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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED \* Docket 09-MD-2047  
DRYWALL PRODUCTS \*  
LIABILITY LITIGATION \* Section L  
\*  
\* New Orleans, Louisiana  
\*  
Relates to All Cases \* May 20, 2015  
\*  
\* \* \* \* \*

ORAL ARGUMENT BEFORE THE  
HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

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23 Proceedings recorded by mechanical stenography using  
24 computer-aided transcription software.  
25



09:27 1 and loss of use and enjoyment.

09:27 2 They also asked Your Honor to send out a  
09:27 3 supplemental notice in which the notice gave great detail as to  
09:27 4 the methodology of Mr. Wright and all three components of the  
09:27 5 damages and actually had precise dollar figures on all three  
09:27 6 components. It added up to more than \$1.2 billion.

09:27 7 Those people who received notice were given an  
09:27 8 opportunity to opt out. That period has run. On February 12,  
09:28 9 Your Honor had a hearing in which Your Honor was going to hear  
09:28 10 at that time presumably an unopposed motion for classwide  
09:28 11 damages and we first entered an appearance.

09:28 12 Since that time we have tried -- on behalf of  
09:28 13 Taishan, we have had basically one animating purpose. Given  
09:28 14 our position in the case, we have said all along and it's been  
09:28 15 our strategy who do we owe and what reasonable amount do we  
09:28 16 owe.

09:28 17 We came in, as Your Honor has already pointed  
09:28 18 out, and we addressed the contempt issues. We paid \$40,000 to  
09:28 19 the Court. We paid \$15,000 to the plaintiffs' counsel. We  
09:28 20 have been participating in the litigation. We paid, with all  
09:28 21 interest, the seven *Germano* plaintiffs, and now we have been  
09:28 22 participating. Our whole goal here is to figure out who do we  
09:28 23 owe, which of these members do we actually owe under the law,  
09:29 24 and what's the reasonable amount we owe them. We need to  
09:29 25 figure this out all in comporting with, of course,

09:29 1 Fifth Circuit controlling law.

09:29 2 We filed opposition papers to the classwide  
09:29 3 motion for damages in the aggregate of more than \$1.2 billion  
09:29 4 with its three components. Last week we received notice that  
09:29 5 the plaintiffs were going to make a dramatic change to their  
09:29 6 motion. Now, they have not amended their motion, but the  
09:29 7 dramatic change is this.

09:29 8 First, with regard to who do we owe, we started  
09:29 9 out at approximately 3,800 people. Now they say there are  
09:29 10 approximately 1,000 people that they are stripping out. So  
09:29 11 they do not intend on June 9 to present evidence for more than  
09:29 12 1,000 people, a third of the class. We think, Your Honor, that  
09:30 13 raises serious due process issues and notice issues. Those  
09:30 14 people have not been told that their claim for damages is not  
09:30 15 going to be presented for class treatment on June 9.

09:30 16 **THE COURT:** Is that your issue or their issue?

09:30 17 **MR. KENNY:** It's our issue, Your Honor, because  
09:30 18 ultimately this raises a serious one-way intervention problem.  
09:30 19 To get this case resolved, we need to know who is actually in  
09:30 20 this class, and nobody has thrown them out of the class.  
09:30 21 Your Honor hasn't. The one-way intervention problems that  
09:30 22 Your Honor noted back in 2006 in your *Turner v. Murphy Oil*  
09:30 23 decision -- where you actually said, "We are going to do  
09:30 24 supplemental notice because of the changed circumstance." But  
09:30 25 we have 1,000 people now who are in limbo.

09:30 1           **THE COURT:** So you only have 3,700 as opposed to  
09:30 2 3,800.

09:30 3           **MR. KENNY:** According to Mr. Inglis' affidavit, there  
09:30 4 are 2,888. We will get to whether that is a precise figure and  
09:31 5 it's a reliable figure and that really does identify who  
09:31 6 actually is owed money.

09:31 7           The second category: Alternative Living  
09:31 8 Expenses. In the supplemental notice, they presented to the  
09:31 9 3,800 people that they were going to seek classwide damages of  
09:31 10 more than \$95 million. They have pulled that down. They told  
09:31 11 in the supplemental notice, its opt-out provision, all the  
09:31 12 class members that they were going to present loss of use and  
09:31 13 enjoyment damages of about \$360 million. They are pulling that  
09:31 14 out.

09:31 15           Based on our opposition paper, they are  
09:31 16 conceding, in other words, Your Honor, that with regard to  
09:31 17 three categories of damages now they say they are owed, two of  
09:31 18 them they are conceding must be adjudicated on an  
09:31 19 individualized basis. Then with regard to the 3,800 people,  
09:32 20 the 1,000 that they have stripped out, they are essentially  
09:32 21 conceding that those damages need to be adjudicated on an  
09:32 22 individualized basis.

09:32 23           **THE COURT:** Well, doesn't that make your job easier,  
09:32 24 though? I'm trying to figure out what the problem is.

09:32 25           **MR. KENNY:** It makes it extremely more complicated

09:32 1 Your Honor.

09:32 2 **THE COURT:** I may not agree that those are class  
09:32 3 deals because it's specific.

09:32 4 **MR. KENNY:** Your Honor has put your finger precisely  
09:32 5 on the problem. We think the better course here -- this is the  
09:32 6 reason we have asked to modify what's going to happen on  
09:32 7 June 9. We think that what ought to happen June 9 is let's  
09:32 8 address the legal issues about the propriety of proceeding on a  
09:32 9 classwide basis even for the remediated damages.

