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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED * Docket 09-MD-2047
DRYWALL PRODUCTS *
LIABILITY LITIGATION * February 23, 2011
*
This Document Relates to All Cases * 9:00 a.m.
* * * * *

STATUS CONFERENCE BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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17 Proceedings recorded by mechanical stenography, transcript
18 produced by computer.

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PROCEEDINGS

(February 23, 2011)

1 **THE DEPUTY CLERK:** All rise.

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

4 **THE DEPUTY CLERK:** MDL-2047, *In re: Chinese drywall*.

5 **THE COURT:** Counsel, make their appearance for the
6 record, please.

7 **MR. LEVIN:** Arnold Levin for Russ Herman, who is
8 liaison counsel.

9 **MR. MILLER:** Good morning, Your Honor. Kerry Miller,
10 defense liaison counsel.

11 **THE COURT:** We have a number of people here and,
12 also, we have 215 on the phone, so please use the microphones
13 when you address the Court.

14 I met with liaison and lead counsel in advance
15 of this meeting and received from them the proposed agenda,
16 discussed it in general with them. I'll hear from the parties
17 now.

18 The first item is Pretrial Orders and Property
19 Inspections No. 2.

20 **MR. LEVIN:** It seems I'm being relieved, Your Honor.
21 Mr. Herman, the floor is yours.

22 **THE COURT:** All right. Anything on Pretrial Orders?

23 **MR. HERMAN:** No, Your Honor.
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1 **THE COURT:** Property Inspections?

2 **MR. HERMAN:** They're going forward. I think
3 Mr. Wallance is here to speak about the inspections in
4 connection with -- although, this says, "Crawford & Company
5 Inspections," this may be the proper time for Mr. Wallance to
6 make his report --

7 **THE COURT:** Okay.

8 **MR. HERMAN:** -- on the remediation program.

9 **MR. WALLANCE:** Thank you, Russ. Thank you, Your
10 Honor.

11 Your Honor, occasionally in the life of a lawyer
12 you have a very gratifying moment as a result of hard work that
13 you and your colleagues and your adversaries have put into a
14 particular project, and that moment occurred on February 7th,
15 in Lauderhill, Florida, when the first home began remediation.

16 The homeowner, Mrs. Aguilar, was present and
17 it's fair to describe her as absolutely ecstatic, "Thank you
18 for choosing me first. Thank you for choosing me first." She
19 gave me a big hug. She gave our contractors a big hug. And
20 she is now on video which you can find on the Web site of the
21 *Fort Lauderdale Sun Sentinel*. And I urge everyone in this room
22 and listening on the phone to go to that Web site and look at
23 that video of Mrs. Aguilar, because that's what this -- all of
24 these efforts for the last six or eight months are about.

25 Five homes, Your Honor, are currently in

1 remediation. Moss, our contractor, Moss & Associates, is
2 really ahead of us all and they've sent out over 100 work
3 authorizations. It's the package that if the homeowner signs,
4 and it contains detailed specifications as to work that's going
5 to be done in that home, then the work starts.

6 We are anticipating quite a few starts in
7 February -- in March and April. And there has been, as well, a
8 significant amount of publicity. The Lauderhill remediation
9 opening, if you will, was accompanied by a lot of press. *CNN*
10 showed up the second week.

11 And a number of people are so excited about the
12 program that they are taking credit for it, including the
13 Louisiana State Attorney General, who issued a press release
14 announcing the start of the remediations in Louisiana. And
15 we're grateful for his support and focusing attention on what
16 so far has been a very positive effort, but still requires --
17 and I want to stress this -- the work really began -- unlike in
18 other cases, the work really began after we signed the
19 agreement last October.

20 And that work is continuing, but it's going to
21 require everyone to commit and continue to move this forward,
22 but I think we're off to a very good start, Your Honor.

23 **THE COURT:** Well, that's good. That's good news. As
24 all of us know, this case posed a lot of problems in the sense
25 that in many cases there's one defendant, two defendants. In

1 this particular case, there are 1,000 defendants. It looks
2 like there may be 20-, 30-, 40,000 homes that are involved in
3 about 28 states presently.

