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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, DECEMBER 10, 2009, 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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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY. TRANSCRIPT
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1 **P-R-O-C-E-E-D-I-N-G-S**

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

3 THURSDAY, DECEMBER 10, 2009

4 (COURT CALLED TO ORDER)

5
6
7 THE DEPUTY CLERK: Everyone rise. MDL 2047, *In re:*
8 *Chinese Drywall.*

9 THE COURT: Would counsel make their appearances for the
10 record, please.

11 MR. SEEGER: If I told you I was Russ Herman would you
12 believe it?

13 THE COURT: That's okay. He's representing the
14 plaintiffs. How about the defendants?

15 MR. WITTMANN: Phil Wittmann here for the Homebuilders,
16 Your Honor.

17 THE COURT: Please use the microphone. We have between
18 60 and a hundred people on the phone, so I would like them at
19 least to be advised of what's happening.

20 MR. WITTMANN: Phil Wittmann, Homebuilders' liaison
21 counsel, Your Honor.

22 THE COURT: Thank you. The first item on the agenda is
23 Pretrial Orders. Anything on that? Anything from the plaintiffs
24 on the pretrial orders?

25 What about Property Inspections? Let me hear from

1 the plaintiffs. Mr. Meunier, do you want to respond to property
2 inspections?

3 MR. MEUNIER: Jerry Meunier for the PSC, subject to
4 Mr. Herman supplementing this later, Judge, I have nothing to
5 report on property inspections.

6 THE COURT: Let me hear from -- he is not here either.

7 MS. BAAS: I think Lexy just went to get them,
8 Your Honor.

9 MR. SERPE: Your Honor, Richard Serpe also with the
10 Plaintiffs Steering Committee. I can report with respect to
11 inspections that the homes for the seven intervenors were made
12 available for defense inspections. They had two full days of
13 inspections last week. They were back in this week. We were
14 able to work out all inspection issues, including protocols for
15 removal of samples, and the inspections, at least as far as the
16 intervenors for the *Germano* trial, have been complete.

17 THE COURT: We're on the property inspections. Anything
18 from the plaintiff further from the plaintiff on the property
19 inspections?

20 MR. LEVIN: Your Honor, you were so quiet, we didn't
21 realize.

22 THE COURT: That's alright. Would you speak into the
23 microphone. As I mentioned at the outset, we have about a
24 hundred people on the phone, so I would like them to be kept
25 advised of what's happening.

1 Anything on the property inspections?

2 MR. HERMAN: No, Your Honor. Other than that, we will
3 announce today the property for the March trial, present the
4 Court with a letter. We have already advised Knauf it's a single
5 property -- property only, single defendant in the New Orleans
6 area to be tried here. I've advised Kerry Miller for Knauf just
7 to let me know when they would like to have their inspections in.

8 THE COURT: Just to remind everybody, the first matter
9 will begin in January and flow into February. It will focus on
10 the remediation and scope of remediation, and that case will
11 proceed on schedule. Then we'll follow that with the plaintiff's
12 selection and then the defendant's selection, and then I've also
13 extended the opportunity to the Homebuilders to pick a case so
14 that we can go with that for the trial.

15 MR. HERMAN: Your Honor, excuse me for not introducing
16 myself. I'm Russ Herman, liaison counsel for plaintiffs. Good
17 morning, Judge Fallon.

18 THE COURT: Good morning. Plaintiff and Defendant
19 Profile Forms, the next item on the agenda.

20 MR. HERMAN: Mr. Miller will address that.

21 MR. MILLER: Good morning, Your Honor. Kerry Miller,
22 defense liaison counsel. With respect to the status of the
23 plaintiff and defendant profile forms, as the Court is aware, the
24 Defense Steering Committee filed a Motion to Dismiss certain
25 plaintiffs who have not submitted profile forms. That Motion to

1 Dismiss was filed before the last status conference.

2 Since the last status conference we have not had
3 many profile forms from plaintiffs' liaison counsel, and what we
4 had put together or are putting together today or tomorrow is a
5 list that will indicate who has not responded to the plaintiff
6 profile form obligation.

7 I understand that opposing counsel at Mr. Herman's
8 office and Mr. Levin's office have worked very hard in trying to
9 reach out to the plaintiffs and their lawyers who have not
10 submitted profile forms in accordance with your pretrial order.