09:32 10 We think there needs to be a little bit of a  
09:32 11 timeout, though. We think new notice has to go out to figure  
09:32 12 out -- and Your Honor needs to wrestle with the issue of  
09:32 13 whether, in fact, you are going to accept this new gambit as to  
09:33 14 whether 1,000 people are out and you are going to pull down  
09:33 15 damages even though Your Honor approved a notice that said just  
09:33 16 the opposite.

09:33 17 We think, at a minimum, we need to have a  
09:33 18 time-out to figure out that issue and how best to proceed  
09:33 19 because, from Taishan's point of view, we share the Court's  
09:33 20 interest, we share the plaintiffs' interest in that we want to  
09:33 21 get this done as fast as we can but within the parameters of  
09:33 22 the law and due process. We think the due process case has  
09:33 23 gone off the rails.

09:33 24 **THE COURT:** Okay.

09:33 25 **MR. KENNY:** Now, the second issue for postponing the

09:33 1 evidentiary hearing is Mr. Inglis now has a declaration that he  
09:33 2 submitted on Friday that raises a couple of points where we  
09:33 3 just need more time to be able to properly and adequately  
09:33 4 defend what, in fact, he is now apparently saying with respect  
09:33 5 to a couple of matters.

09:33 6 One is he is relying on a spreadsheet to  
09:34 7 determine ultimately -- the new number on remediated damages  
09:34 8 dropped from about \$785 million to \$670 million for more than  
09:34 9 2,888 people. He is relying on a spreadsheet that has summary  
09:34 10 data. The spreadsheet was not created based on his direction.  
09:34 11 He just got it. He got it from BrownGreer. That spreadsheet  
09:34 12 supposedly -- we just don't know -- was created as a result of  
09:34 13 pulling materials from, now we know, about 64,000 documents  
09:34 14 that have the underlying data. That would be the subject of  
09:34 15 the motion Ms. Eikhoff will address.

09:34 16 We need to get those documents so that we can  
09:34 17 make an assessment as to whether the data on the summary sheet  
09:34 18 is accurate. Right now we have no way of knowing and there's  
09:34 19 no way of testing under the current state of the record, but  
09:34 20 there is a way to test because the documents are there. They  
09:35 21 are readily available. As Ms. Eikhoff will address, they can  
09:35 22 be given to us right now. There's no practical impediment for  
09:35 23 getting us those documents, but we need to get those documents.

09:35 24 Our experts are going to have to look at those  
09:35 25 documents. We just need time for them -- our experts may have

09:35 1 supplemental reports that they are going to do to challenge  
09:35 2 this number. This is the fundamental number that they want to  
09:35 3 go forward with on June 9.

09:35 4 **THE COURT:** By not doing anything, you are winning.  
09:35 5 By not doing anything, they are claiming less. So you want to  
09:35 6 check it out so you can pay more?

09:35 7 **MR. KENNY:** No, Your Honor.

09:35 8 **THE COURT:** I'm trying to figure that one out.

09:35 9 **MR. KENNY:** If, in fact -- and this would raise  
09:35 10 problems. If, in fact, they were pulling down -- they are  
09:35 11 pulling down about \$655 million for class presentation, but  
09:35 12 they are vaguely reserving their rights to go after all those  
09:36 13 dollars and apparently more in subsequent proceedings which  
09:36 14 raises, just as an aside, fundamental 23(b)(3) superiority  
09:36 15 issues whether this is the way to proceed. They are saying  
09:36 16 they are not giving it up, so we are just going to be having a  
09:36 17 series -- a series -- of individualized inquiries, as it turns  
09:36 18 out, for everybody -- for everybody -- on some issues.

09:36 19 Now, there's a second issue with regard to  
09:36 20 Mr. Inglis. Out of those 2,800 people, he says, "Well, there  
09:36 21 are 131 properties where I didn't have" -- even under their  
09:36 22 methodology, "I didn't have verified property data  
09:36 23 information." So he does a couple of averaging techniques --  
09:36 24 he is an engineer, Your Honor. He is not a statistician. He  
09:36 25 does a couple of averaging techniques and he says, "Now I have

09:36 1 an estimate for those properties."

09:36 2 A lawyer for the plaintiffs apparently called  
09:36 3 some guy named Michael Grossman in Boston and said, "Can you  
09:37 4 take a look at this and tell me what you think?" Grossman  
09:37 5 sends back a two-page -- excuse me, a two-paragraph letter that  
09:37 6 essentially says, "I looked at what he did. It looks good to  
09:37 7 me." Inglis says, "All right. So that's a reasonable  
09:37 8 estimate."

09:37 9 I mean, we have an engineer wandering into an  
09:37 10 area beyond his expertise, statistics, supposedly gets a  
09:37 11 statistician -- who is not on the witness list. Nobody knows  
09:37 12 who he is. Inglis yesterday in his deposition said, "I don't  
09:37 13 know who he is. I never talked to him," and he says, "Well, I  
09:37 14 bless this analysis."

09:37 15 Then we have the whole issue with the 2,888  
09:37 16 people. This thing is trundling towards a June 9 hearing when  
09:37 17 we know from the data that we have and have the strong reason  
09:37 18 to believe that there is a substantial group, a subset within  
09:37 19 that 2,800, where their property has already been remediated.  
09:38 20 Inglis doesn't try to figure out whether any of those  
09:38 21 properties have been remediated, in which case you can look at  
09:38 22 the actual cost, which is the best evidence of what we would  
09:38 23 owe them. Instead, he does an estimate for those.

09:38 24 Well, we need to figure out, out of those 2,800,  
09:38 25 how many of these properties have actually been remediated. We

1 think that information is contained in the 63,000 documents  
2 that are ready to be burned to a disc and produced.

