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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 12, 2015
*
This Document Relates to All Cases * 9:00 a.m.
* * * * *

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

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PROCEEDINGS

(February 12, 2015)

(OPEN COURT)

THE COURT: Be seated, please.

Good morning, ladies and gentlemen. Let's call the case.

THE DEPUTY CLERK: MDL-2047, *In re: Chinese-Manufactured Drywall Products Liability Litigation.*

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

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

MR. MILLER: Good morning, Judge Fallon. It's Kerry Miller on behalf of the Defense Steering Committee and Knauf.

THE COURT: Okay. I met a moment ago with liaison and lead counsel to discuss the agenda, to tell them what's going to be on the agenda.

First, any pretrial orders?

MR. HERMAN: No, Your Honor.

THE COURT: Anything on state court trial?

MR. HERMAN: Well, there is state court and state/federal coordination, a report to be made, under roman

1 numeral II and III. By Mr. Kingsdorf.

2 **THE COURT:** Okay.

3 **MR. KINGSDORF:** Good morning, Your Honor. Bruce
4 Kingsdorf pitch-hitting this morning for Ms. Barrios who is out
5 of the country.

6 Just very briefly. In Virginia, the real
7 property payments have gone out, and the other loss processing
8 is generally scheduled to follow the track used in real
9 property. We expect that notice issuance to claimants on
10 deficiencies and on the curing process will launch for the
11 other loss fund within the next 30 days.

12 And the Garretson Resolution Group has continued
13 to actively communicate with BrownGreer to coordinate with them
14 to make sure that the processes being followed in Virginia are
15 identical -- or are identical or as similar to what has
16 occurred in the other states.

17 **THE COURT:** Okay. Thank you very much.

18 Anything on omnibus class action complaints?

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

20 **THE COURT:** Class action complaint, we've got a
21 motion later in the day.

22 Anything on the litigation fund expense?

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

24 **THE COURT:** Remediation program. Any report on the
25 remediation program?

1 **MR. HERMAN:** There is a report from BrownGreer as to
2 the remediation and from Mr. Kerry Miller for Knauf.

3 **MR. MILLER:** Good morning, again, Your Honor. Kerry
4 Miller for Knauf.

5 On the remediation program, we give these
6 regular reports. The remediation program is nearing
7 completion. As with prior status conferences, Phil Adams from
8 Moss is here in attendance. He's able to answer any questions
9 that counsel or claimants, if they're pro se, may have about
10 the status of their remediation in their home.

11 Your Honor, I was discussing with Jake Woody
12 from BrownGreer prior to the beginning of the conference that
13 one aspect of the remediation program is BrownGreer has some
14 relatively small set of claims that were filed as Knauf
15 remediation claims that have been inactive in some degree.

16 So as part of the clean-up process of this MDL
17 action, at least with respect to my client, Knauf, hopefully by
18 next month's status conference we may present a motion with
19 respect to some of those claims. That is, if the claimant
20 doesn't come forward and avail himself or herself of the
21 remediation program, we may seek an order from the Court
22 extinguishing or eliminating any obligations Knauf may have
23 administratively to follow-up and settle that case.

24 So it's part of the cleanup process with
25 BrownGreer to deal with some of these claims that have been,

1 for some reason or another, inactive for a couple of years now.
2 **THE COURT:** Yes. That's what we have to do. We have
3 to clean up the docket. There are some people who have
4 initially filed something, but they've gone on with their
5 lives, they don't want to pursue it. And if that's the case, I
6 like to notify them, but I like to give them several notices,
7 which we've done; and then at the end of the day, if you don't
8 hear from them, then let's move to dismiss the case, and I'll
9 do it if they don't respond.

10 Okay. Anything from INEX, Banner, Knauf, Global
11 settlements?

12 **MR. HERMAN:** If it please the Court. Your Honor, at
13 this time --

14 **THE COURT:** Do you want to hear from Jake? I'm
15 sorry. Yes.