4 The first challenge in the case was to try to
5 get a census together so that the parties, particularly the
6 defendants, had some idea, and their insurers had some idea, of
7 what their potential claims were, and that was done. Then a
8 protocol was achieved by the trials. So we had ten trials,
9 either in default judgments or in actual trials, and even the
10 default judgments took a week to present evidence.

11 So out of those trials came a protocol. When
12 the protocol came about, then it was more theoretical than
13 real, so it was necessary to put the protocol in action, to do
14 some construction work, get some bricks and mortar out there
15 and put the protocol together; and that was done through the
16 pilot program.

17 A pilot program was created with the
18 understanding that no one would be prejudiced by entering the
19 pilot program. They could take a look-see and see how it would
20 go. The pilot program has been very successful. As was
21 mentioned, five homes are currently in remediation. We've got
22 about 140 or thereabouts in the program. It looks like it's
23 rapidly increasing. It looks like there may be 20 to 30
24 started next month and 60 to 80 the following month.

25 Then we'll get to the point, hopefully, where

1 we'll see where we are at that particular point and see whether
2 or not it can be monetized in some way, shape or form and gone
3 into another way.

4 But it has taken the work and the cooperation of
5 counsel. The thing that's helpful in this particular case,
6 too, is I asked counsel if they could have somebody on the
7 ground, one of the attorneys, at the homes to make sure that
8 these homes were being done according to the protocol.

9 So we have an attorney at the home. He's
10 learning a lot about construction and a lot about drywall, but
11 at least that's our contact. Of course, from the plaintiff's
12 standpoint, there's somebody who fields all of the complaints
13 that people have during the construction. So they're getting a
14 feel for what these construction people have to do.

15 But, hopefully, we'll be able to move that on to
16 another task in the near future. I do appreciate the work on
17 both sides that brought us to this place. I think, as I've
18 mentioned several times, these folks are out of their homes.
19 Nobody likes that. Defendant, plaintiff, nobody likes that.
20 So because of their efforts, we've moved this case fairly fast
21 so far.

22 Thank you very much.

23 **MR. WALLANCE:** Thank you, Your Honor.

24 **THE COURT:** Preservation Order. Anything on that?

25 Before I get to that, let me talk about the

1 profile forms. In order to expedite matters, we try to
2 shortcut some of the traditional methods of discovery, like
3 interrogatories and motions to produce. We don't have the time
4 for that. So profile forms are the substitute.

5 It gives you a look-see. Each side gets some
6 information that is going to be gotten eventually anyway. So
7 we might as well get it up front, get rid of that aspect of the
8 case, and that's done by profile forms. But on both sides, I
9 need your cooperation on the profile forms, and I really mean
10 it.

11 If we don't get the profile forms from the
12 plaintiffs, I'm going to dismiss the cases. If we don't get
13 them from the defendants, I'll take other appropriate action
14 against them.

15 Preservation Orders. Anything on that?

16 **MR. HERMAN:** Nothing new, Your Honor.

17 **THE COURT:** State/Federal Coordination, Dawn?

18 **THE DEFENDANT:** Good morning, Judge Fallon. Dawn
19 Barrios for the state/federal committee.

20 We have prepared, again, our CD of all state
21 cases with contact information for each jurist as well as all
22 motions pending through CT Order No. 21.

23 I'd like to take this opportunity to urge every
24 defendant to inform the state/federal committee of all pending
25 state court cases around the country. Because it's very

1 difficult in some counties for us to pick up the information
2 because they are not on the Internet. We cannot go on the
3 Internet and just search for these cases. And that's the
4 instance, particularly in Florida.

5 I'd like to take the opportunity to thank
6 Ms. Dorothy Wimberly who put me in contact yesterday with an
7 attorney for several builders in Florida, and she wanted to
8 know why I never talked about any of her counties. So I'm
9 going to go use this opportunity to do that today.

10 In Palm Beach County, which is the 15th Judicial
11 Circuit, all of the claims have been coordinated under Judge
12 Kelley. That order came out in 2009.

13 In Hillsborough County, Florida, which is the
14 13th Judicial Circuit, there are approximately two judges
15 assigned to all the Chinese drywall cases. There's no formal
16 order of coordination between the judges of that circuit. But
17 the administrative judge is Judge James M. Barton, II. If Your
18 Honor would like, I'd be happy to contact him or give you the
19 information to contact him.