11 So what we'll be doing in connection with the next
12 hearing is we will look and obtain the list of plaintiffs who
13 have not submitted profile forms. We are going to make sure the
14 due process is complied with, notify those plaintiffs and their
15 counsels likely by certified mail that I think Your Honor will
16 set Rule to Show Cause hearings with respect to claims, and we
17 will seek dismissal with prejudice in connection with the next
18 status conference of the plaintiffs who do not submit timely
19 profile forms.

20 THE COURT: Let me speak on that. The profile forms are
21 an opportunity for the parties to cut through some of the initial
22 discovery aspect of the case. The profile forms are vital, they
23 are necessary, and I'm giving people an opportunity to respond
24 and to fill in the profile forms, but they need to know that
25 after a period of time, after they have been given an opportunity

1 to fill it in, if they resist and do not file the profile forms,
2 I will assume that they are not interested in proceeding with the
3 litigation and dismiss their case with prejudice.

4 Now, I have before me a number of motions to
5 dismiss the case with prejudice for failure to file profile
6 forms. I will issue an order to show cause why those cases
7 should not be dismissed. I'm not going to dismiss them now. I'm
8 not going to deal with the motions now. I'll issue an order to
9 show cause why those cases should not be dismissed and directing
10 the defendants to let me know which individuals should be
11 notified by court order of this opportunity for them to fill in
12 the profile forms. If they haven't done so by next meeting, I'll
13 entertain a motion to dismiss those cases with prejudice.

14 Preservation Order.

15 MR. HERMAN: Your Honor, there are defendant profile
16 forms -- may it please the Court, there are defendant profile
17 forms which are incomplete. We have not yet brought a formal
18 motion. We believe we've got enough facing us right now, but we
19 are reserving our right to bring a motion in the event that those
20 defendants' profile forms are not complete, and we don't assume
21 to know what remedies would be provided in the event of those
22 failures.

23 THE COURT: No, it's a two-way street. The defendant
24 has to produce profile forms; the plaintiffs have to produce
25 profile forms. If either side doesn't do that, then the Court

1 will act on it. If it's the defendant, I'll deal with that
2 situation by dismissing their defenses and proceed accordingly.

3 MR. MILLER: Another issue, Your Honor, we do get
4 updates from Mr. Herman's office with respect to what their
5 information shows in terms of defendants not submitting profile
6 forms. We then turn that list over electronically to all defense
7 counsel who have signed up to LexisNexis, get their feedback
8 back, get in touch with Mr. Herman's office, so we're in a pretty
9 constant information exchange on that issue.

10 THE COURT: Okay.

11 MR. HERMAN: Your Honor, while we're on that, we've had
12 a lot of inquiries from both plaintiff and defense lawyers, and
13 we want to point out the Court's web site for those here and
14 those on the phone. It's www.laed.uscourts.gov. All of
15 Your Honor's pretrial orders and transcripts are there. If the
16 lawyers would look to those first, it will help answer the
17 questions that we have been getting.

18 THE COURT: With that web site on the left-hand side of
19 the page you will see a button for the drywall cases. Click on
20 that button and then you'll have the *Drywall* web site. I've
21 tried to give maximum transparency to this particular case. I
22 put these transcripts on the web site. I put all of the court
23 orders on the web site, all of the motions coming up and things
24 of that sort, so not only do the lawyers have access to it but
25 the public as well, so that's the web site. If you have any

1 questions, go to the web site and look at it.

2 MR. MILLER: Judge, a particular issue that has been
3 generating a lot of questions, phone calls and e-mails, I think,
4 on my end and maybe on the Court's end as well pertains to
5 Pretrial Order 1, 1(c) and a minute entry that was issued in
6 connection with what's known as the *Gross matter*.

7 The *Gross matter* is an indeterminate defendant
8 class-action case filed by the PSC. The parties have agreed and
9 I think the Court has given an order that all you need to do in
10 *Gross* is file a notice of appearance. Services are being made in
11 piecemeal fashion, and I think the agreement, as reflected in the
12 Court's order, is that no defendant in *Gross* that has been served
13 needs to do anything other than file an appearance at this time
14 until further notice.

