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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: CHINESE-MANUFACTURED  
DRYWALL PRODUCTS LIABILITY

Docket No. 09-MD-2047  
Section "L"  
New Orleans, Louisiana  
Wednesday, December 17, 2014

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

APPEARANCES:

FOR THE PLAINTIFF:

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15 Proceedings recorded by mechanical stenography, transcript  
16 produced by computer.  
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P R O C E E D I N G S

(WEDNESDAY, DECEMBER 17, 2014)

(STATUS CONFERENCE AND MOTION PROCEEDINGS)

(OPEN COURT.)

09:05:01 6 THE COURT: Be seated, please. Good morning, ladies and  
09:05:02 7 gentlemen. Call the case, please.

09:05:03 8 THE DEPUTY CLERK: MDL No. 2047, *in re: Chinese*  
09:05:07 9 *Manufactured Drywall Products Liability Litigation.*

09:05:09 10 THE COURT: Will liaison counsel make their appearance for  
09:05:12 11 the record, please.

09:05:13 12 MR. DAVIS: Good morning, your Honor, Leonard Davis from  
09:05:15 13 Herman, Herman, Katz on behalf of Plaintiffs' Liaison.

09:05:20 14 MR. MILLER: Good morning, Judge Fallon. It's Kerry  
09:05:23 15 Miller on behalf of Knauf and the Defense Steering Committee.

09:05:26 16 THE COURT: And please use the podium so that everybody  
09:05:30 17 can hear you, we've got a number of people on the phone.

09:05:35 18 This is our monthly status conference. I met with lead  
09:05:39 19 and liaison counsel a moment ago to discuss the agenda with them.  
09:05:43 20 I'll take it in the order presented.

09:05:45 21 Anything on Pretrial Orders?

09:05:46 22 MR. DAVIS: Your Honor, there have been no new pretrial  
09:05:49 23 orders to report on.

09:05:50 24 THE COURT: How about State Court Trial Settings, anything  
09:05:55 25 there, Dawn?

09:05:55 1 MS. BARRIOS: Thank you, your Honor. Dawn Barrios for the  
09:05:59 2 State/Federal Committee.

09:06:00 3 With the Court's permission I would like to take a couple  
09:06:02 4 of Roman numerals. The state court trial settings is still set in  
09:06:07 5 Virginia. The Garretson Resolution Group, which is the special  
09:06:10 6 master for the Virginia settlements, was not able to be here today  
09:06:13 7 and asked me to make the report. Because your Honor had so quickly  
09:06:17 8 set a conference to discuss the disbursement of the real property  
09:06:21 9 claims, they were able to get the checks out before Thanksgiving, so  
09:06:24 10 everyone was very excited about that.

09:06:26 11 They're now working on the other loss payments, and  
09:06:29 12 they're working very closely with BrownGreer so that we have some  
09:06:35 13 decisions that are the same in both settlement pots.

09:06:38 14 THE COURT: Okay. Thank you very much.

09:06:40 15 MS. BARRIOS: Thank you, your Honor.

09:06:42 16 THE COURT: Anything on Omnibus Class Action?

09:06:46 17 MR. DAVIS: There's nothing new, your Honor, to report on  
09:06:48 18 that.

09:06:48 19 THE COURT: Class Action Complaint, anything?

09:06:50 20 MR. DAVIS: Nothing new on that. And nothing new on the  
09:06:52 21 next one.

09:06:53 22 THE COURT: Okay. And the Remediation Program, anything  
09:06:55 23 on that?

09:06:58 24 MR. HAYDEN: Kerry Miller on behalf of Knauf, your Honor.  
09:07:00 25 It continues to go per our previous reports. As with the previous

09:07:05 1 status conferences, Phil Adams from Moss is here and addresses  
09:07:09 2 questions at the monthly status conference through Mr. Davis' office  
09:07:12 3 and with the ombudsman oftentimes.

09:07:17 4 Your Honor, as I said at the last status conference, it  
09:07:19 5 looks as if the remediation program will wind up in the first half  
09:07:22 6 of 2015.

