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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
Thursday, July 9, 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.

02:10:01 1 THE COURT: One of the first things that I did with the
02:10:03 2 Pre-Trial Order No. 1 is to create or try to create some mechanism,
02:10:11 3 some method, a structure for handling this matter. I called for
02:10:19 4 liaison counsel applications or suggestions from each side. I
02:10:25 5 received a suggestion from the plaintiffs of Mr. Russ Herman and
02:10:31 6 Kerry Miller applied as Defendant's liaison position.

02:10:41 7 There was some question from the defendants whether we
02:10:47 8 should have two liaison, I picked Kerry Miller to be liaison
02:10:52 9 counsel. I just want one liaison counsel for each side. The
02:10:58 10 reason for that is that I see liaison counsel as dealing with
02:11:03 11 administrative matters. I need somebody that the court can serve
02:11:09 12 with orders and I only want to serve two people. The liaison
02:11:14 13 counsel then has to serve or make sure that everybody else is
02:11:19 14 advised of the litigation.

02:11:23 15 I need two people, one for each side, to make sure that
02:11:26 16 they have a complete file so that anyone else on their side that
02:11:31 17 needs documents knows where to go and one place to go. I need a
02:11:39 18 liaison counsel to be responsible for coordinating the document
02:11:47 19 depository, and I need liaison counsel to confer with their side
02:11:56 20 and develop or make some suggestions to me on agenda items. It
02:12:01 21 doesn't mean that that's the only matters that I will discuss, but
02:12:07 22 at that point I just need two people to get together and work on an
02:12:16 23 agenda.

02:12:17 24 In addition to the liaison counsel, I intend to appoint
02:12:23 25 committees, a Plaintiff Steering Committee and a Defendant Steering

02:12:29 1 Committee. From the Defendant Steering Committee, I would expect
02:12:34 2 that the parties would be represented who are involved in
02:12:41 3 litigation on that committee, and that would be the committee that
02:12:50 4 will deal with the nitty-gritty of the case; that is to say, to
02:12:55 5 work on the material.

02:12:58 6 So in that I'll look to the defendants to get together
02:13:04 7 and make recommendations to me, and if the recommendations are made
02:13:09 8 and everybody agrees to it, I will adopt those recommendations and
02:13:13 9 I will put that in an order.

02:13:14 10 With the Plaintiff Steering Committee, there are
02:13:19 11 different issues involved. The Defendant Steering Committee, these
02:13:34 12 individuals are generally retained by their respective parties and
02:13:39 13 they are compensated by their respective parties and do the work
02:13:46 14 and represent their respective interests.

02:13:51 15 The plaintiffs committee is a little bit more involved,
02:14:03 16 and I say this at the outset that so that at least you'll know my
02:14:11 17 thinking. One problem that I share with you from the Plaintiff
02:14:19 18 Steering Committees, that I haven't necessarily had, but I know my
02:14:22 19 colleagues throughout the country who do MDL work have had, and
02:14:27 20 it's something that you need to know about because it's creating a
02:14:34 21 potential problem. People apply to be on the Plaintiff Steering
02:14:41 22 Committee, they submit the applications, and the court then
02:14:46 23 appoints a committee, looks at the applications and selects people
02:14:53 24 who add their interest and experience and, frankly, the resources
02:14:58 25 to carry out the job.

02:15:03 1 Now I know about no one here that does this, but I am
02:15:06 2 told once that committee is organized, occasionally individuals who
02:15:14 3 have been appointed because of their experience hire other people
02:15:18 4 to do their work and they go about getting on another committee so
02:15:25 5 that they can deal with that particular case, too.

02:15:32 6 And it's a difficult situation, I will be appointing a
02:15:37 7 plaintiffs committee but I am going to appoint the plaintiffs
02:15:40 8 committee for a term. There will be no term limits, but I am going
02:15:52 9 to appoint a Plaintiff Steering Committee for one year. At the end
02:15:52 10 of that year, I urge the people who are on the committee to
02:15:54 11 reapply. And when you reapply, let me know on your application
02:16:00 12 what you've done, how many hours you've logged, how much expense
02:16:07 13 you've incurred, and that will help me in making the decision
02:16:15 14 whether or not to reappoint you for another year. And hopefully
02:16:20 15 we'll move the case in an effective and efficient manner.

02:16:26 16 Also, in a case like this, there are many, many issues
02:16:31 17 that need to be addressed. The Plaintiff Steering Committee is not
02:16:37 18 going to be able to address them all, and I am going to look to
02:16:45 19 them for recommendation for other committees and insist on the fact
02:16:47 20 that anyone who is interested in working from the plaintiffs'
02:16:54 21 standpoint be eligible and that they pick an area in which they
02:16:57 22 wish to work whether or not they're on a committee. That doesn't
02:17:03 23 mean they won't even become chair of that committee.

02:17:11 24 Anybody who is interested in working, I urge you to join
02:17:15 25 a committee and work and you can become chair or be chair of that

02:17:19 1 committee, whether or not you're on the Plaintiffs Steering
02:17:24 2 Committee; and your work and effort will be recognized in common
02:17:28 3 benefit and your expenses, approved expenses, (I've appointed a CPA
02:17:34 4 to work on this matter) will be dealt with and he'll talk with us
02:17:41 5 later about that.

02:17:46 6 Another thing that I tried to do in the first order was
02:17:52 7 to deal with filing. In a case such as this, I try to give you
02:18:01 8 some suggested method of filing, headings. If you look at my
02:18:08 9 Pre-Trial Order No. 1, we talk about the filing of the case and how
02:18:15 10 you file it and matters of that sort, it's paragraph nine.

02:18:23 11 Also I remind you that we have electronic filing here, so
02:18:26 12 after the first pleading, all pleadings need to be filed
02:18:32 13 electronically.

02:18:35 14 I believe in meetings. I am going to have open meetings
02:18:44 15 in court at least once a month. Those of you who may find it
02:18:50 16 difficult to come, I'll post a telephone number and we have
02:18:56 17 facilities for you to call in. I am not going to be able to invite
02:19:00 18 you to speak because it's not unusual for me to have 100 people on
02:19:08 19 the phone in these meetings and I can't deal with that if everybody
02:19:12 20 speaks. But you can monitor, if you can't make the meeting for
02:19:22 21 some reason or because of expense you would rather not come, then I
02:19:23 22 understand and you can tune in.

02:19:24 23 All of the meetings will be transcribed. The transcript
02:19:30 24 will be posted on the web site. Everything will be posted on the
02:19:34 25 web site. All of the agenda items, all of my orders, all of my

02:19:39 1 opinions, and I will endeavor to post those.

02:19:44 2 I do try to do my discovery, so if you have any issues of
02:19:50 3 discovery, I'll be dealing with them. Whenever possible I do it
02:19:55 4 without paper, so if you have an issue and you wish to present it
02:20:00 5 to the court, you can do so either with a letter and I'll invite
02:20:04 6 the response; or if not, we'll do it orally. But in any event,
02:20:11 7 I'll get you on the phone with a court reporter, I'll hear your
02:20:14 8 argument, and I'll make the decision immediately so we can move on.

02:20:19 9 In this particular matter I will in addition to the
02:20:27 10 meetings of open court, this type meeting at which I will hear
02:20:34 11 reports and make some decisions on where we go for the next
02:20:41 12 meeting, what we do for the next meeting, I'll be meeting with the
02:20:45 13 committees, liaison counsel, and whoever else I need to meet with
02:20:51 14 in-between that period of time. We will have more meetings
02:20:54 15 initially for the next month or so than probably after that, but
02:20:58 16 every month I will have an open meeting so that we can look at the
02:21:02 17 case again.

02:21:04 18 As I see this case, at the present time, I've only had it
02:21:10 19 for a couple of weeks, but at the present time I see that it's
02:21:16 20 probably going to be necessary to group cases. But if we look at
02:21:21 21 it from the standpoint of the universe, the groupings, two
02:21:26 22 groupings come to mind: One is property damage claims only; and,
02:21:34 23 two, personal injury claims, either only or with property damage.