20 And the third county is Lee County in Florida,
21 which is the 20th Judicial Circuit. The chief judge there is
22 Judge G. Keith Cary. The circuit administrative judge is Judge
23 John S. Carlin. There are approximately five judges in that
24 county assigned to all the Chinese drywall cases. Again,
25 they're not coordinating among themselves.

1 But her point to me I think was very well taken:
2 There are lots of state court judges issuing orders and the
3 other judges and the other parties are not privy to those
4 orders, particularly because they're not on LexisNexis. But I
5 understand LexisNexis is now going deeply into Florida to try
6 to solve some of these problems.

7 Of course, you have in the joint report the
8 other issues regarding Florida.

9 The other state I'd like to report on is
10 Alabama. Last Friday, there was a hearing before Judge Reed on
11 whether or not the defendants could third-party Taishan. In
12 that case, the plaintiff had sued only the domestic defendants.
13 There's a trial date set for May 2nd on some of the claims. On
14 those claims set for trial in early May, Judge Reed denied the
15 motion to allow service on Taishan.

16 But there are about seven other cases
17 consolidated before Judge Reed and he did allow the third-party
18 action to go forward against Taishan in those cases.

19 In Virginia, Mr. Serpe reminds me that Judge
20 Hall is waiting on service on Taishan, and she's hoping that
21 the parties will make that service sometime this spring. He,
22 Mr. Serpe, is arguing the pollution exclusion on the builders
23 risk policies before Federal Judge Mark Davis.

24 The documents have been -- all the pleadings and
25 complaints have been translated into Mandarin to go to China

1 for service because Taishan refused to accept service in the
2 United States.

3 That concludes my report, Your Honor. Thank you
4 very much.

5 **THE COURT:** Thank you very much.

6 I have been in touch with most of the judges in
7 the state court and I've tried to coordinate with them. I send
8 them all the material that I have and confer with them at least
9 on a weekly basis to discuss any developments. I'm just
10 delighted that they've been willing to give me any information
11 that they have that could at least make my life better in this
12 particular case, and I certainly try to reciprocate.

13 Judge Weinstein from Florida has been elected
14 chief judge over there. So he's interested in trying to
15 coordinate and get about three judges who will handle all of
16 the cases throughout the state of Florida and we'll be able to
17 have a little more efficient meetings in that way.

18 **MR. HERMAN:** Your Honor, may it please the Court, at
19 page 7, the *Harrell* class in Florida, hearing for approval was
20 February 4th, 2010. The *Banner* negotiations are ongoing.

21 **THE COURT:** All right. Any discovery issues -- I'll
22 do the motions later and then the Discovery Issues is the next
23 item. Anything that we need there?

24 **MR. HERMAN:** Knauf has made, as indicated,
25 substantial discovery and they're continuing to do so.

1 **THE COURT:** What about the depositions in Germany and
2 Hong Kong and Taishan and New York?

3 **MR. HERMAN:** Your Honor, the depositions in -- the
4 Knauf scheduled depositions in Germany and New York, the Knauf
5 scheduled deposition in Hong Kong have been postponed to be
6 reset because of the trial dates and class actions with
7 Interior Exterior and because we have Taishan issues that we
8 need to accelerate, and they've been postponed with the
9 agreement of Knauf.

10 **THE COURT:** Okay.

11 **MR. HERMAN:** The Taishan deposition, however, will go
12 on. And Mr. Seeger for the PSC and Mr. Duplantier for Interior
13 Exterior will meet after the status conference to work on a
14 discovery schedule that involves Interior Exterior.

15 **THE COURT:** How about Freedom of Information Act?
16 Anything there?

17 **MR. HERMAN:** Your Honor, nothing at this point.
18 However, I would like to -- it's page 12 -- talk about a little
19 bit about Taishan. We've been asked to post the new Taishan
20 trademarks and indicia, which have been identified by
21 plaintiffs on the Web site, updated for the benefit of the
22 builders. Taishan's learned counsel are here.

23 And we make a request that Taishan also provide
24 us with all of the trademarks, any printing and indicia on
25 their drywall so that they, likewise, can be posted for the

1 benefit of all litigants and all litigants' attorneys.

2 **THE COURT:** It seems to me that that's the kind of
3 thing that's going to be gotten either now or later. So we
4 might as well push on that and make sure that it's done now
5 rather than later so we can move on it.