3 For those reasons, Your Honor, we would ask that  
4 the Court modify the schedule. We can go forward on June 9 and  
5 argue whether, in fact, the whole rubric of classwide damages  
6 now for the remediated component of the damages is proper under  
7 Fifth Circuit law. In the meantime, we can go ahead and we can  
8 get this information. If, in fact, Your Honor, decides after  
9 the June 9 hearing that it is, then we can have an evidentiary  
10 hearing after we have had an opportunity to fully prepare to  
11 see what the actual numbers should be.

12 **THE COURT:** The problem to some extent, when I'm  
13 listening to you, I would be a lot more receptive if your  
14 client didn't quit. See, 10 or 12 months ago, when the  
15 Fifth Circuit ruled against them, they said, "We quit, and we  
16 fire our lawyers." They fired their lawyers and they quit.

17 I kept their lawyers in because I wanted them to  
18 have every opportunity to rethink it. I wanted them to  
19 participate in it because I didn't want just emotion to take  
20 care of it. Notwithstanding the fact that they got all of the  
21 information as it was unfolding, they just thumbed their nose  
22 at the Court. Now they come in and they say, "Well, we have  
23 reconsidered after 10 or 11 months and now we want a  
24 continuance."

25 I hear you, and you are doing a wonderful job of

09:40 1 presenting it, but let me hear the other side.

09:40 2 **MR. KENNY:** Your Honor, can I just make one comment  
09:40 3 about that?

09:40 4 **THE COURT:** Sure.

09:40 5 **MR. KENNY:** Bernard Taylor, the first time we  
09:40 6 appeared before Your Honor, he stood before Your Honor  
09:40 7 essentially with hat in hand. We understand our position, but  
09:40 8 that doesn't --

09:40 9 **THE COURT:** You're not to blame at all and Bernard is  
09:40 10 not to blame. You just got into the litigation. In fact, you  
09:40 11 sent some young fellow to get on the last plane to New Orleans  
09:40 12 and he ran in and made an appearance.

09:40 13 **MR. KENNY:** Well, we told him, Your Honor, "It's  
09:40 14 either the judge or our wrath you have to incur, so you better  
09:40 15 get in there." Look, there's no denying it. We wish we  
09:40 16 weren't in the position we are in. But having said that, the  
09:40 17 rules apply.

09:40 18 **THE COURT:** No, I understand. My grandma said, "You  
09:41 19 have to dance with the one who brung you."

09:41 20 **MR. FENTON:** Your Honor, may I make some additional  
09:41 21 comments on behalf of BNBM? We have joined in the motion.

09:41 22 **THE COURT:** Okay. I'll hear one side first and then  
09:41 23 I will hear the other side.

09:41 24 **MR. FENTON:** I'll be brief, your Honor. Rick Fenton  
09:41 25 on behalf of the BNBM entities.

09:41 1 Your Honor, first of all, I very much agree with  
09:41 2 Mr. Kenny's remarks. We have got some additional problems with  
09:41 3 respect to the notice. The class that this Court certified  
09:41 4 last year was specifically for remediated properties. The  
09:41 5 supplemental notice that went out in December removed the word  
09:41 6 *remediated*. So included in this mix of class members now that  
09:41 7 received the supplemental notice are a number of persons who  
09:41 8 were not part of the certified class but who also have  
09:41 9 unremediated properties.

09:42 10 We have been dealing with a moving target, as  
09:42 11 Mr. Kenny has indicated, on damages. Part of the reason for  
09:42 12 that, Your Honor, is that there are some fundamental problems  
09:42 13 with the analysis that has been done.

09:42 14 As Mr. Kenny mentioned, Mr. Inglis, who is the  
09:42 15 plaintiffs' expert, is not a statistician. He is a  
09:42 16 construction expert. He freely admitted in his deposition  
09:42 17 yesterday that there was absolutely -- other than this letter  
09:42 18 that Mr. Kenny mentioned that I will get to in a minute, that  
09:42 19 there was absolutely no statistical analysis done to determine  
09:42 20 whether his construction factor of \$86 per square foot was  
09:42 21 statistically sound.

09:42 22 He simply assumed that this small group of  
09:43 23 plaintiffs in Northeast Virginia, within 60 miles of one  
09:43 24 another, was somehow a representative sample of a group that  
09:43 25 spans I believe it's 18 states and many thousands of claimants.

0 9 : 4 3 1 So there's some fundamental problems to begin with, and that's  
0 9 : 4 3 2 part of the reason that we are seeing the damages shift.

0 9 : 4 3 3 We are not trying to delay, Your Honor, but we  
0 9 : 4 3 4 are trying to avoid error. We don't want to have to go through  
0 9 : 4 3 5 this again. It is tremendously expensive for all the parties,  
0 9 : 4 3 6 it has taken up a tremendous amount of the Court's time, and  
0 9 : 4 3 7 there are some threshold fundamental issues that need to be  
0 9 : 4 3 8 addressed. Besides the problems with notice -- and I think  
0 9 : 4 3 9 renotice is required in view of the changes that have been made  
10 to the plaintiffs' damage theory.

0 9 : 4 4 11 We articulated and Taishan articulated in our  
0 9 : 4 4 12 opposition some threshold legal issues. In addition to the  
0 9 : 4 4 13 lack of any statistical rigor in the expert reports, there is  
0 9 : 4 4 14 Fifth Circuit authority that is very clear on the use of  
0 9 : 4 4 15 aggregate damage awards in this kind of setting. There is  
0 9 : 4 4 16 Fifth Circuit authority and a lot of authority out of this  
0 9 : 4 4 17 Court -- much of it was created during Hurricane Katrina --  
0 9 : 4 4 18 where the courts have held, look, if actual remediation has  
0 9 : 4 4 19 been done, you have to look at the actual costs. At that  
0 9 : 4 4 20 point, estimates have no place. Now, approximately  
0 9 : 4 4 21 three-quarters of the class that remains have remediation that  
0 9 : 4 4 22 has already been done to their properties.

