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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED Docket No. 09-MD-2047
DRYWALL PRODUCTS LIABILITY New Orleans, Louisiana
Tuesday, August 11, 2009

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript
produced by computer.

P R O C E E D I N G S

(TUESDAY, AUGUST 22, 2009)

(STATUS CONFERENCE PROCEEDINGS)

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THE COURT: Be seated, please. Good morning, ladies and gentlemen. Call the case, please.

THE DEPUTY CLERK: MDL No. 2047, in re: Chinese Manufactured Drywall Products.

THE COURT: Liaison counsel make their appearance for the record, please.

MR. HERMAN: Good morning, Judge Fallon, Russ Herman for plaintiffs in MDL 2047.

MR. MILLER: Kerry Miller for defendants, your Honor.

THE COURT: I am pleased to advise that we have several judges on the line: Judge Joseph Farina from Miami, Eleventh Judicial District; Judge Robert Rosenberg from Fort Lauderdale, Seventeenth Judicial District; and Judge Glenn Kelly, West Palm Beach, Fifteenth Judicial District.

Gentlemen, I appreciate your being with us today. I am going to look forward to working with you as a team, and hopefully together we can work on this matter.

I met with liaison counsel to talk about the agenda. I'll take them in the order as it's given.

First, Pretrial Orders.

MR. HERMAN: May it please the court, good morning, your

09:03:42 1 Honor, and good morning your Honors.

09:03:43 2 With respect to the status conference this morning, Item
09:03:50 3 No. 2, Property Inspections, we've had numerous meetings with
09:03:57 4 defense counsel. We're in progress, we expect to provide to the
09:04:05 5 court for review no later than Thursday of this week an agreed to
09:04:13 6 protocol for inspection and to get it to the five or six companies
09:04:19 7 that were interviewed mutually by plaintiffs and defendants on
09:04:23 8 Friday and ask them to please expedite their review and get back to
09:04:29 9 us.

09:04:30 10 We plan to agree on a discrete number of initial
09:04:36 11 inspections that will move rapidly, probably between 30 and 50 with
09:04:43 12 your Honor's approval. And then look at whether the protocol is
09:04:48 13 working and whether the company that's been contracted is doing the
09:04:52 14 job. We will make sure that the company mutually selected or
09:04:58 15 companies mutually selected are available to meet with your Honor
09:05:03 16 on accord with your schedule before the inspections begin.

09:05:06 17 MR. MILLER: Your Honor, I think that's all correct.
09:05:09 18 With respect to the inspection companies, just a few more details
09:05:13 19 on what Mr. Herman had to say.

09:05:16 20 THE COURT: Speak into the mike so the judges can hear
09:05:19 21 you.

09:05:20 22 MR. MILLER: I think the parties jointly believe that the
09:05:21 23 inspection company needs to be court approved so whereby the
09:05:24 24 parties may make suggestions to the court. Ultimately the
09:05:28 25 inspection company needs to be court approved and we anticipate

09:05:34 1 inserting the name of the inspection company into the pretrial
09:05:34 2 order that's going to govern the inspections.

09:05:35 3 THE COURT: I've had several meetings with the parties on
09:05:40 4 this issue. My feeling is at this point I think all would profit
09:05:45 5 by understanding the identification of the issues and the parties
09:05:50 6 involved. I think we need a threshold inspection protocol to
09:05:55 7 determine whether or not the property in question contains Chinese
09:06:00 8 manufactured drywall; secondly, the name of the manufacturer,
09:06:07 9 distributor and installer of that particular drywall; third, the
09:06:12 10 nature and extent, if any, of the impact on the surrounding
09:06:18 11 property. And that's the thrust of this initial inspection.

09:06:22 12 I need a protocol by the end of this week. I will, of
09:06:26 13 course, forward it to the state judges for their inspection and
09:06:30 14 input. And also when you give me the names of the inspectors, I'll
09:06:36 15 also send it to my colleagues in state court for their input.

09:06:41 16 I think this case is going to profit from understanding
09:06:46 17 and getting our hands around as quickly as possible what we're
09:06:51 18 dealing with. We need to know whether or not a particular property
09:06:58 19 has within it Chinese manufactured drywall. And if so, the extent
09:07:03 20 of that drywall. It seems that this drywall has also been sold
09:07:09 21 together with non-Chinese drywall. So not all homes that have some
09:07:16 22 Chinese drywall, have all of the drywall is Chinese manufactured.
09:07:22 23 We need to know that, we need to know how much is involved, we need
09:07:27 24 to know who manufactured it, we need to know who distributed it, we
09:07:30 25 need to know who installed it, and also we need to know at least

09:07:34 1 visually the nature and extent of the collateral damage.