02:21:39 24 The personal injury claims are probably going to take a
02:21:42 25 little longer to resolve because there may be diagnosis problems,

02:21:48 1 issues, there are Daubert issues, causation issues, preexisting
02:21:55 2 issues, expert issues, and those matters may take a little longer
02:22:01 3 to get to. I hope to begin trying those within a year, but I think
02:22:08 4 we can do better than that with the property damage.

02:22:11 5 The property damage cases, it seems to me, ought to be
02:22:17 6 able to be dealt with on a faster track. I think that for those
02:22:24 7 cases we ought to be able to at least begin trials within six
02:22:32 8 months, and that's what I'm going to be looking to you to do.

02:22:36 9 I'll talk a little bit more later about my thinking on
02:22:41 10 conducting bellwether cases and how we go about selecting cases and
02:22:48 11 beginning the trials.

02:22:51 12 In a matter of this sort, at present I have two liaison
02:22:58 13 counsel that will have the responsibility presently of serving
02:23:04 14 everything. I am only going to serve two people, they have to
02:23:08 15 serve the hundreds or thousands of people who are involved in this
02:23:12 16 case. Now that presents a problem, obviously logistically, so we
02:23:16 17 need to know your names and your addresses and some basic
02:23:26 18 information, and I've prepared a form for you, and we'll have it
02:23:31 19 available, it gives your name and your address and how you can be
02:23:36 20 served. And I'll have them up here and I would hope that you would
02:23:43 21 fill it out and leave it with us before you leave, and that will
02:23:51 22 ensure that you get proper service.

02:23:55 23 But in the long-term, I have encouraged liaison to think
02:24:04 24 about an outside provider to supply the necessary service, and I've
02:24:10 25 invited LexisNexis to come and to make their presentation. Liaison

02:24:18 1 counsel for both sides have met with them, and I'll ask liaison
02:24:25 2 counsel at this time to give me some read as to what decisions, if
02:24:29 3 any, have been made. Kerry, do you want to start?

02:24:33 4 MR. MILLER: Sure, your Honor. We had a meeting of the
02:24:39 5 defense counsel who are here at my office prior to this hearing,
02:24:42 6 and in connection with that meeting we invited the LexisNexis
02:24:47 7 representatives to come over and they gave their presentation.
02:24:50 8 Based upon what I observed in the meeting and the feedback I got
02:24:54 9 from the other defense counsel, I think the defendants -- and when
02:24:58 10 I say that, I have sitting with me the members of the Defense
02:25:02 11 Steering Committee who have submitted an unopposed application to
02:25:04 12 be appointed -- and the feedback I got from that group primarily is
02:25:07 13 that the defense will be fine with using LexisNexis and their file
02:25:12 14 and serve product to go ahead and serve and receive pleadings in
02:25:16 15 the case.

02:25:17 16 THE COURT: How about the plaintiffs?

02:25:19 17 MR. HERMAN: May it please the court, yesterday we met
02:25:23 18 with Defense Liaison Counsel, I want to give a particular thanks to
02:25:30 19 the clerk's office, to Lorreta Whyte and Gene Smith who were
02:25:36 20 present and offered invaluable advices. We met with the
02:25:45 21 representatives of LexisNexis, we negotiated fees that are very
02:25:48 22 reasonable, and we have an agreement as of today with liaison
02:25:57 23 counsel and his group to have LexisNexis act as service.

02:26:04 24 I do need to make one explanation based on your Honor's
02:26:12 25 direction and experience in MDL 1657. When lawyers file, they have

02:26:20 1 to use the electronic system with the clerk but they're also going
02:26:25 2 to have to get a specific number and register with LexisNexis. You
02:26:31 3 can't file an official pleading with LexisNexis, it has to be filed
02:26:36 4 with the clerk's office. But you also are going to need to
02:26:40 5 register with LexisNexis.

02:26:42 6 And we believe that this system will work very well, your
02:26:46 7 Honor. It's also cost-effective.

02:26:49 8 THE COURT: All right. When something is filed with the
02:26:51 9 court, the clerk's office will notify the liaison counsel, but the
02:26:59 10 liaison counsel are the only ones that will be served by the
02:27:02 11 clerk's office. LexisNexis, when they get the pleading, they will
02:27:08 12 hit the button and everybody will get it, whoever is registered
02:27:12 13 will get something from them so they can keep up to it that way.

02:27:20 14 I mentioned putting the property damage cases on the fast
02:27:24 15 track. Part of that is going to require cooperation from both
02:27:30 16 sides with regard to compiling a plaintiff fact sheet, defendant
02:27:36 17 fact sheets, immediate inspection protocol, and developing a
02:27:46 18 protocol for preserving any evidence that has been gathered, and
02:27:56 19 also we have to deal with those instances that require immediate
02:28:01 20 remediation.

02:28:03 21 So I am going to look to the parties to work that out.
02:28:07 22 I've instructed them to begin, liaison counsel to begin drawing
02:28:12 23 together their fact sheets. I would hope to have those finished by
02:28:18 24 tomorrow and inspection protocol by the next three or four days.
02:28:22 25 Let me hear from the parties on that.

02:28:24 1 MR. MILLER: Your Honor, we appreciate your comments
02:28:33 2 about trying to get this litigation organized and we think it's a
02:28:37 3 good outline of a plan to bring some order to what is obviously
02:28:40 4 going be to a very large and complex matter.

02:28:43 5 The defendants have been working on the plaintiff fact
02:28:47 6 sheet, your Honor, and we're hopeful to be able to get something to
02:28:50 7 the plaintiffs and to the court in the next couple of days on that.
02:28:52 8 We have a draft and where we're at right now, we worked on it a
02:28:56 9 little bit this morning, the defendants in this case, there are
02:29:04 10 essentially four different layers of defendant: Manufacturer,
02:29:04 11 supplier, building contractor and installer. While no installers
02:29:09 12 are yet in the case, we think they may be.

02:29:11 13 But at any rate, the other three layers are working on
02:29:15 14 the sections on the plaintiff fact sheet. We think the sheet can
02:29:19 15 be two pages or less, your Honor, be really summary and get down to
02:29:22 16 the business of trying to organize and categorize what we're
02:29:25 17 dealing with.

02:29:26 18 By the same token we will work with the court and with
02:29:30 19 liaison counsel and Plaintiff Steering Committee, when that is
02:29:34 20 confected, on the creation or submission of joint inspection
02:29:37 21 protocols identifying potential inspectors so that we can get that
02:29:42 22 process underway soon, your Honor.

02:29:44 23 THE COURT: All right. With regard to the fact sheets, I
02:29:48 24 reinforce this that this is not in lieu of discovery and it's not
02:29:52 25 going to cut you off of discovery, it's not going to nail you down

02:29:56 1 into a particular fact pattern or anything of that sort. The fact
02:30:01 2 sheets, the purpose of the fact sheets, we need to know things that
02:30:07 3 are very basic so that inspections can begin.

02:30:11 4 I really want to get the inspections conducted. I would
02:30:14 5 hope to get the inspections started and completed within the month.
02:30:18 6 We ought to be able to do that. Now that's going to require teams
02:30:23 7 of inspectors, you're not going to have one inspector going around
02:30:26 8 the country working 24 hours a day inspecting property. But you
02:30:32 9 should be able to get teams of inspectors and be able to accomplish
02:30:36 10 this.

02:30:38 11 I think it's important, first of all, from the standpoint
02:30:42 12 of I think from the defendant's standpoint, they ought to know
02:30:45 13 whether or not it's their drywall or whose drywall it is or what
02:30:49 14 the problem is. From the plaintiffs' standpoint they need to know
02:30:54 15 also.

02:30:54 16 So we need to be able to do the inspections quickly and
02:30:58 17 find out how much potentially problematic drywall there is in the
02:31:05 18 house or in the building and who owned the drywall, if it is so
02:31:10 19 marked. That's a key part of it. Some of the other aspects of the
02:31:15 20 air monitoring and things of that sort, it's a little nuance but
02:31:21 21 that may have to go along with it but it may have to follow, maybe
02:31:26 22 it's the next day or following day or whatever it is, it's not
02:31:30 23 going to stop that moving but we have to do some identification and
02:31:35 24 inspections immediately.

