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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED * Docket No.: 09-MD-2047
DRYWALL PRODUCTS * Section L
LIABILITY LITIGATION * October 7, 2015
* New Orleans, Louisiana
This Document Relates To All Cases *
* * * * *

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

APPEARANCES:

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17 Proceedings recorded by mechanical stenography, transcript
18 produced by computer.

PROCEEDINGS

(October 7, 2015)

(COURT CALLED TO ORDER)

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THE COURT: Good morning. Let's call the case, please.

THE DEPUTY CLERK: MDL-2047, *In re: Chinese-Manufactured Drywall Products Liability Litigation.*

THE COURT: Liaison counsel, make their appearance for the record.

MR. LEVIN: Good morning, Your Honor. Arnold Levin for plaintiffs' liaison counsel, Russ Herman, who is either on top of a pyramid or a camel right now. We don't know which, but we can be assured that it's one or the other.

THE COURT: Well, he helped build the pyramids, so he's entitled to it.

MR. LEVIN: What I'm afraid of is that he's in Egypt and some pharaoh is going to give him some hot coal to taste.

MR. ROSENBERG: Your Honor, I'm not going to touch where Mr. Herman is or who he's on top of or what he's on top of. Your Honor, Harry Rosenberg, liaison counsel for Taishan, CNBM and BNBM. Good morning, Your Honor.

THE COURT: Okay. Thank you.

MR. MILLER: Good morning, Judge. Kerry Miller. I'm

08:39 1 liaison counsel on the Knauf side of the manufacturers.

08:39 2 **THE COURT:** Okay. Fine. This is our monthly status
08:39 3 conference. I met a moment ago with the lead and liaison
08:39 4 counsel to discuss the agenda. As you know, the agenda is
08:39 5 prepared by meeting and conferring, and I look forward to
08:39 6 continuing to meet and confer and talk about issues.
08:39 7 Hopefully, the agenda can get smaller by their agreements.

08:39 8 Please use the microphone. We have 150 people
08:39 9 on the phone. So they're listening and interested in what
08:39 10 you're saying.

08:39 11 The agenda presented to me, pretrial orders,
08:39 12 anything on that?

08:39 13 **MR. LEVIN:** Nothing on pretrial orders, Your Honor.

08:39 14 **THE COURT:** How about state court trial settings?

08:39 15 **MR. LEVIN:** Nothing new on state court settings, Your
08:39 16 Honor.

08:39 17 **THE COURT:** Okay.

08:39 18 **MR. LEVIN:** State and federal coordination, the same
08:39 19 thing, another nothing.

08:40 20 **THE COURT:** Okay.

08:40 21 **MR. LEVIN:** On the omnibus class action complaints,
08:40 22 there's been an Omnibus 20 filed in the Eastern District of
08:40 23 Louisiana. There's motions pending with regard to service.
08:40 24 They've been joined. If the defendants want to file a reply
08:40 25 brief and they so move, they will be ripe for, I guess, the

08:40 1 next conference for argument or at any other time that Your
08:40 2 Honor sets them.

08:40 3 **THE COURT:** All right. InEX, Banner, Knauf, anything
08:40 4 on the Global settlements?

08:40 5 **MR. LEVIN:** Nothing. Nothing on them.

08:40 6 **THE COURT:** Wait. Let's hear from Jake first.

08:40 7 **MR. WOODY:** Good morning, Your Honor.

08:40 8 **THE COURT:** Good morning, Jake.

08:41 9 **MR. WOODY:** My name is Jake Woody from BrownGreer. I
08:41 10 do have just a very brief report on the settlement program to
08:41 11 date.

08:41 12 As I mentioned at the last few status
08:41 13 conferences, we've largely converted to a payment program.
08:41 14 Since the last status conference, we've issued \$1.7 million in
08:41 15 payments, which brings our total to \$81,005,697. 75 percent of
08:41 16 those payments have gone to Global, Banner, InEX claims, and
08:41 17 25 percent have gone to other loss claims.

