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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED)
DRYWALL PRODUCTS LIABILITY)
LITIGATION)
) MDL DKT NO. 09-2047 "L"
) NEW ORLEANS, LOUISIANA
) TUESDAY, NOVEMBER 25, 2014
) 9:00 A.M.
THIS DOCUMENT RELATES TO:)
)
All Cases)

TRANSCRIPT OF STATUS CONFERENCE AND MOTION PROCEEDINGS

HEARD BEFORE THE HONORABLE ELDON E. FALLON

UNITED STATES DISTRICT JUDGE

SUSAN A. ZIELIE, RMR, FCRR
OFFICIAL COURT REPORTER
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; TUESDAY, NOVEMBER 25, 2014 08:55AM

2 9:00 A.M. 08:55AM

3 (COURT CALLED TO ORDER) 09:00AM

4 THE COURT: Good morning, ladies and gentlemen. 09:00AM

5 Call the case. 09:00AM

6 CASE MANAGER: MDL 2047, in re: Chinese Manufactured 09:00AM
7 Drywall Products Litigation. 09:00AM

8 THE COURT: Counsel, state your appearances, please. 09:00AM

9 MR. HERMAN: May it please the Court, good morning, 09:00AM
10 Judge Fallon. Russ Herman for plaintiffs. 09:00AM

11 MR. MILLER: Good morning, Your Honor. Kerry Miller 09:01AM
12 for the defendants. 09:01AM

13 THE COURT: We're here today for our monthly status 09:01AM
14 conference. 09:01AM

15 I've met with liaison lead counsel for the 09:01AM
16 parties, discussed the agenda with them. 09:01AM

17 Let's take it in order. Pretrial orders, 09:01AM
18 anything? 09:01AM

19 MR. HERMAN: Nothing new, Your Honor. 09:01AM

20 And may it please the Court, at this time, on 09:01AM
21 behalf of all counsel, we wish your staff and Your Honor a happy 09:01AM
22 Thanksgiving, all those assembled. 09:01AM

23 THE COURT: Same. The same for you all, have a good 09:01AM
24 and safe Thanksgiving. 09:01AM

25 What about state court trial settings? Dawn? 09:01AM

1 MR. HERMAN: Ms. Barrios is here, Your Honor. 09:01AM

2 MS. BARRIOS: Thank you, Your Honor. Dawn Barrios. 09:01AM

3 With regard to state court trial settings, there 09:01AM
4 are three cases that are set forth in the Norfolk court in front 09:01AM
5 of Judge Hall, and they are all set for 2015. And we have high 09:01AM
6 hopes that we will be able to resolve them. 09:01AM

7 With Your Honor's permission, I'd like to jump 09:02AM
8 forward to XI, which is the Porter Blaine Venture Supply 09:02AM
9 settlements. 09:02AM

10 Your Honor issued an order last week approving the 09:02AM
11 allocation as recommended by the Garrison Resolution Group, 09:02AM
12 reduced attorney fees from thirty-two to thirty percent. And 09:02AM
13 the Garrison Resolution Group is doing everything in its power 09:02AM
14 to get those checks to the claimants prior to Thanksgiving. 09:02AM

15 THE COURT: I talked to Judge Hall about that, and she 09:02AM
16 was comfortable with my suggestion that the attorneys fees be 09:02AM
17 reduced. So we did it. 09:02AM

18 And, as I've said, I was hopeful that those funds 09:02AM
19 could be delivered before Thanksgiving, as those folks have 09:02AM
20 suffered quite a bit and hopefully that will make a better 09:02AM
21 Thanksgiving this year for them. 09:02AM

22 Omnibus class action, anything? 09:02AM

23 MR. HERMAN: Not at this time, Your Honor. 09:02AM

24 THE COURT: Anything on the complaint, class action 09:02AM
25 complaint? 09:02AM

1 MR. HERMAN: Mr. Miller, I believe, may have something 09:03AM
2 to say about the Alabama class action suit regarding Knauf 09:03AM
3 property. 09:03AM

4 MR. MILLER: Yes, Your Honor. Kerry Miller again on 09:03AM
5 behalf of Knauf. 09:03AM

6 To notify the Court, for the first time in several 09:03AM
7 years, last week, one of the Knauf clients was served in a 09:03AM
8 Chinese Drywall complaint filed in the Northern District of 09:03AM
9 Alabama. 09:03AM

10 Your Honor, we've commenced to transfer 09:03AM
11 proceedings to your court in this particular case. We have not 09:03AM
12 heard back from the JPML yet, but we expect the matter to be 09:03AM
13 transferred because it is a Chinese Drywall case. 09:03AM

14 THE COURT: Okay, yes. 09:03AM

15 MR. HERMAN: Your Honor, with respect to item No. VI, 09:03AM
16 plaintiff's motions to establish the expense fund, nothing new. 09:03AM

17 Item No. VII at page 9, the remediation program, 09:03AM
18 Mr. Miller. 09:04AM

19 THE COURT: Anything on remediation? 09:04AM

20 MR. MILLER: No, Your Honor. It continues. 09:04AM

21 And the phase now is into the new claim settlement 09:04AM
22 that we reached late last year, and we'll have a report on some 09:04AM
23 pro se issues coming up. But we're getting to the bottom end of 09:04AM
24 the list. Moss anticipates being completely through with the 09:04AM
25 remediation program by mid-next year. 09:04AM

1 THE COURT: As always, I have a Moss representative 09:04AM
2 here in the event anyone in the courtroom needs to talk with 09:04AM
3 them about anything affecting their client's property. Please 09:04AM
4 feel free to do so. I also invite the litigants to come so they 09:04AM
5 can talk to them. 09:04AM

6 I have received a couple of letters commending 09:04AM
7 Moss on their work. Often times in matters of this sort, people 09:04AM
8 are frustrated and they make a lot of complaints. So it's nice 09:04AM
9 sometimes to see that they express their appreciation. So I 09:04AM
10 pass that along to Moss. 09:05AM