15 MR. LEVIN: No, we do need a profile form and a letter
16 is going --

17 THE COURT: Speak in the mic.

18 MR. LEVIN: Arnold Levin. We do need a profile form,
19 and we have a letter going out advising all unrepresented
20 defendants as well as represented defendants of the relevant
21 pretrial orders and also the Court's web site and their need to
22 file an entry of appearance. That will go out. Some of the
23 addresses are bad, and they are being checked now. That letter
24 will go out early next week and it will be filed with the Court.

25 THE COURT: I will post that on the web site.

1 MR. HERMAN: I think, Your Honor, for the record and
2 because there are folks on the phone, the relevant trial orders
3 are 1, 1(b), 1(c), and 5(a), the preservation order, what I call
4 the *registration order*, and the profile form order.

5 THE COURT: The next item on the agenda is State/Federal
6 Coordination. Anything on that?

7 While counsel is approaching the podium, let me say
8 in a case of this sort, you have not only a number of cases in
9 federal court under the MDL proceeding, but we have a number of
10 cases in state courts. Presently it looks like it will be about
11 42 state courts, but the majority of the claims are being filed
12 in Louisiana, Florida, Virginia, and Alabama. There are some in
13 New Jersey and in other places, but those are the areas that I'm
14 seeing most of the claims being filed in state courts.

15 I've contacted the state judges in those state
16 courts. I've made available to them all of the material that we
17 have been generating in the MDL. I've gotten their wise counsel
18 and their cooperation, and we frequently discuss the matters
19 coming up on the phone, and I need to again express my
20 appreciation to my state colleagues for all of the help that
21 they've given to me in this litigation.

22 MS. BARRIOS: Thank you, Your Honor. Dawn Barrios for
23 the State Liaison Committee. Pursuant to Your Honor's directive,
24 we had sent letters out to every judge in the country who had a
25 Chinese drywall case, inviting them to participate in the

1 conference, encouraging them to discuss it with Your Honor and
2 exchange information, so we hope that that has been helpful to
3 you. I have gotten calls from several of the judges, and I've
4 directed them to your law clerk and yourself.

5 Your Honor, since the last status conference, we've
6 only had one remand filed, and that was filed in *West, et al v*
7 *State Farm Fire and Casualty*. It was rejected by the
8 Clerk's Office because of the stay order in effect, so the MDL
9 actually has no remand motions pending before it.

10 I'm providing for Your Honor and for all counsel a
11 CD, updated CD containing all of the state court cases of which
12 we are aware. Thank you, Your Honor.

13 THE COURT: Thank you very much. Ms. Barrios is the
14 chair of the state court committee. I've endeavored to give the
15 state courts an opportunity to participate in the MDL
16 proceedings. She coordinates that activity. I have appointed a
17 committee from the various states to be represented on that
18 committee, and they should feel welcome at these meetings as
19 well, of course, as the judges who are participating today.

20 The next item is State Court Trial Settings. Is
21 there anything on state court trial settings?

22 MR. HERMAN: There are none, Your Honor.

23 THE COURT: We've talked about the Motions in the MDL.
24 Discovery Issues. Any discovery issues?

25 MR. HERMAN: Your Honor, the motions are all indicated

1 on your status report which Your Honor posts on a web site.

2 Very briefly, under PSC motions under A, the Court
3 granted that motion on December 7th.

4 Under B the PSC motions were deferred by agreement.
5 They are still deferred.

6 Under C, the depositions are now set. I'll take
7 those depositions of Venture Supply and Porter-Blaine next week
8 on the -- on Wednesday and Thursday. I believe that's the 17th
9 and 18th, and I've advised the Court in the event that something
10 comes up during that deposition we'll contact the Court.

11 Under B, the DSC motions, the first was under 558.
12 Your Honor heard argument on that in Florida, and there was a
13 briefing here on that issue. It's under advisement.

14 Under B, Interior Exterior, made a discovery
15 motion, was denied but with the right to refile.

16 Under C, the transfer order and motions were denied
17 filed by Venture Supply and Porter-Blaine.

18 Under D, distributor defendants have filed a motion
19 which has been taken under submission to strike plaintiffs'
20 claims for economic damages under Florida law. Your Honor heard
21 argument on that as well as Louisiana law, and it's been
22 submitted.