02:31:36 25 MR. MILLER: Yes, your Honor. On that note, I guess the

02:31:39 1 Defense Steering Committee is a little bit at an advantage in that
02:31:47 2 we have a committee ready, willing and able to get to work, we are
02:31:47 3 going to mobilize and do that.

02:31:48 4 Later on in the agenda I am going to have one of the
02:31:50 5 committee members from Florida speak about a particular Florida
02:31:54 6 law, 5:58 is the statute number, that relates to inspections under
02:31:59 7 Florida law, and we are going to see if we can try and integrate
02:32:02 8 those concepts along with the inspections we are going to be doing
02:32:06 9 in this MDL proceeding.

02:32:07 10 THE COURT: Let me hear from the plaintiff on those
02:32:09 11 issues.

02:32:12 12 MR. HERMAN: Judge Fallon, we've had two meetings with
02:32:16 13 Defense Liaison Counsel on inspection protocols and fact sheets.
02:32:25 14 What we expect from plaintiff liaison's point of vantage is to
02:32:32 15 provide a defense fact sheet, an agreed plaintiff fact sheet, a
02:32:39 16 joint inspection protocol, a group of experts acceptable to
02:32:47 17 plaintiffs to make inspections along with their resumes, and if
02:32:53 18 necessary, very early Frye or Daubert hearings so that we will have
02:33:01 19 not only inspectors from the plaintiffs' side but we will know that
02:33:06 20 whatever these inspectors are able to determine will be
02:33:11 21 satisfactory for trial testimony and deposition testimony.

02:33:16 22 Being an attorney who is often in error but never in
02:33:20 23 doubt, I would expect to have these things accomplished within two
02:33:24 24 weeks. And at the time a Plaintiff Steering Committee is chosen by
02:33:30 25 your Honor, hopefully we will have done our work well enough, we

02:33:34 1 will have gotten enough input from plaintiff firms that all of
02:33:39 2 those issues can be ratified by your Plaintiff Steering Committee
02:33:45 3 and we're prepared to move on.

02:33:49 4 We understand from plaintiff Florida counsel the problems
02:33:54 5 associated with 5:58. There are some peculiar laws that apply in
02:34:01 6 each state. We reserve that to provide your Honor with discrete
02:34:09 7 issues at some future time.

02:34:11 8 In sum, your Honor, we expect to have all of the matters
02:34:18 9 that you directed resolved in a short period of time. I would
02:34:27 10 expect, your Honor, that the inspections, today is July 9, I would
02:34:34 11 expect that by August 30 we will be well on our way with
02:34:40 12 substantial inspections. It is my hope that the plaintiff
02:34:48 13 attorneys, firms that have communicated with me that they have
02:34:51 14 already undergone inspections. We will submit their properties,
02:34:55 15 and particularly those where there are hardship issues, to be put
02:35:01 16 on a line for immediate inspection. Those with property damage
02:35:09 17 only and which constitute a hardship.

02:35:13 18 THE COURT: Okay. Just a couple of comments on that.
02:35:20 19 First, with regard to the experts, you need to let me know both
02:35:21 20 sides whether or not you wish me to do a 706 experts meeting, I can
02:35:28 21 adopt yours and make them the court's or I can appoint my own. I
02:35:34 22 would rather not appoint my own, but that's a potential that at
02:35:39 23 least you have to think about.

02:35:41 24 With regard to the state courts -- anybody that has that
02:35:49 25 will they please turn it off. Thank you.

02:35:53 1 I've been in touch with the state courts, I am going to
02:35:56 2 try the best I can to coordinate with the state litigation. I
02:36:01 3 understand that Florida is a Frye jurisdiction. When we begin our
02:36:06 4 Daubert hearings, I hope to have the state judges here with me who
02:36:13 5 can participate, we'll do the Daubert and Frye together. We will
02:36:15 6 do those proceedings hopefully at one time and anybody, any judge
02:36:21 7 who has a different law will ask the questions that is appropriate
02:36:25 8 to their particular law and then issue whatever they need to issue
02:36:33 9 from their vantage point. But hopefully we can do those
02:36:37 10 qualifications, basic qualifications, basic experts at one time
02:36:46 11 rather than just doing longer more than once.

02:36:53 12 I have already forwarded my orders to state judges so
02:37:03 13 that they can at least see what we've done, and I've offered
02:37:13 14 whatever modest amount that we can give to them, I've offered to do
02:37:18 15 so.

02:37:21 16 In cases of this sort, many cases need to be filed and
02:37:28 17 occasionally there is a logistic problem in filing cases. You may
02:37:36 18 think it more advantageous -- and I am not suggesting you do or you
02:37:42 19 don't -- but it's possible that you may feel that cases are similar
02:37:47 20 and they should be joined. If you do, proceed that way. Please
02:37:54 21 give us an alphabetical list of cases so that we can find them and
02:38:01 22 they will be docketed in a joint fashion. And I'll treat them
02:38:07 23 later if that becomes problematic, I'll deal with it.

02:38:11 24 The one issue, on No. 6 now, one issue is preservation of
02:38:23 25 evidence, spoliation issues, and we talked a little bit about

02:38:27 1 remediation. With regard to some of the property issues, it's
02:38:34 2 early to put this in the mix, but when we're dealing with property
02:38:42 3 damage claims, it may be faster to flip it and deal with damage
02:38:54 4 rather than liability and let the jury determine damages and then
02:39:01 5 deal with liability later. I don't know whether it is or it isn't,
02:39:09 6 but at least that's a potential in the mix. I don't see any
02:39:16 7 problem with that, but that's something at least to think about.

02:39:22 8 The preservation of evidence issues, that's something
02:39:27 9 that you need to be conscience of. I would like to make sure that
02:39:34 10 if the evidence is collected it is available both to state and
02:39:38 11 federal courts, so I will also invite the judges to have some input
02:39:46 12 on the evidence and where it is stored and how it is kept so that
02:39:51 13 any chain will be satisfied from their standpoint.

02:39:58 14 No. 7 is direct filing in the MDL. For those of you who
02:40:04 15 have done MDL work, you know the method of filing in an MDL is to
02:40:09 16 file in your state federal court. The MDL Panel says that they
02:40:18 17 think there will be about 17 states involved in this process, maybe
02:40:22 18 more, but at least. And oftentimes the cases are filed in federal
02:40:28 19 court in that particular state and then it is forwarded to or
02:40:34 20 directed by the MDL to this court. It takes about two months to do
02:40:42 21 that, occasionally longer if there is a problem, and that can hold
02:40:49 22 you up if you don't watch that aspect of the case.

02:40:56 23 What I have done in the past is to permit filing directly
02:40:59 24 into the MDL. That shortens the process, you get here immediately
02:41:07 25 and you can get on the train or get on the wagon or whatever it is

02:41:12 1 immediately.

02:41:16 2 It can only be done, however, with some cooperation
02:41:20 3 between the parties. The defendants in essence have to waive venue
02:41:27 4 because I don't have venue, I have jurisdiction but I don't have
02:41:29 5 venue in a case that happened in Arizona or in Texas or in Florida,
02:41:36 6 but I do have jurisdiction and I will get it eventually. But the
02:41:44 7 way it's done in the past is for defendants to waive venue but
02:41:48 8 maintain all of their other defenses. And the fact that it's filed
02:41:54 9 here if it's from Florida and I try it here, I would be trying
02:41:59 10 under Florida law or Mississippi law or Texas law or something of
02:42:02 11 that sort. But it would give me -- it can be filed directly.

02:42:07 12 I can't do that by decree, it needs to be done by some
02:42:14 13 stipulation of the parties. It's been done in the past by me, as
02:42:20 14 well as I think some other folks, and it works. But that's the way
02:42:32 15 it has to be done.

02:42:32 16 Adding additional parties is something that the parties
02:42:32 17 wanted to take up. Anything from liaison on that?