16 **MR. HERMAN:** If Your Honor will entertain
17 BrownGreer's report.

18 **THE COURT:** Yes. Let me hear from him.

19 **MR. WOODY:** Good morning, Your Honor.

20 **THE COURT:** Good morning, Jake.

21 **MR. WOODY:** My name is Jake Woody. I'm here to give
22 the monthly status report on the Chinese Drywall settlement
23 program.

24 We, to date, have received 22,474 claims and
25 reviewed 20,306 of those. We've completed review on all claim

1 types other than miscellaneous. We are completely focused on
2 those claims at this point.

3 We found that about a third of those we've
4 reviewed appear to be eligible, and two-thirds appear to be
5 incomplete. Of the eligible miscellaneous claims, we are
6 seeing primarily claims for HVAC repair and personal property
7 damage. We'll update the Court as we proceed through that
8 review and have more information.

9 Our largest claim type was the Global, Banner,
10 INEX repair and relocation damages, which is a claim for a
11 pro rata share based on the square footage of an affected
12 property against three settlement funds.

13 We've received 9,947 eligible claims in that
14 category. That claim review is completely finished. There's
15 nothing left for us to do other than issue payments on those
16 claims, which we've been doing since September of 2014. To
17 date we've issued 11,856 payments. There are more payments
18 because in many cases one claimant is eligible for payment from
19 multiple settlement funds. We've distributed \$55.4 million,
20 and have \$20.8 million left to distribute.

21 Claimants who have not been paid fall into a
22 couple of general categories. One is Knauf, who has many
23 claims they've received through an assignment, and we're
24 working with Kerry Miller to resolve those claims.

25 The other category are people who haven't given

1 us the required forms, an IRS W-9 form and a verification of
2 claims form. We've reached out to those people on multiple
3 occasions and we'll continue to do so. And as we receive those
4 documents, we issue them payment.

5 **THE COURT:** Are they pro se, or are they represented?

6 **MR. WOODY:** Many are pro se, but many are
7 represented; and when they're represented, we do contact the
8 law firm and make that request.

9 **THE COURT:** Okay.

10 **MR. WOODY:** The other claims that we're dealing with
11 are what we call other loss claims. Those fall into four large
12 categories: Bodily injury claims, foreclosure and short sale
13 claims, lost rent use and sales claims, and pre-remediation
14 alternative living expenses claims.

15 Of those four claim types, we have found that
16 2,520 are eligible, 32 remain incomplete, and 1,487 are denied,
17 for a total of 4,039 claims.

18 In December of 2014, the Court issued PTO 29,
19 which authorizes us to make resolution offers to the eligible
20 claimants and issue payments to them. We began issuing
21 eligibility notices in early January. To date we've issued a
22 total of 2,021 eligibility notices.

23 Bodily injury we issued first and the claimants
24 have 30 days to respond to that. They can respond in one of
25 two ways: By accepting the offer and receiving payment, or

1 requesting a special master award, which is essentially an
2 appeal where they're allowed to request additional funds from
3 the special master.

4 Of the 2,021 offers, we have received
5 acceptances on 1,293 and requests for a special master award on
6 125. That gives us an overall acceptance rate of 91 percent,
7 which is fairly high, and so far we believe this has been quite
8 successful.

9 We have also issued payment to a number of other
10 loss claimants. So far we've paid 501 claims. Since the last
11 status conference, which was about three weeks ago, we paid 458
12 claimants. The total we've paid out is just over \$4 million.
13 Again, the bulk of that work took place since January 22nd.
14 Since then we've paid \$3.6 million.

15 We are paying people as quickly as we can. If
16 you accept an award and have submitted the required documents,
17 we generally will mail a check within two to three business
18 days. We mail those to the attorneys, just as we do with the
19 Global, Banner, INEX claims.

