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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED
DRYWALL PRODUCTS LIABILITY
LITIGATION

CIVIL DOCKET NO. MDL 2047 "L"
NEW ORLEANS, LOUISIANA
THURSDAY, APRIL 8, 2010, 9:00 A.M.

THIS DOCUMENT RELATES TO
ALL CASES

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

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M O R N I N G S E S S I O N

THURSDAY, APRIL 8, 2010

(COURT CALLED TO ORDER)

THE DEPUTY CLERK: Everyone rise.

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

THE DEPUTY CLERK: MDL 2047, *In re: Chinese Drywall*.

THE COURT: Counsel, make your appearance for the record.

MR. HERMAN: May it please the Court, good morning, Judge Fallon, Russ Herman for plaintiffs.

MR. WITTMANN: Good morning, Phil Wittmann, liaison counsel for the homebuilders.

THE COURT: Anybody from the defendants Knauf? Kyle, do you want to make your appearance?

MR. SPAULDING: Good morning, Your Honor, Kyle Spaulding on behalf of the defendants' liaison counsel. Kerry Miller is supposed to be on the phone. I'm not sure if he is.

MR. HAYDEN: Your Honor, this is Don Hayden. I'm on the phone with Kerry Miller.

THE COURT: Fine. We have 215 others on the phone. We are meeting today as our monthly agenda. I've met with lead

1 counsel for the various interests, as well as liaison, in advance
2 and worked out the agenda. I'll take them in the order
3 presented. First, pretrial orders, anything on that?

4 MR. HERMAN: Good morning again, Judge Fallon. The
5 pretrial orders are all listed at www.laed.uscourts.gov with a
6 link directly to Drywall MDL.

7 Counsel should review particularly pretrial order
8 number 1F, which sets deadlines for profile forms and responding
9 to complaints.

10 There is a new pretrial order number 19, entered
11 March 18, 2010, and which Your Honor has appointed a state and
12 federal coordination committee.

13 THE COURT: Right. There are three new ones on the
14 19th. I conferred again with my colleagues in state court and
15 appointed a committee under the leadership of Dawn Barrios as
16 chair to coordinate the state matters. I also appointed a
17 committee for the insurers with Judy Barrasso as chair to
18 coordinate the insurers' aspect of the case, so hopefully we'll
19 be able to get a profile form specific to those entities. Then
20 on 21 I did a retailers profile form to be more specific to the
21 retailers.

22 Property inspections anything on that?

23 MR. WITTMANN: Yes. Andrew Lemmon's clients' property,
24 a Louisiana property, has been inspected. I understand from
25 Dan Bryson (spelled phonetically) this morning that the Romano --

1 his clients, the Romano properties in Mississippi will be
2 inspected today. That would leave, as far as the June Louisiana
3 trials, MDL trials, Skip's clients' properties in Slidell to be
4 inspected.

5 THE COURT: That's important from the manufacturer's
6 standpoint. I need you to focus on those cases because we're
7 good to go in the last 2 weeks of June, and my thinking is that
8 if we could do two or three of those cases together, I think a
9 jury can deal with those, and then we can, in the future, take
10 more cases at one time, but I would like to give the jury an
11 opportunity to look at 3 cases at one time and see whether or not
12 that presents any problems.

13 That's important to at least have the builders
14 focus on those cases, and it's my thinking with bellwether cases
15 is that you get a couple informational points out of them, one is
16 just the organizational aspect of the case. All of us have been
17 there and done that. We know you can think about and theorize on
18 a trial, but until you actually do it, you really don't know the
19 full aspect of it.

20 We've now had two opportunities, and I've had the
21 seven *Germano* cases. By the way, I just issued an opinion on
22 that case, but that was 7 cases, and then the other case we just
23 tried, so that gives you some information. But it also gives you
24 information on type of cases, so with these picks, let's see if
25 we can get some diversity in the interest because that's another

1 aspect of bellwether that gives you some information on the
2 various cases. So my point is don't pick 3 cases that are the
3 same. Let's try to pick 3 cases that that have some difference
4 in them so we can get some intelligence out of it.

