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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED)
DRYWALL PRODUCTS)
LIABILITY)
LITIGATION)
) CIVIL DOCKET NO. 09-MD-2047-EEF-JCW
) SECTION "L"
) NEW ORLEANS, LOUISIANA
) THURSDAY, FEBRUARY 23, 2012
) 9:00 A.M.

THIS DOCUMENT RELATES TO:)
)
ROBERT C. PATE, AS)
TRUSTEE FOR THE CHINESE)
DRYWALL TRUST)
)
vs.)
)
AMERICAN INTERNATIONAL)
SPECIALTY LINES INSURANCE)
COMPANY, FCCI COMMERCIAL)
INSURANCE COMPANY, FCCI)
INSURANCE COMPANY, ET AL)
)
2:09-CV-07791 (E.D. LA.))

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

OFFICIAL COURT REPORTER: SUSAN A. ZIELIE, RPR, FCRR
United States District Court
Eastern District of Louisiana
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Proceedings Recorded By Mechanical Stenography. Transcript
Produced By Computer Aided Transcription.

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1 NEW ORLEANS, LOUISIANA; THURSDAY, FEBRUARY 23, 2012

2 9:00 A.M.

3 THE COURT: Good morning, ladies and gentlemen.

4 THE CLERK: MDL 2047, in re: Chinese Manufactured
5 Drywall Products liability litigation.

6 THE COURT: Counsel make their appearances for the
7 record, please.

8 MR. MILLER: Good morning, Your Honor. Kerry Miller on
9 behalf of the Defense Steering Committee.

10 MR. HERMAN: May it please the Court, good morning,
11 Judge Fallon. Russ Herman for the Plaintiff's Steering
12 Committee.

13 THE COURT: Please use the microphones. We have
14 several hundred people on the phone.

15 I met with liaison and lead counsel a moment ago
16 to discuss the agenda with them. I'll take it in the following
17 order.

18 Pretrial orders, anything on that?

19 MR. HERMAN: Your Honor, under item No. 1, there's
20 nothing new.

21 THE COURT: I know we have an order of preservation of
22 evidence that was entered just recently.

23 Any state court trial settings that we need to
24 talk about?

25 MR. HERMAN: Dawn isn't here but, her partner is here

1 to advise the Court.

2 MR. KINGSDORF: Bruce Kingsdorf, Your Honor, appearing
3 on behalf of Ms. Barrios.

4 All of the state court trial settings remain the
5 same as stated in the joint report except for one. At the
6 bottom of page 5, the California setting, the Monks case, the
7 case has been settled at mediation. There is a hearing before
8 the Court on March the 5th to iron out a few details. And it's
9 expected at that time to be taken off the Court's docket for an
10 April trial.

11 THE COURT: I do appreciate all of the help that the
12 state courts have given to us in this matter, and I hope we
13 haven't inconvenienced their dockets by asking them to move
14 their cases the several times that I've had to do that. And I
15 do appreciate their cooperation. It's been a great help to this
16 aspect of the case.

17 MR. KINGSDORF: Thank you, Your Honor.

18 I'd also note that there are no cases past
19 conditional transfer order No. 25, there are no additional
20 remands. And I do have disks to present to the Court as to the
21 current status.

22 THE COURT: Good, okay. Well, thank you very much.

23 MR. KINGSDORF: I have one for Mr. Miller also.

24 THE COURT: Good.

25 Anything on insurance issues?

1 MR. HERMAN: Your Honor will be meeting with that after
2 the hearing today.

3 I do want to state for those on the phone that all
4 of Your Honor's pretrial orders, status conference reports,
5 transcripts, other relevant matter, can be accessed on the
6 Court's website at www.laed.uscourts.gov with a link directly
7 to, quote, drywall MDL, end quote.

8 THE COURT: Just a word on the insurance. The insurers
9 being invited to participate in the global resolution of the
10 matter, this should be their last opportunity to do that. If
11 they want in, then I want them to participate.