23 Under E, the DSC filed a Motion to Dismiss certain
24 defendants based upon failure to provide profile forms.

25 Your Honor has addressed that issue.

1 Under C, other motions, on all other motions, and
2 there are numerous, it's Page 8, 9, 10, and 11, they are not --
3 no hearing is needed at this time. No dates have been set by the
4 Court, but we do note that PTO 1(C) at page 11 of the record
5 allows parties to file motions before the MDL court and provides
6 that those motions will be considered without date unless a
7 motion is filed specifically to be accepted from the continuance
8 of those motions. I don't believe that there are any of those
9 pending before Your Honor.

10 THE COURT: Freedom of Information Act. Anything on
11 that?

12 MR. HERMAN: Yes, Your Honor. At the last pretrial
13 status conference, Your Honor directed that plaintiffs should
14 provide contact information for the various government agencies
15 in order that the Court may assist in facilitating discovery from
16 those various agencies. I do think at this point, Your Honor, it
17 is necessary to point out, and I do -- may I approach?

18 THE COURT: Yes.

19 MR. HERMAN: I have a list. Thank you. It's necessary
20 to point out that the federal agencies have not provided and
21 refused to provide plaintiffs with the discovery that we believe
22 is necessary. Evidently under federal law, if you're a
23 plaintiff, you have no access to the CPSC if you're in
24 litigation, but the corporations who are defendants do have
25 access. They have met numerous times with the CPSC, and,

1 therefore, we give an advance indication to the Court that the
2 plaintiffs do not accredit any CPSC report to have any value
3 because they've had one-sided input. We hope to pursue that
4 matter before these trials come to a fruition.

5 THE COURT: I'll look into the material that you've
6 given to me and talk with the U.S. Attorney's Office here and ask
7 them to contact the necessary agencies and get their position on
8 it. If necessary, I'll order that they be present at the next
9 meeting to explain why they haven't delivered the material.

10 MR. MILLER: Your Honor, on the issue of responses to
11 FOIA requests, I just want to make sure, we have received a CD
12 from the plaintiffs, from plaintiffs' liaison counsel containing
13 the responses that they have received as of the last status
14 conference. I also received a hand delivery yesterday containing
15 information from the Environmental Protection Agency.

16 I just want to make sure nothing slips through the
17 cracks. If we realtime have what the plaintiffs have, we're
18 happy to reimburse them for their costs, but as this information
19 rolls in, particularly as we get close to the scope of
20 remediation hearing, we will want to have the same information
21 that the plaintiffs have, so I'll --

22 THE COURT: I think that's right on either side. If you
23 have any information from any of the agencies, you need to give
24 it to the plaintiffs and vice versa. There is no sense in having
25 both of you all write the same agencies and get the same

1 material.

2 MR. HERMAN: Your Honor, first of all, we'll be happy to
3 be reimbursed. We'll provide contemporaneous information, and
4 since Your Honor has spoken to this, we would appreciate the
5 minutes and dates of the meetings that you folks have had with
6 the CPSC as part of the information which we believe we should
7 receive, and I'll be happy to discuss that with you after the
8 conference.

9 Your Honor, with regard to the omnibus complaint,
10 we have a letter, first of all, we have to present to the Court
11 the acceptance of service by Knauf, and I'll call on my colleague
12 Mr. Miller to make any comments that he would like to make about
13 that, and then, Your Honor, followed by that, we have an
14 announcement regarding the second trial for the March 15th trial
15 date.

16 THE COURT: Okay. We're dealing with the tenth item on
17 the agenda, the Trial Settings in Federal Court.

18 MR. HERMAN: Yes, Your Honor.

19 THE COURT: As everyone knows, an omnibus class action
20 complaint has been filed. Some 2,000 individual claims have been
21 logged in that complaint, or thereabouts. The service has been
22 accepted by Knauf on that claim. Anything more on that?

23 MR. MILLER: No. I think that's right, Your Honor. As
24 you will recall, at prior status conferences we often had debates
25 with respect to certain numbers of impacted homes or properties

1 we read about in the press and the number of claims we're having
2 in the MDL. I would point out we were at 300 for quite some
3 time, and now it appears that there are 2,000, or thereabouts,
4 homeowners represented by various members of the plaintiff group
5 who have asserted claims against Knauf Plasterboard (Tianjin) and
6 other defendants.

7 My client, pursuant to pretrial order Number 17, I
8 believe, did yesterday effectuate a waiver of service on behalf
9 of that Knauf Plasterboard (Tianjin) for that particular
10 complaint.