09:07:39 2 So once that is ascertained, and I would hope that that
09:07:43 3 could be ascertained within 30 or 60 days, I am looking for an
09:07:47 4 initial read of 25, 30 homes, take a look at the protocol, you may
09:07:54 5 have to tweak it at that time, and then let's step it out to 1,500,
09:07:58 6 2,000 homes throughout the country. And then from that group, both
09:08:04 7 the federal court, as well as the state courts may find it
09:08:07 8 advisable to select some cases and try those particular cases. At
09:08:13 9 least that's my thought presently.

09:08:15 10 In addition, I asked counsel to get together and give to
09:08:22 11 us a plaintiff and defendant profile form. The traditional method,
09:08:36 12 as all of us know, is to draft a large set of interrogatories and
09:08:36 13 serve those interrogatories and wait for 30 days and then you get
09:08:37 14 them back and you deal with them back and forth. We don't have
09:08:40 15 that time in this particular case, so we have to shortcut that and
09:08:44 16 deal with profile forms instead of detailed sets of
09:08:51 17 interrogatories. Doesn't mean that you can't file interrogatories
09:08:53 18 later, it simply means that there's some information that you need
09:08:58 19 now and we can't wait 30 and 60 days to get that information. So
09:09:04 20 I've instructed counsel to get together and prepare profile forms.

09:09:08 21 Let me hear from the parties on the progress of those
09:09:11 22 profile forms.

09:09:12 23 MR. HERMAN: May it please the court, your Honor, we've
09:09:15 24 had a number of meetings. We expect to have more meetings as soon
09:09:20 25 as this status conference is concluded and to send a representative

09:09:24 1 from plaintiffs and whomever liaison counsel for defense selects
09:09:30 2 with a profile forms for you to review. And if your Honor is
09:09:34 3 satisfied with them to enter an order.

09:09:36 4 We have one issue outstanding, we expect that we're going
09:09:39 5 to resolve it very shortly as soon as this is concluded. We're
09:09:45 6 well aware your Honor is in trial, and so we will try not to
09:09:49 7 interrupt your Honor while you're conducting other business.

09:09:52 8 I will say this, there was some dispute as to who was
09:09:56 9 going to pay, how they were going to pay. The PSC, Plaintiffs
09:10:03 10 Steering Committee met last night, and we met with some of our
09:10:06 11 cochairs, we are going to pay the initial cost of the 25
09:10:10 12 inspections. That does not mean that we are not going to seek
09:10:13 13 reimbursement at some point, it doesn't mean that we agree for the
09:10:16 14 next thousand that we're going to pay. But in order to get this
09:10:20 15 show on the road, the plaintiffs are going to pick up the costs of
09:10:24 16 the inspections, whatever they are.

09:10:26 17 THE COURT: Okay. With regard to the profile forms, let
09:10:28 18 me have those by the end of the week in final form. So I'll put
09:10:32 19 that out in an order and we can distribute the profile forms and
09:10:35 20 we'll get them back as quickly as possible.

09:10:38 21 MR. MILLER: Judge, Kerry Miller on behalf of the
09:10:40 22 defendants. On the issue of the profile forms, just one
09:10:42 23 supplemental point to what Mr. Herman had to say.

09:10:45 24 I think we are close to finalizing those documents, I
09:10:48 25 have every confidence in the world they will be finalized in the

09:10:56 1 next day or so. I think in the course of our discussions yesterday
09:10:56 2 there was an agreement that once they are finalized, submitted to
09:10:57 3 the court for entry, that as part of the court's order authorizing
09:11:03 4 the issuance of those profile forms that the return date would be
09:11:06 5 15 days.

09:11:07 6 THE COURT: Right.

09:11:08 7 MR. MILLER: Because we are going to try to move this
09:11:10 8 fast, get those profile forms answered quickly. We understand from
09:11:13 9 plaintiffs and defendants who come in subsequent to that it's going
09:11:16 10 to be a rolling production. But for the group that's here right
09:11:19 11 now, 15 days is what we're looking for to get the responses in.

09:11:22 12 THE COURT: And that dovetails in with the inspections
09:11:25 13 because I think the profile forms will help you understand from the
09:11:29 14 defendant's standpoint what the complaints are so you will be able
09:11:33 15 to at least be aware of those when you do the inspections.

09:11:35 16 MR. MILLER: In terms of what the court identified as the
09:11:38 17 main issues for the thrust of discovery, the one, the two, and the
09:11:43 18 three, it's the profile forms and the inspections together in
09:11:45 19 agreement that's hopefully going to answer those questions.