11 MR. HERMAN: Your Honor, there are a number of 09:05AM
12 properties where the ombudsman has been called to take some 09:05AM
13 action, is declined. I think it's getting repetitive issues, 09:05AM
14 but there are only about four properties right now. And that 09:05AM
15 goes along with commending Moss for the work that they've done. 09:05AM

16 THE COURT: Yes. I think that ombudsmen work pretty 09:05AM
17 well too in future cases. It's helpful sometimes to have 09:05AM
18 someone that the claimant can talk with and to, and then they 09:05AM
19 can take their complaints to the Moss people and deal with it on 09:05AM
20 a professional level. 09:05AM

21 How about IN/EX? 09:05AM

22 MR. HERMAN: Your Honor, this might be an appropriate 09:05AM
23 time for BrownGreer to give its report. The representative is 09:05AM
24 here. 09:05AM

25 THE COURT: Sure. 09:06AM

1 MR. WOODY: Good morning, Your Honor. My name is Jake 09:06AM
2 Woody from BrownGreer. I'm here to give the monthly status 09:06AM
3 report for the Chinese Drywall settlement program. 09:06AM

4 Start, as always, with the total number of claims 09:06AM
5 received. 09:06AM

6 To date, we've received 22,460 claims. The claims 09:06AM
7 submission deadline was a year ago, October 25, 2013. So this 09:06AM
8 number is very static at this point. 09:06AM

9 Our largest claim type is what we call the Global, 09:06AM
10 Banner and IN/EX repair relocation claims. Those are claims 09:07AM
11 made against three settlement funds: The Banner settlement, the 09:07AM
12 IN/EX settlement and the Global Banner settlement for repair and 09:07AM
13 relocation damages. Essentially, it's a pro rata settlement 09:07AM
14 based on the number of square footage submitted. 09:07AM

15 To date, we have 9,982 eligible claims. 1,637 09:07AM
16 denied. Only one incomplete at this point. And 166 withdrawn. 09:07AM

17 The number of eligible, if you look at the last 09:07AM
18 few status reports, is actually going down because we're in the 09:07AM
19 process of reconciling duplicate claim filings. And, in many 09:07AM
20 cases, one claimant will withdraw a claim. It moves it from the 09:07AM
21 eligible to the withdrawn. In some cases, we find that a claim 09:07AM
22 has been assigned, in which case we deny the assigned claim and 09:07AM
23 pay the eligible claim. 09:07AM

24 THE COURT: Why withdraw a claim? 09:07AM

25 MR. WOODY: Many times, we receive two claims -- from a 09:07AM

1 husband and a wife, for instance. And from the same law firm. 09:07AM
2 It's easiest to just withdraw one and pay the full amount to the 09:08AM
3 other. 09:08AM
4 THE COURT: I see. 09:08AM
5 MR. WOODY: The allocation agreement allows us to make 09:08AM
6 one payment per claim per address. 09:08AM
7 The pro rata numbers are calculated by taking the 09:08AM
8 total amount available for each of the three settlements, 09:08AM
9 dividing it by the total eligible under air square footage. 09:08AM
10 Under air square footage is essentially the heated 09:08AM
11 areas of the home that you can live in all year-around. 09:08AM
12 For Banner, the amount per square foot is \$2.97. 09:08AM
13 For IN/EX, it's .36. The Global fund is divided into three 09:08AM
14 separate pools: The builder pool, the supplier pool and the 09:08AM
15 installer pool. For Global builder, it's \$2.03. For Global 09:08AM
16 supplier, it's \$3.36. And, for Global installer, it's .95. 09:08AM
17 This is a per square foot amount. So, if your home is 1,000 09:08AM
18 square feet, you'd multiply it by the per square foot to come up 09:08AM
19 with the final payment number. 09:09AM
20 These numbers were approved in CAP-9, Claims 09:09AM
21 Administrative Procedure 9, which authorized us to pay these 09:09AM
22 amounts. These are ninety-seven percent of the true pro rata 09:09AM
23 number. The three percent hold back we made for contingency. 09:09AM
24 Right now, we're paying ninety-seven percent. And the numbers 09:09AM
25 here are the ninety-seven percent. 09:09AM

1 THE COURT: Do you want to review the numbers for the 09:09AM
2 people on the phone? 09:09AM

3 MR. WOODY: Sure. 09:09AM

4 For Banner, the total amount available is 09:09AM
5 \$32,407,975.79. The total eligible under air square footage in 09:09AM
6 the Banner settlement is 10,588,086 square feet. The 09:09AM
7 ninety-seven percent per square foot amount for Banner is \$2.97. 09:09AM

8 For IN/EX, the total amount available is 09:09AM
9 2,068,286.11. Total eligible square footage in IN-EX is 09:10AM
10 5,575,028 square feet. Which leaves us with a .36 per square 09:10AM
11 foot payment for IN/EX. 09:10AM

12 For Global builder, the amount available is 09:10AM
13 \$18,779,229.25. The total square footage for Global builder is 09:10AM
14 8,974,310. And the per square foot amount for Global builder is 09:10AM
15 \$2.03. 09:10AM

16 For Global supplier, our amount available is 09:10AM
17 13,980,092.89. Total eligible square footage is \$4,041,779. 09:10AM
18 Which gives us a payment of 3.36 for Global supplier. 09:10AM

19 Finally, for Global installer, the amount 09:10AM
20 available is \$8,972,298.42. Total square footage for Global 09:10AM
21 installer is 9,170,409. Which leaves us with a per square foot 09:11AM
22 payment for Global installer of .95. Total amount available is 09:11AM
23 \$76,207,882.46. 09:11AM

24 We filed CAP-9 on September 11th of 2014 and began 09:11AM
25 making payments on September 12th. To date, we've issued 11,245 09:11AM

1 payments. The number of payments is greater than the number of 09:11AM
2 claims because many claims received payment from more than one 09:11AM
3 fund. 09:11AM

4 To date, we've distributed \$52,032,437.36, which 09:11AM
5 is about seventy percent of the amount available to us to 09:11AM
6 distribute. We have remaining \$24,175,445.10. 09:11AM