12 If they feel that they do not want in, then what
13 I'm going to do is, when I'm advised of that, when it comes to
14 my attention, I'll then carve them out of the stay order and let
15 the cases proceed against them so that they can have some
16 finality, which they're entitled to.

17 And those insurers that are participating, of
18 course the stay order will be in effect and they can then
19 resolve any particular details that they have to resolve.

20 And also, I might say that, by participating in
21 this discussion, they are not waiving any of their rights or not
22 caving into the jurisdiction of the Court or anything of that
23 sort.

24 But those insurers who are not interested in
25 participating, the plaintiffs should go forward against them,

1 and I'll carve them out of the stay order.

2 Homebuilders fees and costs.

3 MS. WIMBERLY: Yes, Your Honor. Dorothy Wimberly for
4 the Homebuilders liaison counsel's office.

5 Yesterday, the Court entered a show cause order,
6 it's record docket 12546, identifying those builders who have
7 failed to comply with the Court's prior fee orders.

8 I would note that, unfortunately, despite our
9 efforts to make certain that it was accurate, I have been
10 apprised of two errors on it, which we will be promptly
11 rectifying and removing, those people who had timely complied.

12 But the only difference from what's in the joint
13 report regarding this is that the show cause order is set for
14 March 22nd, immediately following the monthly status conference.

15 I would encourage counsel for all builders who are
16 identified on the exhibit attached to the order to please get in
17 touch with our office. We will be able to provide you with the
18 amount that you are owed based upon the prior orders, the
19 necessary forms if you cannot locate them in the record, and
20 answer any questions and if special arrangements need to be made
21 for anyone. We've done that for other builders. But the
22 important thing is that you please contact our office so that we
23 can work through this and not burden the Court further.

24 THE COURT: Okay. All right. Thank you very much.

25 And I encourage them to do so.

1 MR. HERMAN: Your Honor, item No. V, state federal
2 coordination, Mr. Kingsdorf has the report.

3 First, I'd like to thank Mr. Kingsdorf and Ms.
4 Barrios for the job that they are doing with the Consumer
5 Product Safety Commission. Mr. Kingsdorf will make that report.

6 I'm still frankly concerned on behalf of the PSC
7 that we still don't have the information about the CPSC. The
8 arm of the United States Government denied access to the Leung
9 mines, which we feel is a paramount issue.

10 But Mr. Kingsdorf will speak as to the Consumer
11 Product Safety Commission.

12 MR. KINGSDORF: Bruce Kingsdorf, Your Honor.

13 I had a lengthy conversation yesterday with
14 Melissa Hampshire representing the CPSC, and they have received
15 the PSC's appeal from the denial of the request for
16 documentation from the CPSC and they have lodged various
17 exemptions and exceptions to our request.

18 However, they have offered a compromise, Your
19 Honor, of an in-camera inspection by the Court of approximately
20 31,000 documents, which they will be compiling. They have
21 advised that it will take 348 man hours to compile the
22 documentation. I asked whether that was straight time,
23 overtime, one person, 100 people. They really couldn't give me
24 an answer for that. But it will apparently take a few weeks to
25 compile.

1 They are concerned about disseminating the
2 information which has some personal information, and there are
3 certain requirements apparently of the CPSC that there be
4 notification given to manufacturers and distributors of the
5 product that complaints are made against.

6 I advised that, because they were Chinese
7 companies, it was nearly impossible to provide notice to the
8 manufacturers. Then they advised that they would have to
9 provide to the distributors. And I don't really know how that
10 will work, Your Honor.

11 But they are willing to do an in-camera inspection
12 under a protective order, and I have contact information so that
13 the Court can communicate directly.

14 THE COURT: We've got to cut through this. Just give
15 me the contact information, and I'll order them to give it to
16 the Court in-camera. And I'll deal with the number or amounts
17 or whatever it is. But give me the contact information so I can
18 get to it.

