

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED * 09-MD-2047
DRYWALL PRODUCTS *
LIABILITY LITIGATION * Section L
 *
Relates to: All Cases * March 22, 2016
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MONTHLY STATUS CONFERENCE BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

Appearances:

For the PSC: Herman Herman & Katz, LLC
BY: RUSS M. HERMAN, ESQ.
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New Orleans, Louisiana 70113

For the Knauf Defendants: Baker Donelson Bearman
Caldwell & Berkowitz, PC
BY: KERRY J. MILLER, ESQ.
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For the Taishan, CNBM, and BNBM Defendants: Phelps Dunbar, LLP
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Proceedings recorded by mechanical stenography using
computer-aided transcription software.

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1 representatives of the PSC.

2 Let's go down the agenda first. Anything on
3 pretrial orders?

4 **MR. HERMAN:** No, Your Honor.

5 The next item at page 4, Item IV, there are 268
6 alleged Taishan properties that have now been vetted by the PSC
7 and removed by order.

8 At page 5 under Item VI, the Knauf Remediation
9 Program, there are 2,845 properties. There are three packets
10 out. Jake Woody is here to report. I suggest, may it please
11 the Court, that we do Item VI, the Knauf Remediation Program,
12 and Item XV, already remediated homes, at the same time.

13 **THE COURT:** Jake, do you want to come up.

14 As everybody knows, we have grouped these claims
15 into two sort of groupings. One is a Knauf drywall grouping
16 and the other is the Taishan, et al., drywall grouping. We are
17 finished pretty much with Knauf with the exception of some
18 objections and some claimants, and now we are moving into
19 Taishan, et al. I will hear from Mr. Woody on the report on
20 Knauf.

21 **MR. WOODY:** Good morning, Your Honor. My name is
22 Jake Woody from BrownGreer here to give the monthly status
23 report for the Chinese Drywall Settlement Program.

24 We will start as always with the total payments
25 we have made from the Settlement Program. That total is now

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1 \$82,565,727, which is an increase of just under \$100,000 since
2 our last status conference in February. Of that amount,
3 25 percent is for what we call other loss claims. That total
4 is \$20.9 million. 75 percent is for what we call Global,
5 Banner, INEX repair and relocation claims, and that total is
6 \$61.5 million.

7 Global, Banner, INEX repair and relocation is a
8 square footage payment intended to assist people in repairing
9 their homes or relocating. Other loss claims are made up of
10 several different claim types intended to compensate them for
11 things like lost rent, moving out of the property, moving back
12 in, etc. I will talk a little bit more about that in just a
13 minute.

14 I also wanted to mention the timeline for when
15 we have made all these payments because I think that's
16 important to get an understanding of where we are in this
17 program.

18 In 2014 we paid \$52.5 million, which is
19 63 percent of everything we have paid. So that means that for
20 almost two years now we have had 63 percent of all payments
21 made. 36 percent were made in 2015, and so far this year we
22 have just paid 1 percent. That's not because of any lack of
23 diligence. It's because we have paid almost everything we can
24 pay.

25 We continue to pay people who submit required

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1 documents and things like that, but I did think that this was
2 interesting just to show that while we are still working on the
3 program and it's still ongoing, most people have been paid.
4 Some people in some cases have been paid for several years now.
5 Again, our total payment is \$82.5 million.

6 We are also paying stipends to attorneys
7 pursuant to Pretrial Order 30. These are cost reimbursements.
8 So far we have paid \$4.5 million, which is an increase of
9 \$372,000 since the last status conference. We have \$411,000
10 left to distribute. All we need to distribute that money is
11 some forms from law firms.

12 If anybody on the phone or in the courtroom is
13 waiting for this, they can find those forms on our website or
14 they can always e-mail us as CDWquestions@BrownGreer.com, and
15 we will tell them what we need from them to get that money
16 paid.

17 **THE COURT:** Tell us about the stipends a little bit,
18 Jake.

19 **MR. WOODY:** The stipends are again set out in PT0 30.
20 We are authorized to pay \$1,000 per KPT property and \$150 for
21 non-KPT property. The money goes to law firms, and it comes
22 from the attorney fee fund. It doesn't come from money
23 allocated to go to homeowners. It comes from a separate pool
24 of money.