09:07:23 7 THE COURT: Okay. I received a letter from someone on the  
09:07:28 8 Northshore, I've given it to Moss so that they can make contact with  
09:07:35 9 them and see if they can resolve some of their problems, they seem  
09:07:38 10 to have some critical issues there.

09:07:42 11 Anything on INEX?

09:07:45 12 MR. DAVIS: We have a motion set following the status  
09:07:49 13 conference on inspection costs and hold back, and I'll address that  
09:07:52 14 at the appropriate time.

09:07:53 15 And BrownGreer is present to give their report.

09:07:56 16 THE COURT: Okay. Anything, Jake?

09:08:18 17 MR. WOODY: Good morning, your Honor. My name is Jake  
09:08:19 18 Woody, I'm from BrownGreer, the settlement administrator for the  
09:08:23 19 Chinese Drywall program. I am here to give the Court's monthly  
09:08:25 20 status report.

09:08:27 21 To date we have received 22,473 claims, the claims  
09:08:31 22 deadline was October 25th of 2013, so this number is very static.  
09:08:35 23 Our largest claim type by volume is what we call GBI - Global,  
09:08:42 24 Banner, INEX repair and relocation damages, we received 12,599  
09:08:45 25 claims --

09:08:46 1 THE COURT: Why don't you tell us what that is, Jake.

09:08:49 2 MR. WOODY: Those are -- repair and relocation damages  
09:08:52 3 are -- it's a pro rata per square foot amount based on the number of  
09:08:57 4 square foot received for eligible claims. We take that number,  
09:09:01 5 divide the amounts available for each settlement, and issue a check  
09:09:06 6 based on the square footage of the home.

09:09:08 7 And I have more information about that later in this  
09:09:12 8 report.

09:09:13 9 The other claims are what we call other loss claims, they  
09:09:17 10 are a variety of things: Bodily injury, foreclosure and short sale,  
09:09:22 11 lost rent, use, and sales, miscellaneous, pre-remediation  
09:09:26 12 alternative living expenses, and tenant loss. And I have -- we've  
09:09:31 13 largely completed review of all of those claims, and I have more  
09:09:34 14 information forthcoming.

09:09:36 15 The Global, Banner, INEX of the 12,599 claims, 9,997 are  
09:09:43 16 eligible; 1,656 have been denied, either because the claimant  
09:09:50 17 assigned their claim to another entity, or because they failed to  
09:09:54 18 submit all of their required documents.

09:09:56 19 We do have some activity where people are withdrawing  
09:09:59 20 claims, that's still going on, so the numbers here change slightly  
09:10:04 21 between every status conference.

09:10:07 22 THE COURT: And why would they withdraw them?

09:10:09 23 MR. WOODY: Because we are in the process of -- we  
09:10:11 24 received a number of duplicative claims, claims from different  
09:10:15 25 entities for the same property. We're in the process of reconciling

09:10:18 1 those. Generally what happens is we inform the parties that we have  
09:10:22 2 two or three claims for the same property, and we're generally able  
09:10:27 3 to tell who has the rights and the party who doesn't have the rights  
09:10:30 4 we either deny the claim or they withdraw.

09:10:30 5 THE COURT: Okay.

09:10:33 6 MR. WOODY: On September 11th of this year we filed Claims  
09:10:37 7 Administrative Procedure 9, which authorizes us to issue payments  
09:10:42 8 for Global, Banner, INEX repair and relocation damages. It also  
09:10:46 9 sets the pro rata per square foot amount.

09:10:49 10 For the Banner settlement, that is \$2.97 per square foot;  
09:10:54 11 for the INEX settlement, that is \$0.36 per square foot. The Global  
09:10:59 12 settlement is divided into three separate pools per the allocation  
09:11:02 13 agreement: The Global builder per square foot amount is \$2.03, the  
09:11:09 14 Global supplier amount is \$3.36, and the Global installer is \$0.95  
09:11:15 15 per square foot.

09:11:16 16 And again, that is simply a math equation where we took  
09:11:20 17 the eligible square footage submitted for each settlement, divided  
09:11:25 18 the amounts available and came up with this amount.