02:42:37 18 MR. MILLER: Again, just briefly, your Honor, on the
02:42:42 19 issue of adding additional parties. A couple of considerations:
02:42:47 20 No. 1, I understand from plaintiff liaison counsel and some other
02:42:54 21 plaintiff lawyers that there may be an attempt to add homeowner
02:42:59 22 insurers and insurers of various defendants to the case. We are
02:43:03 23 going to make sure that the fact sheets have lines for that
02:43:07 24 information because the idea would be to go ahead and add them
02:43:11 25 sooner rather than later. If they're subject to a separate track

02:43:14 1 then so be it, we can deal with it later down the road, but we
02:43:18 2 think they should be add sooner rather than later.

02:43:20 3 Secondly, your Honor, during the product identification
02:43:24 4 process, at least for the property claims, we know from the review
02:43:27 5 of the cases that have been filed -- and I think we've looked at
02:43:30 6 about 270 separate cases, that were either supplied by the
02:43:35 7 defendants or the plaintiffs that have been filed -- we know that
02:43:39 8 there are some defendants missing that will likely be implicated
02:43:45 9 either during the fact sheet process when plaintiffs look at their
02:43:48 10 records and figure out who built their homes or who supplied their
02:43:53 11 drywall or what label or tag is on the Sheetrock in their house,
02:43:57 12 certainly during the inspection process we anticipate additional
02:44:03 13 manufacturers, suppliers and builders will come to the floor.

02:44:05 14 What we need to be careful about is that what we do
02:44:08 15 between now and the time that these parties are added to the
02:44:12 16 litigation, we don't have to redo. So I think we all need to be
02:44:16 17 mindful of being efficient and streamlined and smart on those
02:44:21 18 issues.

02:44:24 19 MR. HERMAN: May it please the court, to date, as far as
02:44:31 20 I am aware, there are only four manufacturers that have yet been
02:44:37 21 identified. Recently the Los Angeles Times indicated that there
02:44:46 22 are numerous manufacturers of "Chinese drywall". A number of
02:44:52 23 inspections have indicated that there is only the appellation made
02:44:59 24 in China rather than a direct reference to a manufacturer,
02:45:07 25 particular manufacturer.

02:45:11 1 We have requested from U.S. Customs and from some
02:45:15 2 journalists who are investigating the matter, the names of the
02:45:20 3 other manufacturers such as they know and how they have learned
02:45:27 4 this information. We would hope to share that with all attorneys
02:45:32 5 who register in the MDL or with LexisNexis so that they will have
02:45:40 6 an opportunity to take a look at inspections they've already made
02:45:43 7 and will be making in order to make sure all of the parties are
02:45:48 8 joined.

02:45:50 9 We also at a luncheon today learned that there are four
02:45:56 10 major suppliers that were not well-known or not known, and we're
02:46:07 11 going to be making efforts to have them properly joined in the
02:46:12 12 federal pleadings.

02:46:14 13 THE COURT: I suspect that in a grouping such as this
02:46:20 14 where we have 100 or so people in the audience there may well be
02:46:24 15 someone who is associated with or represents someone who has not
02:46:29 16 been named and wishes to be anonymous, and I understand that. But
02:46:37 17 you need to be aware of the fact that the train is leaving the
02:46:43 18 station, and if you want to participate in the discovery, you
02:46:45 19 better get on it because you're liable to live with the discovery
02:46:49 20 and find that you're stuck with it.

02:46:54 21 I am going to do my very best to give everybody an
02:46:57 22 opportunity, I told you about the web site, you will have an
02:47:00 23 opportunity to know what's going on. If you take advantage of that
02:47:04 24 opportunity, you're welcome to. If you don't, you shouldn't be
02:47:10 25 able to say we didn't know what was going on. So you may be

02:47:13 1 waiving some rights.

02:47:15 2 Also, if the cases are tried in New Orleans and under
02:47:21 3 Louisiana law, we will be asking the jury to make decisions on
02:47:28 4 responsibility and liability. Whether or not you're in the case
02:47:33 5 your name may be presented to the jury and the jury may find that
02:47:37 6 you're responsible. It may not mean anything other than for your
02:47:43 7 good will and future sales possibilities, or for that matter it may
02:47:50 8 mean something.

02:47:52 9 And so the fact that you're in doesn't mean that you're
02:47:57 10 liable, the fact that you're in doesn't mean that you'll stay in
02:48:01 11 until the end if you have adequate defenses, if it's not your
02:48:07 12 product, if you had nothing to do with it, then you ought to get in
02:48:11 13 and out as quickly as you can, a revolving door may work for you.
02:48:15 14 But I suspect that it's not going to be helpful to you to try to
02:48:18 15 ignore the litigation. We are not going to wait for you and you
02:48:23 16 need to know that if you are here.

02:48:26 17 Master complaint, I think it's efficient in MDLs to try
02:48:37 18 to pull together as quickly as possible a master complaint. I
02:48:40 19 don't think it's able to done this week or next week because we
02:48:43 20 need more information, you need more claims, theories of liability,
02:48:56 21 defenses, and things of that sort so that you don't need to
02:48:56 22 constantly amend that master complaint. But I think it's helpful
02:49:00 23 to have and I expect that one will be forth coming as quickly as is
02:49:08 24 reasonable.

02:49:11 25 Anything other than that from liaison counsel?

02:49:14 1 MR. HERMAN: No, your Honor.

02:49:19 2 THE COURT: Service on foreign defendants, anything from
02:49:23 3 plaintiff or defendants on that?

02:49:26 4 MR. HERMAN: No, your Honor.

02:49:31 5 THE COURT: Okay. The issues in service in cases
02:49:37 6 involving a foreign defendant presents some challenges occasionally
02:49:45 7 because the service oftentimes, as we know, in maritime matters is
02:49:49 8 done by the Haig Convention. Unfortunately, costs have increased
02:49:55 9 in that aspect of the case and it's rather hefty now. It wasn't
02:50:03 10 that hefty in the "old days," but it is now. I recognize that.

02:50:11 11 But also that presents a problem, not only from the
02:50:15 12 standpoint of plaintiffs, but it can also present a problem from
02:50:19 13 the standpoint of defendants. If it's too expensive to have a
02:50:31 14 plaintiff serve a defendant, the plaintiff may simply sue someone
02:50:36 15 else and have that someone else sue and serve the defendant.

02:50:41 16 The difficulty with that is that if it's a third-party
02:50:45 17 intervention or third-party complaint or something of that sort,
02:50:51 18 that conceivably can be delayed until after a judgment. So that
02:50:58 19 can present problems from the standpoint of the defendant putting
02:51:02 20 off their issues for years and keeping it unresolved.

02:51:10 21 So the point that I make is that it may advantage us for
02:51:16 22 both sides to get over this service hurdle, if it is indeed a
02:51:21 23 hurdle.

02:51:21 24 I talked about the bellwether trials. What my thinking
02:51:28 25 is from the standpoint of bellwether trials, and this is just early

02:51:33 1 on, and I want to be able to simply write this in pencil because as
02:51:39 2 times change it may have to be erased and refashioned. But my
02:51:46 3 thought at this time is that I would like to give each side an
02:51:51 4 opportunity to pick ten cases and look at the cases closely and
02:52:00 5 then come up with five for each side.

02:52:05 6 And I say pick ten cases because you need to do some
02:52:09 7 initial discovery on those cases to see whether or not what you
02:52:14 8 thought they were they really are. And oftentimes when you pick a
02:52:19 9 case for bellwether and you get into it, you say, my God, I
02:52:23 10 shouldn't have picked that case, I should have picked another case.
02:52:26 11 And that's just the way of the world. So I suggest that each side
02:52:36 12 pick ten, then come down to five. I'll give each side two strikes,
02:52:39 13 so we'll come up with six. We'll try five cases, one will be a
02:52:44 14 swing in the event one of the five fall by the way side. I would
02:52:51 15 hope we would be able to move those, as I say, rather quickly.