6 **MR. MILLER:** Yes, Your Honor. And if you reference
7 back to Pretrial Order No. 10, that's the pretrial order that
8 governs the indicia and the markings, and it sets forth the
9 continuing obligation to update it anyways. So that structure
10 is in place.

11 **THE COURT:** Let's do that then. What's reasonable,
12 timewise?

13 **MR. STANLEY:** Good morning, Your Honor. We just
14 heard about this this morning for the first time, so we haven't
15 had a chance to communicate with our clients.

16 **THE DEPUTY CLERK:** Excuse me, your appearance,
17 please, on the record.

18 **MR. STANLEY:** Oh, I'm sorry. Rick Stanley for
19 Taishan.

20 **THE DEPUTY CLERK:** Thank you.

21 **MR. STANLEY:** So we haven't had a chance to
22 communicate to see what we have already provided and what the
23 plaintiffs want and what needs to be provided in connection
24 with the markings that they're talking about.

25 I think some of it has already been transmitted

1 in the 30,000 documents we've produced on personal
2 jurisdiction. But to the extent that those things need to be
3 supplemented once we find out exactly what the universe is,
4 we'll get back to you, Judge.

5 **THE COURT:** Okay.

6 **MR. STANLEY:** I would think, hopefully, we'd be able
7 to report by the next status conference.

8 **THE COURT:** Let me hear from you within two weeks on
9 that and then I will look forward to you having it by the next
10 status conference.

11 **MR. STANLEY:** Thanks, Judge.

12 **THE COURT:** Okay. Thank you.

13 Trial Settings in Federal Court. I think we
14 talked about that.

15 **MR. HERMAN:** As listed in the status report, which
16 Your Honor posts, there are both class certification hearings,
17 and the Court set a bellwether trial on the claims against
18 Interior Exterior to commence July 18th, 2011.

19 **THE COURT:** Anything on Filings in the MDL? That's
20 the next item on the agenda.

21 **MR. LEVIN:** Your Honor, Arnold Levin.

22 Perhaps we can combine the filings and the
23 notice of appearance and default judgments together.

24 **THE COURT:** Right.

25 **MR. LEVIN:** Where we are on filings is Knauf has

1 agreed to accept service. So the onerous process of the Hague
2 is not necessary. And they've been receiving these pleadings
3 and accepting these pleadings; and for this we're all thankful,
4 because it saves hundreds of thousands of dollars in filing
5 fees.

6 Taishan has not. Taishan has been served in the
7 indeterminate defendants complaint, the *Gross* complaint and now
8 in the first substantive complaint, Omni II, they've been
9 served.

10 It takes a filing of a motion for a default
11 judgment and proof of service for them to enter their
12 appearance, but they've entered their appearance. In many
13 ways, I feel that I've satisfied my mom's request that I be a
14 doctor because at least with regard to Taishan I'm an oral
15 surgeon.

16 There are intervention complaints outstanding.
17 It takes nine months to serve them. When they finally get to
18 Taishan in China, they're refused. It takes an affidavit of
19 refusal and a filing. They're already in this court. I see no
20 reason why they can't accommodate the court and counsel by
21 accepting service.

22 They're contesting personal jurisdiction, and
23 they'll continue to contest personal jurisdiction. But to set
24 up these barriers after -- and cause the plaintiffs to spend
25 the type of money just doesn't make sense.

1 But I've said my peace. We'll continue to serve
2 them under the Hague, sir.

3 **THE COURT:** The issue that everybody has to be aware
4 of is court costs. So it's a situation where a defendant, if
5 they get to the point where if they lose some of their motions
6 and they're in the case, then they start out with a million
7 dollars or so liability even if they're only responsible for
8 one house, because of the court costs. The court costs can be
9 even more than the damages.

10 **MR. LEVIN:** Following this hearing -- excuse me, Your
11 Honor. I'm sorry to interrupt.

12 **THE COURT:** That's all right.

13 **MR. LEVIN:** Following this hearing, we will argue a
14 motion that's unopposed to enter additional default judgments
15 against Taishan's parents and subsidiaries. For some reason,
16 they argue that they're not involved in the case, but they
17 never enter their appearance.