19 MR. KINGSBORF: I have that. Would you like me to give
20 it to your law clerk after the conference?

21 THE COURT: Yes, great.

22 How about the omnibus class action complaints?

23 MR. LEVIN: As of last night, Your Honor, we have
24 another one. That's what's new.

25 THE COURT: Plaintiff's motion to establish?

1 MR. HERMAN: Nothing new, Your Honor.

2 THE COURT: What about the pilot program, any report on
3 that?

4 MR. HERMAN: It's proceeding very well. We commend
5 Kaye Scholer on the process that they're doing, as well as the
6 contractor that they've chosen. Things seem to be moving much
7 more smoothly.

8 I don't have a report with me, but perhaps Steve
9 wants -- Steve Glickstein wants to address it. I know that Mr.
10 Wallen sent in a report earlier this week, and there were I
11 think 1,200 to 1,400 residences in process.

12 MR. GLICKSTEIN: Good morning, Your Honor. Steve
13 Glickstein for Kaye Scholer and Knauf defendants.

14 I don't have anything, any statistics to add to
15 the written report, other than as Mr. Herman said things are
16 progressing through the system very well. We are still
17 enrolling and are willing to enroll. And any plaintiff's
18 counsel whose clients prefer not to wait until final approval of
19 the class action settlement to get their homes into the queue
20 can do so now.

21 THE COURT: The terms sheet, anything on that?

22 MR. HERMAN: Nothing new, Your Honor.

23 THE COURT: This settlement, you've got to recognize
24 that it's not like the usual settlement where one side gets a
25 check and the other side gets a release. There's going to be a

1 lot of implementation and work in order to put this matter
2 together. And so at least the parties ought to be giving some
3 thought to that, as to a substructure that can be used. And
4 I'll be talking with them about that at the appropriate time.

5 Anything from the Knauf defendants?

6 MR. HERMAN: We continue to meet, that is the PSC, with
7 Knauf, particularly in so far as scheduling, implementing the
8 settlement.

9 Yesterday, representatives Mr. Miller, Mr.
10 Schonekas, Steve Glickstein, Arnold Levin and Leonard Davis and
11 I met for a couple of hours, and we've got a checklist that
12 we're working through. And we believe we're making progress in
13 terms of further implementation of the settlement prior to final
14 approval by Your Honor.

15 And I might add at this point, we have discussions
16 with L&W this afternoon with Banner. There have also been
17 discussions with Minor Pipes as regards those three potential
18 settlements, and we're making headway in connection with those.

19 THE COURT: Any Taishan defendants, any report on that?

20 The Taishan defendants, as everybody knows, the
21 depositions went off in Hong Kong a month or so ago. I was
22 present at them. It consumed a week. We started at 8:30 in the
23 morning on Monday, and went to 6:00 o'clock each day, in a
24 windowless room, and we finished up about 3:30 on Friday
25 afternoon. And everybody left on Saturday morning to come back

1 to the United States.

2 I thought the depositions went well; there were
3 only about maybe 15 objections throughout the week. I ruled on
4 them immediately, and we moved on.

5 The witnesses were cooperative. And the lawyers,
6 of course, handled themselves very well, on both sides.

7 I do appreciate the support of the two senators
8 from Florida and the two senators from Louisiana and the two
9 senators from Virginia. I appreciate their help. They wrote
10 letters to Taishan announcing that I would be there and looking
11 forward to my prompt return, and copies were sent to the state
12 department and the other individuals who were kind enough to
13 check on me periodically. But things went well, and all of
14 those who participated did well.

15 We had a great interpreter. The state department
16 was kind enough to give us some references. We picked the
17 interpreter who was very good at her craft, and we didn't have
18 any other interpreters in the room. I thought it was better
19 just to have one interpreter. So I made her a 706 expert for
20 the Court, and so she was the interpreter for the litigation. I
21 thought she did a splendid job, and I appreciate all of her
22 help.