02:53:00 16 The federal/state coordination I've talked about. One
02:53:08 17 issue that I do want to cover at this time is the plaintiff time
02:53:15 18 billing guidelines. I've appointed Phil Garrett to be the CPA
02:53:23 19 expert in this particular case. I am serious about saying that
02:53:26 20 anybody who wishes to work from the plaintiff's standpoint, they
02:53:33 21 have an opportunity to do so but you need to be conscious of what
02:53:37 22 you need to do to log your time or your billing or your costs,
02:53:43 23 which may entitle you to some common benefit work.

02:53:49 24 Phil, why don't you discuss that briefly with us.

02:53:51 25 MR. GARRETT: Thank you, your Honor. What we've done is

02:53:54 1 we've prepared some slides, your Honor, just to show the mechanics
02:53:57 2 of what goes on. You will be issuing the actual rules of how of
02:54:03 3 what time and what expenses can be submitted. But what we're going
02:54:07 4 to do is actually put some guidelines up today because we want
02:54:11 5 everybody to be aware that it is a big job to report the time and
02:54:15 6 expenses and a lot of people are used to only reporting the time
02:54:18 7 and expenses toward the end of the case, and we will talk about
02:54:20 8 that.

02:54:23 9 First thing we have to do is gather the time and cost
02:54:26 10 information. One of the things your Honor would like to have done
02:54:29 11 is to have all of the time and costs submitted on a monthly basis
02:54:33 12 rather than accumulating for six months or a year or longer, we
02:54:36 13 want to have this done so we can submit it on a monthly basis. If
02:54:39 14 the people who are doing common benefit time and common benefit
02:54:42 15 costs would have somebody in their office start organizing this
02:54:47 16 stuff on a monthly basis, after two or three months, a system will
02:54:51 17 be there, they can submit it on a monthly basis, it will be
02:54:55 18 electronic and it will flow very smoothly.

02:54:57 19 When we organize the time, you know, you're going to have
02:55:02 20 your own time system that's going to accumulate all of the hours
02:55:05 21 that were for common benefit on this particular MDL, but that time
02:55:10 22 has to be by quarter hours, it has to conform with the pretrial
02:55:14 23 orders -- which means it has to have a summary if you're dealing
02:55:22 24 with a particular timekeeper. We only want to see that
02:55:23 25 timekeeper's totals, but we want to have behind that all of the

02:55:24 1 backup that shows it was kept contemporaneously.

02:55:27 2 If we're organizing expenses, we need the list of
02:55:30 3 expenses; but more than that, we also need the receipts for the
02:55:33 4 expenses. If you're flying first class from here to Houston and
02:55:37 5 the pretrial order says that you can only be allowed coach airfare,
02:55:41 6 we need a document that shows us what is the coach airfare. So the
02:55:47 7 pretrial order guidelines are going to be issued or have been
02:55:51 8 issued, and they must be adhered to and then you must take your
02:55:55 9 information and then fit it into those.

02:55:57 10 Once you've gotten your information together, we have a
02:56:00 11 web site now that you will be able to dial into and post into that
02:56:05 12 the case cost management. You will be able to upload -- hopefully
02:56:10 13 you will be filing this stuff electronically so it will be Adobe
02:56:14 14 files, you'll be uploading with their indexes. And then the web
02:56:17 15 site will allow you to go back in and see if any of those costs
02:56:21 16 have been rejected or what submissions you all have actually
02:56:23 17 submitted in the past.

02:56:25 18 So the first thing you really have to do is get somebody
02:56:28 19 in your office who is going to gather the cost and time
02:56:32 20 information. The requirement is going to be 15 days after the end
02:56:34 21 of the month; and after six months, if you have not filed the
02:56:38 22 stuff, you're going to be barred from filing. So if we're dealing
02:56:42 23 with the month of September, you can file September hopefully by
02:56:45 24 October 15th. Then November, then December, then January, then
02:56:50 25 February, but after March on April 1st, you will not be allowed to

02:56:54 1 file for that September 2009 time any longer.

02:56:58 2 So we're asking everybody please get these guidelines to
02:57:01 3 your people, let them start submitting it on an electronic basis so
02:57:05 4 they can get used it and it will work well. The whole thing is you
02:57:09 5 need to start in-house getting this information together.

02:57:13 6 The index becomes very important. I am a CPA so by
02:57:18 7 nature I grew up doing tax returns from Schwegmann bags. I don't
02:57:22 8 want your Schwegmann bags on litigation. If you just pile up all
02:57:27 9 of the information and send it to us in a big PDF file, it's going
02:57:32 10 to take hours and hours for us to reconcile it; and liaison counsel
02:57:42 11 is probably going to tell me to send it back to you. So please
02:57:42 12 have somebody make up an index, have them do the numbers so each
02:57:43 13 page refers to a particular number.

02:57:45 14 You can see on this sample index I've done here, No. 7 is
02:57:48 15 a private jet for \$11,000; No. 8 is first class ticket for \$3,600.
02:57:52 16 And it may be important for you to put those numbers into your
02:57:58 17 documentation, but what I really need is the comparable coach
02:58:02 18 airfare, which is 1,500, and you see that column is the column that
02:58:06 19 I will add down.

02:58:07 20 So it's a very simplistic index, but I think it's a real
02:58:11 21 key to saving us a lot of time and to save you all from having a
02:58:16 22 lot of rejections.

02:58:18 23 Once you've organized the stuff and you got the indexes
02:58:21 24 done, you can dial into the Garrett code there, ccms.com, and this
02:58:27 25 will be in the pretrial orders, that will give you a submit expense

02:58:31 1 report. From there, it's very simple, you just take your index,
02:58:35 2 put in the dollar amounts there. When you hit submit, it will come
02:58:39 3 up with a signature page where you will have a pin number to either
02:58:42 4 sign electronically or you can print it down and attach it to the
02:58:44 5 documentation.

02:58:45 6 And then you will submit your expenses and it will ask
02:58:47 7 you to upload your file documentation, so all of that will come to
02:58:51 8 us electronically. You can see you will be able to select the
02:58:54 9 case, if it's a particular trial or one of the bellwether trials or
02:58:58 10 just the MDL in general, you will be able to pick the month and so
02:59:01 11 forth.

02:59:02 12 We think having forms filed electronically we won't be
02:59:04 13 dealing with anymore lost in the mail issues or we didn't get it or
02:59:08 14 whatever, it will all be captured in one web site.

02:59:12 15 The same thing with the time, once you have the
02:59:14 16 information gathered, you can see here we have two attorneys that
02:59:18 17 we are going to ask their hours and we're going to ask for it by
02:59:21 18 certain tabs, case assessment, pretrial pleadings, discovery and so
02:59:25 19 forth. Along with that you will have to put the documentation that
02:59:30 20 shows the records were kept contemporaneously.

02:59:33 21 By doing this we have everybody, we will comparing apples
02:59:35 22 to apples with everybody in the firm and your Honor can do it. And
02:59:39 23 so when you submit the time, you will also be uploading your
02:59:42 24 documentation to back that up, too.

02:59:44 25 The good news is, one of the things that will happen in

02:59:48 1 the report, once you've issued your submissions, you will be able
02:59:52 2 to tell what's going on. This report will be available for each
03:00:00 3 individual firm to see where theirs stands. You can see on the
03:00:00 4 first one, the first two are MDL generals and we have "to be
03:00:01 5 reviewed" is the status in the far right column. So we haven't
03:00:06 6 posted those.

03:00:07 7 The one we did post had \$5,500 was submitted, \$5,500 was
03:00:12 8 approved. There was one for \$9,902 in the fourth column that was
03:00:16 9 submitted that we only approved \$8,250 of and \$1,652 rejected.

03:00:23 10 The web site will let you go view the summary and go view
03:00:26 11 the documentation so you will be able to see our notes as to what
03:00:29 12 happened. If you have a problem with what's happened, you're more
03:00:32 13 than welcome to contact us and we can go over it with you. If
03:00:35 14 there's more information to be submitted, you can submit an
03:00:38 15 additional submission.

03:00:39 16 So you will be able to tell and each one of those columns
03:00:42 17 is sortable by you. So if you want to know just show me the
03:00:45 18 rejected you can do it. If you're out of town, you can do this
03:00:48 19 from anywhere that you can get to a web site, 24/7, so there is no
03:00:52 20 reason everybody shouldn't know exactly where they stand.