20 So I would expect by the next status conference
21 on March 26th, we'll have a fairly static population of other
22 loss claims. We'll have paid everybody who's eligible to be
23 paid. And the deadline to respond will have run on all of the
24 eligibility notices and we'll be able to put people either in
25 the paid category or into the appeal category. If you appeal,

1 that process will work closely with the special master to
2 resolve those claims.

3 **THE COURT:** Okay.

4 **MR. WOODY:** Just our contact information. I'll give
5 that real quickly. The best way to contact us is by e-mail at
6 cdwquestions@browngreer.com. Our online portal is
7 www3.browngreer.com/drywall. And if you need to, you can call
8 us at 866-866-1729.

9 **THE COURT:** Okay. One thing that needs to be
10 reinforced is that the settlement that we've been talking about
11 is the Knauf, claims against Knauf and their downstream people.
12 It has nothing to do with the claims that the parties have
13 asserted against Taishan and Taishan's affiliates.

14 The reason for that, some people, particularly
15 pro ses, are not really aware of that. They want to know why
16 they're not being paid when their neighbor or somebody in
17 another section of the city has gotten paid; and that's the
18 reason, if they've gotten their board from the Taishan group,
19 then that has not been resolved. That is pending still. But
20 the Knauf people and their downstream have resolved their
21 cases, and that's the reason.

22 **MR. WOODY:** Thank you, Your Honor.

23 **THE COURT:** Thank you.

24 AT&T just called and said let's have the
25 speakers speak up a little bit. They can hear me, but they

1 have difficulty hearing the speakers.

2 **MR. HERMAN:** May it please the Court. I think at
3 this juncture, the next item on the agenda dovetails into Your
4 Honor's remarks. It's roman numeral X. Rather than recite all
5 of the activities that we've undertaken to pursue the Chinese
6 manufacturers who are entities in China, if folks will refer to
7 pages 15 through 26 in the status conference report, which will
8 be posted on Your Honor's Web site, there are 11 pages that
9 detail the activities of the PSC.

10 And in that regard, lead counsel, Arnold Levin,
11 Fred Longer, Lenny Davis, and Gerry Meunier and myself,
12 continue to pursue the Chinese entities both here and in Oregon
13 and elsewhere, and rather than detailing all the activities,
14 folks can refer to pages 15 to 26.

15 The only other issue is I'd like to reemphasize
16 that daily we get questions about homeowners -- or from
17 homeowners primarily -- we estimate there are 4,000 to 5,000
18 uncompensated, innocent folks out there -- as to why Knauf is
19 settled and why they're not in.

20 And the reason is Knauf has, after trials and
21 after a great deal of discovery and one year of negotiation,
22 Knauf always entered an appearance before Judge Fallon and
23 Judge Fallon, as a result, was able to direct the parties to
24 negotiate and resolve the Knauf board. But, thus far, Taishan
25 has been unwilling, as have the other Chinese entities, to come

1 forward.

2 And those conclude my remarks, but Arnold Levin,
3 lead counsel, has something to add.

4 **THE COURT:** Okay.

5 **MR. LEVIN:** Probably, if you read pages 15 through
6 26, I have nothing to add, Your Honor. But just five
7 particular comments I think are in order for those that are
8 here and on the telephone.

9 In Oregon, we went after with a motion to
10 intervene in litigation that a CNBM affiliate -- and that's my
11 characterization that they're an affiliate, Your Honor, not the
12 Court's characterization -- was conducting business in Oregon,
13 timber business, and was involved in litigation utilizing the
14 federal courts for litigation, yet CNBM refused to appear here
15 and was defaulted.

16 Our motion to intervene was denied as being
17 untimely. We've taken objections or exceptions to the
18 magistrate judge's order. The matter has been stayed as to a
19 \$50,000 sum of money, which were counsel fee's, is presently in
20 the Court's registry, I believe. In any event, that's going
21 up.

