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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED * Docket 09-MD-2047
DRYWALL PRODUCTS *
LIABILITY LITIGATION * September 16, 2010
*
This Document Relates to All Cases * 9:00 a.m.
* * * * *

STATUS CONFERENCE BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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26 Proceedings recorded by mechanical stenography, transcript
27 produced by computer.

PROCEEDINGS

(September 16, 2010)

1
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3 THE DEPUTY CLERK: Everyone rise.

4 THE COURT: Be seated, please.

5 Good morning, ladies and gentlemen. Call the
6 case, please.

7 THE DEPUTY CLERK: MDL-2047, *In re: Chinese drywall*.

8 THE COURT: Counsel, make their appearance for the
9 record, please.

10 MR. HERMAN: Good morning, Judge Fallon. Russ Herman
11 for plaintiffs.

12 MR. MILLER: Good morning. Kerry Miller on behalf of
13 the defense steering committee.

14 THE COURT: Okay. We're here for our monthly status
15 conference. I ask everybody to speak into the microphone. We
16 have several hundred people on the line who are participating
17 in this conference and they would like to know what's happening
18 also.

19 The first item is Pretrial Orders. Anything on
20 the agenda?

21 MR. HERMAN: May it please the Court, Judge Fallon,
22 under item No. I, Pretrial Orders, the court's Web site can be
23 accessed at www.laed.uscourts.gov with a direct link to drywall
24 MDL.

25 There is nothing new in terms of the pretrial

1 orders, other than the PSC, Your Honor, has been directed with
2 regard to "G" to file notice of amendments.

3 **THE COURT:** Yes. Pretrial Order No. 1G provides that
4 the triggering device for filing responsive pleadings is when
5 the PSC files a notice of completion of amendments to the Omni
6 complaints. That triggers a 30-day deadline. And there's some
7 confusion as to what's happening there because individuals, who
8 maybe don't monitor this as often, don't know whether or not
9 there's a notice or that a notice has been filed.

10 So there's a lot of calls and confusion on that.
11 So we've got to deal with it so that we don't have any problems
12 with that particular matter.

13 **MR. HERMAN:** Your Honor, as I understand it, the
14 Taishan entities, which have been served, will file profile
15 forms within --

16 **THE COURT:** Yes. That's another item on the agenda.
17 But the pretrial order is what I'm concerned about. So we're
18 going to have to deal with a notice of completion of
19 amendments. Let's give that some attention and within the next
20 30 days, if you're finished with your amendments, let's file a
21 notice so we can trigger all of the responsive pleadings.

22 The next item is Property Inspections. Anything
23 on that?

24 **MR. HERMAN:** Your Honor, although it's not noted,
25 there are, this week, inspections of Habitat for Humanities

1 homes being coordinated by the PSC through member Jim Reeves'
2 office. We have nothing to report yet.

3 **THE COURT:** All right. Plaintiff and defendant
4 profile forms. There's an issue that the plaintiff's objected
5 to Taishan's request for extension of time. Taishan requests
6 two extensions: First, an extension of time on two of their
7 entities, indicating that they need time or they don't feel
8 that they should necessarily be ordered to file the profile
9 forms.

10 Secondly, the other entities, they take the
11 position that they don't have any work, they don't have
12 anything involving those entities with any entity in the United
13 States and that it would be a vain and useless thing.

14 I've considered their positions. With regard to
15 the two entities that have delivered drywall to the United
16 States, I want them to answer, to file a profile form. I'll
17 give them 30 days to do that. With regard to the other
18 entities, they don't have to file any profile forms it at this
19 time. I'll take that one off the table for now.

20 Let's get the two entities that we know have
21 sent drywall into the United States and have them file the
22 necessary profile forms. That's my ruling on that and I'll put
23 that out in a minute entry.

24 The Preservation Order, anything on that?

25 **MR. HERMAN:** Your Honor, nothing new.