11 As set forth in Pretrial Order 17, I want to be
12 clear that was a one-time agreement by my client who worked well
13 with Mr. Herman and Mr. Levin's office and certainly appreciate
14 their efforts in putting it together and all those who
15 contributed to it. Our next steps, of course, are going to be to
16 start to evaluate that census and that information and move on.

17 THE COURT: One of the purposes of the omnibus
18 complaint, or the significant purpose of omnibus complaint is to
19 try to get our hands around this particular litigation. The way
20 of doing that is to find out how many claims are out there.
21 While there are obviously more claims than have been filed, it is
22 some indication of the claims. Hopefully this will give an
23 opportunity to take some sampling and design some kind of sample
24 that reflects the litigation in general or certain aspects of the
25 litigation from the standpoint of the defendants involved.

1 Once that grouping is analyzed to see whether or
2 not it's a reliable sample, whether it's enough of a reliable
3 sample, if it is, then you can explore more about the type of
4 claims in that sample, and the nature and extent of the claims in
5 that sample, where they are from, how many in that sample have
6 drywall in over 50 percent of the house as opposed to under
7 50 percent of the house or 10 percent of the house or whatever it
8 is.

9 You're better off with a grouping like that than
10 you are with simply one claim, in order to get some indication of
11 total census in the case and the nature and extent of the claims
12 in the case. That's one of the aspects of the omnibus complaint
13 that hopefully we can now begin mining that data.

14 MR. MILLER: Your Honor, one more aspect. In Pretrial
15 Order 17, I think we ought to remind everyone that there is an
16 obligation for those plaintiffs who are in the omnibus complaint
17 to follow up with the plaintiff profile forms. In discussions
18 with Mr. Levin, I understand that some of those are en route to
19 me. We will make all earnest efforts to evaluate those right
20 away because that's probably the first cut at mining the claims,
21 as you say.

22 THE COURT: The next is filings in the MDL. Anything on
23 that?

24 MR. HERMAN: Your Honor, I have a couple of other
25 matters, if I might.

1 THE COURT: Yes.

2 MR. HERMAN: Excuse me, Your Honor. First of all, I
3 want to present the Court with the service of acceptance. If I
4 may approach the Court, I have an original and a copy.

5 Secondly, Your Honor, we indicate that there were
6 several hundred Knauf cases provided that did not make the
7 cutoff. Knauf is firm that this acceptance was only one time;
8 however, we emphatically state to all plaintiff attorneys and
9 those individual claimants who are representing themselves to
10 please provide us with information as to Knauf and any other
11 Chinese manufacturers with regard to their homes and encourage
12 them to have their homes inspected and identified.

13 With regard to profile forms, the reason the
14 profile forms were not submitted yesterday is we were waiting for
15 the docket number to be placed on the profile forms. They are
16 being provided seriatim. We have the profile forms. The only
17 thing needed now is to imprint the case number on it, and they
18 will be provided forthwith.

19 Your Honor has set a schedule for trials at
20 page 19. And Your Honor had directed that today plaintiffs pick
21 and designate the case to be tried before Your Honor on
22 March 15th. I have a letter to Your Honor with copies to defense
23 liaison counsel that states that the plaintiffs propose that
24 *Tatum B. Hernandez and Charlene M. Hernandez, individually, and*
25 *their minor children, Grant Hernandez and Amelia Hernandez v*

1 *Knauf Gips* in the USDC, Eastern District, 2:09-CV-06050 is the
2 selection for trial services confirmed, and I would like to
3 approach and provide the Court with a copy -- with the original
4 of that letter and defense counsel with copies.

5 To that end -- I'm sorry, Your Honor, I didn't mean
6 to move from the mic. To that end, Your Honor, Chris Seeger and
7 Steve Herman have worked out a proposed scheduling order. We
8 provided it to Knauf. They'll meet and confer and shortly make a
9 recommendation to Your Honor of a scheduling order for the March
10 trial. We also were meeting and will meet to set up a fair and
11 reasonable deposition schedule that will not cause Knauf to have
12 to take all the depositions at once.

13 I appreciate the opportunity to address Your Honor
14 on those points.

15 THE COURT: All right. Then by the next status
16 conference, I would like Knauf to designate the trial that they
17 wish to proceed for the following trial, and then the following
18 one I'll give the opportunity to the Homebuilders to pick a case
19 that they wish to try and we'll go on that way.