7 At this point, there are a couple reasons why we 09:12AM
8 would not have paid an eligible claim. 09:12AM

9 One reason is the claimant has not submitted the 09:12AM
10 W-9 or verification of the claims form. We need both before we 09:12AM
11 can issue payment. 09:12AM

12 Both forms are available on our website under the 09:12AM
13 Paper Form section. I'll give that out at the end of the 09:12AM
14 presentation. 09:12AM

15 We only need those forms once per claimant. If 09:12AM
16 you have multiple claims, we just need one set of forms for 09:12AM
17 that. 09:12AM

18 The other reason is slightly more complicated, 09:12AM
19 it's the duplicate claim issue that I mentioned earlier. As I 09:12AM
20 mentioned, we are in the process of going through those and 09:12AM
21 reconciling those as best we can. As we resolve them, we issue 09:12AM
22 payment. 09:12AM

23 At this point, we've made -- we're issuing 09:12AM
24 payments every day. Still, not as many as were issued a month 09:12AM
25 ago. We've issued -- most people have received payment at this 09:12AM

1 point, but we are still issuing payment. It's slowed down for 09:12AM
2 the reasons I just mentioned. 09:12AM

3 THE COURT: How long do you think it will take before 09:12AM
4 you finish paying? 09:12AM

5 MR. WOODY: It depends in large part on the responses 09:13AM
6 we receive and when people submit the documents. But I would 09:13AM
7 expect, by the end of the year, we'll have almost all the money 09:13AM
8 out of the door, if we can. 09:13AM

9 Finally, our other loss claim types. We call them 09:13AM
10 other loss. These are bodily injury, foreclosure and short 09:13AM
11 sale, lost rent due to sales and pre-remediation alternative 09:13AM
12 living expenses. 09:13AM

13 We've finished reviewing all of these claim types 09:13AM
14 and are in various stages of receiving responses to incomplete 09:13AM
15 notices. 09:13AM

16 We have, across all four claim types, \$2,359 09:13AM
17 eligible claims. 170 bodily injury. 531 foreclosure and short 09:13AM
18 sale. 1,134 lost rent due to sales. And 524 pre-remediation 09:13AM
19 alternative living expenses. Those are eligible claims. 09:13AM

20 The best measure of where we are with these claims 09:13AM
21 is the number of incomplete claims. This month, we have 206 09:13AM
22 incomplete across all four claim types. That month, that number 09:14AM
23 was 400. So it's dropped by half in the last month. 09:14AM

24 And you can tell, we have one incomplete for 09:14AM
25 bodily injury and ten for pre-remediation alternative living 09:14AM

1 expenses. That means that those claim types are essentially 09:14AM
2 done. We have more for foreclosure and short sale and lost 09:14AM
3 rent, and that's simply because we reviewed those after we did 09:14AM
4 bodily injury and pre-remediation, which meant that the 09:14AM
5 deadlines for people to respond to incomplete notices are in 09:14AM
6 some cases still open. 09:14AM

7 I would expect that that number will continue to 09:14AM
8 drop pretty rapidly because we have issued notices on all those 09:14AM
9 claims, in many cases, within the last month. And any deadline 09:14AM
10 extension should end before the next status conference. 09:14AM

11 So we have 206 incompletes across all claim types. 09:14AM
12 1,485 denied claims. Total claims submitted for these other 09:14AM
13 loss claims is 4,050. 09:15AM

14 As I mentioned, our web portal is the best source 09:15AM
15 to get those required documents if you need to submit them. 09:15AM
16 That address is www3.BrownGreer.com/drywall. You can email if 09:15AM
17 you'd like us to send you the documents or if you have questions 09:15AM
18 at cdwquestions@BrownGreer.com. And, if you need to call us, 09:15AM
19 our number is 866-866-1729. 09:15AM

20 Thank you, Your Honor. 09:15AM

21 THE COURT: Thank you very much. 09:15AM

22 Next item is shared costs fund. Anything on that? 09:15AM

23 MR. HERMAN: Nothing new on that, Your Honor. 09:15AM

24 THE COURT: Taishan defendants, anything on the 09:15AM
25 Taishan? 09:15AM

1 MR. HERMAN: Your Honor, the details of all of the 09:15AM
2 Taishan pursuit and its related entities occurs at page 14 to 22 09:15AM
3 of the current report and details, for those that want to review 09:16AM
4 the report, the ongoing activities that lead counsel Arnold 09:16AM
5 Levin, Gerry Meunier and Leonard Davis have pursued. 09:16AM

6 With respect to Venture Supply and Porter Blaine 09:16AM
7 defendants, at page 22, Dawn Barrios has already reported. And 09:16AM
8 that occurs at pages 22 to 25 of the current report. 09:16AM

9 There's nothing new at page 25 for plaintiff and 09:16AM
10 defendant profile form. 09:16AM

11 Nothing new under at page 25 under frequently 09:16AM
12 asked questions. 09:17AM

13 I do want to repeat the Court's website so that 09:17AM
14 anyone interested may access this status conference report and 09:17AM
15 review it. It is www.laed.uscourts.gov/Drywall/faq.ftm. 09:17AM

16 Your Honor, at page 26 of this status conference 09:17AM
17 report, are matters set for hearing. There are nine of them, as 09:17AM
18 I understand it. You will -- 09:17AM

19 THE COURT: I'll take those after this meeting. We'll 09:17AM
20 take a quick break and then I'll come back and deal with it. 09:17AM

21 One is the physical evidence preservation order. 09:17AM
22 We've had a lot of physical evidence preserved, and it's time to 09:17AM
23 get rid of that. Anybody has any issue, let us know. But let's 09:18AM
24 prepare an order for me to look at, and I'll post it on the 09:18AM
25 website and deal with it. 09:18AM

1 There are a lot of fees connected with storing 09:18AM
2 this material, and it's getting to the point now unless it's 09:18AM
3 involving Taishan there's no reason to keep it. Even moving it 09:18AM
4 is going to be expensive. And then dealing with where to put it 09:18AM
5 is also going to be expensive. So I'm trying to minimize some 09:18AM
6 of the expenses. 09:18AM