08:41 18 On the Global, Banner, InEX side, we have
08:41 19 distributed \$60,647,721 and paid 17,655 claims. We do have
08:41 20 \$15.5 million left across the three accounts.

08:41 21 We have some Global, Banner, InEX claims that we
08:41 22 haven't paid yet either because the claimant hasn't submitted
08:42 23 the required documentation or there's an overlap with another
08:42 24 claim. Those numbers have dwindled to the point where I
08:42 25 believe we have less than 100 of each.

08:42 1 And we continue to do outreach to claimants who
08:42 2 need to give us documents in an attempt to get that
08:42 3 documentation and pay them. And we also work with claimants
08:42 4 and attorneys to resolve the overlapping claims.

08:42 5 On the other loss side, we've paid \$20,357,976.
08:42 6 28 percent of the total payments have gone to lost rent, use,
08:42 7 and sales; 26 to pre-remediation alternative living expenses,
08:42 8 which we abbreviate here as PRALE; 25 percent to foreclosure,
08:42 9 short sale; 20 percent to miscellaneous; and about half a
08:42 10 percent to bodily injury.

08:42 11 The lost rent, use, and sales claims are largely
08:42 12 restricted to commercial owners, and all the other claim types
08:42 13 are largely residential owners. So you can see that about
08:42 14 28 percent has gone to commercial owners, and 72 percent has
08:43 15 gone to residential owners. That's an approximate breakdown
08:43 16 between the two types of claims.

08:43 17 Just digging a little bit deeper to the other
08:43 18 loss claims, we have determined that 5,123 are eligible, 2,777
08:43 19 are denied, and 27 are incomplete. The incomplete number is
08:43 20 important because those claims are open. They still have a
08:43 21 chance to cure that and become eligible.

08:43 22 For frame of reference, at the last status
08:43 23 conference there were 140 incompletes, now we're down to 27.
08:43 24 So, as always with these programs, that number continues to get
08:43 25 smaller and smaller, and eventually will be zero. And total

08:43 1 other loss claims is 7,927.

08:43 2 **THE COURT:** When you get to the 27, Jake, it might be
08:43 3 useful to get with liaison counsel and see who the lawyers are
08:43 4 involved in those cases so that some contact can be made to the
08:43 5 individuals. Because it may just be filling out forms or
08:44 6 giving more information, and maybe that can help get resolve
08:44 7 some of those.

08:44 8 **MR. WOODY:** Yes, sir. You can see that of the 27, 23
08:44 9 are lost rent, use, and sales. What's happening here is these
08:44 10 are mostly large condo buildings where the claim came in as one
08:44 11 claim for the entire building and it's been sort of severed
08:44 12 into smaller ones. And we do have time frames in which they
08:44 13 have to respond. If they don't respond, we'll deny the claim
08:44 14 and close it.

08:44 15 **THE COURT:** Okay.

08:44 16 **MR. WOODY:** Just real quickly, Your Honor. On the
08:44 17 eligibility side, we do have 26 offers outstanding. Those
08:44 18 are -- 18 of those are miscellaneous. Again, those are 30 days
08:44 19 to respond to those. If there's no response, we mark it as
08:44 20 accepted and pay them as necessary. Again, at the last status
08:44 21 conference there were also 140 open offers and now we're down
08:44 22 to 26.

08:44 23 Finally, just a quick summary of what we've done
08:44 24 since the last status conference. We've made 555 payments
08:45 25 totaling \$1.7 million. We have 146 other loss claims accepted,

08:45 1 which is important because we can pay them and close them; 483
08:45 2 notices issued; 128 claims denied for incompleteness, which is
08:45 3 also significant because we can then close those claims; and
08:45 4 720 claims closed.

08:45 5 The more claims we can close, the closer we get
08:45 6 to concluding the program. So that number is important as
08:45 7 well.

08:45 8 **THE COURT:** Okay.

08:45 9 **MR. WOODY:** All right.

08:45 10 **THE COURT:** Of course, this is in addition -- or it
08:45 11 complements, I should say, the other settlement involving
08:45 12 Knauf, which is --

08:45 13 **MR. WOODY:** Yes, sir.