1 Under State/Federal Coordination, I've
2 coordinated wardrobes with Ms. Barrios this morning.

3 **THE COURT:** Okay.

4 **MS. BARRIOS:** Thank you, Mr. Herman. Let's remember
5 to do that in every case for every status conference.

6 Good morning, Your Honor. Dawn Barrios for the
7 State/Federal Committee.

8 We've prepared the CDs containing all the state
9 cases and all the remands through CTO 19. We continue to be
10 blessed with a lot of cooperation from the defense,
11 particularly Mr. Minor Pipes in providing us this information.

12 I'd like to make note that I was informed by
13 Mr. Serpe and Mr. Jeffrey Breit that the Virginia cases that
14 are set for trial in January and February of next year are
15 pulled down at the present time and they're working with the
16 defendants on some procedural matters in that case.

17 **THE COURT:** Right. Right. I think that would be
18 helpful in that particular state if they tabled the trials to
19 give me a little bit more of an opportunity to focus on that
20 particular state.

21 It's a little different in that in Louisiana and
22 the other states, certainly, Florida, there's both Taishan and
23 Knauf drywall in those states. It looks like that in Virginia
24 there's probably just Taishan drywall or Chinese drywall from
25 the Chinese entities, and that's a little different than what

1 I'm dealing with. So if I could split that a little bit and
2 hold everything in abeyance, I think it would be helpful. If
3 we get the Gulf looked after, not first, but at least in a
4 different way.

5 **MS. BARRIOS:** Yes, Your Honor.

6 **THE COURT:** I'm happy that that was done.

7 **MS. BARRIOS:** Thank you.

8 **THE COURT:** What about the state court trial setting
9 in Florida?

10 **MR. HERMAN:** Your Honor, Judge Farina has a class
11 action in *Harrell* set for Monday. The parties to that trial
12 request that Your Honor discuss with Judge Farina whether that
13 matter may be continued to a date certain in order to give
14 additional time to, perhaps, reach resolution.

15 **THE COURT:** Okay. All right.

16 **MR. HERMAN:** As Ms. Barrios has said, the cases that
17 were set in Virginia are now continued or pulled down. The
18 list of those cases appears at pages 6 and 7 of the status
19 conference.

20 With regard to Motions in the MDL, item No. VII
21 at page 7 of the status conference report, there have been
22 numerous meetings since the last status conference. The
23 motions are being placed in buckets or in matters that can be
24 coordinated and a joint report will come to Your Honor as to
25 the progress being made in that regard.

1 **THE COURT:** Yes. As I mentioned last time, I have a
2 number of motions now. What I try to do in these MDL cases is
3 to focus on structure of the MDL and also some early potential
4 of looking at it globally. When I'm finished with that, or at
5 least have that in some kind of the control, then I look at the
6 motions.

7 And the way I look at the motions, depending
8 upon the number of motions, I appoint a motion committee
9 comprised of three or four people, to look at the motions from
10 all of the interested parties in the motions, and they group
11 those motions in categories for me and then suggest one or more
12 of those motions in each category that I can take up and simply
13 replicate that ruling throughout.

14 Or if we can't do it that way, we spot four or
15 five issues and I deal with the issues involving those
16 particular motions and make rulings on those issues so that I
17 don't have to take each motion and deal with each motion.
18 That's what's being done now.

19 I understand that the committee's just about
20 finished with their work. Once they do that, I'll then set
21 some briefing schedules and we'll proceed on the motions.

22 With regard to the global resolution
23 discussions, I have ordered that the interested parties,
24 particularly Knauf's entities, meet with the PSC and come to
25 New Orleans to do that. They have been meeting the last couple

1 of days and I've been monitoring those meetings.

2 Freedom of Information?

3 **MR. HERMAN:** Your Honor, I might add that depositions
4 are now set, 30(b)(6) depositions, actually beginning Monday
5 through November, of various Knauf representatives.