0 9 : 4 4 23 **THE COURT:** But those cases really involve insurance  
0 9 : 4 4 24 claims against their own insurer and the policy provisions say  
0 9 : 4 5 25 that if you are remediated, this is what you get. That's where

09 : 45 1 those cases come down, primarily. It's not against the  
09 : 45 2 tortfeasor. It's against the insurance company.

09 : 45 3 **MR. FENTON:** I believe, Your Honor, the cases are  
09 : 45 4 broader than that. The Katrina cases, you are right, those  
09 : 45 5 were insurance cases, but there is Fifth Circuit authority and  
09 : 45 6 the principle is the same. If you have actual costs, those are  
09 : 45 7 your damages. You don't rely on an estimate when there are  
09 : 45 8 actual numbers available.

09 : 45 9 Now, these class members here are active  
09 : 45 10 litigants. These are people who are plaintiffs in individual  
09 : 45 11 cases. They are subject to discovery. The plaintiffs never  
09 : 45 12 asked them, "What are your actual costs? What were your actual  
09 : 45 13 costs of remediation?" Mr. Inglis never asked them.

09 : 45 14 **THE COURT:** The problem with actual cost of  
09 : 45 15 remediation when you are looking at a tortfeasor is that the  
09 : 45 16 person loses their house. They don't have any other place to  
09 : 45 17 live, so they have to get back in their house. They just do  
09 : 45 18 everything they can to get back in their house as quickly as  
09 : 46 19 they can. They don't even put insulation in it. They take the  
09 : 46 20 drywall out and they may slap something up against the wall  
09 : 46 21 just to get in the house. That's their actual damages. Now,  
09 : 46 22 the tortfeasor created that situation. To then stick them with  
09 : 46 23 that actual damage, that's just --

09 : 46 24 **MR. FENTON:** Well, Your Honor, part of the problem is  
09 : 46 25 that if you look at Mr. Inglis' spreadsheets, in many cases, on

09:46 1 an individual basis, he is very low. The actual costs of  
09:46 2 remediation were actually higher. It goes both ways.

09:46 3 My point, though, Judge, is there are a lot of  
09:46 4 threshold legal issues here that I think really should be  
09:46 5 sorted out before we proceed to take proof. We are not saying  
09:46 6 June 9 should be deferred forever. What we are saying is on  
09:46 7 June 9 we should take the time to deal with the threshold legal  
09:46 8 issues, make sure that the notice to the class is sufficient,  
09:46 9 supplement the notice if need be, and then we can move to an  
09:47 10 evidentiary stage if the Court determines that that's  
09:47 11 appropriate. There will be plenty to do on June 9. Thank you,  
09:47 12 Your Honor.

09:47 13 **THE COURT:** Thank you very much.

09:47 14 **MR. LEVIN:** Arnold Levin for the Plaintiffs' Steering  
09:47 15 Committee. Your Honor, I will be very brief because the  
09:47 16 colloquy between the Court and counsel answered a lot of the  
09:47 17 questions that I would have responded to.

09:47 18 I was born but not yesterday. It sounds to me  
09:47 19 like it was a motion to decertify the class by a defaulted  
09:47 20 party, who can't do that. I haven't seen this argument in  
09:47 21 30 years where the defendant comes in and says the class is  
09:47 22 being denied due process. The last I saw it was in two cases  
09:47 23 that we cited to the Court, the *Sley* case and *Umbriac* by  
09:48 24 Judge Higginbotham in the district court, in the Eastern  
09:48 25 District of Pennsylvania, and then the Third Circuit, chief

0 9 : 4 8 1 judge in the Third Circuit, where he said, "You are not fooling  
0 9 : 4 8 2 us. You are not protecting the class. You really want no  
0 9 : 4 8 3 class." And that's exactly what they want is no class, and  
0 9 : 4 8 4 they have been defaulted.

0 9 : 4 8 5 As far as how we structured the class  
0 9 : 4 8 6 proceedings, the class definition is for remediated homes or  
0 9 : 4 8 7 homes to be remediated, and the damages are the cost of  
0 9 : 4 8 8 remediation not the cost of the Band-Aids that these poor  
0 9 : 4 8 9 people had to do to get into their homes. They don't benefit  
10 from that. They are estopped from benefiting from that.

0 9 : 4 8 11 They caused that to happen by ignoring 4,000  
0 9 : 4 8 12 homeowners in Louisiana, Virginia, Florida, and some other  
0 9 : 4 9 13 states sprinkled in. They don't gain the benefits of their  
0 9 : 4 9 14 outrageous conduct. They had every opportunity to do what the  
0 9 : 4 9 15 Knauf defendants did. They chose not to. They held back.  
0 9 : 4 9 16 They are still holding back.

0 9 : 4 9 17 Now, we looked at the class and we haven't  
0 9 : 4 9 18 denied any member that has sued on the *Amorin* complaint or the  
0 9 : 4 9 19 *Gross* complaint or any of the complaints with due process. In  
0 9 : 4 9 20 fact, we gave them due process.

0 9 : 4 9 21 Those damages that clearly could be presented on  
0 9 : 4 9 22 a class basis are the cost of remediation. That's arithmetic.  
0 9 : 4 9 23 We moved other damages on an individual basis for another day  
0 9 : 4 9 24 on another phase of the trial, and we said a final judgment  
0 9 : 5 0 25 would not be entered until there was complete relief for

09:50 1 everybody. We think that's a proper structure and we think  
09:50 2 that is due process.