23 The parties are completing their discovery on the
24 jurisdictional aspect of the case. I think the plaintiffs had
25 maybe one or two witnesses on the west coast that they're going

1 to be deposing. I've given them the schedule for briefing, and
2 I would intend to have oral argument on that motion in June,
3 middle of June. And, hopefully, I can get my opinion out
4 shortly thereafter, and we'll see where we go from there.

5 MR. HERMAN: Your Honor, if I may, I have a couple of
6 comments regarding Taishan.

7 Tom Owens, attorney for Taishan, met yesterday in
8 our offices with Leonard Davis to discuss certain issues,
9 including discovery issues. And we appreciate Mr. Owens'
10 participation in that meeting.

11 I'd be remiss if I did not, in connection with the
12 Hong Kong depositions, thank my partner Leonard Davis for
13 coordination, administration. And Chris Seeger, Arnold Levin,
14 Jerry Meunier, Eric Gonzalez and others that went to Hong Kong.
15 And they also were supported by second chairs and a number of
16 PSC and non-profit PSC members that helped prepare for those
17 depositions. And we thank Your Honor for making those
18 depositions move professionally and with substance.

19 THE COURT: Interior/Exterior defendants, anything on
20 those?

21 Banner defendants?

22 MR. HERMAN: The Allocation Committee continues to
23 meet. The deadline for report is March 5th, and there are
24 meetings scheduled for today.

25 But, at page 14, the issue -- this is under XII,

1 page 14, the issue of North River, excess insurer of INEX, the
2 Court issued an order setting a hearing on motion to lift the
3 stay today. Would Your Honor like to hear that after
4 conclusion, or now?

5 THE COURT: I can hear it after. We'll go into all of
6 the motions at one time.

7 MR. HERMAN: XIII. As I indicated, Your Honor, the
8 Allocation Committee will be meeting again today. I believe the
9 meeting is either at 11:30 or noon, at Kerry Miller's office, as
10 there are other meetings scheduled.

11 THE COURT: Anything new on Venture Supply?

12 MR. HERMAN: Nothing new.

13 MR. LEVIN: There's something new as of this morning.

14 Your Honor, you will receive today probably an
15 agreed-upon order by Venture's carriers to appoint John Perry as
16 a mediator with regard at least to two insurance policies
17 dealing with Venture and Porter Blaine.

18 THE COURT: Okay.

19 MR. MILLER: Your Honor, Kerry Miller.

20 Just one point of clarification on a point Russ
21 just made. The Banner allocation is at my office 30 minutes
22 after this conference concludes. So we're going to start there
23 30 minutes after.

24 It looks like we're moving pretty good, so I'm
25 guessing around 10:30.

1 THE COURT: I met yesterday with Venture Supply, those
2 defendants, as well as representatives from the plaintiff's
3 committee. And hopefully we'll be able to resolve some of those
4 issues.

5 Anything on profile forms, plaintiff/defendant
6 profile forms?

7 MR. HERMAN: Your Honor, there's a motion set before
8 you today that Your Honor will hear following this status
9 conference schedule, and there are additional matters.

10 THE COURT: Anything on pro se plaintiffs?

11 MR. HERMAN: Mr. Johnston, Bob Johnston, isn't here
12 today.

13 He reported that there's nothing new from the last
14 written report that he submitted, Your Honor.

15 THE COURT: Okay. Other than the motions, anything
16 further from anybody?

17 The next meetings are March the 22nd, April the
18 26th, and I set May 17th as the meeting in May.

19 Let's take a five minute break and we'll come
20 back. Court stands in recess.

21 (Proceedings in recess.)

22 THE COURT: We have a couple of motions before us.

23 The omnibus motion for plaintiff's motion for
24 preliminary default judgment, the record document 12551. We've
25 had a number of changes to it.

1 MR. LEVIN: Arnold Levin, Your Honor.

2 Your Honor, last night, you received the third
3 amended errata. I think that will be the last amended errata,
4 so it's an order for the Court to act on it.