09:11:27 19 To date we've issued 11,410 checks. There are more  
09:11:31 20 checks than eligible claims because many claimants received a check  
09:11:35 21 from multiple settlement agreements. The total amount we've paid is  
09:11:41 22 \$53.1 million. We continue to issue payments every day, although  
09:11:43 23 the volume is largely decreased because we've issued the majority of  
09:11:48 24 the payments we can issue. We do have 23.1 million left to  
09:11:53 25 distribute.

09:11:53 1           The only reason we would not have paid you for an  
09:11:56 2 eligible claim to date is because either you have a duplicative  
09:12:00 3 claim that we're reconciling, as I mentioned, or because you haven't  
09:12:03 4 submitted the required payment documents. That's an IRS Form W-9,  
09:12:08 5 and what we call a Verification of Claims form. Both the W-9 and  
09:12:11 6 the Verification of Claims form are available on our web site. And  
09:12:15 7 we've also performed outreach to inform people that they have an  
09:12:19 8 eligible claim and either haven't submitted those documents to us or  
09:12:23 9 the documents they did submit are incomplete for one reason are  
09:12:26 10 another.

09:12:27 11           So we're working through the remaining payments and we  
09:12:29 12 continue to issue payments every day.

09:12:30 13           As I mentioned, we are substantially complete on our  
09:12:35 14 review of the other loss claims. The total eligible claims right  
09:12:40 15 now is 2,494. We do have 103 incomplete claims across all of the  
09:12:47 16 claim types. The incomplete number is important because we have a  
09:12:52 17 set amount of money to distribute, so the number of open claims  
09:12:55 18 affects how we do our calculations.

09:12:58 19           Just for a frame of reference, we had in November -- or  
09:13:03 20 excuse me, in October we had 400 incomplete claims, at the last  
09:13:08 21 status conference we had 200, this month we have a 103. Obviously  
09:13:11 22 that number is dropping and continues to drop. By the next status  
09:13:14 23 conference I expect it to be well under 100.

09:13:18 24           And we have denied 1,459 claims. At this point most of  
09:13:24 25 the denials are for people who failed to submit all of the required

09:13:29 1 documents. There are a few assignments where we denied the claims,  
09:13:32 2 but generally the only reason we deny a claim, another loss claim is  
09:13:36 3 for failure to submit the required documents.

09:13:39 4 Because we are substantially complete and we have so few  
09:13:45 5 incomplete claims, we've been discussing procedures to resolve these  
09:13:47 6 claims where we don't have a finalized order yet, but I expect by  
09:13:51 7 the next status conference we will be well along the path towards  
09:13:55 8 that.

09:13:55 9 THE COURT: Okay.

09:13:57 10 MR. WOODY: Our web portal where you can access the  
09:14:00 11 payment documents I mentioned earlier or review your claim is  
09:14:07 12 [www3.BrownGreer.com/drywall](http://www3.BrownGreer.com/drywall). The best way to contact us is by  
09:14:14 13 e-mail at [CDWquestions@BrownGreer.com](mailto:CDWquestions@BrownGreer.com). Or if you need to call us,  
09:14:17 14 our toll free number is (866) 866-1729.

09:14:23 15 Thank you very much.

09:14:24 16 THE COURT: Okay. Thank you very much. Anybody have  
09:14:27 17 anything in the audience on that? Okay.

09:14:29 18 Let's go to Shared Costs. Anything on that, Lenny?

09:14:31 19 MR. DAVIS: There's nothing new, your Honor.

09:14:32 20 THE COURT: Taishan Defendants, we're still on a holding  
09:14:36 21 pattern there?

09:14:37 22 MR. DAVIS: Well, your Honor, we got the order that was  
09:14:39 23 reissued regarding privileged documents, and we will expect briefing  
09:14:45 24 to be filed by December 29.

09:14:49 25 THE COURT: Yes. I received a large number of documents

09:14:54 1 in accordance with my order from the attorneys, either the present  
09:14:58 2 attorneys or prior attorneys of Taishan. I looked through them and  
09:15:03 3 made the decision on what's privileged and what's not and instructed  
09:15:07 4 them to release the non-privileged documents.

09:15:12 5 MR. DAVIS: With respect to the next item, item XI,  
09:15:16 6 Venture Supply - Virginia matter. It has been reported earlier,  
09:15:21 7 money is being distributed and that's on its way.