5 I would like those cases given to me by next week,
6 so let's get on the ball with that.

7 Plaintiff and defendant profile forms, anything on
8 that?

9 MR. HERMAN: Your Honor, we would like to have the cases
10 selected by Friday of next week so we can begin discovery.

11 THE COURT: Yes.

12 MR. HERMAN: Your Honor, with respect to the next issue,
13 profile forms, there are -- there is a manufacturers profile
14 form; a contractor/installer form, which I'll address in a
15 second; a builder defendant form; a distributor form; an exporter
16 form; a retailer form; and, I believe, we've reached or close to
17 agreement will reach an agreement on an insurers profile form.

18 With respect to the retailer profile form, it's
19 been submitted to the Court after negotiation, and we're awaiting
20 for Your Honor's review.

21 THE COURT: I'll draft a final on that one.

22 The profile forms, again, it's not an attempt to
23 stop you from getting discovery. It's not an attempt to short
24 circuit or do away with interrogatories or any of the other
25 devices that are present under the federal rules. It's really an

1 opportunity to shorten it, to get some information to you as
2 quickly as possible so that your subsequent discovery vehicles
3 can be targeted so that you're not asking questions that are so
4 broad that nobody knows what you want except you, and you're not
5 sure because you just want everything and for all times. So it
6 just doesn't work that way. Then I get a lot of motions for not
7 wanting to answer and motions to produce and motions to compel
8 and all of that sort of thing, so this is an opportunity to get
9 some information, but the profile form can't be so specific that
10 it defeats its own purpose. It has to be kind of a capsule of
11 the critical information that you need, and so don't feel that if
12 you don't put it in the profile form you're not going to be able
13 to get it later. That's not purpose of the profile form.

14 MR. HERMAN: Your Honor, may it please the Court, there
15 is one issue on profile forms. There have been negotiation
16 between the installers and plaintiffs. We had proposed, that is,
17 plaintiffs have proposed one single form for contractors and
18 installers. There was a discussion, Your Honor, I believe, by
19 Mr. Fitzsimmons as to wanting a separate installer form. We're
20 waiting on Your Honor to advise us as to whether there should be
21 a separate form or not.

22 THE COURT: Preservation order, anything on that?

23 MR. WITTMANN: Your Honor, on the installer profile
24 form, I understand there were some discussions about perhaps
25 changing the installer profile form.

1 THE COURT: Yes.

2 MR. WITTMANN: There has been some discussion about a
3 change in the form. I don't know that it has been submitted to
4 you yet.

5 THE COURT: No, it hasn't.

6 MR. WITTMANN: They are discussing that and they may
7 present something to you later.

8 THE COURT: Okay. That's fine.

9 MR. HERMAN: Your Honor, nothing new under preservation
10 orders, and Ms. Barrios is here.

11 THE COURT: State/federal coordination committee.

12 MS. BARRIOS: Good morning, Your Honor, Dawn Barrios for
13 the federal/state committee. We've had a lot of activity this
14 past month, and I want to thank all those attorneys, particularly
15 Ms. Barrasso, for providing me with additional state court case
16 information.

17 We have just this week sent letters out again to
18 all the state court judges that we know about advising of your
19 web site and of your recent rulings. I will be sending out your
20 *Germano* opinion and your *Hernandez* opinion as soon as it's
21 rendered to the various state court judges.

22 I have been working with Mr. Richard Serpe to get
23 Judge Hall, who is the coordinating judge in Virginia, to perhaps
24 adopt LexisNexis. I understand from Mr. Serpe that the defense
25 are in favor of electronic service. We're trying to get that

1 on-line for you.

2 Judge Hall has a hearing, a large hearing on
3 April 21st, at which time I understand that she'll probably
4 select some cases for trial in the fall. We just hope that we do
5 get her on LexisNexis so that we can keep up with all of her
6 information. I also understand that she's considering adopting
7 some of your pretrial orders.

8 THE COURT: I've been in touch with Judge Hall, who is
9 enthusiastically proceeding with this particular case. We're
10 trying to work together on it so that we can coordinate our
11 efforts. She has been very helpful to me in pointing me in the
12 direction of the appropriate Virginia law and other aspects, so
13 hopefully we'll get that on board.