20 Filings in the MDL? Anything?

21 MR. HERMAN: Your Honor, the only thing that I wanted --
22 I felt -- I feel necessary to report to Your Honor is that one of
23 the declaratory judgment actions was not sent to the MDL;
24 however, there are some other declaratory judgments out there,
25 insurance issues, which do impact the MDL.

1 I want to advise that sometime between now and the
2 end of the year plaintiffs will be filing a large number of
3 direct actions directly in the MDL which will not only have
4 coverage issues but substantive issues, and it's our belief that
5 that may somehow have an impact as to whether the insurance
6 actions end up here. I thought I would alert Your Honor to that
7 in advance.

8 MR. LEVIN: Arnold Levin. One of the coverage actions
9 involves the insurance in the Taishan issue that's before the
10 Court. The panel has not transferred a similar action, although
11 it was not here, with damage actions that were related to an
12 action that was being tried. We'll be filing papers before the
13 panel and will copy Your Honor with those papers, sir.

14 THE COURT: The initial issue is going to be whether or
15 not that is MDL fodder, whether that's appropriate for the MDL or
16 whether the insurance coverage issues are specific enough for the
17 local courts to deal with those. I think some thought has to be
18 given to that because the MDL has discussed some of this with me,
19 the panel, and I haven't concluded, frankly, that this is part of
20 the MDL or should be resolved individually because it's not
21 something that will impact the entire litigation. It's so
22 *sui generis*, it's so case specific, it's so insurance-policy
23 specific that some analysis has to be made on that.

24 Notices of Appearance and Default Judgments in the
25 *Germano* case.

1 MR. HERMAN: Your Honor, we just remind all counsel,
2 particularly in connection with those recently involved in *Gross*
3 and those in the omnibus complaint who have not appeared before,
4 that there is an order requiring that all counsel file
5 appearances. Again, we direct all counsel to laed.uscourts.gov
6 and the drywall signal in connection therewith.

7 THE COURT: Preliminary default has been issued in the
8 *Germano* case. We're now at the stage where the default will be
9 proceeding, as I mentioned earlier, to file a default, and I'll
10 be dealing with the scope of the mediation in that particular
11 case.

12 MR. HERMAN: Your Honor, I have now received three notes
13 from three different attorneys. As usual, I'm often in error but
14 not in doubt. I want to make everyone aware that the depositions
15 of Venture Supply and Porter-Blaine are scheduled next week in
16 Norfolk, will be on-line in the event that they wish to observe
17 or tune in.

18 THE COURT: Everybody is aware that in these particular
19 cases oftentimes, at least in the beginning and during the course
20 of the litigation, there are certain depositions that everyone
21 wishes to participate in. I can't have everybody at the
22 deposition because we would be using the Superdome, and that's
23 already committed for the next couple of weeks. So in order to
24 allow everybody maximum participation, we have arranged for these
25 depositions to be put on-line so that you can pull them up with

1 your Social Security Number or predesignated number. You can
2 look at it on your computer. On the left side of the page is the
3 realtime transcript, and on the right-hand side is voice and
4 image.

5 If you wish to participate in the deposition, you
6 simply type in whatever questions you want, and it goes to your
7 representative, the plaintiff or the defendant. At the
8 appropriate time that individual elbows his colleague who is
9 asking the question and indicates that New Orleans wishes this,
10 or Hawaii wants this and so forth and so on in the transcript.
11 Everybody is able to participate in it and watch the deposition
12 as it goes on. It's worked in other cases, and hopefully it will
13 work in this instance, too.

14 MR. HERMAN: Your Honor, there is one other matter that
15 is not necessarily set out in the status conference which we want
16 to bring to your attention and those individuals here in the
17 courtroom and that are on the phone. After some extensive
18 meet-and-confers with counsel for Knauf, we have reached an
19 agreement on ESI. It's now being reviewed by Ms. Bass and
20 members of the builders.

21 We do want to remind, particularly the defendants,
22 that many, many privileged logs pursuant to PTO 15 have not been
23 provided. The plaintiffs have deferred bringing motions before
24 the Court regarding the absence of these privileged logs, but we
25 would appreciate those defendants who have partially complied

1 with defense profile forms to please get us their privileged logs
2 as soon as possible.

3 THE COURT: With the ESI information, the electronically
4 stored information, this is my thinking on that: I want to give
5 the parties an opportunity to explore and look this over. This
6 is not the type of material that has any smoking guns generally
7 in it. That's not the issue here. Oftentimes in cases that's a
8 problem, and it has to be worked out through privileged logs.