7 MR. HERMAN: Your Honor, on behalf of plaintiffs, we're 09:18AM
8 cognizant of that. We are concerned that some facilities have 09:18AM
9 mixed boards stored and they've got to take efforts to separate 09:18AM
10 the Taishan board or other manufactured board, other than Knauf. 09:19AM
11 And continue to at least advise the Court and advise counsel 09:19AM
12 once they've done that. 09:19AM

13 THE COURT: Yes. Prepare the motion from the owners of 09:19AM
14 the drywall, and then send it to plaintiff's counsel. And, if 09:19AM
15 there's an issue, I'll deal with it. 09:19AM

16 MR. HERMAN: Yes, Your Honor. 09:19AM

17 At page 26 of the status conference report, item 09:19AM
18 15, pro se claimants, Mr. Johnston is here. 09:19AM

19 MR. JOHNSTON: Morning, Your Honor. Bob Johnston, 09:19AM
20 curator for pro se plaintiffs. 09:19AM

21 I've filed with the Court my 33rd status report 09:19AM
22 and have some news for the Court. So I'm going to turn it over 09:20AM
23 to Kerry Miller to advise the Court of what the gist of that is. 09:20AM

24 MR. MILLER: Thank you, Bob. 09:20AM

25 Kerry Miller again on behalf of Knauf, Your Honor. 09:20AM

1 For the last two or three status conferences at 09:20AM
2 least, Mr. Johnston has given a report of a list of alleged KPT 09:20AM
3 or Knauf homeowners that he has kept and maintained. That list 09:20AM
4 has grown to something in the range of 55, something of that 09:20AM
5 order. 09:20AM

6 MR. JOHNSTON: Something like that. 09:20AM

7 MR. MILLER: And that's a list Mr. Johnston has shared 09:20AM
8 with the Court and shared with me and plaintiff's counsel on a 09:20AM
9 regular basis. 09:20AM

10 Your Honor, with respect to those claims on that 09:20AM
11 list that are unrepresented, true pro se claims, my client has 09:20AM
12 authorized me to state the following: That they are amenable to 09:20AM
13 processing those homes for settlement consistent with the *Beane* 09:20AM
14 settlement, B-E-A-N-E, that we reached last fall. 09:21AM

15 This basically was a settlement, Your Honor, in 09:21AM
16 which the only consideration is remediation of the homes. There 09:21AM
17 is no other loss fund like there was in the original settlement. 09:21AM
18 There is no aspect in what we're talking about now for these 09:21AM
19 homes for so-called ARHs. These are homes that need to be 09:21AM
20 remediated. 09:21AM

21 Your Honor, the requirements of Beane in order to 09:21AM
22 get to a remediation are still intact. Those requirements 09:21AM
23 involve providing a report or indica that Knauf, KPT Chinese 09:21AM
24 Drywall, is what's in the home. Mr. Johnston tells me that he's 09:21AM
25 got boxes of inspection reports. So we'll go ahead and get 09:21AM

1 those from him because that's the first step in the process. 09:21AM

2 And then, secondly, once there is indicia such 09:21AM
3 that it makes sense to set up an inspection, the homes will be 09:21AM
4 inspected pursuant to the usual court protocol we've had in 09:21AM
5 place for some time to define the extent of the Chinese drywall 09:22AM
6 in the home. 09:22AM

7 At that point, if the home passes inspection, then 09:22AM
8 Moss will be contacted to do a cost estimate of the home 09:22AM
9 pursuant to the protocol. Moss will then generate that 09:22AM
10 document. 09:22AM

11 And then, at that point, Your Honor, the homeowner 09:22AM
12 has three basic options. Number one is to go with Moss under 09:22AM
13 option one to get the home remediated. Number two would be to 09:22AM
14 hire his own licensed contractor and proceed under option two. 09:22AM
15 Number three, Your Honor, would be to take a discounted cash 09:22AM
16 amount and do with that what he wants with it, subject to 09:22AM
17 certain requirements, including getting a release from the 09:22AM
18 mortgage company, posting the fact that the home contains 09:22AM
19 Chinese Drywall in the public records. 09:22AM

20 But the requirements are set forth and adopted for 09:22AM
21 the settlement. 09:22AM

22 In addition, Your Honor, the settlement does not 09:22AM
23 apply to anyone who is unrepresented or otherwise meets the 09:22AM
24 requirements if they purchased the home with knowledge or when 09:22AM
25 they purchased a home and failed to do reasonable diligence to 09:22AM

1 ascertain whether or not the home contained Chinese drywall. 09:23AM

2 So I just want to make sure that, even though you 09:23AM
3 may be on Mr. Johnston's list, it doesn't mean you're 09:23AM
4 automatically eligible. You've got to meet the regular 09:23AM
5 eligibility requirements that are set forth in the initial Knauf 09:23AM
6 class action complaint with the PSC as well as the Beane 09:23AM
7 complaint from last fall. 09:23AM

8 THE COURT: As I understand it, that's another 09:23AM
9 agreement. It's not really part of this agreement, it's a whole 09:23AM
10 new agreement that you and Mr. Johnston have worked out. 09:23AM

11 MR. MILLER: That's correct, Your Honor. 09:23AM

12 The eligibility requirements are adopted from the 09:23AM
13 previous agreement. This is a new arrangement. 09:23AM

14 MR. JOHNSTON: Your Honor, because this has just 09:23AM
15 happened, I think it's appropriate for me to make sure I've got 09:23AM
16 the four corners of what my communication to the pro se 09:23AM
17 plaintiffs should be. 09:23AM

18 We start off with 56, 57 certainly intend -- 09:23AM
19 because of their dealings with me and my office, I want to 09:23AM
20 advise them of this very positive development. 09:24AM

21 There are a couple of things I think it's 09:24AM
22 appropriate to come away from this status conference so that I 09:24AM
23 can make sure that what my communication to the pro ses will be 09:24AM
24 will pass with the Court and certainly with Kerry. 09:24AM

25 As he indicated, there are the three options, 09:24AM

1 which we all know, most of which would involve Moss type
2 remediations.