09:50 3 As far as renoticing the class, again this is a  
09:50 4 red herring. This class has been noticed twice. One opt-out.  
09:50 5 Only one opt-out. Now they want to give the others a chance to  
09:50 6 opt out. Those that opted out have individual claims and they  
09:50 7 are already opted out because they are going to be handled for  
09:50 8 foreclosures caused by the defendant, bankruptcies that they  
09:50 9 withstood caused by the defendant, alternative living expenses  
09:50 10 that they are due caused by the defendant. Every item of  
09:50 11 damages is preserved. It's neatly preserved.

09:50 12 Well, I guess I know why they are doing it.  
09:51 13 They have delayed for five, six years and they want to continue  
09:51 14 to delay.

09:51 15 Your Honor, we want to hold that June 9 hearing.  
09:51 16 We are prepared to go forward on that June 9 hearing. As to  
09:51 17 the comments with regard to our expert, Mr. Inglis,  
09:51 18 Chris Seeger will address the Court.

09:51 19 **MR. SEEGER:** Good morning, Your Honor. Chris Seeger  
09:51 20 for plaintiffs. I will keep my comments brief.

09:51 21 The defendants had an opportunity to depose  
09:51 22 Mr. Inglis, which they took yesterday, and deposed him over  
09:51 23 seven hours. All of the questions that they say they are  
09:51 24 confused on, or this change or that change, they questioned him  
09:51 25 about. They questioned him about how the numbers got crunched,

09:51 1 what houses came out.

09:51 2 They questioned him about BrownGreer's  
09:51 3 spreadsheet, which Mr. Inglis made very clear to them that he  
09:51 4 relied upon the information provided to him by BrownGreer.  
09:52 5 Now, BrownGreer is a claim administrator not only appointed by  
09:52 6 this Court but courts throughout the country to do exactly what  
09:52 7 they are doing in this case, whether it's a personal injury  
09:52 8 case or a property damage case. They are collecting data and  
09:52 9 they are making that data available in this case through a  
10 summary format.

09:52 11 I have never heard of a situation where a  
09:52 12 Court-appointed claim administrator has been asked to produce  
09:52 13 the kind of information they are asking for here. They are  
09:52 14 trusted to do this. They are the gold standard in claim  
09:52 15 administration. As I said, nobody has ever questioned the  
09:52 16 reliability of the information and the data they have provided.

09:52 17 Mr. Inglis' approach -- and I'm going to keep  
09:52 18 this really brief -- is simple. It's based on some simple  
09:52 19 math. The scope of work has been established by this Court in  
09:52 20 your findings of fact in both *Germano* and *Hernandez*. That's  
09:52 21 based upon the hard work of a lot of scientists that the Court  
09:52 22 has heard from, scientists from Sandia. One person and one  
09:52 23 firm that's been in the middle of this since the very  
09:53 24 beginning, since 2009, is Berman & Wright and George Inglis.  
09:53 25 They have been in the middle of this establishing the scope,

09:53 1 studying the science.

09:53 2 He testified very plain. The scope is  
09:53 3 established. It's set forth. It's ripping down the houses to  
09:53 4 the studs. All he simply did is applied cost factors from  
09:53 5 RSMean. He adjusted the \$86 a foot, which was in Your Honor's  
09:53 6 findings in *Germano*, to 2015 and then further refined the  
09:53 7 number to benefit the defendants, further refined the number to  
09:53 8 adjust for cost factors based on localities. He used ZIP codes  
09:53 9 to do that.

09:53 10 It's straight math. So if there are 2,800  
09:53 11 homes, you apply the straight math to the 2,800. If they want  
09:53 12 to put the other 1,000 homes back in, we can do that and apply  
09:53 13 the straight math to the 3,800. It's very straightforward.

09:53 14 On the issue on the statistician, that really is  
09:53 15 a red herring because they know, because they have read the  
09:53 16 deposition, that Mr. Inglis made something very clear. He is  
09:53 17 not a statistician. He did not rely upon statistics.

09:54 18 They raised some issues about representative  
09:54 19 sampling. We didn't ask Mr. Inglis to do it. The lawyers did  
09:54 20 it. We asked a statistician to take a look at it, double-check  
09:54 21 our work, make sure we got it right. He came back and he had  
09:54 22 said, yeah, we absolutely got it right.

09:54 23 Mr. Inglis didn't know who the statistician was  
09:54 24 because that wasn't part of what he was asked to do. He didn't  
09:54 25 care. It doesn't matter. It's just math. There's no

09:54 1 extrapolating. There's no statistical work being done by  
09:54 2 Mr. Inglis. So, again, a red herring and inappropriate to  
09:54 3 really cite to that testimony knowing what Mr. Inglis said on  
09:54 4 it.

09:54 5 Not knowing what properties are remediated again  
09:54 6 is another red herring. Again, it's math. Whatever the number  
09:54 7 is, it is. If a home has been remediated, it doesn't mean they  
09:54 8 are still not owed the money for remediating just because a  
09:54 9 homeowner did it on their own. So I'm not really clear on what  
10 all these points are, but I think Mr. Levin summed it up.

09:54 11 I think, Your Honor, it would really serve the  
09:54 12 Court well to get these witnesses into your Court on June 9,  
09:54 13 hear what they have to say, both Mr. Inglis and Mr. Woody, who  
09:55 14 is going to testify about this information, and let them come  
09:55 15 in with their experts. Jerry and I are flying to Atlanta today  
09:55 16 to talk to their experts. I think that would serve the Court  
09:55 17 well just to cut down on the delay.

09:55 18 **THE COURT:** Okay. Any response?

09:55 19 **MR. KENNY:** Just real briefly, Your Honor. The issue  
09:55 20 of the constant punishment should just end. We are in the case  
09:55 21 and we have the right to litigate and defend in accordance with  
09:55 22 the law.