5 THE COURT: I'm going to grant the preliminary default.
6 I'll post those people on the website showing that I've entered
7 a preliminary default. And then I'll eventually, within a
8 couple of weeks, set a time for dealing with the final permanent
9 default to confirm the default.

10 I moved this motion at least three times. Told
11 people even before the motion was filed that I was going to do
12 it. Notwithstanding that, they haven't answered, they haven't
13 done anything to the case. So they've been properly served, and
14 I've got to move them out of the case. So I'll do so by
15 granting a default against them. And, once the default is
16 confirmed, then you can act accordingly.

17 MR. LEVIN: Thank you, Your Honor.

18 THE COURT: The next item is objection to stay and
19 preliminary approval order of the Knauf settlement agreement,
20 that's docket 12138.

21 MR. GLICKSTEIN: Steve Glickstein for the Knauf
22 defendants.

23 We have had several telephone conferences with the
24 objectors. We are 99 percent toward agreed-upon order. We have
25 a final telephone call scheduled for tomorrow.

1 I would ask that the Court just kick the motion.
2 If for some reason that, unexpectedly, we don't have an
3 agreed-upon order, probably we'd want to set it either
4 telephonically or in person before the next status conference.

5 But I'm hopeful that we'll have an agreed-upon
6 order.

7 THE COURT: Why don't you get to me within a week, let
8 me know one way or another.

9 If not, then I'll set it on a date convenient with
10 everybody, and I'll do it on the phone.

11 MR. GLICKSTEIN: Okay.

12 THE COURT: Okay, thank you.

13 Plaintiff's Steering Committee motion to compel or
14 to seek sanctions for certain defendants who have produced the
15 profile form, that's document No. 12435 and 12548.

16 MR. LEMMON: Good morning, Your Honor. Andrew Lemmon
17 on behalf of the PSC.

18 Pursuant to various court orders and including
19 specifically pretrial order No. 25, the defendants were all
20 required to provide profile forms to both the PSC and to the
21 other liaison counsel.

22 We filed an errata today. We filed an exhibit
23 first with our motion, Exhibit A, for people who contacted us
24 with, you know, some information, some promise to provide us
25 information.

1 Exhibit B was people who provided nothing, we
2 haven't heard from at all.

3 We filed an errata last night that shows where
4 we've progressed with that. We've gotten some more profile
5 forms in since we filed this originally. We have some more
6 promises that we're going to get some more in. So we're asking
7 the Court to enter an order to compel or sanctions against them
8 for failure to comply with the Court's order.

9 THE COURT: Why don't you give me the list of people
10 who haven't complied, and then I'll issue an order finding them
11 in default, and I'll devise some penalties for it.

12 MR. LEMMON: Okay. Thank you, Your Honor.

13 THE COURT: Thank you.

14 What about the lifting of the stay regarding
15 claims against North River? That's 12459.

16 MR. LEVIN: Arnold Levin again Your Honor.

17 We're to the point where delaying any action on
18 North River doesn't make any sense. Everything else is moving
19 towards an ultimate resolution, at least on the Knauf side of
20 the ledger sheet and the downstream defendants and the carriers
21 on the Knauf side.

22 We have an entitlement to move against North River
23 if the INEX settlement is approved. However, Mr. Herman has
24 schooled me on the Louisiana law; and, in the *Amato* case, we
25 have a direct action against the insurance carrier.

1 So it makes no sense to tread water and then start
2 the process in June or July, when we can begin to start the
3 process now.

4 If the stay is lifted, we can file some discovery,
5 but ask the defendants, North River -- and they don't have to
6 take action on that discovery right now. Let's just discuss it,
7 and at the same time let's also discuss resolution. And at
8 least we'll move that aspect of the case along.