09:15:25 8 THE COURT: Okay.

09:15:26 9 MR. DAVIS: Profile Forms, there is nothing new.  
09:15:28 10 Frequently Asked Questions, it's the website and I think  
09:15:33 11 folks are familiar with that.

09:15:34 12 There are two matters set for hearing following this  
09:15:40 13 conference: One is the motion for assessment of class damages and  
09:15:44 14 the other is the Fee Committee's motion for inspection and hold back  
09:15:48 15 pursuant to PTO 28(E).

09:15:48 16 THE COURT: Okay.

09:15:52 17 MR. DAVIS: With respect to Pro Se Claimants, Mr. Johnston  
09:15:55 18 is here.

09:15:59 19 MR. JOHNSTON: Good morning, your Honor, Bob Johnston,  
09:16:05 20 curator for pro se plaintiffs.

09:16:07 21 As the court recalls, at the last status conference on  
09:16:13 22 November 25th, the court was advised by Kerry Miller, who is here  
09:16:19 23 today, that Knauf has agreed to remediate properties of a set number  
09:16:25 24 of pro se plaintiffs who did not have any knowledge of the presence  
09:16:30 25 of Knauf until after the October 25th, 2013, deadline.

09:16:36 1           As the court can surmise, that has triggered a lot of  
09:16:40 2           communications with my office. I have sent out two detailed reports  
09:16:46 3           to all of the pro se plaintiffs. I was provided by Knauf counsel  
09:16:53 4           with a summary of the settlement that has gone out accompanying the  
09:16:58 5           second letter, and I and my office has been working with Knauf  
09:17:06 6           counsel, paralegals at the Frilot firm to make sure that all of the  
09:17:11 7           appropriate indicia that basically shows that they do have the Knauf  
09:17:17 8           drywall is in the right place in their office.

09:17:20 9           So all of that is going very, very well. It's been a  
09:17:24 10          long time that we have had these informal discussions, and I  
09:17:28 11          personally and professionally want to thank Knauf and certainly its  
09:17:32 12          counsel, Kerry, and the other attorneys for being able to bring this  
09:17:37 13          whole thing together. I think it's a significant resolution of this  
09:17:44 14          for these individuals.

09:17:46 15          And certainly I received and I have been told more than  
09:17:49 16          once by several of the individuals to thank the court for allowing  
09:17:56 17          the format for this to be resolved.

09:17:58 18          So I think it is a very good day for these pro se  
09:18:02 19          plaintiffs, and I just wanted to advise the court of that.

09:18:05 20          THE COURT: Well, thank you. And thank you for all of  
09:18:07 21          your work on it, I think you've done very good work for those folks.

09:18:14 22          MR. JOHNSTON: Thank you.

09:18:14 23          THE COURT: Anything on the Physical Evidence, are you all  
09:18:15 24          still working on that?

09:18:17 25          MR. DAVIS: We are having some additional discussions on

09:18:19 1 that, your Honor, and we will have something to report to the court  
09:18:22 2 shortly.

09:18:25 3 THE COURT: Okay. We have an issue, obviously, cost wise,  
09:18:29 4 and I understand that there's -- the Knauf drywall is one thing, you  
09:18:34 5 can get rid of that, that's resolved; but with the Taishan drywall  
09:18:41 6 or even the mixed drywall, it presents an issue. One way of doing  
09:18:44 7 it is to try to do a sample of it so that we don't have maintain  
09:18:50 8 warehouses full of this stuff, and another is probably to look at  
09:18:58 9 shifting costs if that's necessary.

09:19:00 10 But hopefully the parties will come up with a creative  
09:19:03 11 solution and we will be able to work that out.

09:19:06 12 Anything on Already Remediated Homes that we haven't  
09:19:10 13 talked about?

09:19:10 14 MR. DAVIS: There's nothing new.

09:19:12 15 THE COURT: What about Attorney General, anything from the  
09:19:14 16 Attorney General's office?

09:19:24 17 MR. DAVIS: I have not heard --

09:19:24 18 MR. STYRON: Christopher Styron on behalf of the Attorney  
09:19:27 19 General. Nothing to report today, your Honor.