09:55 23 With regard to the notice issue, I just repeat,  
09:55 24 the way the case is proceeding now is fundamentally different  
09:55 25 than what the class was told in your Court-approved notice that

09:55 1 went out, and they have not been informed that the game is  
09:55 2 completely changing.

09:55 3 **THE COURT:** Any response?

09:55 4 **MR. FENTON:** Yes, Your Honor. I have to take issue  
09:55 5 with counsel's remarks and I stand exactly by what I said.  
09:55 6 Mr. Woody said that he applied no statistical analysis. The  
09:56 7 Grossman letter relates to one aspect of his analysis and that  
09:56 8 is how one extrapolates unknown square footage. Mr. Grossman  
09:56 9 did not bless the representative sample. He didn't address it  
09:56 10 at all even though our experts had gone into great detail about  
09:56 11 why the sample is not representative. So Mr. Grossman's  
09:56 12 silence on that issue, I think, speaks volumes. Without  
09:56 13 statistical rigor, the Fifth Circuit has said you can't have  
09:56 14 classwide damages, and that's why I think we should address  
09:56 15 these threshold issues on June 9. Thank you, Your Honor.

09:56 16 **THE COURT:** Thank you very much. Let's continue with  
09:56 17 the discovery and I'll write something on this. Let's go  
09:56 18 forward with the discovery.

09:56 19 The next motion is the motion to compel.

09:57 20 **MS. EIKHOFF:** Yes, Your Honor. Christina Eikhoff on  
09:57 21 behalf of Taishan.

09:57 22 The subject of the motion to compel is a set of  
09:57 23 documents that exists in a place where we know they exist.  
09:57 24 They are being held by BrownGreer, and up until a few days ago  
09:57 25 we had representations that they were being burned to a disc

09:57 1 ready to produce.

09:57 2           These documents identify who the class members  
09:57 3 are in detail, the type and size of property that's at issue,  
09:57 4 whether they have been already remediated, and the extent to  
09:57 5 which the properties were remediated, is it a Band-Aid job that  
09:57 6 the Court referenced earlier or was it a more thorough  
09:57 7 remediation whose drywall was identified as being in the  
09:57 8 properties, and whether or not these claimants have been made  
09:57 9 whole.

09:57 10           **THE COURT:** As I understand it, we started when you  
09:58 11 asked for all of the documents and data and now, at my request,  
09:58 12 you have trimmed it down to the documents, data, information  
09:58 13 BrownGreer reviewed, and that's what you want the information  
09:58 14 to be.

09:58 15           **MS. EIKHOFF:** Your Honor, we want the documents that  
09:58 16 are the backup to the summary spreadsheet that is the  
09:58 17 cornerstone of the plaintiffs' motion for damages and of their  
09:58 18 expert's report.

09:58 19           **THE COURT:** I understand.

09:58 20                   What's the response?

09:58 21           **MR. MEUNIER:** May it please the Court. Jerry Meunier  
09:58 22 for the plaintiffs.

09:58 23                   Your Honor, I'm not sure I understood what  
09:58 24 Ms. Eikhoff just said because they have every plaintiff profile  
09:58 25 form, which identifies every plaintiff class member, which

09:58 1 gives the property address, which gives the square footage  
09:58 2 where it's available. Mr. Woody is going to be deposed next  
09:58 3 Tuesday and will explain under oath in detail to the  
09:59 4 defendants, who have noticed his deposition, exactly what he  
09:59 5 did when he had to come up with the summary of the data.

09:59 6 So I think you have seen in Knauf's opposition  
09:59 7 to this that for them to request the entirety of the material  
09:59 8 is to necessarily have BrownGreer produce that which is  
09:59 9 proprietary, which has nothing to do with the Taishan class  
10 damages trial. So I think they should go forward with  
09:59 11 Mr. Woody's deposition next Tuesday, ask him how he came up  
09:59 12 with the data he provided, and they have all of the fact  
09:59 13 sheets.

09:59 14 **THE COURT:** I understand that. Before she begins the  
09:59 15 deposition, she wants the material that he relied upon. It  
09:59 16 seems to me that she is entitled to that; not all the documents  
09:59 17 that you have looked at since you have been in this business,  
09:59 18 but the documents that you looked at. If you just looked at  
09:59 19 the sheets, that's what the documents are.

09:59 20 I don't want them to take the deposition and  
10:00 21 then all of a sudden Mr. Woody say, "Well, I also relied on  
10:00 22 this document," which she doesn't see. So anything that he  
10:00 23 relied on to give the information that he is going to give they  
10:00 24 ought to have.

10:00 25 **MR. MEUNIER:** Well, that's fine, Your Honor. I have

1 talked to Mr. Woody about it. He can address it. It is going  
2 to take time for him to pour through the material, which is the  
3 64,000 documents you keep hearing about, and identify exactly  
4 what fits that precise characterization. I suppose it will  
5 take time and maybe --

6 **THE COURT:** Well, let's look at it, Mr. Woody. You  
7 don't have a dog in this fight, so I don't need your comments.  
8 The material that you have looked at to base your opinion on,  
9 that's what they want.

10 **MR. MEUNIER:** Judge, in addition, that's not counting  
11 what we have already given them, which is all the fact sheets.

12 **THE COURT:** Right. If they have it, don't give it  
13 again. We have to deal with the costs in this case. If you  
14 have given them the fact sheets and that's all you relied on,  
15 that's it. If you relied on something else, give it to them.

16 **MR. WOODY:** I understand.

17 **MR. MEUNIER:** Thank you, Judge.

18 **MR. MILLER:** Your Honor, if I may for a second?

19 **THE COURT:** Yes.

20 **MR. MILLER:** Kerry Miller on behalf of Knauf. We put  
21 in an opposition to this yesterday. I just want to reserve my  
22 rights on that, Your Honor.