25 To be eligible for this, you need to have a

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1 property with an eligible claim, whether or not it's a property
2 that's been remediated or Global, Banner, INEX repair and
3 relocation claim or an other loss claim. You have to have an
4 eligible claim. So just because you submitted a claim doesn't
5 mean you get a stipend. You have to have actually recovered
6 money for a homeowner or a client, and if that's the case --

7 I guess I should back up and say last fall we
8 distributed a list of all the eligible properties and the
9 amount that they were eligible for based on the information we
10 obtained during our review, distributed that to attorneys, gave
11 them a chance to object or supplement or add to it. They did
12 that. We then gave that to the PSC, who attached it to PTO 30,
13 and the Court published it on its website.

14 So this list is available for everyone of all
15 the properties that are at issue and the amounts for each
16 property. Once that was finalized and once the time to appeal
17 PTO 30 ran, which I believe was at the end of 2015, the very
18 end, we began issuing payments.

19 We need a verification form from the firms and
20 we need a W-9 to issue that payment. We do it by wire.
21 Typically we do it about once a week or when we reach a
22 critical mass of money that needs to be paid out. So we have
23 been working on that for about three or four months now.

24 **THE COURT:** As we know, this amount of money that we
25 are talking about, the \$82 million, under the Settlement

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1 Program, Knauf's interests agreed to remediate the homes of the
2 individuals 100 percent, remediate the homes in accordance with
3 the protocol, which was evidence-based and devised after six or
4 seven trials, and then putting it in a program. It was a
5 temporary program to see whether or not the theoretical
6 protocol worked. It did, and they monetized it and Knauf
7 agreed to pay for the remediation.

8 The downstream Knauf defendants agreed to
9 supplement that with various other amounts for various other
10 things. The latter part is what we are talking about here. So
11 the \$82 million is in addition to the amount that Knauf spent
12 in remediating the homes, which was approximately
13 one-point-some billion dollars or estimated, in any event.

14 **MR. WOODY:** Yes, sir.

15 I do want to announce that we are completely
16 finished with the other loss claims that we have been working
17 on for so long. There's nothing left for us to do. We are not
18 waiting on any information from people. I wanted to give you a
19 quick overview of that timeline.

20 We started off at the bottom here with 7,987
21 claims. Of those, 5,150 were eligible. The rest were denied
22 either because they didn't give us the required documents or
23 they didn't provide proof that the property had Chinese drywall
24 in it.

25 PTO 29 authorized us to issue or make an initial

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1 offer to people at certain capped amounts. We did that at the
2 end of 2014. Of that, 4,423 people accepted the offer. So we
3 paid them. That's the money that I showed you earlier. Those
4 claims are done and have been done for some time.

5 727 of the eligible claims elected to have the
6 special master review their claim in an attempt to obtain a
7 greater recovery. We worked with the special master to get him
8 all the information he needed to review those claims and issued
9 determinations on those as well. There was also an option
10 after that for people to ask him to reconsider the offer he
11 made. Of the 727, 326 requested reconsideration. The
12 remainder accepted his offer. We have finished reviewing these
13 reconsideration requests.

14 As you can see, we have been through these
15 claims many, many times at this point, so there was nothing
16 really new or earthshaking for us to look at. On March 11 we
17 issued the last of our final determination notices to people
18 for these other loss claims. The only option remaining is to
19 either accept that offer -- and if you got an offer and you
20 want to accept it, there's no need to do anything; you can do
21 nothing, and we will pay you -- or to appeal directly to the
22 Court. I believe we are maybe going to have a special hearing
23 on those appeals.

24 The time to appeal for many people is still
25 open, although it's only open for about another week or so. So

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1 once we have all the appeals in hand, we can file responses to
2 each and set those for a special hearing.

3 **THE COURT:** The special hearing we set for May 5 of
4 this year to give everybody an opportunity to speak if they
5 wish or write if they wish, at least make themselves known.

6 I might say that the focus of the Court in these
7 types of matters is to create a program that gives a process, a
8 procedure for dealing with the issue. The claims administrator
9 is the first person who goes through the Settlement Program,
10 makes sure that the agreements established in the Settlement
11 Program have been carried out. When people make claims, they
12 simply look at the Settlement Program to determine whether or
13 not their claim falls within the terms of the Settlement
14 Program and how much they are entitled to under the Settlement
15 Program.

16 The claims administrator is the one who does the
17 first cut, so to speak. Then if somebody is not satisfied,
18 feels that the claims administrator made a mistake or didn't
19 interpret it well or they are dissatisfied for any reason, they
20 have an opportunity to then appeal that decision to a special
21 master, who is appointed by the Court and not associated with
22 this litigation in any way, shape, or form, just with expertise
23 in mediating matters.