09:19:29 20 THE COURT: All right. Thank you very much.

09:19:31 21 The only thing we have -- anything else from anybody  
09:19:36 22 before the motions? Anything from the audience?

09:19:38 23 MR. DAVIS: The motions and the next status conference.

09:19:41 24 THE COURT: The next status conference is January 22nd and  
09:19:42 25 the following one is February the 12th.

09:19:47 1           Okay. Let's go into the motions. Lenny, the hold back,  
09:19:52 2 explain what that is.

09:19:56 3           MR. DAVIS: On October 23, 2014, the Fee Committee filed a  
09:20:07 4 motion for inspection costs and hold back pursuant to Pretrial Order  
09:20:12 5 28(E). That motion seeks reimbursement for all reasonable costs,  
09:20:21 6 including costs of inspection in individual cases. And that's  
09:20:24 7 pursuant to paragraph four and footnote one of the memo, which was  
09:20:32 8 filed with that motion, outlines that issue.

09:20:36 9           As the Court's aware, this motion deals or arises out of  
09:20:42 10 the INEX, Banner, Knauf and the L&W settlements that were approved  
09:20:46 11 back in February of 2013. The issue here is that class members do  
09:20:55 12 not pay attorneys' fees and costs, and that's a significant benefit  
09:20:59 13 that was reached in connection with these settlements. The Fee  
09:21:05 14 Committee was ordered to file a motion to determine the amount of  
09:21:08 15 reimbursement a claimant will recover for costs, and that's what  
09:21:13 16 this motion is, the inspection costs and hold back motion.

09:21:16 17           The Fee Committee performed interviews of counsel in its  
09:21:23 18 course of working through Pretrial Order 28, and in the course of  
09:21:27 19 those interviews did an analysis of costs and an evaluation of what  
09:21:36 20 was reasonable, including inspection costs. And again, that's set  
09:21:40 21 forth in the memo. The short summary of that is that it ranged from  
09:21:45 22 a few hundred dollars on a home to a couple thousand.

09:21:50 23           And so the Fee Committee in its motion has recommended  
09:21:55 24 what I call a stipend, a stipend of \$1,000 for a property where KPT  
09:22:02 25 Chinese drywall is present, including those with mixed board that

09:22:09 1 included KPT Chinese drywall. If it's non-KPT, there's a stipend of  
09:22:17 2 \$150 per property that's recommended.

09:22:21 3 And in addition, this motion talks about a hold back,  
09:22:24 4 which is what your Honor mentioned earlier. And that recommendation  
09:22:28 5 was a \$10 million hold back for the remaining litigation costs and  
09:22:33 6 administration.

09:22:35 7 That's the sum and substance of what's being requested.  
09:22:38 8 I am not aware of anyone filing any opposition, I haven't heard of  
09:22:43 9 any.

09:22:43 10 THE COURT: Right.

09:22:44 11 MR. DAVIS: Now, I will bring one issue to the court that  
09:22:46 12 was raised, which is lower case kpt. And as the court's aware,  
09:22:53 13 those individuals get a 50 percent recovery, which is set forth in  
09:22:58 14 the settlement agreement, and that's Section 4.9.2 of the Knauf  
09:23:03 15 Settlement. And the recommendation would be, since that issue was  
09:23:08 16 raised, that a similar type of reduced stipend by 50 percent would  
09:23:13 17 be appropriate.

09:23:13 18 THE COURT: That sounds fair. Okay. I didn't receive any  
09:23:18 19 objections, so I am going to approve that.

09:23:22 20 And the next motion is on the Notice for Class Damage.  
09:23:27 21 Fred, do you want to handle that?

09:23:28 22 MR. LONGER: Yes, sir. Good morning, your Honor. Fred  
09:23:29 23 Longer on behalf of the PSC.

09:23:33 24 Your Honor, we filed our motion for an assessment of class  
09:23:39 25 damages pursuant to Rule 55(b)(2)(B).

09:23:47 1           And, your Honor, in September -- going back and giving  
09:23:53 2   some history -- your Honor on September 26th certified the class  
09:23:58 3   following the Fifth Circuit's rulings becoming final. And now that  
09:24:05 4   the *Germano* class has been expanded, we've asked for this assessment  
09:24:10 5   of damages here.