23 It appears that some of the 64,000 documents  
24 that are the issue include inspection reports and/or cost  
25 estimates prepared by consultants retained by Knauf and paid

1 for by Knauf, particularly Moss. Some of the 64,000 documents  
2 include the repair scope analysis that Moss prepares. Knauf  
3 pays Moss \$1.45 a square foot to do those documents. Those  
4 documents are then signed by the homeowner, and then they  
5 control the scope of work and the cost of work and that kind of  
6 thing. So in these cases these would either be mixed homes or  
7 these would be homes where it was believed it was Knauf board  
8 only then to find out it was Taishan board. Of course, Taishan  
9 could use these documents for litigation purposes.

10 The other sets of documents, Your Honor, would  
11 be inspection reports done by the Court-approved inspectors as  
12 part of the Knauf remediation program. I think in the schedule  
13 of documents that Jake Woody submitted, it looked like there  
14 are about 300 of those in the 64,000 documents; not 300  
15 documents but 300 reports. Knauf pays on average about \$800  
16 for those reports.

17 So I just want to make sure that -- I know  
18 things are truncated. It's an accelerated timeline. It's  
19 easier sometimes to do a document dump then to sift through  
20 them on the front end, but Knauf does have a claim that those  
21 materials are proprietary for previous reasons stated and  
22 certainly would seek reimbursement of those funds at the  
23 appropriate time from Taishan or through the Court.

24 **THE COURT:** That's another issue, costs, and I'm  
25 sensitive to that. You ought to see what he gives. If any of

1 those are material that you incurred costs in, I will take that  
2 up at another time.

3 **MR. MILLER:** Thank you, Judge.

4 **MS. EIKHOFF:** Your Honor, if I just may respond to  
5 that, to Mr. Miller's points about the cost of the inspections.  
6 For all of the reasons we have already articulated, the  
7 inspection reports that identify whose drywall was in the homes  
8 that are now the subject of these damages claimed is very  
9 relevant and very --

10 **THE COURT:** No, I agree with that. I think you ought  
11 to have it. It's a question later on of whether or not you  
12 ought to pay for it or not pay for it. I won't decide that  
13 now. I don't know what we are talking about. It's just too  
14 general to decide now. If it's one dollar, that's one thing.  
15 If it's \$100,000, that may be another thing. I will give you  
16 an opportunity to respond to that. I'm not going to  
17 automatically say you have to pay costs, and I'm not going to  
18 automatically say you don't have to pay costs. Let's get the  
19 documents first and then I will hear about that situation.

20 **MS. EIKHOFF:** Yes, Your Honor. Now, the deposition  
21 of Mr. Woody is scheduled for Tuesday. So in terms of us  
22 getting these documents that we have been asking for --

23 **THE COURT:** Well, you ought to get them as quickly as  
24 you can.

25 Jake, give them the documents as quickly as you

10:04 1 can.

10:04 2 MR. WOODY: Yes, sir.

10:04 3 MS. EIKHOFF: Thank you.

10:04 4 THE COURT: I have another motion, but the lawyer has  
10:04 5 to be contacted on the phone. This has to do with another  
10:04 6 issue we haven't talked about yet. It has to do with the  
10:04 7 motion to enforce the Banner settlement. I'll take a  
10:05 8 five-minute break.

10:05 9 MR. HERMAN: May we approach very quickly with  
10:05 10 Mr. Miller regarding a Knauf/PSC problem?

10:05 11 THE COURT: Yes. Thank you very much.

10:05 12 THE DEPUTY CLERK: All rise.

10:05 13 \* \* \*

14 CERTIFICATE

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

20  
21  
22 s/ Toni Doyle Tusa  
23 Toni Doyle Tusa, CCR, FCRR  
24 Official Court Reporter  
25

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<p><b>6</b></p>		
<p>60 miles [1] 13/23            60606 [1] 2/7            63,000 [1] 11/1            64,000 [5] 8/13 25/3 25/23 26/1 26/14</p>		<p><b>B</b></p> <p>B-275 [1] 2/13            back [9] 3/18 5/22 10/5 15/17 15/18            17/15 17/16 20/12 20/21            backup [1] 23/16            Baker [1] 2/9            Band [2] 17/8 23/5            Band-Aid [1] 23/5            Band-Aids [1] 17/8            bankruptcies [1] 18/8            Banner [1] 28/7            base [1] 25/8            based [6] 3/7 6/15 8/10 19/18 19/21            20/8            basically [1] 4/13            basis [6] 6/19 6/22 7/9 16/1 17/22 17/23            be [29]            Bearman [1] 2/9            because [15] 3/18 5/17 5/24 7/3 7/19            8/20 11/17 11/19 16/15 18/7 20/15            20/15 20/24 21/8 23/24            been [24] 4/14 4/20 4/21 5/14 10/19            10/21 10/25 13/10 13/13 14/9 14/19            14/22 17/4 18/4 19/12 19/19 19/23            19/25 21/7 22/1 23/4 23/8 24/17 27/22            before [5] 1/11 12/6 12/6 16/5 24/14</p>