08:45 14 **THE COURT:** -- a billion or something of that sort.

08:45 15 **MR. WOODY:** Yes, sir. This is just the settlement
08:45 16 program. None of these numbers are indicative of what's going
08:45 17 on in the remediation program. That program continues to move
08:45 18 forward, and we do work closely with all counsel to do that.

08:46 19 **THE COURT:** Okay.

08:46 20 **MR. WOODY:** Thank you, Your Honor.

08:46 21 **THE COURT:** Okay. Thank you, Jake.

08:46 22 The next item is Taishan, BNBM, CNBM defendants.
08:46 23 Anything on that?

08:46 24 **MR. LEVIN:** There's a lot there, Your Honor.

08:46 25 **THE COURT:** Yeah.

08:46 1 **MR. LEVIN:** But it's basically, stay tuned for a
08:46 2 November hearing and a December hearing. At liaison counsel's
08:46 3 meeting, the Rule 12 motions are being teed up for some time,
08:46 4 and you've asked or requested or ordered us to meet and confer
08:46 5 with regard to scheduling.

08:46 6 **THE COURT:** Harry?

08:46 7 **MR. ROSENBERG:** Good morning, Your Honor. That's
08:46 8 correct, Judge, that consistent with the practice of both
08:46 9 members of the PSC and defendants' counsel, we're going to meet
08:46 10 and confer and try to resolve all issues.

08:46 11 There is -- there are some motions, Your Honor,
08:46 12 that are still outstanding, and we understand the Court's not
08:46 13 going to expect a formal response while the parties are meeting
08:47 14 and conferring.

08:47 15 **THE COURT:** Right. Keep me in the loop, both of you
08:47 16 all. Maybe it might be helpful to make a list of all of those
08:47 17 motions and let's take a look at them and see where they are so
08:47 18 we have a meeting of the minds as to what we're doing.

08:47 19 **MR. LEVIN:** We'll do that, sir.

08:47 20 **MR. ROSENBERG:** Your Honor, that's precisely what we
08:47 21 were discussing, so I could meet with the counterpart at the
08:47 22 PSC and we could have a list, and then we can establish a
08:47 23 schedule for a hearing on those motions.

08:47 24 **THE COURT:** That's fine. Okay. Good.

08:47 25 **MR. ROSENBERG:** Thank you, Judge.

08:47 1 **THE COURT:** Yes.

08:47 2 All right. Venture Supply, anything?

08:47 3 **MR. LEVIN:** Yes, Your Honor. The last of the
08:47 4 Virginia settlements are ready for distribution. And the PSC
08:47 5 has met with Mr. Serpe, and continues to meet with Mr. Serpe,
08:47 6 who continues to advise us of the status of these claims as he
08:47 7 processes them. And we're just waiting for Mr. Garrett to get
08:47 8 back from his vacation to bless the final figures so that we
08:48 9 can provide them to Your Honor and then make the distribution.

08:48 10 **THE COURT:** Okay. Anything on profile forms?

08:48 11 **MR. LEVIN:** Yes. In the omni 20 complaint, we're
08:48 12 starting to get the profile forms. They will be delivered to
08:48 13 defendants, Taishan liaison counsel.

08:48 14 **THE COURT:** Okay. I understand that we'll have a
08:48 15 motion to amend the form accordingly because you have been
08:48 16 sending them to Kerry Miller.

08:48 17 **MR. LEVIN:** We'll do that, Your Honor.

08:48 18 **THE COURT:** All right. Let's see. With regard to
08:48 19 the matters set for hearing following the status conference, we
08:48 20 have four motions. Several of them are not contested. There's
08:48 21 one that is. We weren't able to get the counsel on the phone,
08:49 22 so we may have to take a short break and get him on the phone
08:49 23 after this meeting.

08:49 24 Anything on physical evidence? Preservation
08:49 25 orders?

08:49 1 **MR. LEVIN:** Well, to some extent, that will be part
08:49 2 of the November hearing with Taishan.