9 Here I think the main hurdle is just logistics
10 issues. There are some defendants that are keeping it in certain
11 format and others in another format. Really, to make it
12 meaningful it should be stored or presented in the same format
13 and also searchable information because it's not any good if it's
14 not searchable information.

15 So the individuals should get together and discuss
16 the format, discuss the formulating searchable terms and things
17 of that sort. This shouldn't be a real problem in this
18 particular case. It's just logistical issues, and I can deal
19 with that by sharing costs, by swapping costs, by dealing with it
20 in some easier manner. Let's not get hung up on that. You need
21 to get the material, and you need to meet and confer on that.
22 Bring it to me if you can't resolve it and I'll resolve it.

23 The next item is Service of Pleadings
24 Electronically or are we on Master Complaint?

25 MR. HERMAN: I think, Your Honor, the Master Complaint.

1 Really, there is no issue as to that presently. Again, the
2 Court's web site, folks really have to look at that and look at
3 Pretrial Order Number 6. We're getting calls and e-mails daily,
4 and there seems to be some misunderstanding at the bar as to what
5 they are supposed to do.

6 They have to use the ECF for filing pleadings, and
7 then we get them, and they are posted on LexisNexis, and they can
8 be accessed on LexisNexis or the ECF system. We still are having
9 new lawyers, of course, coming into the case. I suspect that due
10 to the work of the PSC and lead counsel Arnold Levin, there will
11 be a lot more attorneys visiting New Orleans, and we wish them
12 well, and we wish they would look at number 6, Pretrial Order
13 Number 6.

14 THE COURT: Let's remember that if you're going to file
15 something, you need to file it in court. You don't file it with
16 LexisNexis. You file it with the Court. Then the liaison
17 counsel for each side gets word of it, and they make sure that
18 LexisNexis gets it. LexisNexis then uploads it and gives the
19 notice to everyone. If you have any question, you can access
20 LexisNexis and see what's filed and what's not filed, but to file
21 something, you don't file it with LexisNexis. You file it with
22 the Court.

23 MR. HERMAN: Your Honor --

24 THE COURT: We talked about the omnibus.

25 MR. HERMAN: Yes, Your Honor has spoken to the omnibus

1 complaint.

2 THE COURT: Special Master. As I mentioned last time, I
3 appointed Michael Rozen to be Special Master, he and his firm, on
4 this particular case. He's been discussing and working with the
5 parties on some preliminary matters in this case.

6 Anything you want to report on, Michael?

7 SPECIAL MASTER ROZEN: Thank you, Your Honor.
8 Michael Rozen, Special Master. All I would say, Judge, is that
9 I've been meeting with all of the relevant parties. Everybody
10 has been extremely cooperative, as you would expect, in those
11 meetings. I expect we will continue from now till the end of the
12 year into January, and I'm always optimistic in these regards,
13 Judge, but we will see.

14 THE COURT: Fine. I appreciate your work on this. I've
15 been in touch with the Special Master on a number of occasions.
16 He's kept me advised of his discussions, and I do urge the
17 parties to access him.

18 As I mentioned, in a case of this sort, because
19 there are so many defendants, it's very difficult for me to
20 discuss the case because I need an open courtroom to have
21 everybody present at it, and I don't want to talk with one
22 defendant or one side without the other side, and so it's a
23 problem for me.

24 A Special Master is not inhibited in that same
25 fashion. He can talk to each individual, and I've given him

1 authority to do so, so he can discuss the case with each party by
2 themselves or with any combination that he feels is appropriate
3 to do so. I think that will move the case, and my sense of it is
4 that that is helping in this particular matter. It's too soon to
5 determine the extent of his assistance, but I think it's moving
6 properly.

7 Nineteen is Knauf Gips.

8 MR. HERMAN: Your Honor, we have had discussions
9 frequently. The last was about an hour ago, and we will work out
10 a reasonable schedule with Mr. Miller with regard to jurisdiction
11 depositions. We don't anticipate problem in scheduling those and
12 having them taken. I'm certain we'll be meeting again on that in
13 the next few days.