3 There are what I call secondary features of the
4 earlier settlements which don't apply.

5 But will there not be an alternative living
6 expense factor based upon the square footage?

7 MR. MILLER: Yeah. You get your lump-sum amount.

8 MR. JOHNSTON: Number two, there are about 16 or 17 of
9 the individuals who are on my office's list who there is some
10 indication that actually either they may have signed up with an
11 attorney or there may have been some attorney. I believe it
12 would be appropriate when I send this letter to say that please
13 advise me whether you are represented. Because, if they are,
14 then they essentially are outside the circle of this settlement.
15 So I'm not doing anything other than trying to clarify who the
16 true list is. And, I do believe it's appropriate, but I'm
17 asking the Court: Okay with you?

18 THE COURT: Yes.

19 This is, as I say, a new settlement as I see it.
20 It's not part of what you all have agreed to before.

21 MR. JOHNSTON: The final thing is that Peter and
22 Jeannette Thriffiley, who are here, who, as you know, he is a
23 pro se plaintiff and a New Orleans attorney, which probably is
24 the creator of the timing to get us from July to now, has a
25 motion relating to this. And I simply told him I would say to

1 the Court if the Court believes that this can certainly be 09:26AM
2 passed on because he's on the list. 09:26AM

3 THE COURT: Yes, okay. We'll make it moot. 09:26AM

4 MR. LEVIN: Having heard that, Your Honor, we'd like to 09:26AM
5 say the PSC are not orphans to this agreement. It's 09:26AM
6 Thanksgiving week. We created the table for your clients to 09:26AM
7 feast on. So we're very much a part of it and want to see every 09:26AM
8 paper. 09:26AM

9 MR. JOHNSTON: And a delicious meal it will be. That's 09:26AM
10 great. 09:26AM

11 MR. MILLER: One point on this, just to be clear to the 09:26AM
12 extent information gets out about this. This agreement that I 09:26AM
13 reached with Mr. Johnston as pro se curator, Your Honor, only 09:26AM
14 applies to those pro se claimants who are on his most recent 09:26AM
15 list dated yesterday. It is not an open-ended arrangement or 09:26AM
16 offer and it will not apply prospectively, Your Honor. 09:26AM

17 I mentioned earlier on in this status conference 09:26AM
18 in connection with the regular remediation report that Moss 09:26AM
19 intends on completing all of its activities, the inspection 09:27AM
20 activities and the construction activities by mid-2015. This 09:27AM
21 new agreement with these pro se homes will dovetail into that 09:27AM
22 workflow. While my client has fulfilled its obligations under 09:27AM
23 the settlement, it is anxiously awaiting the end of its 09:27AM
24 involvement in home construction in the gulf south. And, from 09:27AM
25 their perspective, Your Honor, it has to come to an end. These 09:27AM

1 additional homes can dovetail into Moss's workflow. But from 09:27AM
2 our perspective, from Knauf's perspective, Your Honor, there is 09:27AM
3 no longer a need for Mr. Johnston to maintain a list of folks 09:27AM
4 who called him prospectively who might have Knauf Chinese 09:27AM
5 Drywall. I am not authorized to even receive that information 09:27AM
6 from Mr. Johnston. And that position is not going to change. 09:27AM

7 So I want to be very clear with respect to another 09:27AM
8 list: There is no need or no basis for another list, there is 09:27AM
9 no reason to maintain a list, there's no reason to collect 09:28AM
10 inspection reports, because my client has simply fulfilled its 09:28AM
11 obligations under the settlements and is not going to entertain 09:28AM
12 any new claims at this point. 09:28AM

13 MR. JOHNSTON: And I have heard what Kerry has said. 09:28AM
14 He's certainly said it to me very clearly. 09:28AM

15 My question is -- I look to the Court -- because, 09:28AM
16 if between now and Christmas and the next six months I have 09:28AM
17 communications that I receive, what am I supposed to do? Should 09:28AM
18 I simply, if they want to send me an inspection report, simply 09:28AM
19 put it somewhere, tell them that at this point -- I'm not sure 09:28AM
20 where, from the Court's perspective, I'm to be going with regard 09:28AM
21 to this. So I look to the Court for some guidance. 09:28AM

22 THE COURT: Right. I think from -- we're going to have 09:28AM
23 probably a motion to relieve the pro se person from his 09:28AM
24 responsibility, and I'll hear that motion. 09:29AM

25 MR. JOHNSTON: Will Kerry file it? 09:29AM

1 THE COURT: Yes. Let's file that. 09:29AM

2 MR. JOHNSTON: That's fine. 09:29AM

3 THE COURT: Then we'll relieve you. If you get called, 09:29AM
4 tell him to call the liaison counsel. 09:29AM

5 MR. JOHNSTON: He's claiming I took some of his papers. 09:29AM

6 MR. HERMAN: Well, you did it in law school. 09:29AM

7 Here there are. 09:29AM

8 THE COURT: Anything from the Louisiana attorney 09:29AM
9 general? 09:29AM

10 No? Okay. 09:29AM

11 Anyone else -- 09:29AM

12 MR. LEVIN: Announce the January meeting, Your Honor. 09:29AM

13 THE COURT: The next meeting is December 27th. And the 09:29AM
14 January meeting is the 22nd. 09:29AM

15 Anybody have any comments for the good of the 09:29AM
16 order? 09:30AM

17 I'll be back then in a couple of minutes and we'll 09:30AM
18 deal with the motions. 09:30AM

19 Court stands in recess. Thank you. 09:30AM

20 (Proceedings in recess.) 09:30AM

21 THE COURT: Be seated, please. 09:35AM

22 We have a number of motions. There's counsel on 09:35AM
23 the phone in one of the motions for me to reconsider. Is that 09:35AM
24 the one we're going to take first? 09:36AM

25 I'm sorry, you're here in person. 09:36AM

1 Call that, please, first because counsel has a 09:36AM
2 scheduling problem. So record document 18087. 09:36AM

3 MR. REDFEARN: Robert Redfearn, Junior. I'm here on 09:36AM
4 the Motion for Reconsideration with regard to Preservation 09:36AM
5 Alliance of New Orleans, better known as Preservation Resource 09:36AM
6 Center, our appeal from our payment out of the settlement fund. 09:36AM

