. I'm guessing. All right.

17 MR. CONNOLLY: Your Honor, would you like on the  
18 proposed order that we send in to identify the specific  
19 fittings? We have developed a numbering scheme. Would you  
20 like us --

21 THE COURT: You can just put it in an attachment,  
22 I guess. You know, I don't need much explanation.

23 I take it you have a document somewhere that just  
24 lists all the numbers.

25 MR. CONNOLLY: We've exchanged it back and forth.

1 I'm just wondering the level of detail that your Honor would  
2 like.

3 THE COURT: I guess it doesn't really matter  
4 greatly to me, but it seems that you would want to have some  
5 more protection or cover of what I know so I'm willing to  
6 sign off on. If you give me the list of which ones selected,  
7 each of the 45, then I'll say that those have been approved  
8 for testing and I think that's about all I can do.

9 MR. CONNOLLY: Marvelous. Thank you, your Honor.

10 THE COURT: Okay. Where do we stand then?

11 MR. RAITER: I think that's it, your Honor.

12 THE COURT: I don't have to look at these  
13 pictures --

14 MR. RAITER: No, the pictures were to just help  
15 illustrate. What we're ultimately going to do is we're going  
16 to pull those cracks apart and look --

17 THE COURT: Is any crack or break considered a  
18 failed fitting? Does the crack have to go all the way  
19 through and impair function, or am I touching on an issue  
20 that's unresolved?

21 MR. RAITER: I think it's unresolved technically,  
22 but we're looking at fittings that are before -- the fittings  
23 that are there are either there because they themselves have  
24 leaked -- and why they leaked, of course, is a question. Was  
25 it because of a cracking process or a dezincification process

1 or was it something else, did they just put a bad crimp on it  
2 and they didn't get a good seal in the first place and it  
3 leaked. Or you've got fittings there that we've looked at  
4 that come from homes at which other fittings leaked.

5 So what we have seen is that there are varying  
6 stages of failure here. These cracks don't develop the  
7 moment that you put the fitting in. They start and they  
8 progress. So you can have a fitting that has not technically  
9 leaked yet, but when you examine it, it has cracking under  
10 way and just hasn't made its way to the outside diameter of  
11 the fitting.

12 THE COURT: Okay. I think I have a picture of  
13 that.

14 Mr. O'Neal?

15 MR. O'NEAL: I like that question. May I respond  
16 to it?

17 (Laughter)

18 MR. O'NEAL: This does get into something we're  
19 going to be talking about, I anticipate, if we have to come  
20 back to you on the discovery question that I mentioned and  
21 will certainly be talking about in class certification.

22 What is a failure, what is a claim, all these  
23 things are terms which are used loosely and result in lots  
24 and lots of numbers being thrown around and we're going to  
25 try and wrestle those to the ground.

1           As Mr. Connolly indicated, many of the fittings  
2           that are in the depository don't at least have a visual sign  
3           of a crack or a leak. If a crack or a leak is evidenced,  
4           then you need to examine, we will say -- you will hear me say  
5           this -- on an individual basis to determine the cause and the  
6           mechanism of failure.

7           THE COURT:    So I might get to go through this  
8           fitting by fitting sort of akin to the recount and vote by  
9           vote and category by category.

10          MR. O'NEAL:   Well, it probably won't take as long  
11          as the recount.

12          THE COURT:    I have all sorts of four-week periods  
13          that I can set aside.

14          All right. Gertie, we need about a 60-day-out date  
15          for the next conference.

16          THE CLERK:    How about Tuesday, April 21st at 9.

17          MR. O'NEAL:    I'm sorry. April what?

18          THE CLERK:    Tuesday, April 21st at 9.

19          MR. RAITER:    Fine here.

20          THE COURT:    Okay. April 21st. Was that 9?

21          THE CLERK:    Nine a.m.

22          THE COURT:    And with the change that we have put  
23          on the record today, I'll issue the pretrial order and that  
24          date -- Gertie, we have this on a form we can --

25          THE CLERK:    I can insert it.

1           THE COURT:    Okay.  Will you send it to the  
2 chambers e-mail?

3           MR. RAITER:    I will.

4           THE COURT:    All right.  We can make the change if  
5 you've got the form to do it from there.

6           All right.  Anything further?

7           (No response)

8           THE COURT:    All right.  See you in April.

9           COUNSEL:     Thank you, your Honor.

10          (Proceedings concluded at 9:31 a.m.)

11                       \* \* \* \* \*

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13                       **C E R T I F I C A T E**

14

15           I, **TIMOTHY J. WILLETTE**, Official Court Reporter  
16 for the United States District Court, do hereby  
17 certify that the foregoing pages are a true and  
18 accurate transcription of my shorthand notes,  
19 taken in the aforementioned matter, to the best  
20 of my skill and ability.

21

*/s/ Timothy J. Willette*

22

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