22 At the same time, we filed a declaratory
23 judgment action in Oregon. And the day that we filed it, we
24 moved before the Panel for transfer to this jurisdiction. A
25 conditional transfer order has been entered. There's been no

1 appearance from anybody for CNBM to date.

2 We also have filed a motion to enforce the
3 Court's contempt order, which is before the Court. That was
4 filed either yesterday or the day before yesterday, along with
5 12 notices of deposition as to major banks in the United States
6 that we believe are facilitating commerce with the CNBM and
7 BNBK and SASAC entities in the United States, along with a
8 deposition notice on an entity called Plum Creek, which we
9 believe, and know, has had transactional commercial business
10 with the CNBM entities.

11 Today, also pending is a mandamus before the
12 Fifth Circuit with regard to the privilege log of Taishan's
13 counsel. We have been ordered to respond to that particular
14 mandamus by Monday, 3:00 p.m. Eastern Time or Central Time. I
15 travel between Philadelphia and New Orleans and half the time I
16 don't know where I am, Your Honor. In any event, we will
17 comply, obviously, with that order.

18 We are, indeed, in a very strange situation.
19 Everything's been filed under seal. Your Honor knows what's
20 under seal, the fired counsel for Taishan knows what's under
21 seal, the Fifth Circuit knows what's under seal, and we are
22 responding not knowing what's under seal.

23 But we have some idea what's under seal because
24 the log entries that we have seen has shown that Taishan's
25 counsel has been in -- I wouldn't use the word *concert*, but has

1 been in the same room with CNBM rendering legal advice because
2 they've asserted an attorney/client privilege. We'd love to
3 see that document.

4 Today we have a motion to assess damages on a
5 class action, which has been certified, with regard to present
6 owners of Taishan board against multiple defendants that have
7 been defaulted by this Court and have been found by this Court
8 to be affiliates in the findings of fact that the Court filed
9 with regard to the class action. We intend to proceed today
10 with that motion. At the conclusion of the proceedings today,
11 we will submit to the Court proposed findings of fact and
12 conclusions of law with regard to the assessment.

13 This morning we have been told by discharged
14 counsel for Taishan, who doesn't represent Taishan -- he's been
15 discharged by them, not to his obligations by the Court -- and
16 doesn't represent BNBM, one of the defaulted judgments, that he
17 received an e-mail asking that the hearing today be continued.
18 An e-mail purportedly on behalf of BNBM.

19 However, BNBM has not entered an appearance,
20 BNBM's counsel, whoever that is, and we don't know, has not
21 spoken to us, and our clients have waited five years for this
22 day. And I don't know whether anybody in the courtroom is
23 present for BNBM, but we intend to -- it is our view that we
24 should proceed with the assessment of damages today.

25 **THE COURT:** Okay. We'll take that up immediately

1 after this matter.

2 **MR. HERMAN:** Your Honor --

3 **THE COURT:** Wait, wait. Tom, do you want to respond?
4 Okay.

5 **MR. OWEN:** Tom Owen, discharged counsel that's still
6 counsel of record on behalf of TG. With respect to Mr. Levin's
7 comments regarding the e-mail that was received, I received
8 that e-mail today. It asked for -- there was some information
9 about a potential appearance by one of the other defendants.

10 In addition, it was communication by someone
11 who's supposed to be representing TG asking for an extension of
12 the hearing as well. Now, I'm discharged counsel, so I'm just
13 providing this as a communication to the Court as to what their
14 request was. They said that the reason why they wanted the
15 extension is because that they are interviewing counsel and
16 intend to participate in future proceedings.

17 So that's the information I wanted to convey to
18 the Court that I've received as of 8:30 this morning.

19 **THE COURT:** Well, you see, the problem is I wouldn't
20 have any problem perhaps with a short continuance, but I have
21 to be asked for it by somebody who appears. If you don't
22 represent them, nobody here, apparently, wants to indicate that
23 they represent them, so I don't really have anybody asking me
24 who represents the people for a continuance okay.