09:11:48 20 THE COURT: I think that's right. Also while you're
09:11:50 21 doing the inspections you're going to come across some property,
09:11:53 22 obviously, and some samples will be taken. The issue of what to do
09:11:57 23 with those samples is the next item on the agenda, the Preservation
09:12:01 24 Order. This type of material you need to talk to the people to
09:12:05 25 find out how you store it. You can't stick it in a plastic bag,

09:12:10 1 you can't put it in your pocket and expect that the chain of
09:12:14 2 custody will be maintained.

09:12:17 3 So we need to deal with a preservation order and get that
09:12:25 4 to me so I can send it to the state judges and hopefully that same
09:12:30 5 chain of custody will satisfy their requirements as it will for the
09:12:35 6 federal requirements.

09:12:36 7 You won't have to go back in and take other samples, the
09:12:40 8 samples will be valid samples -- I am not saying you have to test
09:12:44 9 them now, that may come later, but the samples will be validly
09:12:48 10 taken, validly stored, and then able to be tested at another time.
09:12:55 11 But the chain of custody is what I am focussing on with the
09:12:58 12 preservation order. Anything on that?

09:13:03 13 MR. HERMAN: We've exchanged three different versions of
09:13:05 14 a preservation order and we're continuing to work on it, your
09:13:08 15 Honor. We'll have an order to you certainly before inspections
09:13:12 16 begin.

09:13:14 17 THE COURT: All right.

09:13:14 18 MR. HERMAN: Your Honor, the next issue I believe on your
09:13:19 19 Honor's agenda is No. 5 which would be State Court Trial Settings.

09:13:30 20 THE COURT: Yes, right. Anything on that from either the
09:13:30 21 plaintiffs or defendants?

09:13:30 22 MR. HERMAN: From plaintiffs we will attempt to track
09:13:32 23 removals and remands, your Honor, and I believe the defendants will
09:13:36 24 advise, as is customary, at each status conference the trial
09:13:42 25 settings in state and federal court, as well as motions that are

09:13:48 1 pending.

09:13:50 2 And, your Honor, as I understand it, your Honor is
09:13:53 3 considering a period of time in which no motions will either be
09:14:01 4 filed or heard.

09:14:07 5 THE COURT: Two points on that. The reason that I need
09:14:09 6 to know about the state court settings is so that I am not
09:14:15 7 inconsistent with their settings. I don't want to set a trial on a
09:14:19 8 date that they have a trial set, so I want to be conscious of that.
09:14:24 9 And if they have something coming up, I need to know it so I don't
09:14:27 10 get in the way of it. That's the reason for that.

09:14:30 11 With respect to motions, my thinking with motions is that
09:14:34 12 we've got to stop everything, the motions initially, just to get a
09:14:42 13 handle on it. In this case we've got several thousand of claims
09:14:48 14 that we know about and maybe many thousands more. We can't have
09:14:55 15 thousands of motions being filed with people having to respond to
09:15:01 16 the motions within a certain period of time or have their rights
09:15:05 17 prejudiced. So I am going to be issuing an order freezing motions
09:15:12 18 and then I am going to instruct the parties to get together a list
09:15:16 19 of motions for me, prioritize the motions, and then I'll set a
09:15:21 20 briefing schedule on those motions.

09:15:23 21 I need them to direct their attention on the key motions
09:15:27 22 as opposed to being all over the place. So we're going to get to
09:15:35 23 the motions and we're going to get to them expeditiously, but I
09:15:39 24 need to focus on the key motions first rather than motions that can
09:15:46 25 wait for a week or two.

09:15:48 1 The State/Federal Coordination. My thinking there is
09:15:54 2 that I talked to liaison counsel for both sides, lead counsel for
09:15:58 3 both sides to suggest to them that they could get together for me
09:16:04 4 some names of individuals who are involved in the state court
09:16:07 5 proceedings and give me some input on a committee to appoint for
09:16:19 6 state court liaison purposes, and I'd like the committee to feel
09:16:24 7 free to come to every meeting, at least their chairs if not the
09:16:29 8 whole committee, the state court liaison committee, and I want to
09:16:35 9 hear from them as to what their needs are, what their problems are,
09:16:40 10 that we can deal with them from the federal vantage point. So I
09:16:44 11 will be hearing from counsel before the next meeting on that, on
09:16:52 12 that issue.

09:16:55 13 THE COURT: Discovery Issues is the next item.

09:16:57 14 MR. HERMAN: Your Honor, with respect to coordination, we
09:17:03 15 understand that there are a number of defense counsel that have
09:17:05 16 signed up and haven't entered an appearance, and plaintiffs would
09:17:10 17 not object to, if they are required to enter an appearance, would
09:17:14 18 not object to your Honor considering that they don't have to file
09:17:18 19 responsive pleadings at this point but at least we would know which
09:17:24 20 party is represented by whom.