03:00:54 21 And then you will have the month. So you can see here
03:00:56 22 they filed time for two months but they filed expenses for four
03:01:01 23 months, so they have some catch up to do get their work up-to-date.

03:01:06 24 So get started, contact the information, I need the
03:01:12 25 contact information sent from the Plaintiff Steering Committee or

03:01:14 1 plaintiff liaison counsel so I will know who to be able to send
03:01:18 2 user names and passwords to and put the group together.

03:01:22 3 Gather the information, organize the time with index,
03:01:25 4 organize the costs with an index, and make sure it complies with
03:01:29 5 the pretrial order. If it doesn't comply, don't make me reject it,
03:01:32 6 go ahead and just adjust the numbers yourself, send it to us and we
03:01:36 7 will be able to deal with it.

03:01:37 8 Once we get your contact information, we will be sending
03:01:40 9 you a user ID and a password and then you can start entering your
03:01:44 10 information. You don't have to wait for a particular time. Once a
03:01:48 11 month is over and you've had time and costs involved, you can go
03:01:52 12 ahead and enter that information then.

03:02:05 13 Thank you, Mr. Herman. One of the points he was making
03:02:06 14 is that once you have your password and your user name, nobody else
03:02:10 15 will be able to see your information. So it's not where we're
03:02:13 16 going to have one firm looking at another firm and comparing what
03:02:15 17 they're doing to somebody else. It will be a totally secure web
03:02:28 18 site, you will have your password. And if Firm A dials in, they
03:02:28 19 can only look at their stuff and only get reports on their stuff;
03:02:28 20 if Firm B dials in, they can only look at their stuff, they can
03:02:30 21 only look at whatever their information is.

03:02:32 22 Only one that can circumvent that would be your Honor and
03:02:36 23 if he wants, he can go look at anybody's stuff. But other than
03:02:39 24 that, every firm will be totally independent.

03:02:42 25 MR. HERMAN: And the defense counsel can't see it either,

03:02:45 1 can they?

03:02:45 2 MR. GARRETT: Not unless they convince Judge Fallon.

03:02:48 3 THE COURT: Thank you very much. And I am going to try
03:02:50 4 to work with the states on this so it will be adopted throughout
03:02:54 5 the country with the states who are handling this also because
03:02:57 6 oftentimes the work is being done in the states and I don't know
03:03:01 7 about it and all of a sudden at the end there's some disagreement
03:03:05 8 as to what was common benefit and what was not common benefit. So
03:03:09 9 hopefully this will alleviate some of those problems.

03:03:15 10 Other matters, Kerry, you wanted to have other people
03:03:20 11 address the court?

03:03:23 12 MR. MILLER: May it please the court, your Honor, this is
03:03:27 13 a big case with a lot of issues, there is no doubt about that, I
03:03:31 14 only know some of the issues. I think it would be a benefit of the
03:03:35 15 court and for the other side, the plaintiffs to hear from a couple
03:03:39 16 of the members of the Defense Steering Committee. They will
03:03:42 17 provide a little bit more detail on some of the points that we
03:03:44 18 touched upon that I think will be helpful for the court and the
03:03:48 19 plaintiffs to be able to understand it, because it will be part, I
03:03:52 20 think, of the next several steps in the litigation, preservation of
03:03:54 21 evidence, joint inspections, and things that are very important for
03:03:58 22 us to get this thing moving forward and in the right collection
03:04:01 23 direction.

03:04:01 24 So I am going to let them introduce themselves. They're
03:04:04 25 in the unopposed motion for appointment to the Defense Steering

03:04:08 1 Committee. They will identify who they represent and discuss some
03:04:10 2 issues. What we talked about is it will be a five minute
03:04:14 3 presentation by a builder rep and a five minute representation by a
03:04:17 4 supply rep.

03:04:18 5 THE COURT: Okay.

03:04:19 6 MS. BASS: Thank you. May it please the court, my name
03:04:26 7 is Hilarie Bass from Greenberg Traurig in Miami, Florida, and I
03:04:30 8 represent Lennar and U.S. Homes in this case.

03:04:32 9 I appreciate the court giving us just a few moments this
03:04:36 10 afternoon to describe some of the unique things about the home
03:04:39 11 builder position in this case, because in many ways the home
03:04:43 12 builders are actually more aligned with the plaintiffs group than
03:04:46 13 with many of the manufacturer defendants certainly in the defense
03:04:50 14 group. And the reason why that is is because the home builders
03:04:54 15 perceived they are also victims was of this defective product.
03:05:00 16 Most of the home builders simply hired installers who came in and
03:05:01 17 put up drywall which was unidentified to them and which, of course,
03:05:05 18 they were unaware of any defect.

03:05:07 19 But most importantly, many of the home builders involved
03:05:11 20 in this case are currently spending millions of dollars out of
03:05:14 21 pocket to go in and repair their defective homes, basically taking
03:05:19 22 the drywall down, taking the homeowners out, paying to put them
03:05:24 23 some place else, putting their furniture in storage, taking the
03:05:27 24 home down to the studs, replacing with clean, fresh appropriately
03:05:32 25 non-defective drywall and then putting the homeowner in. And

03:05:35 1 that's something that we have, for the most part, been doing
03:05:40 2 voluntarily in an effort to stand behind our warranty and to
03:05:43 3 protect our brand.

03:05:44 4 What that also reflects, however, is that there are
03:05:47 5 significant differences in the positions we are likely to take in
03:05:51 6 this litigation with that many of the defendants and certainly the
03:05:54 7 manufacturers.

03:05:55 8 Your Honor noted previously that the home builders had
03:05:58 9 filed a secondary request for additional liaison counsel, just to
03:06:01 10 reflect the fact that there are basic fundamental differences
03:06:04 11 between the position of the home builders in this case and the
03:06:08 12 manufacturers.

03:06:09 13 Certainly as it comes to service, for example, we've
03:06:12 14 already been told by the representative of the manufacturers that
03:06:15 15 it is not their intention to accept service, so that means that
03:06:19 16 each of the other defendants who are involved in cross-claims and
03:06:23 17 of course the plaintiffs as well, are going to be forced to spend
03:06:26 18 15 to \$25,000 for each one of these cases to be served to the Haig.
03:06:30 19 Hopefully your Honor's admonition this afternoon may have some
03:06:34 20 impact on that.

03:06:34 21 But even beyond that, we're also aware they're going to
03:06:37 22 be objecting to such things as whether or not this court has the
03:06:40 23 ability to assert personal jurisdiction over them, whether or not
03:06:43 24 there is a basis to bring in German parents of the manufacturers.

03:06:48 25 There are also significant differences regarding our

03:06:51 1 repair protocol. We've already been told by the manufacturers that
03:06:54 2 they object to the fact that the home builders are out there
03:06:57 3 repairing these homes and that they would like us to try any one of
03:07:01 4 a number of unproven and untested schemes, whether it's air
03:07:05 5 filtration or sealants or various other methodologies, none of
03:07:09 6 which have proved effective to us to protect our homeowners from
03:07:14 7 the problems emanating from this drywall. So we have chosen to go
03:07:22 8 in and repair, and the only way that we know how replacement of the
03:07:22 9 drywall. But again, another fundamental difference in the
03:07:25 10 positions that will be taken by the manufacturers and the home
03:07:27 11 builders.

03:07:28 12 And of course lastly, we would hope that whatever
03:07:33 13 resolution comes out of this MDL case, whether it's by your honor
03:07:39 14 or by a jury, whatever defendants are in the room are going to
03:07:41 15 stand behind any judgment tendered. Unfortunately, we do not have
03:07:44 16 any level of confidence that the Chinese manufacturers are prepared
03:07:47 17 to so that. And, in fact, we've been affirmatively informed that
03:07:49 18 there has never been a U.S. judgment that has ever been paid by any
03:07:53 19 Chinese manufacturer. Another reason why we are extremely
03:07:56 20 concerned about the Chinese manufacturers in any way representing
03:08:01 21 the rest of the defendant group.