25 **MR. OWEN:** Right. And this was --

1 **THE COURT:** It's a rumor sort of, and I'm not going
2 to act on that.

3 **MR. OWEN:** This was basically TG, Taishan Gypsum,
4 asking me to convey that information to you, which I'm doing.

5 **THE COURT:** Right.

6 **MR. OWEN:** I don't know if there's anybody else here
7 who's going to -- any other defendants who might be party to
8 the hearing today who might ask for an extension.

9 **THE COURT:** All right. Anybody here that represents
10 BNBK who wants to ask for a continuance?

11 **MR. HERMAN:** Maybe there's an observer in the room.
12 Is there an observer in the room?

13 **THE COURT:** All right. Let's go on. Anything on
14 profile forms?

15 **MR. HERMAN:** Your Honor, just one other -- nothing
16 with profile forms. But one other comment. This morning I
17 received an e-mail from the clerk of the MDL panel, Mr. Lüthi,
18 that the Oregon matter is now transferred here, not
19 conditionally, but finally; and as a result, not all of the
20 record will come here.

21 But I would like permission to file the oral
22 argument that I made and that was responded to in Oregon in the
23 record --

24 **THE COURT:** Okay.

25 **MR. HERMAN:** -- so that -- and it's not under -- it

1 won't be under seal.

2 **THE COURT:** Yes. Okay.

3 **MR. HERMAN:** There's nothing under profile forms,
4 frequently asked questions. Your Honor's already addressed
5 that the matter is set for the hearing and will proceed after
6 this conference.

7 **THE COURT:** How about the pro se claimants? Bob,
8 anything?

9 **MR. HERMAN:** Mr. Johnston's here.

10 **THE COURT:** All right.

11 **MR. HERMAN:** As I indicated previously, we met and
12 we'd like to see Your Honor after your motion hearing today for
13 about five minutes.

14 **THE COURT:** Okay.

15 **MR. JOHNSTON:** Good morning, Your Honor. Bob
16 Johnston. I have provided the Court with the curator's 36th
17 status report which summarizes what has been going on.

18 But very briefly, as the Court, I believe,
19 remembers, there were approximately 60 what I call late Knauf
20 claims that as a result of some extensive and formal
21 discussions with Kerry Miller, counsel for Knauf, we were able
22 to provide the Court at the November status conference with the
23 information that settlements would be agreed upon. But that
24 was limited to those individuals who had not had their
25 properties remediated.

1 So if you take from the 60 about 10 individuals
2 who, over the years, self remediated their property or have a
3 claim for a diminished sale price. Since the last status
4 conference, Kerry and I have met face-to-face, had, I thought,
5 very productive discussions. And I think the best way to
6 describe it for the Court is is that I'm hopeful that we'll be
7 able to provide the Court with information pertaining to these
8 claims and potential possible resolution by the time of the
9 next status conference.

10 The only other fairly extensive activity that
11 I've been involved in, and Jake Woody with BrownGreer, who's
12 been here today, there have been a number of direct
13 communications I've had with individuals pertaining to GBI
14 questions and other loss questions. And I have done what I
15 always do, which is to go deal directly with the claim
16 personnel and try to assist those people, and I think that has
17 worked very, very well. I've gotten great cooperation from
18 BrownGreer personnel.

19 And with that, that provides the Court with my
20 report for this conference.

21 **THE COURT:** Okay. Thank you very much.

22 **MR. JOHNSTON:** Thank you.

23 **THE COURT:** Your work's been very helpful.

24 Anything on the evidence preservation order?

25 **MR. HERMAN:** Yes, Your Honor. At page 28 of the

1 status conference report, we have been in negotiations with the
2 homebuilder's counsel re: notification to those consumers they
3 have supplied board, to give them an opportunity to preserve
4 evidence in the event that the home -- the vendees and their
5 attorneys feel it's necessary. We should be able to present
6 something to you in the next few days.