6 On Freedom of Information, we have nothing to
7 report. I might add that we appreciate Mr. Glickstein's
8 various and numerous meetings with Mr. Davis in order to
9 resolve discovery issues, including the production of
10 documents.

11 **THE COURT:** Filings in the MDL?

12 **MR. HERMAN:** Your Honor, there's nothing new to
13 report.

14 **THE COURT:** Default judgments?

15 **MR. HERMAN:** At this time the only issue as to any
16 default judgments are the *Germano* judgments which Taishan has
17 appealed.

18 **THE COURT:** Okay. And I might say that Taishan has
19 now been participating in the monthly meetings, reserving all
20 of their rights, of course. But they have been an active
21 participant and I have had several conferences with counsel for
22 Taishan and the other entities and, hopefully, their
23 participation can make some meaningful contributions to the
24 ultimate resolution of this litigation.

25 Insurance Issues, anything with that?

1 **MR. HERMAN:** Your Honor, with regard to Insurance
2 Issues, there have been various discussions. And in accordance
3 with the June 10th order and, accordingly, from those meet and
4 confers, there's been a briefing and hearing schedule for
5 various motions, jurisdictional venue and homeowners'/insurers'
6 motions.

7 And Your Honor on July 1st set a filing,
8 briefing and hearing schedule, matters were heard on
9 September 2nd and are currently under advisement. There is
10 also a hearing date on motions set on November 3rd of 2010.

11 With regard to Service of Pleadings
12 Electronically, there's nothing new.

13 There have been some discussions, particularly
14 among -- between the PSC and Knauf as to service issues and
15 we've made some headway.

16 **THE COURT:** Okay. Master Complaint, anything?

17 **MR. HERMAN:** I understand that Mr. Miller -- Kerry
18 Miller, who is liaison for defendant manufacturers and liaison
19 for defendants, has an engagement. If there's something on
20 here -- on the schedule that Kerry would like to address, Your
21 Honor, perhaps we can do that now.

22 **THE COURT:** Right. Okay.

23 **MR. MILLER:** I don't think there are any matters,
24 Your Honor, on the agenda that need my special attendance here.
25 So if it's acceptable to the Court, I'll go ahead and attend to

1 another matter.

2 **THE COURT:** Yes. Sure.

3 Class Action Complaints?

4 **MR. HERMAN:** Arnold Levin, lead counsel for the
5 plaintiffs, will speak to that and also speak to the next
6 issue, Class Action Complaints, Your Honor.

7 **MR. LEVIN:** I'll merge the two, Your Honor, and I
8 won't repeat everything that's been said every other time.

9 Where we are right now is the intervention
10 complaints will be filed in Omni I, Omni II, Omni IV, and in
11 the *Gross* complaint, an intervention which is -- we've
12 designated as Omni III with letters, they will be filed.

13 As to -- they will be served in accordance with
14 the Hague on any defendant that wants us to go to that task and
15 serve them. Let that be clear.

16 As to the Knauf defendants, we are engaged in
17 discussions where we have a stand-still agreement with regard
18 to statute of limitations and prescription. And, hopefully,
19 within 30 days we will have an order where they will accept
20 service and we will have a Rule 16 procedure laid out where we
21 can, on an expedited basis, on a rolling basis, let them know
22 the indicia as to each of the plaintiffs that have filed.

23 We assure the Court that the PSC is interested
24 in this process and we're not going to hide the ball. If they
25 have it, they have it; if they don't have it, we're going to

1 encourage them to go away, or move them into an Omni II
2 complaint because they have Chinese board but it's unidentified
3 Chinese board, and that's a lot of the defendants that Taishan
4 counsel was referring to that didn't send materials into the
5 United States.

6 Discovery is going to have to be taken on that
7 issue.

8 **THE COURT:** All right.

9 **MR. LEVIN:** There will be a second round of
10 intervention complaints that are being prepared right now. And
11 we will file a motion and serve them in the manner in which
12 we're serving the intervention complaints that I just
13 addressed.

14 **THE COURT:** Any comments on any of this?