<p><b>B</b></p> <p>begin [1] 14/1</p> <p>beginning [1] 19/24</p> <p>begins [1] 24/14</p> <p>behalf [8] 3/6 3/22 3/23 4/12 12/21 12/25 22/21 25/20</p> <p>being [5] 16/22 21/1 22/24 22/25 23/7</p> <p>believe [3] 10/18 13/25 15/3</p> <p>believed [1] 26/7</p> <p>benefit [2] 17/9 20/7</p> <p>benefiting [1] 17/10</p> <p>benefits [1] 17/13</p> <p>Benjamin [1] 1/21</p> <p>Berkowitz [1] 2/9</p> <p>Berman [2] 1/15 19/24</p> <p>Bernard [2] 12/5 12/9</p> <p>Besides [1] 14/8</p> <p>best [3] 7/18 10/22 28/18</p> <p>better [2] 7/5 12/14</p> <p>between [1] 16/16</p> <p>beyond [2] 3/8 10/10</p> <p>billion [2] 4/6 5/3</p> <p>Bird [1] 2/2</p> <p>bit [2] 3/18 7/10</p> <p>blame [2] 12/9 12/10</p> <p>bless [2] 10/14 22/9</p> <p>BNBM [3] 2/6 12/21 12/25</p> <p>board [2] 26/7 26/8</p> <p>born [1] 16/18</p> <p>Boston [1] 10/3</p> <p>both [3] 16/2 19/20 21/13</p> <p>break [1] 28/8</p> <p>brief [5] 3/15 12/24 16/15 18/20 19/18</p> <p>briefly [1] 21/19</p> <p>broader [1] 15/4</p> <p>BrownGreer [6] 8/11 19/4 19/5 22/24 23/13 24/8</p> <p>BrownGreer's [1] 19/2</p> <p>brung [1] 12/19</p> <p>burned [2] 11/2 22/25</p> <p>business [1] 24/17</p> <p>but [21] 3/23 5/6 5/24 7/21 8/19 8/23 9/11 12/1 12/7 12/16 13/8 14/3 14/23 15/5 16/18 19/6 21/10 24/18 26/15 26/20 28/4</p>	<p>changing [3] 3/7 3/17 22/2</p> <p>characterization [1] 25/4</p> <p>characterized [1] 3/16</p> <p>Charles [1] 2/10</p> <p>check [2] 9/6 20/20</p> <p>Chicago [1] 2/7</p> <p>chief [1] 16/25</p> <p>CHINESE [1] 1/5</p> <p>CHINESE-MANUFACTURED [1] 1/5</p> <p>chose [1] 17/15</p> <p>Chris [2] 18/18 18/19</p> <p>Chris Seeger [1] 18/18</p> <p>CHRISTINA [2] 2/3 22/20</p> <p>CHRISTOPHER [1] 1/18</p> <p>Circuit [9] 5/1 11/7 11/15 14/14 14/16 15/5 16/25 17/1 22/13</p> <p>circumstance [1] 5/24</p> <p>circumstances [1] 3/7</p> <p>cite [1] 21/3</p> <p>cited [1] 16/23</p> <p>claim [5] 5/14 19/5 19/12 19/14 26/20</p> <p>claimants [2] 13/25 23/8</p> <p>claimed [1] 27/8</p> <p>claiming [1] 9/5</p> <p>claims [2] 14/24 18/6</p> <p>class [30]</p> <p>classwide [6] 4/10 5/2 6/9 7/9 11/5 22/14</p> <p>clear [4] 14/14 19/3 20/16 21/9</p> <p>clearly [1] 17/21</p> <p>client [1] 11/14</p> <p>codes [1] 20/8</p> <p>collecting [1] 19/8</p> <p>colloquy [1] 16/16</p> <p>come [4] 11/22 15/1 21/14 24/5</p> <p>comes [1] 16/21</p> <p>comment [1] 12/2</p> <p>comments [4] 12/21 18/17 18/20 25/7</p> <p>Committee [1] 16/15</p> <p>company [1] 15/2</p> <p>compel [3] 3/11 22/19 22/22</p> <p>complaint [2] 17/18 17/19</p> <p>complaints [1] 17/19</p> <p>complete [1] 17/25</p> <p>completely [1] 22/2</p> <p>complicated [1] 6/25</p> <p>component [1] 11/6</p> <p>components [4] 3/24 4/4 4/6 5/4</p> <p>comporting [1] 4/25</p> <p>computer [1] 2/17</p> <p>computer-aided [1] 2/17</p> <p>conceding [3] 6/16 6/18 6/21</p> <p>conduct [1] 17/14</p> <p>confused [1] 18/24</p> <p>constant [1] 21/20</p> <p>construction [2] 13/16 13/20</p> <p>consultants [1] 25/25</p> <p>contacted [1] 28/5</p> <p>contained [1] 11/1</p> <p>contempt [1] 4/18</p> <p>continuance [1] 11/24</p> <p>continue [2] 18/13 22/16</p> <p>control [2] 3/8 26/5</p> <p>controlling [1] 5/1</p> <p>cornerstone [1] 23/17</p> <p>correct [1] 28/17</p> <p>cost [10] 10/22 15/14 17/7 17/8 17/22 20/4 20/8 25/24 26/5 27/5</p> <p>costs [10] 14/19 15/6 15/12 15/13 16/1 25/13 26/24 27/1 27/17 27/18</p> <p>could [2] 17/21 26/9</p> <p>counsel [2] 4/19 16/16</p> <p>counsel's [1] 22/5</p>	<p>counting [1] 25/10</p> <p>country [1] 19/6</p> <p>couple [4] 8/2 8/5 9/23 9/25</p> <p>course [3] 4/25 7/5 26/8</p> <p>court [28] 1/1 2/12 3/5 4/19 11/4 11/22 13/3 14/17 16/10 16/16 16/23 16/24 18/18 19/6 19/12 19/19 19/21 21/12 21/12 21/16 21/25 23/6 23/21 26/11 26/23 28/15 28/16 28/23</p> <p>Court's [2] 7/19 14/6</p> <p>Court-appointed [1] 19/12</p> <p>Court-approved [2] 21/25 26/11</p> <p>courts [2] 14/18 19/6</p> <p>created [4] 8/10 8/12 14/17 15/22</p> <p>crunched [1] 18/25</p> <p>current [1] 8/19</p> <p>cut [1] 21/17</p>
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