7 There is no other issue -- other issues. The
8 next issue would be Item XVIII, already remediated homes, at
9 page 29 of the status conference report. Mr. Miller will
10 address that.

11 **MR. MILLER:** Briefly, Your Honor, on the point of
12 already remediated homes, again, it's Kerry Miller on behalf of
13 Knauf.

14 Your Honor, every lawyer who has clients who
15 fall within that category of having already remediated their
16 home should have received in the last week or so a letter from
17 my new firm, or someone who works at my new firm being the
18 point person, confirming, number one, these are your inventory
19 of cases. If our records don't match up, let us know.

20 And, number two, here's the status of the cases,
21 here's the information needed, you know, that kind of thing.

22 And, number three, we'll be working with you to
23 try and get those resolved.

24 So, Your Honor, what we're trying to do in
25 cooperation with the PSC, Lenny Davis is the point person, is

1 through direct interaction between counsel for Knauf and
2 plaintiff counsel or pro se, as the case may be, try and
3 resolve cases.

4 Your Honor, if that doesn't work, we use the
5 court-appointed mediator, Dan Balhoff, to get involved. Your
6 Honor, if we feel as if we don't have information to even
7 entertain a mediation or make an offer, because we don't get a
8 response or because the information is so lacking, we're going
9 to be filing motions to dismiss those claims pretty much on a
10 monthly basis coming up in March, Your Honor.

11 **THE COURT:** Okay. I understand that Dan Balhoff has
12 got some scheduled.

13 **MR. MILLER:** Yes. We have a group of cases scheduled
14 for mediation in Florida the week of March 9th.

15 **THE COURT:** Okay. Thank you very much.

16 **MR. HERMAN:** I do want to comment and thank the
17 ombudsman, Mr. Velez, and Moss and, of course, the folks with
18 Kerry Miller, and our office and others. We've had a great
19 deal of activity in the last month in terms of getting homes
20 completed and a lot of progress has been made.

21 The next matter, Your Honor --

22 **THE COURT:** Attorney General? Louisiana Attorney
23 General?

24 **MR. HERMAN:** Yes, Your Honor.

25 **THE COURT:** Anything from them? Here he comes.

1 **MR. BLACK:** David Black for the State of Louisiana.

2 We've received answers to our -- the second
3 amended petition yesterday from the Knauf entities, and USG
4 entities have been served. We're in the process of serving GKB
5 per your December 23rd order. We also have served Taishan --
6 the Taishan entities per your December 23rd order, have not
7 received responses from them.

8 **THE COURT:** Okay.

9 **MR. BLACK:** And I think the next step is perhaps a
10 meet and confer for scheduling purposes per your
11 May 20th order.

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

13 **MR. HERMAN:** May it please the Court. Your Honor, as
14 I understand it, the Attorney General's counsel has indicated
15 they have no further need of the document depository and the
16 various electronic searches that we have. We are, therefore,
17 going to try to make that depository inactive until such time
18 as you may have other defendants before the court.

19 **THE COURT:** Yes.

20 **MR. HERMAN:** We will, however, keep part of the
21 depository open as it relates to the Chinese corporations, TG,
22 and their affiliates.

23 **THE COURT:** Okay. Both of those things, both the
24 preservation of evidence and the continuing operation of the
25 depository costs a lot of money, so we've got to figure a way

1 of at least dealing with that.

2 Okay. Anybody? Anything else from anybody?
3 The next meeting then is March 26th, and the following meeting
4 is April 17th.

5 (WHEREUPON, the proceedings were concluded.)

6 *****

7 CERTIFICATE

8 I, Jodi Simcox, RMR, FCRR, Official Court Reporter
9 for the United States District Court, Eastern District of
10 Louisiana, do hereby certify that the foregoing is a true and
11 correct transcript, to the best of my ability and
12 understanding, from the record of the proceedings in the
13 above-entitled and numbered matter.

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

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