09:17:26 21 THE COURT: I am going to have to act on that, folks. My
09:17:33 22 problem is is that I need to know who is in the litigation, and
09:17:41 23 from that standpoint the people who have been sued and who have
09:17:46 24 been served, those individuals have to make some appearance. And
09:17:52 25 if they don't make the appearance, I am going to instruct the

09:17:58 1 plaintiffs who have sued them to file with me a motion for default
09:18:02 2 judgment and I will have to act on that.

09:18:05 3 So I need to have some appearance by those individuals,
09:18:11 4 and I need that done before the next meeting, either file a motion
09:18:18 5 for default, I'm talking about individuals who are defendants who
09:18:23 6 have been served who have not answered yet. It's time at least for
09:18:31 7 them to make an appearance.

09:18:34 8 Any matters on Discovery Issues?

09:18:36 9 MR. MILLER: Your Honor, on that very point, on making
09:18:38 10 the appearance by all defendants who have been served in the
09:18:41 11 various MDL cases. Just as a point of reference, in Pre-Trial
09:18:46 12 Order No. 1 entered by your Honor back in July, section 8 is titled
09:18:50 13 Extension and Stay, and that's what provides, at least at this
09:18:54 14 point an unlimited extension of time to even file a notice of
09:18:59 15 appearance. So that would be the section that needs to be modified
09:19:02 16 and get the parties who have been served at least file an
09:19:06 17 appearance in the litigation so we know who they are.

09:19:08 18 As we work on these discovery issues and progress on
09:19:11 19 profile forms and inspection sheets, if you're in the case, the
09:19:13 20 parties jointly think, at least at this point, you need to get
09:19:16 21 those profile forms, you need to be involved in the inspections,
09:19:19 22 and you need to move forward. So we think it's critical that that
09:19:23 23 paragraph get modified.

09:19:24 24 THE COURT: I just modified it, I verbally modified it.
09:19:27 25 It will go into my minute entry, that's already been done two

09:19:35 1 minutes ago.

09:19:35 2 MR. HERMAN: May it please the court, with the next item
09:19:35 3 on your agenda, Item No. 7, Discovery Issues, we are drafting,
09:19:43 4 plaintiffs are drafting a master set of discovery and we should be
09:19:50 5 ready to file that within the next two weeks.

09:19:52 6 We will be filing within the next two weeks a motion and
09:19:57 7 brief for the conduct of early 30(b)(6) depositions. And we will
09:20:07 8 give defendant liaison counsel a copy of any discovery we intend to
09:20:13 9 initiate before it's filed so that we can meet and confer, and
09:20:20 10 hopefully, your Honor, by the time we meet next in a status
09:20:24 11 conference, that issue will either be ripe for your Honor's
09:20:28 12 consideration or it will be resolved.

09:20:31 13 THE COURT: Let me comment on that. On both sides from
09:20:35 14 discovery, before you file discovery, I need you to file it with
09:20:38 15 each other or send it to each other in draft form and meet and
09:20:42 16 confer on it. You don't have to agree, but at least you ought to
09:20:47 17 meet and confer on it. And then after you've met and conferred,
09:20:50 18 put it in final form and send it to the court. That's not going to
09:20:54 19 delay it because I don't want you to meet and confer and get
09:20:58 20 together in a week or two. When you send it in draft form, meet
09:21:03 21 within an hour or two and talk about it and then file it with the
09:21:07 22 court.

09:21:08 23 But meet and confer before you file discovery matters
09:21:11 24 with the court so that I'll know that whatever the disagreement is
09:21:17 25 you've at least tried to resolve it first.

09:21:21 1 Next item is the FOIA Issues.

09:21:26 2 MR. HERMAN: Your Honor, I apologize, I've made an error
09:21:29 3 in connection with the status report. It should have included your
09:21:33 4 Honor's web site, www.laed.uscourts.gov/drywall/drywall.htm. Let
09:21:53 5 me repeat it, www.laed.uscourts.gov/drywall/drywall.htm, which then
09:22:03 6 would allow any interested party to access your conferences and
09:22:10 7 your rulings.

09:22:11 8 THE COURT: Right. And a shortcut is the
09:22:13 9 www.laed.uscourts.gov. When you pull the court's web site for the
09:22:20 10 Eastern District, you'll see on the left-hand side a number of
09:22:23 11 buttons and click on the Drywall button and I'll come up that way,
09:22:27 12 too.

09:22:29 13 In that connection, I'll post everything on there for
09:22:32 14 everyone who is interested in this litigation, whether it's
09:22:37 15 litigants or lawyers or anyone else public, they have access to it.
09:22:48 16 You can keep in touch with it, I have current events on it, I have
09:22:48 17 all of the orders, all of my opinions will be posted on it. Even
09:22:52 18 the transcripts from these hearings in due course will be posted on
09:22:59 19 that website.