9 THE COURT: What's the other side of that?

10 MR. RISLEY: Good morning, Your Honor. Kevin Risley
11 for the North River Insurance Company.

12 The reason it doesn't make any sense to lift the
13 stay right now is because we have a moving picture in front of
14 us. There's not just the INEX settlement but there's the Knauf
15 settlement. If those are both approved, the PSC will end up
16 owning a very few number of claims, because what will be left is
17 the Taishan claims and maybe some mixed house claims. So, why
18 lift a stay for a party that a few months from now may have no
19 interest in the claims at all? It makes more sense to us to
20 figure out who has the right to sue us before we lift the stay
21 and go forward.

22 A second point is, even on the non-KPT houses,
23 there's a question of exhaustion. There's \$8 million of primary
24 coverage below us that right now is unimpaired. It's supposed
25 to be paid as part of the underlying settlements; but, if those

1 settlements are not approved, then there's still no exhaustion
2 against us and the claims are not ripe. There may be claims on
3 file; but, until there's exhaustion, there's nothing to go
4 forward on against us. If we started a trial this afternoon,
5 the Court would have to direct a verdict in our favor. So why
6 don't we get the exhaustion issues out of the way with the
7 settlements and make sure those claims are ripe?

8 THE COURT: How do you do that without discovery?

9 MR. RISLEY: The discovery on exhaustion would be, if
10 the Court approves the Knauf settlement, it will be the position
11 of INEX and the primary carriers, they've paid their limits,
12 they're out. So that wouldn't involve the discovery from us,
13 that involves the resolution of that settlement agreement.

14 Now, I would say this. We have offered to sit
15 down and talk. I heard the Court say that the insurers are
16 willing to participate in the global settlement within the next
17 couple weeks, I suspect.

18 It might make some sense then to put this off 30
19 days to see if those discussions go anywhere. If they want to
20 send us the discovery now so we have it, that's fine. But I
21 would rather not open the door until we know whether the
22 settlement talks will be fruitful or not.

23 One last point, Judge. If Court is inclined to
24 lift the stay against us, we also have claims on file against
25 Knauf, which is the manufacturer. We have similar claims

1 against KPT. I think it would be unfair and violation of due
2 process to allow them to pursue the claims against us without us
3 allowing those claims to be perused against a third party. So,
4 if the stay is lifted, it shouldn't be just against North River
5 but also in favor of North River to pursue the claims it has.
6 If we're going to get it done, let's get it done all at once.

7 THE COURT: Okay. Let me hear the response.

8 MR. LEVIN: Sounds like a lawyer just made a statement,
9 Your Honor.

10 We're in this courtroom, everybody is moving
11 towards resolution. One of the ways to move towards resolution
12 is to have an active docket. We've agreed not to take action
13 after the stay is lifted, if Your Honor does lift it, but we
14 want to be ready. We certainly will speak with them. But
15 there's no reason why we should have our hands tied with a stay
16 when we have a direct action against North River. And, if they
17 have defenses to that action, they can raise them in that
18 action. But we shouldn't be precluded from moving in that
19 direction.

20 THE COURT: What's your position about opening
21 discovery against Knauf? Or maybe I ought to ask Knauf that.

22 MR. GLICKSTEIN: Steve Glickstein.

23 This actually came up during a prior argument.

24 First, Knauf, as Your Honor knows, has been
25 exhaustively discovered. God knows how many of our witnesses

1 have been deposed, but it's been over a dozen.

2 North River, I believe, has participated in that
3 discovery. And, if they haven't, they've had every opportunity
4 to participate in that discovery.

5 Knauf, unlike North River, has stepped up to the
6 plate and has offered a global deal.

7 Under Louisiana law, North River can, if they need
8 to, try the empty chair and don't need to be in the case.

9 So, if the stay is lifted, there is no basis or
10 reason to lift the stay against Knauf in order to permit North
11 River to do whatever it needs to do at trial or in order to try
12 to allocate the fault.

13 MR. RISLEY: Your Honor, if I could.

14 The reasons that they offer now to lift the stay
15 were just as valid when the first stay was put in place with
16 their consent and when the Court put in the Knauf and INEX stays
17 that they asked for. Those reasons haven't changed.