14 I really do think that LexisNexis is the way to go
15 with service. It's important to give everybody an opportunity to
16 get the information as quickly as possible, and our clerk's
17 offices, even from the federal system, it makes it a little
18 difficult. They have a better facility for doing that and it
19 works better, so I do encourage her to favorably consider that.

20 MS. BARRIOS: Your Honor, I present to Your Honor and to
21 all liaison counsel the CD that has all of the state court cases
22 with the judge's contact information through CTO 14.

23 THE COURT: Thank you.

24 Motions in the MDL.

25 MR. HERMAN: Your Honor, the state court trial settings.

1 THE COURT: I'm sorry, state court trial settings.

2 MR. HERMAN: First I want to acknowledge the work that
3 Dawn has done very quickly in contacting folks and judges to
4 assemble the material.

5 With regard to state court trial settings, in
6 Florida there appear to be three cases, either one or more of
7 them which will be tried in Florida in early June. For
8 identification purposes, one client is Victor Diaz, another is
9 Jeremy Alters (spelled phonetically), and the third is
10 Irvin Gonzales, and the PAC will be meeting Monday, our trial
11 team members, with those folks in Florida.

12 With regard to other trial settings, Your Honor has
13 directed that in the last two weeks or so of June, there well be
14 cases tried in Louisiana. Andrew Lemmon's clients' property has
15 been inspected, Dan Bryson's clients' property in Mississippi
16 will be inspected today, and we're also advised that there are
17 several properties of Skip's clients in Slidell that will be
18 quickly scheduled for inspection.

19 The other trial settings that we're familiar with
20 at this point are the seven *Germano* intervenors will be scheduled
21 for trial in late August or September against the distributor,
22 Venture Supply; the builder, Porter-Blaine, and potentially
23 installers that were subcontracted by Porter-Blaine, and that
24 will be a contested litigation.

25 THE COURT: Judge Farina and I talked several times a

1 week, and I know he's moving forward with his aspect and doing it
2 very well. He's got a massive amount of issues in his cases, and
3 he's working through them, so I am in touch with him, and I've
4 tried to coordinate our trial dates with his, and hopefully we'll
5 be able to do that.

6 Next item is the motions in the MDL. I have a
7 number of motions now, several hundred of them. I've asked the
8 parties to get together and give me a listing of the motions.
9 They have done so, and now what we need to do is group the
10 motions in some grouping that makes sense, and then I would like
11 their input on picking one or more of those motions from each of
12 those groups that have a representative group of issues so that I
13 can focus on those one time as opposed to 250 times.

14 Discovery issues.

15 MR. HERMAN: Yes, Your Honor. There are several that
16 need to be addressed. The Marsh report indicated there might be
17 as many as 40,000 CDW properties based upon the amount of drywall
18 shipped; however, there are some warehouses that have CDW that
19 has not been used. We have given to manufactures' liaison
20 counsel a list of those. We will be making joint inspections and
21 conducting inventories of what's there, and they are proceeding
22 next week.

23 Also, both the builders and the plaintiffs, the PSC
24 plaintiffs want to move forward with Knauf discovery, and we
25 would like to get that coordinated with the manufactures and the

1 builders. Steve Herman from our office will meet with
2 Mr. Whitman and attempt to work out a process for the Knauf
3 depositions and then liaison with Kerry Miller to establish dates
4 and protocols to present to Your Honor.

5 MR. WITTMANN: Your Honor, with respect to the 30(b)(6)
6 notices that have gone out in connection with the plaintiffs'
7 request for documents, these are set to go forward on April 19th
8 and April 16th. It's created a lot of confusion, as we mentioned
9 at the conference with you this morning, in terms of what should
10 be done. There are lawyers whose clients are being served with
11 30(b)(6) notices. They haven't had time, really, to deal with
12 them. We believe they should be simply treated as Rule 34
13 requests. Your Honor directed me to meet with Mr. Davis and work
14 out a protocol to do that and have these go forward as Rule 34
15 requests as opposed to subpoena duces tecum because it's creating
16 a lot of confusion among the homebuilders and other defendants as
17 well.