09:23:09 20 MR. HERMAN: Your Honor, under the Freedom of Information
09:23:11 21 Act, plaintiffs have filed a number of requests to various
09:23:15 22 governmental agencies, both federal and state, and will be filing
09:23:19 23 more. We have not had a problem in terms of return at this
09:23:27 24 juncture. In the event we do have a problem, we will report to the
09:23:34 25 court by the next status conference and if necessary ask the court

09:23:40 1 to assist in having FOIA returns.

09:23:45 2 THE COURT: Both sides have a right to have that. If you
09:23:48 3 don't get cooperation, let me know and I'll issue the appropriate
09:23:52 4 order for the person to come down here and tell us why.

09:23:58 5 MR. MILLER: Your Honor, while on the topic, Russ, if you
09:24:01 6 wouldn't mind sharing with me a copy of the FOIA requests that have
09:24:05 7 been issued.

09:24:05 8 MR. HERMAN: I don't see any problem with sharing FOIA
09:24:08 9 requests. And we would like any of the defense also to provide us
09:24:16 10 copies of their FOIA requests; and we're also willing to exchange
09:24:20 11 the materials that we receive, I think we can work cooperatively to
09:24:25 12 have that process accelerated.

09:24:27 13 MR. MILLER: Sounds good from our end, your Honor.

09:24:30 14 THE COURT: Okay. Next item is Trial Settings in Federal
09:24:32 15 Court.

09:24:35 16 What my thinking is on that is that after the next
09:24:39 17 meeting, I am going to look to you all to give me each ten cases
09:24:45 18 that you're focussing on, and those ten cases will be cases that
09:24:53 19 will form the initial pool from which we'll try the cases. I will
09:24:57 20 give you an opportunity to conduct some discovery, some pertinent
09:25:04 21 case specific discovery on those ten cases, and then I'll ask you
09:25:07 22 to come up with five from each side. From the five I'll give each
09:25:13 23 side an opportunity to veto two selections.

09:25:19 24 We'll come up with three each, that will be six, we will
09:25:22 25 try to try five cases, we will have one as a swing in the event one

09:25:27 1 folds. And I hope to start those cases the beginning of next year,
09:25:32 2 January so that will give you four months or so to get ready for
09:25:39 3 them and we'll have an opportunity to look at the cases.

09:25:43 4 All of us who have been doing this for awhile know that
09:25:46 5 you can think about a case, you can plan a case, you can visualize
09:25:55 6 a case, but until you put a case on, you don't know what that case
09:25:56 7 is about, just the way it works. From those bellwether trials
09:26:02 8 you'll find out how much it costs to try the case, what's involved
09:26:06 9 in the trial of the case, how the juries respond to those cases,
09:26:13 10 and it'll give you some input, hopefully, that will give you an
09:26:17 11 opportunity to look at this case from a global standpoint.

09:26:21 12 But that's my current thinking. But I will meet with the
09:26:23 13 parties to discuss it with them before taking any action. And I
09:26:29 14 will also coordinate as much as I can with the state courts so that
09:26:35 15 I get their consent and cooperation also. Yes.

09:26:41 16 MR. MILLER: Judge, if I may on that point of trial
09:26:43 17 settings. That's why the defendants think the discovery moving
09:26:48 18 forward needs to be focused two things: No. 1, the selection of
09:26:51 19 the bellwether plaintiffs. The plaintiffs are at an advantage,
09:26:54 20 they know their clients better than we do. That's why the profile
09:26:58 21 forms and the inspections need to go forward so the defendants have
09:27:01 22 the ability to evaluate the cases and select their ten.

09:27:03 23 So that's why we think discovery needs to be focused
09:27:05 24 that. And of course once the 20 cases are selected, there can be
09:27:09 25 more intense discovery on those cases.

09:27:11 1 THE COURT: That's correct. And I agree with that.

09:27:14 2 With the ten cases, too, I ask that counsel in good faith
09:27:18 3 try to select cases that are across the spectrum. I mean, it
09:27:23 4 doesn't make any sense to take the same case and try that ten times
09:27:27 5 or five times, it doesn't make any sense to do that. So I am going
09:27:31 6 to look to you for some guidance and some suggestions as to how we
09:27:34 7 get a sampling of what we're dealing with.

09:27:37 8 MR. HERMAN: Your Honor, there is, as natural, to have
09:27:43 9 some disagreement between sides in a case. We think that the
09:27:46 10 defendants know a lot more about our clients than we know, having
09:27:51 11 conducted somewhere between 400 and 800 inspections directly with
09:27:56 12 clients in Florida and elsewhere. Notwithstanding that, if we are
09:28:02 13 to really have a spectrum of cases, then we need expedited 30(b)(6)
09:28:09 14 depositions in-depth to determine which suppliers, which members of
09:28:15 15 the distribution chain are going to be involved in those eventual
09:28:20 16 five or six cases that are going to be tried.