7 THE COURT: This is one involving the settlement that 09:36AM
8 it was -- 09:37AM

9 MR. REDFEARN: New Orleans area Habitat For Humanity. 09:37AM

10 THE COURT: Habit for Humanity. And they supplied 09:37AM
11 material, you say. And the material they supplied was 09:37AM
12 contaminated. 09:37AM

13 MR. REDFEARN: Yes. 09:37AM

14 THE COURT: And it's an issue of whether or not you fit 09:37AM
15 into one bucket or the other bucket, so to speak. 09:37AM

16 MR. REDFEARN: It's really not. It's very clear what 09:37AM
17 bucket we fit into. 09:37AM

18 The problem really -- and, Judge, let me make 09:37AM
19 clear, I'm not asking anybody to change the settlement agreement 09:37AM
20 or rewrite it. The problem is at the front-end. As I 09:37AM
21 understood the settlement agreement before we even agreed to all 09:37AM
22 of this, wherever you're settling defendant fell, you went into 09:37AM
23 that pot. Our settling defendant was Habitat For Humanity. 09:37AM
24 With respect to Habitat For Humanity, they were only a supplier. 09:37AM
25 They did no building. In fact, we went up and picked up the 09:37AM

1 drywall ourselves. We were clearly a supplier, no ifs ands or 09:37AM
2 butts. That's not even contested by the settlement 09:38AM
3 administrator or anybody. 09:38AM

4 The problem was -- and it's never been explained 09:38AM
5 to me why this was done -- somebody decided, because New Orleans 09:38AM
6 area Habitat for Humanity also acted as a builder, they just 09:38AM
7 took the full amount of Habitat for Humanity settlement funds 09:38AM
8 and plopped them all into the builders fund. They didn't 09:38AM
9 segregate out for the portion for people who were only 09:38AM
10 suppliers, to whom they were only supplies. Which, frankly, 09:38AM
11 would be a very easy mathematical thing to do. You could look 09:38AM
12 for the claim forms and see whether people are claiming against 09:38AM
13 Habitat as a builder or supplier. Nobody did that. 09:38AM

14 So what happens, when we come up, they tell us: 09:38AM
15 Our hands are tied, all Habitat's money went into the builders 09:38AM
16 fund so we're just plopping you into the builders fund. 09:38AM

17 You probably are aware of this, but what we are 09:38AM
18 talking about, these are buildings which -- no good deed goes 09:38AM
19 unpunished -- Preservation Resource actually remediated. They 09:38AM
20 end up getting Chinese Drywall, and so they had to go back and 09:39AM
21 refix it. These are for poor, underprivileged people. This is 09:39AM
22 Taishan. There's no other money coming back. 09:39AM

23 Preservation Resource Center uses its money to 09:39AM
24 help these poor, underprivileged people to fix up their homes. 09:39AM
25 So, by throwing us in the wrong pot, as you saw from the 09:39AM

1 numbers, we're actually being shorted by a third. It's not -- 09:39AM
2 in the scheme of this whole settlement, we're probably taking 09:39AM
3 about an additional 25, \$30,000 for our particular claims. Not 09:39AM
4 a lot of money in the scheme of this. Huge amount of money to 09:39AM
5 Preservation Resource Center. 09:39AM

6 And, quite frankly, there's no reason to throw us 09:39AM
7 in the builders fund. We should be in the suppliers fund. As a 09:39AM
8 practical matter, I don't care if we re-do the money or not, but 09:39AM
9 we got from a supplier only. Our settling defendant was a 09:39AM
10 supplier only. Somebody, for administrative purposes, decided 09:39AM
11 not to put any money in the supplier fund. Just figured, people 09:40AM
12 like us, what the heck, the baby being thrown out with the bath 09:40AM
13 water. It's really not proper, Your Honor. 09:40AM

14 THE COURT: Let me hear from the other side. Who is 09:40AM
15 here for -- 09:40AM

16 MR. REDFEARN: Judge, for what it's worth, I never saw 09:40AM
17 any response to this motion. 09:40AM

18 MR. HERMAN: May it please the Court -- 09:40AM

19 THE COURT: In essence, he's taking the position that 09:40AM
20 Habitat occupied two roles. One, they occupied the role as a 09:40AM
21 builder. Two, they occupied the role as a supplier. And, from 09:40AM
22 his standpoint, they were occupying the role as a supplier only. 09:40AM
23 And that he takes the position that he's looking to them as a 09:40AM
24 supplier, not as a builder. 09:40AM

25 MR. HERMAN: Your Honor, may it please the Court, as an 09:40AM

1 officer of the Court first, and as lead liaison for plaintiffs, 09:40AM
2 learned counsel's presentation is absolutely correct. And I 09:40AM
3 know that, personally, as far as Habitat's roles, because in 09:41AM
4 connection with a lawsuit that we tried on behalf of Habitat and 09:41AM
5 others against an insurer of IN/EX, it was very clear to us that 09:41AM
6 Habitat performed several roles. And I can affirm factually 09:41AM
7 that -- I don't think there's a need because I know learned 09:41AM
8 counsel -- but I will affirm that his recitation as to the facts 09:41AM
9 regarding Habitat are absolutely correct. 09:41AM

10 MS. BARRIOS: May it please the Court, I filed a 09:41AM
11 motion, a memo in support of Mr. Redfearn's motion. 09:41AM

12 I have several clients in that same position. 09:41AM
13 They got their drywall from Habitat. We made a claim as a 09:41AM
14 supplier. We were approved as a supplier. And we were paid out 09:41AM
15 of the building fund. 09:41AM

16 And it's a substantial difference for these 09:42AM
17 underprivileged people. The per square foot amount if you are a 09:42AM
18 supplier is \$3.36. But, for a builder, it's \$2.03. 09:42AM

19 So we'd just ask the Court to recognize that those 09:42AM
20 who actually got the drywall from Habitat as a supplier be paid 09:42AM
21 as a supplier. 09:42AM