18 But it would be the worst of all possible worlds,
19 and with all due respect an abuse of the discretion of the
20 Court, I believe, to allow us to be a defendant but not at the
21 same time assert claims. Under the redhibition statute, we're
22 entitled to recover from the manufacturer. The extent of that
23 discovery is based upon whether INEX was an innocent seller or
24 not. But that's where we have an absolute right to assert those
25 claims in the same proceeding claims that are be asserted

1 against us.

2 THE COURT: I do understand the issue.

3 What I'm going to do is I'm going to keep the stay
4 for two weeks, let you all talk. Get back to the Court within a
5 two-week period, and then I'll hear from all of you all to
6 determine whether or not to lift the stay; and, if so, which
7 aspect of the stay would be lifted on Knauf. Let's do it that
8 way.

9 MR. RISLEY: We'll do that. Thank you, Your Honor.

10 THE COURT: You have the responsibility to contact me
11 in two weeks.

12 MR. RISLEY: We will do so.

13 MR. HERMAN: May it please the Court, Your Honor, it
14 would be helpful if North River would file a motion and a brief
15 regarding the issue of lifting the stay as to Knauf so we can
16 respond formally.

17 THE COURT: I don't know whether I'll do that or not.
18 But I'll give you two weeks.

19 Now, I hope I don't have to visit that situation,
20 because it seems to me that either you're in or you're out. And
21 it's not only true with North River but it's true with all of
22 the insurers. If you're interested in resolving the matter, I
23 want you to feel comfortable doing it. If you're not interested
24 in it, then you've got to get on with your case. You just can't
25 tread water the rest of the time. I need everybody to focus and

1 tie up this aspect of the case so I can look at the other aspect
2 of the case, and that's what I'm trying to do.

3 MR. RISLEY: Understood, Your Honor.

4 THE COURT: Rule to show cause for installers, builders
5 and suppliers for failure to provide required confidential
6 affidavits.

7 I know we have several people who haven't done
8 that. Dan Balhoff is here as the special master. And those who
9 have not supplied the confidential mediation affidavits have to
10 meet with him and talk it through. Let me know who hasn't. I'm
11 going to have to take action.

12 You want to come forward?

13 MR. BALHOFF: Yes, Your Honor.

14 THE COURT: I don't see any downside on this. I'm
15 dumbfounded as to why you haven't received the information.
16 They're confidential. I don't need to know about it. You just
17 need to know, frankly, what the coverage is. What's the problem
18 there?

19 MR. BALHOFF: I wish I knew what the problem was. And,
20 actually, we've gotten a very good response, Your Honor.
21 Several hundred affidavits.

22 There are approximately 250 defendants who have
23 not responded. I don't know if some of those are defunct or
24 not.

25 I think the point that we wanted to make today is

1 today's the chance for absolution. Anybody that is here, I will
2 be -- if the Court is willing -- I will be here in the courtroom
3 after you've concluded your proceedings today to receive
4 affidavits from anyone that has them. If you can produce them,
5 we'll strike you off the list. I will make a report to the
6 Court, and I assume the Court will decide at that point whether
7 and what sanctions to impose upon those who have not responded.

8 THE COURT: I'm going to have to impose some sanctions,
9 so I'll give you one last opportunity to resolve the matter. If
10 it's not resolved, then I'm going to have to act. I'm not going
11 to be able to be just overlook it. So let's get that done.

12 MR. BALHOFF: Thank you, Your Honor.

13 THE COURT: Thank you.

14 Any further motions that we have? Anything else,
15 folks?

16 Thank you very much. The court stands in recess.

17 (9:51 a.m., proceedings concluded.)

18

19 CERTIFICATE

20

21 I, Susan A. Zielie, Official Court Reporter, do hereby
22 certify that the foregoing transcript is correct.

22

23

24 /S/ SUSAN A. ZIELIE, FCRR

24

Susan A. Zielie, FCRR

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