09:28:22 17 So we have a disagreement as to what the limit would be
09:28:26 18 in 30(b)(6), we'll try and work it out. We have to provide the
09:28:36 19 usual list of subjects, but I note for your Honor and the other
09:28:37 20 judges, we do have a disagreement on this issue.

09:28:39 21 THE COURT: All right. Okay. Next item is Filings in
09:28:44 22 the MDL.

09:28:46 23 MR. HERMAN: Your Honor, there have been intense
09:28:49 24 discussions which have become even more intense in the last three
09:28:53 25 days. It would be premature for me to speak other than to say that

09:29:04 1 folks on both sides are encouraged that there may be, with the
09:29:07 2 consent of their clients, a waiver of service under some
09:29:13 3 circumstances with a reservation of certain defenses and direct
09:29:18 4 filing in the MDL with a reservation as to venue and other
09:29:25 5 defenses. And hopefully that will happen because that will allow
09:29:29 6 us, both sides, a better opportunity in the MDL to explore the
09:29:38 7 issues.

09:29:40 8 THE COURT: Anything from the defendants on that?

09:29:43 9 MR. MILLER: I think Russ's recitation is right. There
09:29:47 10 are certain defendants I think right now that are amenable to
09:29:50 11 direct filing in the MDL while others may not be, but are
09:29:54 12 evaluating the issue.

09:29:55 13 With respect to service, again, the same. I think there
09:29:55 14 are certain defendants, particularly domestic defendants that are
09:29:58 15 capable of accepting service. I know some of the foreign
09:30:01 16 defendants are considering the issue. We hope to be back with your
09:30:04 17 Honor at the next conference on it.

09:30:05 18 THE COURT: It's important that we get everybody in as
09:30:08 19 quickly as we can, because the train is leaving, folks, and you're
09:30:12 20 not going to be able to catch up to it. So the MDL is going to get
09:30:16 21 it eventually, you might as well shortcut it. It's going to take
09:30:21 22 about two months to get from filed in a state through the process
09:30:25 23 to this MDL. If you can detour and come in initially reserving
09:30:31 24 your rights, I don't expect anybody to give up any rights, but
09:30:36 25 reserving your rights for all of the defenses, all of the

09:30:44 1 applicable laws, and where you're going to try the case, things of
09:30:49 2 that sort and any problem with it. But I think it's to everybody's
09:30:54 3 advantage that you get into this if you're going to go with the MDL
09:30:59 4 that you get in as quickly as possible.

09:31:01 5 Tolling Agreements/Suspension of Prescription.

09:31:08 6 MR. HERMAN: We have no agreement as to tolling in
09:31:10 7 Louisiana. Of course, what we are entertaining doing is filing a
09:31:16 8 large complaint with all plaintiffs in alphabetical order in
09:31:23 9 federal court and asking the court to put it on the suspense
09:31:26 10 docket, either directly or by class action.

09:31:29 11 As to Tolling Agreements, there is no agreement on
09:31:31 12 tolling at this point.

09:31:32 13 With respect to class actions, your Honor, the PSC has
09:31:43 14 requested consent from defendants for a waiver of local Rule 23B
09:31:44 15 requiring motions to be filed moving for certification as required
09:31:51 16 by that rule.

09:31:54 17 THE COURT: All right. Anything on that?

09:31:56 18 MR. MILLER: Yeah, I think there's consent on defendants
09:31:58 19 to go ahead and waive that local rule.

09:32:02 20 THE COURT: I will grant that. I am not going to be
09:32:05 21 dealing with certifications within a short period of time like that
09:32:08 22 in a case like this.

09:32:11 23 MR. HERMAN: May it please the court, on Motions in the
09:32:13 24 MDL, there is an application for the homebuilders. I might note
09:32:20 25 that the only attorney older than Arnold Levin in the courtroom is

09:32:26 1 subject to that motion.

09:32:28 2 MR. LEVIN: Phil, welcome to our court.

09:32:33 3 MR. WITTMANN: I am hiding back here, Judge.

09:32:35 4 THE COURT: We can't see you, Phil, so you must be in it
09:32:41 5 some way.

09:32:42 6 I got that application and I am going to grant that. And
09:32:45 7 I look to the committee to give me some suggestions as to lead
09:32:49 8 counsel.

09:32:53 9 MR. HERMAN: We will be pleased to work with whomever is
09:33:02 10 chosen and directed by your Honor.

09:33:05 11 THE COURT: Anything more on motions? I think we've
09:33:09 12 talked about that earlier.