18 THE COURT: Yes, the issue that presents itself is that
19 some of the entities haven't been in yet, and some of the
20 entities haven't either formally come in or even retained counsel
21 or, if they have retained counsel, they retained what they call
22 *monitoring counsel*. So it's unclear as to who's in and who's
23 out, and so the plaintiffs have just issued it to everyone.

24 Some of the individuals, of course, hopefully a lot
25 of them, have counsel, and in that type situation it creates

1 confusion, so my suggestion was that Phil get with Lenny or
2 someone from the plaintiffs' committee and work out some protocol
3 so that the plaintiff committee knows who's represented and who's
4 the individual that is representing those entities, and in those
5 just treat it in the regular way so we don't have that problem.

6 MR. WITTMANN: In the meantime I understand Mr. Davis is
7 granting extensions of time to people who have called in.
8 Correct, Lenny?

9 MR. DAVIS: What we've done, Your Honor, is when counsel
10 has contacted us we have been willing to grant extensions of
11 time. It gives us an opportunity to speak with counsel and let
12 them know that we're looking for, the information, and hopefully
13 we'll get it promptly.

14 MR. WITTMANN: We will meet, though, and discuss that,
15 Judge.

16 THE COURT: Okay.

17 MR. HERMAN: Your Honor, one more statement on that
18 issue. We need from defense counsel a list of who they
19 represent.

20 THE COURT: Sure. Well, that's what I would hope would
21 be forthcoming in the meeting. We've got to know who they
22 represent and who is unrepresented or who's not represented or
23 whatever it is and then send the subpoenas to those who are not
24 represented and hopefully they'll get representation.

25 Freedom of information act, anything on that?

1 MR. HERMAN: No. Your Honor, as folks know, the CPSC
2 issued an interim report on April 2, 2010. There are no FOIA
3 requests outstanding of the CPSC.

4 THE COURT: Trial settings in federal court. We talked
5 a little bit about that. The other thing that I want to say with
6 trial settings, we look to the builders to pick a case, and from
7 that standpoint I really am interested in them focusing on a
8 defendant or defendants as opposed to cases in which they have
9 been sued. I'm looking for them to be a plaintiff in the case
10 that they pick so that we have at least their input.

11 They have been on the ground doing some of the
12 work, and I've heard testimony as to the work and the nature and
13 the scope of the work, but I think it would be helpful from their
14 standpoint to pick the case. I've given everybody else an
15 opportunity to pick cases.

16 MR. WITTMANN: We will do that, Your Honor. I think
17 you're looking at trial date sometime in September maybe.

18 THE COURT: Yes, some time in the fall. I'll check with
19 you all after you've had an opportunity to think about it first.

20 Filings the MDL. It's important to check the web
21 site. I've tried to put everything on the web site. I've got
22 some frequently asked questions and methods of doing it, and it's
23 important to check the web site before you call the Court because
24 we have anticipated most of your questions and put the solutions
25 to those questions there.

1 Notices of appearance and default judgments,
2 anything on that?

3 MR. HERMAN: No, no matters, Your Honor.

4 THE COURT: Insurance issues? As I mentioned, I
5 appointed an insurance committee, made Judy Barrasso lead counsel
6 of that. Anything on it from the insurance committee, counsel?

7 MR. HERMAN: Your Honor --

8 MS. BARRASSO: I think Mr. Herman was going to say about
9 appointing a committee. We have a steering committee now on the
10 insurers' side. We're working with the plaintiffs on the profile
11 form which we hope should be back to the Court in a day or two to
12 talk about that.

13 THE COURT: I have received some cases from the MDL on
14 insurance matters, so I don't know, we have been talking about
15 that, what that situation is.

16 MR. LEVIN: Arnold Levin. Your Honor, the MDL
17 transferred the first insurance case yesterday. There are
18 several others, many others in federal courts. They will be the
19 subject of filings as tag-alongs to get those cases to Your Honor
20 should the MDL panel deem fit.

21 THE COURT: Right.

22 Service of pleadings.

23 MR. HERMAN: Your Honor, there is no issue at the
24 present with service of pleadings. I believe that lead counsel,
25 Mr. Levin, has furnished the Court and all other liaison counsel

1 a listing showing which complaints have been served on whom.