18 But our service against Taishan benefits not
19 only the omni plaintiffs, it benefits the builders, who are
20 looking to defendants to help them remediate homes. And we're
21 happy to undertake this, but we're not an eleemosynary
22 institution, the Plaintiff's Steering Committee.

23 **MR. MILLER:** Your Honor, Kerry Miller. Just on that
24 issue, to touch upon and remind the Court and give Taishan
25 maybe the benefit of why the Knauf entities did what they did

1 and that is to accept service only in the MDL.

2 And the purpose of that, in addition to carving
3 off unnecessary costs, was to create a census so that your risk
4 and your exposure could be evaluated in one forum, and I think
5 it's been of some benefit to have done that.

6 **THE COURT:** They have to understand that simply by
7 entering that doesn't mean that their motions are not going to
8 be given full weight. That's the only way I can really hear
9 from them is if they enter and explain themselves.

10 Otherwise, I'm in a position of just having to
11 default them and not getting their information, not getting
12 their approach. So they can enter with the understanding that
13 they're reserving their rights, obviously, to contest
14 jurisdiction, contest whatever they need to contest. But that
15 approach deprives them of a voice and doesn't make sense to me.

16 So they should take another look at this because
17 pretty soon they may be the only ones standing and that's not
18 necessarily going to be comfortable.

19 Insurance Issues. Anything?

20 **MR. HERMAN:** Yes, Your Honor. Ms. Barrasso, who is
21 the liaison counsel, will speak to that.

22 **MS. BARRASSO:** Good morning, Judge. Judy Barrasso
23 for the insurers.

24 Judge, pursuant your order regarding scheduling
25 of motions involving the CGL insurers, we've met with the

1 homebuilders and the PSC. We've revised the proposed
2 scheduling order and we're going to meet with you following
3 this to confect that. We hope to get that done.

4 **THE COURT:** Thank you.

5 The Service of Process Electronically. Anything
6 on that?

7 **MR. HERMAN:** Nothing new, Your Honor.

8 **THE COURT:** Any Master Complaints?

9 **MR. HERMAN:** Nothing new, Your Honor.

10 **THE COURT:** Class Action Complaints/Indeterminate
11 Defendants. Anything on the Omnibus class?

12 **MR. LEVIN:** They just continue to be filed, Your
13 Honor.

14 **THE COURT:** Okay. Anything from the Special Master?

15 In addition to the special master, the Court's
16 appointed now BrownGreer to corral this issue and try to get
17 our hands around it and expedite some matters.

18 Personal Jurisdiction. Anything on that?

19 **MR. HERMAN:** Yes, Your Honor. Paper discovery
20 continues with regard to Knauf and there's nothing new to
21 report. We're moving through the discovery and eventually
22 there will be a hearing on the personal jurisdiction and the
23 alter ego issue.

24 **THE COURT:** All right. I continue to update the
25 *Frequently Asked Questions*. When I set the schedule, I'm

1 dealing with Central Time, so I'll make that clear in the
2 answers. One appearance is satisfactory. I don't need a
3 number of people to be present representing the same parties.

4 Anything on the next one, Matters Set for
5 Hearing Following The Current Status Conference, that's what
6 we're going to deal with now.

7 **MR. LEVIN:** We're prepared to argue, Your Honor.

8 **THE COURT:** I've got a number of motions. We'll take
9 a ten-minute break after and I'll come back and hear the
10 motions.

11 **MR. HERMAN:** Your Honor, I would like to, may it
12 please the Court, point out, we have a number of new folks in
13 attendance today, that Your Honor has established
14 www.laed.uscourts.gov/drywall/faqhtm. And in addition, all of
15 Your Honor's status conferences are posted.

16 **THE COURT:** I think we've covered the Other Issues on
17 the agenda. The next status conference is March 23rd.

18 Anything from anybody in the audience? We've
19 got several hundred people here. Okay, folks. Thank you very
20 much for your work. March 23rd, next status conference.

21 The court will stand in recess.
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CERTIFICATE

I, Jodi Simcox, RMR, FCRR, Official Court Reporter
for the United States District Court, Eastern District of
Louisiana, do hereby certify 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.

S/ Jodi Simcox, RMR, FCRR
Jodi Simcox, RMR, FCRR
Official Court Reporter