24 The special master hears evidence, looks at
25 documents, gives consideration to the individual, and then

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1 writes an opinion and makes a decision. At that point the
2 individual, if they feel that the special master has erred, has
3 made a mistake, didn't do what they feel should be done, they
4 have a right to ask for a reconsideration of that. The special
5 master wipes the slate clean, reconsiders what's been done, and
6 then issues an order. They can go either way on it.

7 Oftentimes the special master will say, "In reconsideration, I
8 increase the amount," or they can affirm what they did before.

9 At that point the individual, if they are still
10 not satisfied, has an opportunity to appeal to the Court. When
11 I get the appeal, I listen to the party. I look at all the
12 documents, everything that's been said, everything that's been
13 written. I give it consideration, and I do the very best I can
14 and make a decision on it.

15 That's the best we can do in this type
16 situation. Not everybody is going to be satisfied. It's
17 unfortunate, but that's the nature of the game. My concern is
18 that everybody has an opportunity to go through the process.
19 The process is detailed. They have an opportunity to present
20 their case, to re-present their case two or three times, and
21 then a final decision has to be made. That's what we are in
22 the process of doing now.

23 **MR. WOODY:** I also wanted to mention just in
24 conclusion -- I wanted to give you some visual of the program
25 as a whole. I've talked about Global, Banner, INEX claims and

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1 other loss claims, which are sort of the bottom two parts of
2 this period. We have also briefly touched on the Knauf
3 Remediation Program, which is separate and apart from what I
4 have just talked about. It's a separate pool of money. It's a
5 separate program. Although we work on it, it's not a
6 claim-based program like this. It's a program to remediate
7 properties, as we mentioned.

8 The total claims that we have had to deal with
9 in the entire Chinese drywall settlement world is just over
10 24,000. We are now done with them, which is a nice feeling to
11 have.

12 With that I will conclude and just note that
13 since the last status conference we have paid just under
14 \$100,000 in claim payments, \$411,000 in stipend payments. We
15 issued the last of our notices. 96 of them went out on
16 March 11. We have zero claims remaining to review on our end.
17 Thank you.

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

19 **MR. HERMAN:** May it please the Court. Under
20 Item VII, INEX, Banner, Knauf, L&W, and Global settlements,
21 there are no new issues. As I indicated before, 268 alleged
22 complaints against Taishan, BNBM, CNBM defendants have been
23 dismissed.

24 Between pages 7 and 17, there are three tracks
25 detailed: a contempt track, a class action track, and a

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1 jurisdiction track. 47 depositions have been taken in that
2 regard.

3 There's nothing new under Venture Supply and
4 Porter-Blaine at Item IX.

5 There's nothing new under Item X, plaintiff and
6 defendant profile forms.

7 Under Item XI, there's nothing new. For the
8 record and any people listening, if they want to access the
9 Court's website for the status conference and the content of
10 the reports, it's www.laed.uscourts.gov/drywall/faq.htm, and it
11 appears at page 19 of the status conference report.

12 Item XII, Your Honor has indicated there are
13 some items set after this hearing which Your Honor will
14 entertain.

15 Item XIII, there's nothing new on the physical
16 evidence preservation order.

17 Item XIV, there's nothing new on the entry of
18 preliminary default.

19 Item XV has already been addressed by Mr. Woody
20 on already remediated homes.

21 Your Honor has indicated the next status
22 conference will be April 26 at 9:00 a.m.

23 **THE COURT:** The following one is May 25, and that one
24 is at 2:00 p.m. It's May 25 at 2:00 p.m. Then the objections,
25 as I mentioned, will be -- I will set that and post it -- on

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May 5 at 9:00.

MR. HERMAN: May it please the Court. I apologize.
I think the attorneys for the attorney general are here.

THE COURT: Anything from the attorney general?

We will take a five-minute break here, and I
will hear from the litigants. Court will stand in recess.

THE DEPUTY CLERK: All rise.

* * *

CERTIFICATE

I, Toni Doyle Tusa, CCR, FCRR, Official Court
Reporter for the United States District Court, Eastern District
of Louisiana, certify that the foregoing is a true and correct
transcript, to the best of my ability and understanding, from
the record of proceedings in the above-entitled matter.

s/ Toni Doyle Tusa
Toni Doyle Tusa, CCR, FCRR
Official Court Reporter

\$	75 percent [1] 4/4 7778 [1] 1/22	attorney [4] 2/25 5/22 13/3 13/4 attorneys [3] 5/6 6/10 13/3 authorized [2] 5/20 7/25
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47 [1] 12/1	appeal [6] 6/16 8/21 8/24 9/20 10/10	claim-based [1] 11/6
5	10/11	claimants [1] 3/18
5,150 [1] 7/21	appeals [2] 8/23 9/1	claims [19]
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