2 With respect to the next two items --

3 THE COURT: Master complaint and class action.

4 MR. HERMAN: And the omnibus class complaint,
5 Arnold Levin, lead counsel, will discuss those with Your Honor.

6 MR. LEVIN: First, the master complaint is easy because
7 we're not in a position to do it as yet because we're still in
8 the situation where service is being effectuated on various
9 foreign defendants. We've given Your Honor the status of that
10 service today in chambers.

11 In any event, the *Gross* complaint, which is the
12 indeterminate defendant complaint, has started to hit China, and
13 we've gotten responses from some defendants. They are not in the
14 nature of a Rule 12 or a motion for a summary judgment. They are
15 narratives, and they are quite revealing.

16 That complaint, the *Gross* complaint, has been the
17 subject of a motion to amend which has been filed with the Court
18 this week, and in that regard, the first omnibus complaint, the
19 *Payton* complaint, a motion to amend will be filed some time in
20 April to correct deficiencies and some new allegations based upon
21 new information that we received.

22 It's my opinion that -- it's mine -- that until
23 that amendment is effectuated in *Payton*, which is the first
24 complaint that's really out there, Rule 12 motions or any other
25 motions should be held in abeyance because the allegations in the

1 amended complaint might be of significance with regard to those
2 motions.

3 We have filed that motion in a very abbreviated
4 form to avoid destroying forests and destroying our bank accounts
5 because these complaints, two complaints cost in excess of
6 \$200,000 to translate and file, so we've used an abbreviated
7 matter. Should Your Honor have any questions, you know, we'll
8 meet with Your Honor with regard to *Gross*. *Payton* will be
9 structured the same way.

10 Omnibus III and IV are in the process of
11 translation and service. The insurance omnibus complaint is in
12 the process of being served. Of course, that's an easier task
13 because it's all domestic.

14 With regard to *Germano*, upon receipt of
15 Your Honor's ruling today, it is our intention to move for class
16 certification in *Germano* as against Taishan. That's the way the
17 protocol was set up, and we should be able to file that within
18 two weeks, sir.

19 THE COURT: Okay. Yes, go ahead, Phil.

20 MR. WITTMANN: Your Honor, if I may, with respect to
21 these amendments to the Omni complaints, could we simply have an
22 order issued by the Court that would relieve defendants from
23 responding to those until some reasonable time after they have
24 been amended and served?

25 MR. LEVIN: Yes, we have no problem with that,

1 Your Honor.

2 THE COURT: Yes. What you need to do is just get me
3 some kind of an agreement and I'll just do that.

4 MR. WITTMANN: I'll check with Mr. Levin and get that
5 done.

6 THE COURT: Okay. While I'm on that master complaints
7 and class actions and omnibus complaints, let me mention
8 something that's also on number 11, and that is my feeling about
9 this litigation is that a challenge is to get our arms around it
10 to see how big or small or whatever it is out there and how many
11 parties are out there and what the issues are. I think that's
12 helpful because the parties ought to know what the universe is so
13 that they can begin assessing their specific liability in that
14 particular universe, whether it exists or not, and, if so, the
15 extent of it.

16 Also, the plaintiffs have to get some assessment as
17 to whether they are talking about 3,000 claims or 40,000 claims.
18 That's a big, big difference there. The truth of the matter is
19 we just don't know at this point. So I think we need some
20 technical assistance on pulling together a database in an attempt
21 to get the universe established.

22 I was suggesting to the parties that they consider
23 BrownGreer. Orran Brown. I've worked with him in several cases,
24 and he's very technically efficient and does a great job in
25 matters of this nature particularly. I suggested to the parties

1 that they get together and see whether they can work out some
2 sort of payment agreement and agreement to at least get
3 Orran Brown aboard so that he can begin pulling together this
4 litigation.