14 THE COURT: The next item is Default Proceedings in
15 *Germano*.

16 MR. HERMAN: Yes, Your Honor. Your Honor has put forth
17 a scheduling order. I want to indicate to Your Honor that every
18 member of your Plaintiffs Steering Committee in one way or
19 another has pitched in in terms of the plaintiff side of *Germano*
20 to keep it on schedule for trial, both in providing their own
21 intellect and experience and their own resources. We have no
22 reason to think that that matter will not be -- will not go to
23 trial. It will go to trial as Your Honor has directed.

24 THE COURT: In that particular case, the plaintiffs have
25 sought to get a cross-section of the houses, to the extent it can

1 be done, to give some indication of the nature and extent of the
2 claims. Seven cases have been selected, and these are the cases
3 that will be affected by this particular proceeding. Hopefully,
4 it will have some informational effect for the parties in other
5 cases, but it's not binding on the other cases. It's for
6 informational purposes.

7 In that spirit, I have invited anyone who wishes to
8 intervene in the case to do so so that they can have an
9 opportunity to present their evidence or present their
10 information or present their experts. We've gotten some
11 interventions, but the parties need to take a look at this
12 because it's an opportunity for them to get some information and
13 not necessarily be bound or not be bound by the ruling of the
14 Court.

15 MR. HERMAN: Your Honor, with respect to interventions,
16 the intervention cutoff date has already passed; however, we were
17 advised that there are other folks who may want to intervene. We
18 ask that those folks communicate directly in writing to
19 Mr. Miller, to Arnold Levin, lead counsel, to myself, liaison
20 counsel, and to Richard Serpe, S-E-R-P-E, who is lead trial
21 counsel in *Germano* so that if there are ways to adjust in
22 recommending to Your Honor without disturbing the trial date,
23 we'll attempt to accommodate that as long as they don't prejudice
24 the plaintiff's case.

25 My only concern is that there has been substantial

1 work done by plaintiffs in preparing this case, and we'll be
2 happy to accommodate any reasonable intervention in recommending
3 to Your Honor unless it somehow, in our view, would affect the
4 presentation of the case which would require us to get more
5 experts, more *Daubert*, more information, et cetera.

6 THE COURT: That's my thinking on it. I don't have any
7 problem extending the time for intervention, as long as it does
8 not present a prejudicial problem for the parties involved now.
9 So these dates are really for the litigants, for the lawyers, and
10 not necessarily for the Court. My interest is in the trial date,
11 not necessarily in the cutoff dates that do not prejudice the
12 parties.

13 MR. MILLER: Your Honor, Kerry Miller on behalf of the
14 Defense Steering Committee. We agree with those comments. Input
15 is good, so long as it doesn't prejudice the parties that have
16 already intervened, so we'll work with Mr. Herman and Mr. Levin
17 to try to accomplish that.

18 Also, there have been some discussions, now that
19 there have been inspections of the properties -- at least we know
20 who the initial three intervenors are -- that there may be a more
21 streamlined way to exchange information, to deal with experts,
22 things of that nature, so I'm going to work with Mr. Seeger and
23 Mr. Levin and Mr. Serpe in maybe crafting some things that will
24 streamline our information exchange efforts moving forward.

25 THE COURT: Keep me in the loop. If there is a problem,

1 get to me immediately and I'll work it out.

2 The last item is Next Status Conference. Counsel
3 has asked that we set a status conference in the next couple of
4 weeks, particularly focused on the upcoming trial date so it will
5 be really focused on that aspect of this litigation, and that
6 date is December 29th, at 9 o'clock. It will be focused on that
7 aspect of the litigation. When is the other one?

8 THE CLERK: January 14th.

9 THE COURT: January 14th is the overall status
10 conference. I'll start that when I meet with the liaison counsel
11 at 8:30 and I'll meet in open court at 9 o'clock on that
12 particular matter.

13 Anything else while we are all assembled? We've
14 got about a hundred people here the courtroom and a hundred on
15 the line. Anything from anyone else?

16 Again, I thank my colleagues who are on the line
17 for their interest in this matter, and I appreciate all the help
18 that they've been giving to me. I'll see you at the next status
19 conference. We'll stand in recess.

20 THE DEPUTY CLERK: Everyone rise.

21 (WHEREUPON, at 10:05 a.m., the proceedings were
22 concluded.)

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REPORTER'S CERTIFICATE

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

s/Cathy Pepper

Cathy Pepper, CRR, RMR, CCR
Official Court Reporter
United States District Court

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