22 THE COURT: The issue is one that the administrator 09:42AM
23 looked to the specifics of the agreement. 09:42AM

24 And the agreement takes the position that class 09:42AM
25 members shall be entitled to recover their repair and relocation 09:42AM

1 payments from only those participating defendant funds to which 09:42AM
2 their respective builder or installer or supplier contributed. 09:42AM

3 Habitat contributed to the Global fund as a 09:42AM
4 builder. So the administrator's looking at the wording, and he 09:43AM
5 feels that he's constrained. 09:43AM

6 The difference is a builder is \$2.03 a square 09:43AM
7 foot, a supplier is \$3.36. So I'm going to have to know what 09:43AM
8 effect does this have, how many are we dealing with and how do 09:43AM
9 we go about reclaiming those funds. Because, if the funds have 09:43AM
10 all been paid out, it's one issue that's going to be 09:43AM
11 complicated. 09:43AM

12 MR. HERMAN: Your Honor, may we approach sidebar with 09:43AM
13 counsel? 09:43AM

14 THE COURT: Yes, sure. 09:43AM

15 (Discussion held off the record.) 09:44AM

16 THE COURT: I've talked with counsel to see if they can 09:45AM
17 creatively work this matter out. 09:45AM

18 I'll take it under advisement; and hopefully, with 09:45AM
19 their efforts, this matter will go away. 09:45AM

20 The next motion, at the top, is a motion for late 09:45AM
21 filed claims. I have a number of those claims. 09:45AM

22 Let me just speak to the overall problem of late 09:45AM
23 filed claims. 09:45AM

24 We've heard during the initial status conference 09:45AM
25 that counsel have worked out another agreement. So I don't have 09:45AM

1 anything to do with that agreement. I'm really talking about 09:45AM
2 late filed claims under the original agreement. 09:45AM

3 The original agreement provided certain cutoff 09:46AM
4 dates. Now, we kept moving those cutoff dates back and back and 09:46AM
5 back, until I really had to put one cutoff date that I couldn't 09:46AM
6 resolve. I couldn't keep pushing it back because I was 09:46AM
7 interested in starting the payments. And some of these funds 09:46AM
8 are pro rata payments, depending upon how many people have 09:46AM
9 applied and how much money is in that particular bucket. That's 09:46AM
10 why I had to put a particular date that was written in stone, 09:46AM
11 after we moved it back and back and back, had to come to some 09:46AM
12 type of final dates, so that we could begin paying. Because you 09:46AM
13 can't pay the money unless you know how many are involved in 09:47AM
14 that particular bucket. And that's why the October the 26th or 09:47AM
15 22nd -- I forget the exact date -- of 2013 was eventually put in 09:47AM
16 place. 09:47AM

17 So it's a problem to deal with late filed claims. 09:47AM
18 Doesn't mean that they're not valid claims, it just means that 09:47AM
19 they may have to pursue those by another vehicle. They have to 09:47AM
20 file suit and see where it goes. 09:47AM

21 But the money, as you've heard early on, a lot of 09:47AM
22 it's already been paid. So that's a problem for late filed 09:47AM
23 claims. 09:47AM

24 So I'm going to have to adhere to that date. It 09:47AM
25 doesn't mean that they don't have a claim. Doesn't mean you 09:48AM

1 can't file a claim. It doesn't mean you can't work out some 09:48AM
2 agreement for your claim. But to get in this settlement program 09:48AM
3 is, I'm afraid, late. 09:48AM

4 There are two motions to extinguish settlement. 09:48AM
5 This is somewhat similar. 09:48AM

6 The claimants who are making claims have to fill 09:48AM
7 out certain paperwork. And they have been noticed to get the 09:48AM
8 paperwork in. And then they're asked two and three and four 09:48AM
9 times and letters were written, return-receipt-requested. And 09:48AM
10 still no documents. And then the notice was sent out that, if 09:48AM
11 you don't send the documents, your claims are going to be 09:48AM
12 dismissed. No response. 09:48AM

13 So there's two motions to extinguish the 09:49AM
14 settlement. I haven't received any response on those motions. 09:49AM
15 I'm going to grant the motions. That's record docket 18046 and 09:49AM
16 18066. 09:49AM

17 There's a defendant, Trial Creek, motion to 09:49AM
18 dismiss -- 09:49AM

19 MR. MILLER: Your Honor, I apologize for interrupting 09:49AM
20 the Court. Kerry Miller again for Knauf. 09:49AM

21 On document 18066, that's one of the motions to 09:49AM
22 extinguish that we filed, Your Honor. 09:49AM

23 In our reply brief, Your Honor, we filed a 09:49AM
24 proposed order which set forth the exact properties that had not 09:49AM
25 responded to the motion. Since we filed our reply last 09:49AM

1 Thursday, we did receive two additional affidavits yesterday. 09:49AM

2 So, Your Honor, if it's permissible with the 09:49AM
3 Court, if I can approach, I have a revised order which takes 09:49AM
4 those two homes off of the list that was attached to our 09:49AM
5 proposed order. 09:50AM

6 THE COURT: Thank you. Give me the ones that haven't 09:50AM
7 responded. 09:50AM

8 MR. MILLER: That's what it is, Your Honor. 09:50AM

9 THE COURT: Good. 09:50AM

10 And I'll grant that motion. 09:50AM

11 There's a motion for defendant Trout Creek's 09:50AM
12 motion to dismiss the claimed complaint. 09:50AM

13 I haven't received any opposition. I'll take that 09:50AM
14 on the briefs and I'll deal with that one. 09:50AM

15 MR. LEVIN: Your Honor, the PSC is not involved in that 09:50AM
16 motion, but we would respectively request and suggest that this 09:50AM
17 Court has jurisdiction under CAFA. 09:50AM

18 THE COURT: There's no response, so I'll have to deal 09:50AM
19 with that. 09:50AM

20 The Motion to Reconsider the special master, we've 09:50AM
21 already talked about that. 09:50AM

22 Villalago's consent judgment approval, any comment 09:50AM
23 on that one? 09:50AM

24 MR. MASON: Your Honor, this motion arises from a 09:50AM
25 potential conflict between various individuals of Villalago. 09:51AM