08:49 3 **THE COURT:** Okay. Anything else on this agenda?

08:49 4 **MR. LEVIN:** Nothing on already remediated homes -- or
08:49 5 is there?

08:49 6 **MR. MILLER:** Yeah, briefly. Your Honor, on the issue
08:49 7 of already remediated homes, that's item 15 on the agenda, in
08:49 8 the past, Your Honor, we've submitted from time to time motions
08:49 9 to the Court seeking to extinguish Knauf's obligations because
08:49 10 of the claimant's failure to follow-up or for a number of
08:49 11 different issues.

08:49 12 We filed our most recent motion I think last
08:49 13 month, Your Honor. It's set for hearing for a regular
08:49 14 submission date next Wednesday, October 14th. We've not
08:49 15 received any opposition to it, but we have agreed to pull a
08:49 16 couple of the homes off to get some more information.

08:49 17 So what we'll do later on this week is submit a
08:50 18 revised order to Eliza, and it will be unopposed like that.

08:50 19 **THE COURT:** Okay. Well, keep me posted. If it's
08:50 20 unopposed, I'll work it out accordingly.

08:50 21 **MR. MILLER:** Okay. We just wanted to advise the
08:50 22 Court we're going to submit a revised order prior to the
08:50 23 14th and it hasn't been opposed yet.

08:50 24 **THE COURT:** Okay. Fine. All right. Thanks.

08:50 25 **MR. LEVIN:** The next is scheduled dates for --

08:50 1 **THE COURT:** Yes. The next schedule dates for the
08:50 2 next meetings are November 9th at 2:00 p.m. and December 7th at
08:50 3 2:00 p.m.

08:50 4 **MR. LEVIN:** As an adjunct to that, Your Honor, you
08:50 5 had scheduled the Oceanique motion for reconsideration for
08:50 6 November 4th. It's my understanding that that will be heard on
08:50 7 November 9th.

08:50 8 **THE COURT:** Okay. Yes. That's what we'll do.

08:50 9 All right. I'll be back in a couple more --

08:50 10 **MR. BLACK:** Your Honor, I had one thing --

08:50 11 **THE COURT:** Yes. Anything from the Attorney General
08:50 12 of Louisiana?

08:51 13 **MR. BLACK:** If I may? David Black for the State of
08:51 14 Louisiana. I've raised informally an issue concerning
08:51 15 obtaining copies of sealed filings --

08:51 16 **THE COURT:** Right.

08:51 17 **MR. BLACK:** -- and raised it with counsel for both
08:51 18 sides, I believe both for the PSC and for the various
08:51 19 defendants. I think everybody agrees that the State of
08:51 20 Louisiana can get the filings without being excluded from the
08:51 21 sealed portions.

08:51 22 **THE COURT:** Okay. All right.

08:51 23 **MR. DAVIS:** We are happy, Your Honor, to send them to
08:51 24 counsel. We just didn't want to violate the Court's order and
08:51 25 wanted the defendants' approval.

08:51 1 **THE COURT:** Right. Yeah.

08:51 2 Anything, Harry, on that?

08:51 3 **MR. ROSENBERG:** No, Your Honor. We have no
08:51 4 objection.

08:51 5 **THE COURT:** Okay. If I need a motion, just prepare
08:51 6 it and I'll sign the motion. All right. I'll be back in five
08:51 7 minutes.

08:51 8 (WHEREUPON, the Court took a recess.)

08:54 9 *****

08:54 10 **CERTIFICATE**

08:54 11 I, Jodi Simcox, RMR, FCRR, Official Court Reporter
08:54 12 for the United States District Court, Eastern District of
08:54 13 Louisiana, do hereby certify that the foregoing is a true and
08:54 14 correct transcript, to the best of my ability and
08:54 15 understanding, from the record of the proceedings in the
08:54 16 above-entitled and numbered matter.

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s/Jodi Simcox, RMR, FCRR
Jodi Simcox, RMR, FCRR
Official Court Reporter

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