03:08:02 22 It may well be, your Honor, that it when it comes time
03:08:07 23 for you to consider master complaints that it might be appropriate
03:08:10 24 to have a separate master complaint on behalf of the home builders.
03:08:13 25 In fact, Lennar was one of the first drywall complaints filed

03:08:16 1 anywhere in this country. We, as a plaintiffs, were the first to
03:08:21 2 assert claims against the Chinese manufacturers and others in the
03:08:24 3 supply chain to attempt to recover the damages that we've incurred
03:08:28 4 by virtue of the millions of dollars we're spending, as we speak,
03:08:31 5 to repair the defective homes.

03:08:34 6 There's also a significant issue I wanted to bring to
03:08:37 7 your Honor's attention today about the preservation of evidence,
03:08:40 8 that portion of your MDL order that covers that issue. And I've
03:08:44 9 had very preliminary conversations with some of the plaintiff
03:08:46 10 representatives in an effort to reach some agreement on that issue,
03:08:50 11 and hopefully in the next days we can have those conversations.
03:08:52 12 But for many of the home builders who have been actively repairing
03:08:57 13 those homes, we, of course, have been maintaining samples of the
03:09:00 14 defective drywall as part of what we would expect to be our burden
03:09:03 15 to use to establish as evidence in any future trial.

03:09:05 16 The scope of your Honor's, the language in your paragraph
03:09:09 17 would seem to suggest that we would need to be filling up
03:09:13 18 warehouses with every piece of drywall, defective appliance, and
03:09:17 19 the like, that are taken out of remediated homes. I would hope
03:09:21 20 that the plaintiffs and the defense group will be able to reach
03:09:24 21 some resolution in the next week about appropriate contours of what
03:09:28 22 that order should look like going forward.

03:09:30 23 THE COURT: I do urge you to do that and give to me some
03:09:35 24 suggestions within the week, and then we'll deal with it. I put
03:09:44 25 that out initially, but sometimes it has to be tweaked because of

03:09:44 1 special circumstances. You know what they are and the plaintiffs
03:09:46 2 know what they are. If you can agree on it, I'll deal with it in
03:09:50 3 that way and that fashion.

03:09:53 4 MS. BASS: I would hope we could reach resolution since I
03:09:55 5 assume the plaintiffs also recognize their burden to maintain this
03:09:57 6 evidence to prove their portion of the case.

03:09:59 7 And lastly, I did just want to touch upon, as Mr. Miller
03:10:03 8 reflected, chapter 5:58, which is relevant for the Florida cases.
03:10:08 9 And what that statutory scheme provides is that any home builder is
03:10:12 10 allowed an opportunity to inspect and repair any home which has the
03:10:17 11 kind of inherent defect reflected by this drywall. And this is a
03:10:21 12 very detailed statutory scheme that provides that a court shall
03:10:25 13 abate any action which is filed by a homeowner where the prior 60
03:10:31 14 day notice to the home builder has not been previously given. Once
03:10:34 15 that notice is given, the home builder does have an absolute right
03:10:39 16 to go in and make the repairs.

03:10:41 17 Many of the plaintiffs in the pending cases have not
03:10:43 18 filed that notice, it's an issue that's being resolved in the state
03:10:46 19 courts currently with motions to abate saying the statutory scheme
03:10:50 20 says you may not file until you give us this notice and to the
03:10:53 21 extent you're currently giving us this notice, we now have an
03:10:56 22 opportunity to go in, inspect and repair.

03:10:59 23 That's something that I would hope that we could
03:11:02 24 incorporate into the inspection protocol to ensure that the home
03:11:06 25 builders are given the appropriate statutory right to go in and

03:11:09 1 make any repairs and reflected by the inspection.

03:11:12 2 THE COURT: Yes. That's again something that you ought
03:11:14 3 to bring to my attention. If I can issue an order to deal with
03:11:18 4 that, we ought to do it because I think it's to the advantage of
03:11:22 5 the homeowners to get this done.

03:11:25 6 MS. BASS: And clearly, your Honor, once we brought that
03:11:26 7 to their attention, we had many homeowners who previously filed
03:11:31 8 lawsuits who have come to us and said we would much rather have our
03:11:33 9 home repaired tomorrow and get the statutory protection as well
03:11:36 10 with the release that goes along with it.

03:11:39 11 THE COURT: Bring that to my attention, and first meet
03:11:42 12 with your counter parts and the plaintiffs or whoever else you need
03:11:47 13 to deal with and bring it to my attention.

03:11:50 14 MS. BASS: Thank you, your Honor. Those are the three
03:11:52 15 points that I wanted to bring to your attention this afternoon just
03:11:55 16 to reflect the unique position of home builders in this case.

03:11:58 17 THE COURT: And before you leave, I can see some
03:12:06 18 uniqueness, for lack of a better term, in your group. So you have
03:12:13 19 to determine whether you're comfortable with being on the Defendant
03:12:23 20 Steering Committee or whether you need another steering committee
03:12:28 21 or whether you have a subgroup of that steering committee or
03:12:33 22 something. Maybe it's too early but that's something that you need
03:12:35 23 to focus on.

03:12:36 24 MS. BASS: I appreciate you giving us that opportunity,
03:12:39 25 your Honor. We've had a lot of discussion among the home builder

03:12:43 1 group, and I would suspect that there would unanimity that at a
03:12:45 2 minimum we would want to have a separate subgroup of any steering
03:12:48 3 committee. Thank you, your Honor.

03:12:50 4 THE COURT: Sure.

03:12:52 5 Anyone else?

03:13:01 6 MR. ATLAS: Good afternoon, your Honor. My name is Jan
03:13:04 7 Atlas, I am with Adorno & Yoss, and we represent Banner Supply, one
03:13:06 8 of the principle suppliers. And we find ourselves, as your Honor
03:13:10 9 is well aware, sort of caught in the middle between the homeowners
03:13:14 10 and the builder/developers and the manufacturers.

03:13:17 11 Your Honor has already addressed many of the issues that
03:13:19 12 we're concerned about and Ms. Bass has also addressed a couple of
03:13:23 13 them. But most pertinently, for the supplier group that we're
03:13:27 14 involved in, we have certain rights and defenses under Florida law,
03:13:31 15 as your Honor understands, that in the process of dealing with the
03:13:37 16 MDL proceeding we want to just ensure that we have an opportunity
03:13:40 17 to address those issues, whether it be in response to the master
03:13:44 18 complaint or discovery issues.

03:13:46 19 But I think many of the issues that we were concerned
03:13:50 20 about, you've already encompassed in your agenda and your
03:13:54 21 treatment.

03:13:54 22 THE COURT: Let me make it plain that in an MDL we're
03:14:02 23 dealing with the laws of the states, there's not going to be a
03:14:05 24 federal law. And so if the Florida cases are tried, I will be
03:14:10 25 applying Florida law. In the Vioxx case, which I had something to

03:14:15 1 do with, we tried a number of those cases, and not one of them was
03:14:21 2 tried under Louisiana law. And so juries understood the law. And
03:14:29 3 I will be applying the substantive law of the state in either
03:14:33 4 motions or in trials. So there's no question about that.

03:14:38 5 MR. ATLAS: And the only remaining point that I would
03:14:40 6 like to bring to the court's attention, and your Honor has already
03:14:43 7 addressed it with respect to your communications with the state
03:14:46 8 court judges. As your Honor is probably aware, we are involved in
03:14:50 9 many, many state court actions in Dade County, Miami-Dade County,
03:14:55 10 Broward County, Palm Beach County, and we are in a position where
03:14:59 11 we're going to be subjected to fighting the issue on many, many
03:15:10 12 different fronts.

03:15:11 13 THE COURT: Right.

03:15:11 14 MR. ATLAS: To the extent that your Honor is able to
03:15:11 15 involve the state court judges in South Florida, we would be most
03:15:13 16 appreciative.

03:15:14 17 THE COURT: I think that just makes a lot more sense
03:15:17 18 frankly. I think that litigation, you ought not to have to do the
03:15:22 19 same thing 50 times, it really ought to be done in a consistent
03:15:28 20 fashion.