1 I'm Gary Mason. I represent the homeowners of 09:51AM
2 Villalago and the Villalago class. 09:51AM

3 We have persons that are the current owners that 09:51AM
4 were never named plaintiffs in the lawsuit that bought these 09:51AM
5 units rather cheaply, but are the current owners, and the units 09:51AM
6 are going to get remediated. Some of them, if they'd had Knauf 09:51AM
7 homes, have actually got lump-sum payments or are in this 09:51AM
8 category of lump-sum payments. And we have a conflict between 09:51AM
9 certain individuals in that category and the prior owners who 09:51AM
10 are named plaintiffs who actually lost their units to 09:51AM
11 foreclosure or short sale and meet all the definitions. 09:51AM

12 There's various pools of money that I'm 09:51AM
13 responsible for. And the reason I have come forward to the 09:51AM
14 Court with this motion is so that I have direction from the 09:51AM
15 Court and a court order that tells me what I should do and I 09:51AM
16 don't have to be faced with this conflict. 09:51AM

17 I have money from the costal settlement. And, all 09:51AM
18 this money's available, that's not the issue. It's just a 09:51AM
19 question of who gets it. We have money from the costal 09:52AM
20 settlement that's available that, my judgment and we've argued 09:52AM
21 in our briefs, unopposed -- except several objections that I'll 09:52AM
22 get to in a moment -- that that money should go to the prior 09:52AM
23 owners. That's what we negotiated and that's where we believe 09:52AM
24 it should go. 09:52AM

25 There was a controversy with Knauf money, because 09:52AM

1 we wanted Knauf to refrain from paying this money to the current 09:52AM
2 owners and reserve that money for the prior owners. And we 09:52AM
3 resolved that particular motion through a consent order which 09:52AM
4 put those funds into escrow. 09:52AM

5 Your Honor, just so you have the scope of what 09:52AM
6 we're talking about here, it's roughly \$221,000, is what we're 09:52AM
7 talking about. 09:52AM

8 So it is our proposal, Your Honor, for all the 09:52AM
9 reasons set forth in our brief and that we have behaved 09:52AM
10 consistently with the available money that what we characterized 09:52AM
11 as the lump-sum payment of the \$8.50 per square foot go to the 09:52AM
12 individuals on our charts that are the prior owners, the named 09:53AM
13 plaintiffs in the litigation. 09:53AM

14 Pursuant to the consent order that Your Honor 09:53AM
15 entered, notice went out. So everyone's been notified, both the 09:53AM
16 prior owners and the current owners. We've had a couple of 09:53AM
17 returned envelopes, of course. And we re-sent those out to the 09:53AM
18 best addresses. And we think we've pretty much got everybody, 09:53AM
19 either by mail or by email, who has an interest in this motion. 09:53AM

20 We did get three objections. And, as I set forth 09:53AM
21 in my papers, Your Honor, it is our view that all three of these 09:53AM
22 individuals are not eligible for any of these funds. All three 09:53AM
23 of these individuals are persons that are current owners that 09:53AM
24 were never named plaintiffs that bought these units at 09:53AM
25 bargain-basement prices and with knowledge of Chinese Drywall. 09:53AM

1 The only exception that we would suggest is that 09:53AM
2 one of them, Ahmad, Griswold Ahmad, was really a hardship case. 09:54AM
3 We had a lot of trouble getting him out of his unit. He didn't 09:54AM
4 have the money. He begged us. I wanted to get his unit 09:54AM
5 remediated. And I advanced him from part of the fund that was 09:54AM
6 set aside for nuisance and basically hardship cases, half of the 09:54AM
7 lump-sum payment to give him a few thousand dollars. And that 09:54AM
8 seemed to do the trick. He did take that money, evacuate his 09:54AM
9 unit, and Moss was able to go there and remediate the money. So 09:54AM
10 half of that particular allocation was already spent. So it's 09:54AM
11 the other half that I would want to go to the prior owners, the 09:54AM
12 Julios. 09:54AM

13 We have proposed a order, Your Honor, which I hope 09:54AM
14 it will be entered. And then I'll be able to go ahead and 09:54AM
15 authorize BrownGreer to distribute the money according to our 09:54AM
16 charts. 09:54AM

17 THE COURT: The way I see it is that the prior owners 09:54AM
18 are the ones who really took the hit. They may have sold their 09:55AM
19 property but they sold it to people who, number one, knew that 09:55AM
20 Chinese Drywall was there; and, number two, got it at a cheaper 09:55AM
21 price. So they got the benefit already. They bought a building 09:55AM
22 that they knew Chinese drywall was in at a lower price. To give 09:55AM
23 them more money, it just doesn't seem fair to me. The people 09:55AM
24 who really, as I say, were damaged are the prior owners. 09:55AM

25 So I see that that is appropriate. 09:55AM

1 MR. MASON: I should point out, Your Honor, that in 09:55AM
2 addition to go what Your Honor just said, those individuals are 09:55AM
3 also getting their units remediated and will be able to sell 09:55AM
4 those units at market prices. 09:55AM

5 THE COURT: They will benefit from the amount because 09:55AM
6 the property's being remediated. That's where they have been 09:55AM
7 made whole. Really, it's something that they really are not 09:55AM
8 entitled to, but they should be well satisfied with it. 09:56AM

9 So I'm going to grant that motion. Thank you very 09:56AM
10 much. 09:56AM

11 MR. MASON: Thank you, Your Honor. 09:56AM

12 THE COURT: Anyone else, anything further from anyone 09:56AM
13 else? 09:56AM

14 All right, folks. Thank you very much. And have 09:56AM
15 a good Thanksgiving, you and your families. 09:56AM

16 Court stands in recess. 09:56AM

17 (9:56 a.m., proceedings concluded.) 09:56AM

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CERTIFICATE

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

/S/ SUSAN A. ZIELIE, FCRR

Susan A. Zielie, FCRR

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