5 I think it's helpful. It's very helpful for the
6 defendants. I would think the insurers would be interested in
7 knowing their potential, if any, exposure, and so would the
8 defendants. I think from the plaintiffs' standpoint, they ought
9 to know what their universe is, whether it's 3,000 cases or less
10 or 40,000 cases or more. I think that has some effect on the
11 litigation. So the parties are going to be doing that, and
12 hopefully we'll have somebody of Orran Brown's qualifications
13 aboard to help us in that regard.

14 Knauf Gips personal jurisdiction, anything on that?

15 MR. HERMAN: Nothing on that, Your Honor, except we need
16 to move the discovery along, and I know that our colleague
17 Kerry Miller, who is liaison counsel for the manufactures and
18 represents Knauf, hadn't had an opportunity to address the status
19 conference report at all yet orally, and if he's on the phone he
20 may have some comments he would like to make.

21 THE COURT: Kerry, do you have anything on that?

22 MR. MILLER: I'm here, Your Honor.

23 It's my appreciation that we are making significant
24 progress in the review of the voluminous documents. I think some
25 productions have been made, and we're looking to continue with

1 the rolling production over the next, you know, month or so and
2 hopefully be able to wrap up that production probably at some
3 point early this summer and then move into the next phase of that
4 discovery.

5 THE COURT: Kerry, do you have any opinion in the 706
6 Orran Brown situation?

7 MR. MILLER: Your Honor, from my perspective, I would
8 tend to agree that there is a need to get some uniform data in
9 place about the size of this issue. I share your comments that
10 it's a whole different case if it's 3,000 than if it's 40,000,
11 and one of the problems we've all had is I have certain limited
12 data, other defendants have certain limited data, plaintiffs have
13 certain limited data. It's a lot of data and it's hard to get it
14 to match up. We need, I think, a centralized database that's
15 going to be the court data that can be relied upon.

16 THE COURT: Yes. I agree with that.

17 MR. MILLER: So I'm happy with meet with Russ and Phil
18 and the insurers and whoever about how -- to see if we can come
19 to an agreement as to how their services are funded.

20 MR. HERMAN: Kerry, if you're available and Phil is
21 available, we need about eight participants, I think, in a
22 conference call, eight counsel representing each of the various
23 levels of involvement, and if we could do that Monday afternoon,
24 we could get a start on that.

25 THE COURT: I've asked Phil to kind of take the leading

1 oar on that since he expressed some concern about costs;
2 although, he's interested in the concept. I think that if you
3 can pull together the group and let's move on that.

4 MR. WITTMANN: I'll contact everybody after this
5 conference and set it up with Russ.

6 THE COURT: Get with Russ and get all of the names and
7 addresses.

8 MR. MILLER: Monday afternoon would work for me, so I
9 would be happy to participate in a call then.

10 MR. WITTMANN: I know it won't work for me at this point
11 but maybe we could do it Saturday.

12 MR. HERMAN: Or Sunday.

13 MR. WITTMANN: Or Sunday.

14 MR. HERMAN: Your Honor, there are no other issues on
15 the status conference report that need explication.

16 THE COURT: May 27th is the next status conference.
17 Anything from anybody?

18 MR. HERMAN: Your Honor, we will have our lead trial
19 counsel, Chris Seeger, contact Kerry Miller and Lexy in order to
20 get a meeting of counsel involved in the June trial some time
21 between now and before the May 27th conference, as Your Honor's
22 calendar permits.

23 THE COURT: All right. Thank you very much. Court will
24 stand in recess.

25 THE DEPUTY CLERK: All rise.

1 (WHEREUPON, at 9:57 a.m. the proceedings were
2 concluded.)

3 * * *

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8 REPORTER'S CERTIFICATE

9
10 I, Cathy Pepper, Certified Realtime Reporter, Registered
11 Merit Reporter, Registered Professional Reporter, Certified Court
12 Reporter of the State of Louisiana, Official Court Reporter for
13 the United States District Court, Eastern District of Louisiana,
14 do hereby certify that the foregoing is a true and correct
15 transcript, to the best of my ability and understanding, from the
16 record of the proceedings in the above-entitled and numbered
17 matter.

18
19
20 s/Cathy Pepper

21 Cathy Pepper, CRR, RMR, CCR
22 Official Court Reporter
23 United States District Court
24
25

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