03:15:31 21 And my input, at least the response that I had received
03:15:35 22 from the state courts seem to be along those lines. And I will be
03:15:40 23 looking to them for guidance. It's not, you know, a one-way
03:15:46 24 street. I am going to be relying on them, as perhaps they might on
03:15:52 25 me in some minor instances; but hopefully we will be able to work

03:15:56 1 together and work through this.

03:15:59 2 MR. ATLAS: For that we would be very appreciative.

03:16:01 3 Thank you, your Honor.

03:16:02 4 THE COURT: And I frankly think it's better for
03:16:04 5 everybody, not only the defendants but the plaintiffs, too.

03:16:06 6 MR. ATLAS: Thank you.

03:16:08 7 MR. HERMAN: Your Honor, I think it would be
03:16:10 8 inappropriate for me to reply on behalf of plaintiffs as to special
03:16:15 9 issues at this point. I want to thank Ms. Bass who represents U.S.
03:16:20 10 Homes and Lennar who had 12 issues organized under three points,
03:16:27 11 we're aware of those issues, we make no response now; and
03:16:30 12 Mr. Atlas, who represents Banner Supply, who made three points and
03:16:35 13 we're aware of those.

03:16:37 14 I will state that liaison counsel is available and has
03:16:42 15 resources and has reached out to counsel in the various states to
03:16:47 16 attempt to reach some preliminary agreements or stipulations on
03:16:52 17 these issues.

03:16:54 18 I would like in response to your Honor's directive of
03:17:02 19 rapid inspections and rapid trials suggest to the plaintiff counsel
03:17:11 20 that we would hope to have on the plaintiff side inspections done
03:17:14 21 by August 30th, case selection in September with discovery complete
03:17:21 22 by October, pretrial orders as your Honor has directed in November,
03:17:26 23 and trials in December and January.

03:17:28 24 I know it's ambitious, but I know that this is, the
03:17:34 25 rapidity with which your Honor has considered this matter and on

03:17:41 1 behalf of plaintiffs assembled here, we appreciate the fast
03:17:46 2 tracking. We know that it's an imposition on the clerk's office,
03:17:52 3 we know it's an imposition on your staff, that you have other
03:17:55 4 matters. And from the plaintiffs' point of vantage, we intend to
03:17:59 5 do everything possible to accelerate these issues.

03:18:03 6 Lastly, your Honor, after your Honor concludes, I have
03:18:09 7 the forms that defense and plaintiff liaison counsel need filled
03:18:15 8 out, so if the attorneys would stay we will pass these out.

03:18:22 9 Does your Honor have other business in this courtroom?

03:18:24 10 THE COURT: No, I don't, not today.

03:18:28 11 Let me just make a couple of comments and then I will
03:18:31 12 hear from anyone else, any other additional issues.

03:18:34 13 This is a matter that I really look to the attorneys to
03:18:39 14 stand tall on. Looking around the room I have every reason to
03:18:43 15 believe and I certainly know you're capable of it and that you will
03:18:47 16 do it. The people, whether you're on the plaintiffs or the
03:18:52 17 defendants' side, you have to recognize that the individuals that
03:18:58 18 you're dealing with in these particular cases, whether it's
03:19:02 19 defendant or plaintiff, deserves some fast treatment in this case.

03:19:06 20 From the standpoint of the claimants, many of these
03:19:10 21 individuals have lost everything with the storms, whether it's in
03:19:13 22 Florida, Louisiana, or any other state. That's the reason they had
03:19:18 23 the material. They need some closure in their lives. They get up
03:19:28 24 from one storm and another one knocks them down. They get up from
03:19:34 25 that and now they're afraid that they're knocked down again. All

03:19:37 1 of us recognize that.

03:19:38 2 From the standpoint of the defendants, these folks have
03:19:41 3 to get on with their business. And if they shouldn't be in the
03:19:48 4 litigation because it's not their drywall in certain instances,
03:19:52 5 they ought to know that and get out of that litigation and not have
03:19:57 6 it hanging over their heads for years. It's not fair to them. So
03:20:03 7 this is where lawyers come in the picture. And I really urge you
03:20:09 8 to cooperate, to the extent you can cooperate, and let's get this
03:20:13 9 case resolved as quickly as I know you're capable of and work as
03:20:22 10 much as you can together on it.

03:20:23 11 Anything else that we haven't covered that anyone else in
03:20:27 12 the room feels they ought to bring to my attention? Danny.

03:20:37 13 MR. BECNEL: May it please the court, on the inspections,
03:20:41 14 a lot of the lawyers have been doing inspections for the last four
03:20:44 15 or five, six months. And I am just wondering -- and many instances
03:20:49 16 we're two and three experts at each inspections, toxicology and
03:20:54 17 industrial hygiene and chemistry, et cetera.

03:21:01 18 Does the court want us to redo each one of the houses
03:21:05 19 or --

03:21:06 20 THE COURT: Well, whatever is appropriate for both sides.
03:21:12 21 I mean, if you've done it and the other side is satisfied with it,
03:21:18 22 then that may be one thing. If they're not satisfied with it, then
03:21:22 23 they have an opportunity to look at it and deal with it. I don't
03:21:26 24 know if you necessarily have to do your portion over again, but
03:21:31 25 they have an opportunity to at least look at it.

03:21:32 1 I would hope that the plaintiffs could get together and
03:21:36 2 get the CVs and the reports from all of those experts and then swap
03:21:40 3 them some way along the line, same way with the defendants, so that
03:21:45 4 everybody is on the same page. I really again need you all to
03:21:49 5 cooperate in this matter.

03:21:51 6 MR. BECNEL: Judge, one of the things that I think maybe
03:21:55 7 the court might want to do in this, because there are hundreds and
03:21:58 8 hundreds of people that call us up, and they say if I have to pay a
03:22:02 9 big attorneys fee and I have to fix my house and it's going to cost
03:22:06 10 me 100,000 to fix my house, I can't afford to have you represent me
03:22:10 11 and they're just sitting there, they just don't know what to do and
03:22:13 12 lawyers on the plaintiff side don't know what to say or how to try
03:22:17 13 to advise them in that situation.

03:22:21 14 And I would just like to make the court aware of that.
03:22:24 15 And maybe what the court can do, especially when we're dealing with
03:22:28 16 electrical problems and air conditioning problems that are already
03:22:30 17 damaged but are still functioning but are going to fail, when you
03:22:36 18 do the inspection, it might not fail at that time but you give it
03:22:40 19 another two or three months and it will fail.

03:22:42 20 So I think maybe the court might ought to think about
03:22:45 21 some experts it appoints to deal with electrical and air
03:22:49 22 conditioning problems. Because if the electrical fails and we have
03:22:53 23 a fire, then maybe some of us might feel partially responsible for
03:22:58 24 not requiring the electrical to be repaired.

03:23:02 25 THE COURT: Well, that's why I said I think I need some

03:23:04 1 input from the lawyers who hopefully can talk about those things.

03:23:09 2 And if you need me to appoint 706 experts, I will do so.

03:23:13 3 The next meeting in this matter, open court meeting will
03:23:18 4 be August the 11th, August the 11th at nine o'clock in this
03:23:24 5 courtroom. I will meet with liaison counsel and perhaps the
03:23:27 6 steering committees at 8:30 that morning in advance.

03:23:34 7 Well, thank you very much for coming, folks, and thank
03:23:37 8 you for your input, I appreciate it. The court will stand in
03:23:40 9 recess.

03:23:40 10 THE DEPUTY CLERK: Everyone rise.

03:23:42 11 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

03:23:42 12

03:23:42 13 * * * * *

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15 REPORTER'S CERTIFICATE

16

17 I, Karen A. Ibos, CCR, Official Court Reporter, United States
18 District Court, Eastern District of Louisiana, do hereby certify
19 that the foregoing is a true and correct transcript, to the best of
my ability and understanding, from the record of the proceedings in
the above-entitled and numbered matter.

20



21

Karen A. Ibos, CCR, RPR, CRR
Official Court Reporter

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