09:33:12 13 MR. MILLER: I think so, your Honor. The idea is that a
09:33:13 14 list is going to be submitted jointly by Friday on motions we think
09:33:17 15 can be prioritized and handled either with little discovery or with
09:33:20 16 discrete amounts of discovery.

09:33:22 17 THE COURT: That's fine. Insurance Issues.

09:33:24 18 MR. HERMAN: There are no current issues other than, I
09:33:27 19 believe, there is one dec action, I will ask lead counsel for
09:33:31 20 plaintiffs.

09:33:33 21 MR. LEVIN: There are two dec actions in Virginia, your
09:33:40 22 Honor, and one has been noted as a tag along, the other will be
09:33:43 23 noted as a tag along. There is one homeowners suit against AIG in
09:33:52 24 the Middle District of Florida, that will be tagged along today.

09:33:59 25 MR. HERMAN: Your Honor --

09:34:00 1 MR. MILLER: On the point of insurance issues, it is my
09:34:05 2 belief and understanding that that question is part of the defense
09:34:09 3 profile forms, identification of insurers.

09:34:12 4 THE COURT: I think it is.

09:34:13 5 MR. MILLER: And if it is, as we all think that it is,
09:34:18 6 that would all be answered within 15 days. I would hope that if
09:34:21 7 there's going to be actions filed against those insurers if they're
09:34:24 8 filed after that 15-day period because, as you put it out, the
09:34:27 9 train is leaving the station.

09:34:28 10 MR. HERMAN: The plaintiffs will withhold filing any
09:34:30 11 insurer amendments to complaints or new complaints until after the
09:34:36 12 15 days and we've met and conferred. Its plaintiffs' intention to
09:34:48 13 chart policies and different types of policies of various parties,
09:34:48 14 that's another reason we feel we need 30(b)(6), because of the
09:34:52 15 chain of distribution they have different types of policies issued
09:34:57 16 by different insurers with different clauses.

09:35:00 17 So we will be happy to refrain from filing any direct
09:35:07 18 actions against insurers or amendments against insurers until the
09:35:11 19 15 days have passed and we've met and conferred.

09:35:15 20 THE COURT: Also with regard to depositions. I've done
09:35:18 21 this in another case or two, there is an opportunity to do
09:35:25 22 depositions online. There's some outside providers that afford
09:35:31 23 that service.

09:35:33 24 In the cases that I've used it on, you log on with your
09:35:38 25 social security number, it's prearranged, the depositions are taken

09:35:42 1 online; that is to say, two people, one from the plaintiff, one
09:35:47 2 from the defendant or other parties appear, one individual has a
09:35:54 3 lap top, the other asks the questions. People who want to
09:35:59 4 participate in the deposition participate by pulling it up on their
09:36:07 5 computer. On the right-hand side of the screen is the running
09:36:09 6 transcript, on the left-hand side is voice and image. The
09:36:12 7 plaintiffs have their chat rooms, defendants have their chat rooms,
09:36:16 8 the Chinese wall separates them. You can communicate back and
09:36:21 9 forth. If Hawaii has something or New York has something or
09:36:23 10 someone else has something, you can communicate that way, and it
09:36:28 11 comes up and you click on, you click on the screen next to the
09:36:32 12 questioner.

09:36:34 13 At the appropriate time he elbows him and says New
09:36:37 14 Orleans wants this, Miami wants this, and so forth and you do it
09:36:42 15 that way.

09:36:43 16 With this number of people, it works. It's economical.
09:36:48 17 It's good because the experts can monitor the depositions. If you
09:36:53 18 give me a heads up on a particular deposition that you anticipate
09:36:57 19 some difficulty with, I log on and I'll make my rulings immediately
09:37:01 20 so that you can continue on.

09:37:04 21 It's worked before and I notice it to you because you can
09:37:11 22 take a look at it and if you want all or some of the depositions
09:37:16 23 taken in that fashion you can do so.

09:37:20 24 MR. HERMAN: With great respect, your Honor, from the
09:37:23 25 plaintiffs standpoint we prefer an iron curtain to a Chinese wall.

09:37:28 1 MR. MILLER: Well, just as long as it's not Chinese
09:37:32 2 drywall, right?

09:37:34 3 THE COURT: As long as it's not Chinese drywall,
09:37:37 4 manufactured drywall. Okay.

09:37:39 5 The next item is Service of Pleadings Electronically.

09:37:42 6 MR. HERMAN: Yes, your Honor, and LexisNexis has a
09:37:51 7 training session scheduled for today. At what time?

09:37:52 8 THE DEPUTY CLERK: Noon.

09:37:53 9 MR. HERMAN: At noon.