09:24:13 6           In the course of pursuing that class, we issued notice  
09:24:18 7   following your Honor's order and the opt out deadline was  
09:24:25 8   October 25. And to my knowledge only two people have chosen to opt  
09:24:29 9   out, which is like ten thousandths of the class has opted out,  
09:24:36 10   otherwise everyone is in.

09:24:38 11           But in the course of going forward with the assessment of  
09:24:42 12   damages herein, we were concerned that the class may not realize the  
09:24:46 13   parameters of the damages that your Honor can award on a class-wide  
09:24:53 14   basis. And in particular we were concerned that people with  
09:24:58 15   personal injury claims or other claims that were individualized and  
09:25:05 16   could not be assessed on an aggregate basis be advised that that  
09:25:11 17   was, in fact -- those claims were not being pursued at the  
09:25:16 18   assessment of damages herein.

09:25:17 19           So what we have asked your Honor to do and what we  
09:25:20 20   explained in our papers is, here are the sorts of damages that we  
09:25:25 21   can look for, remediation values, loss of use and enjoyment, for  
09:25:33 22   example; but there are other types of claims, bankruptcy claims,  
09:25:39 23   unique claims involving personal injuries that cannot be pursued on  
09:25:43 24   a class basis, and we want people to have notice that those types of  
09:25:46 25   claims are not being pursued.

09:25:49 1           So we've asked your Honor for an opportunity to give a  
09:25:53 2 second notice to the class advising them of the parameters of the  
09:25:57 3 assessment of damages herein so that we are completely assured that  
09:26:03 4 we've provided due process to all persons in the class, and that  
09:26:09 5 they know their rights and they know what the PSC is doing on their  
09:26:14 6 behalf.

09:26:14 7           THE COURT: And if they want to pursue those personal  
09:26:17 8 injury claims, they can on their own or through someone else?

09:26:22 9           MR. LONGER: They would have to opt out of the class and  
09:26:24 10 then pursue it themselves, yes, sir.

09:26:27 11           THE COURT: The concern that I had on this is that the  
09:26:36 12 issue of class certification is a little difficult, if not  
09:26:40 13 impossible, at least in this circuit, for personal injury claims  
09:26:44 14 because each of those are specific. We have some precedent in  
09:26:53 15 allowing the certification of property damage claims, the Murphy Oil  
09:27:00 16 case, the Fifth Circuit approved certification of that. So there is  
09:27:05 17 precedent there. But all of the precedent with personal injury  
09:27:10 18 aspects of the claims have not met with satisfaction by the circuit.

09:27:19 19           So I mentioned that to the parties and they are  
09:27:24 20 restructuring their notice and that's part of the reason for the  
09:27:27 21 notice.

09:27:33 22           Anything on that? I received no objections, so I'll  
09:27:37 23 approve that notice.

09:27:38 24           MR. DAVIS: Upon receipt of an order, we will begin  
09:27:41 25 getting notice out as soon as possible; and then we will, again,

09:27:44 1 come back to the court, there's already been a motion filed to set  
09:27:48 2 the matter for an actual hearing.

09:28:00 3 MR. LONGER: It's wonderful to have a team, your Honor.  
09:28:02 4 But the point that Mr. Meunier just whispered in my ear is that  
09:28:09 5 there should be a new opt out date, which is being provided in the  
09:28:16 6 notice, so that those people, if they so choose, can opt out.

09:28:20 7 THE COURT: Thank you. Anything else?

09:28:20 8 MR. DAVIS: I think that's it, your Honor. I know it's  
09:28:23 9 the end of the year, and I wish you and your staff and everyone a  
09:28:25 10 Happy Holidays.

09:28:26 11 THE COURT: Same here, everybody here have a great  
09:28:28 12 holiday, and I'll see you next year on the 22nd.

09:28:31 13 MR. DAVIS: Thank you.

09:28:31 14 MR. LONGER: Happy Holidays, your Honor.

09:28:31 15 THE COURT: Thank you very much. The court will stand in  
09:28:36 16 recess.

09:28:36 17 THE DEPUTY CLERK: All rise.

18 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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