09:37:53 10 THE COURT: And segue into that, the importance in a case
09:37:57 11 of this sort, the importance of transparency and in disseminating
09:38:02 12 information, we talked about transparency with the website, the
09:38:06 13 method of disseminating information is done through an outside
09:38:10 14 provider LexisNexis. They will be keyed in to the court and they
09:38:15 15 will be served with the documents that the liaison counsel are
09:38:20 16 served with. Instead of liaison counsel having to sending the
09:38:26 17 documents to 1,500 or 2,000 lawyers, LexisNexis can do that and it
09:38:33 18 will be done electronically with e-mail.

09:38:36 19 And as soon as the document is filed, they will get a
09:38:40 20 copy and they will be able to upload it and then distribute it
09:38:45 21 immediately. So you will get the filings within about 20 minutes
09:38:50 22 after it's filed so you will know what's happening.

09:38:52 23 MR. MILLER: Your Honor, on that point. LexisNexis is
09:38:55 24 also going to conduct a training session tomorrow morning at nine
09:38:58 25 at my office. So if it's more convenient for folks to do it then,

09:39:02 1 if they're staying over, nine o'clock tomorrow.

09:39:04 2 THE COURT: We have a session here in court at 12
09:39:07 3 o'clock, I understand we've got about 100 people who are going to
09:39:11 4 be attending. So if you're interested, you can attend.

09:39:15 5 THE DEPUTY CLERK: It's on the second floor, Judge,
09:39:16 6 courtroom 227.

09:39:18 7 THE COURT: I am in trial myself, starting in a couple of
09:39:22 8 minutes, so it won't be in this courtroom, it will be on the second
09:39:26 9 floor.

09:39:28 10 Anything on the Master Complaint?

09:39:30 11 MR. HERMAN: Not at this time, your Honor.

09:39:33 12 THE COURT: Anything from the defendants on that?

09:39:34 13 MR. MILLER: No, your Honor.

09:39:35 14 THE COURT: The next status conference, I think it would
09:39:38 15 be helpful if we had one in a shorter period of time, September the
09:39:44 16 3rd, Thursday, September the 3rd at 8:30 for the liaison counsel
09:39:50 17 and lead counsel, and then at nine o'clock in open court.

09:39:59 18 Again, I appreciate the attendance of the judges from
09:40:02 19 state court, they do me an honor by attending today; and hopefully
09:40:08 20 one day they can sit with me on the bench and we'll deal with the
09:40:13 21 Frye hearings, the Daubert hearings that we have.

09:40:17 22 One last comment about the PSC. I have asked the PSC to
09:40:25 23 be conscious of individual lawyers who are not on the PSC who wish
09:40:28 24 to perform work on this particular case under the direction of the
09:40:34 25 PSC. There's room for everyone who wants to work, whether you're

09:40:45 1 on the PSC or not on the PSC. I know there are extremely talented
09:40:45 2 lawyers, and if you're willing to work and interested in working, I
09:40:49 3 assure you there will be a spot for you.

09:40:52 4 MR. HERMAN: Your Honor, in accord with your Honor's
09:40:55 5 direction, every lawyer that has submitted an application either to
09:41:00 6 serve on the PSC or a committee who has a filed case and commits to
09:41:06 7 file cases in the MDL will be appointed as of seven o'clock P.M.
09:41:15 8 this evening to a committee. And in some cases, those that have
09:41:22 9 been very active and have indicated, even though they're not on the
09:41:26 10 PSC, they will be cochairs or chairs of various subcommittees. We
09:41:33 11 will provide your Honor the list after we get confirmation back
09:41:38 12 that they choose to serve and they're willing to serve under the
09:41:42 13 guidelines set forth.

09:41:43 14 But I assure your Honor, it will be open participation,
09:41:49 15 but only by those who intend to participate fully in the activities
09:41:53 16 of the MDL. We've had a number of applications from folks that
09:41:57 17 have no filed cases in federal court, so they should file if they
09:42:03 18 want to participate.

09:42:04 19 THE COURT: Fine. I know we have several hundred people
09:42:06 20 here. If there's anything anyone else wishes to bring up to the
09:42:10 21 court I have it in open court for that reason, not only to inform
09:42:14 22 you but also to give you a forum if you have something to say.

09:42:19 23 Hearing none, thank you very much, I look forward to
09:42:22 24 seeing you on September 3rd.

09:42:23 25 THE DEPUTY CLERK: Everyone rise.

19:42:25 1 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

19:42:25 2

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REPORTER'S CERTIFICATE

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I, Karen A. Ibos, CCR, Official Court Reporter, United States

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District Court, Eastern District of Louisiana, do hereby certify

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that the foregoing is a true and correct transcript, to the best of

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my ability and understanding, from the record of the proceedings in

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the above-entitled and numbered matter.

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Karen A. Ibos, CCR, RPR, CRR

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Official Court Reporter

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