15 **MR. GLICKSTEIN:** Arnie said it magnificently.

16 **THE COURT:** Okay. Fine.

17 **MR. GLICKSTEIN:** That's sad for me to say that.

18 **THE COURT:** I do think that it's important for all of
19 the entities to be before the court. In the event matters
20 resolve, then I will have jurisdiction to enforce whatever the
21 resolution is on behalf of all of those entities as opposed to
22 people who are not before me. So I think it's helpful to both
23 sides.

24 **MR. LEVIN:** With regard to class actions, we have
25 pending a motion for a Virginia class in the *Germano* case. And

1 Your Honor asked us to speak to Taishan's counsel to get some
2 schedule whereby they can respond, however they choose to
3 respond.

4 In this state, we will be filing in this court,
5 three class actions: One against Knauf; another against Banner
6 in Florida, a large participant in the drywall problem; and a
7 third against INEX and its carriers for declaratory relief.
8 It's our intention in filing those class actions to, now that
9 the dust has settled, to create a gravitas in this MDL so that
10 we can deal with the Chinese drywall problem.

11 We'll ask the court for a schedule for the
12 defendants to respond to those class motions.

13 And I think --

14 **THE COURT:** The other thing that's significant is
15 that there's a class action pending, or at least certification
16 or settlement, in Georgia and there's some indication that the
17 plaintiffs intend to file a motion seeking the court to enjoin
18 that from proceeding.

19 What's the status of that Georgia action?

20 **MR. LEVIN:** Well, that's proceeding towards
21 evaporation of the Chinese drywall issues with regard to Lowe's
22 and with remuneration of coupons. And it's for that reason
23 that we filed our *or writs* motion in front of Your Honor.

24 **MR. HERMAN:** Your Honor, I indicated to Lowe's
25 counsel that we would not discuss substantively that case.

1 **THE COURT:** All right. I'll set something up that
2 Lowe's counsel can be here and then I'll deal with it. I'll
3 put that on the front burner.

4 For federal court to enjoin the state court, I
5 want all the participants to be present so that if I do go that
6 route at least everybody will know where I'm going.

7 **MR. LEVIN:** That's my say, Your Honor.

8 Does the Court have any questions?

9 **THE COURT:** No, I'm fine. Thank you.

10 **MR. LEVIN:** Thank you, sir.

11 **THE COURT:** Anything on Special Master?

12 I might say that in the discussions thus far,
13 John Perry has been very, very helpful in moving this matter
14 forward. I appreciate that and will be officially appointing
15 him if that needs to be done.

16 **MR. HERMAN:** I'm reminded of something that,
17 unfortunately, I didn't pay attention to, Your Honor, which has
18 to do with the selection regarding homebuilder trials that Your
19 Honor had indicated Your Honor wanted to set. I did not want
20 to not mention that in connection with the status conference
21 today.

22 **THE COURT:** Yes. Hilarie, you've talked about it.
23 You mentioned to the court that there's a little difficulty
24 from the homebuilders in that they feel that it has to be
25 packaged in such a way that they will not be disadvantaged and

1 trying to figure a way of packaging them so that we're dealing
2 with a limited number of trials as opposed to 700 or 500 of
3 them.

4 So that's going to take a little creative
5 methods so that we can get some resolution of that or at least
6 tee them up and see how we do it. I don't want them to pick
7 trials and then be prejudiced by opinions in those trials. So
8 I'm sensitive to that.

9 MR. LEVIN: Excuse me, Your Honor. May I address one
10 other issue?

11 THE COURT: Yes.

12 MR. LEVIN: I've been in Louisiana so long that not
13 only does Lenny Davis whisper in Russ' ear, but he now whispers
14 in my ear, and I appreciate it.

15 I assume that for purposes of filing the motions
16 for class certification, the stays that are in place have been
17 lifted to the limited extent of letting us file them.

18 THE COURT: Yes. I'll lift the stay for the filing
19 purposes, not for any other proceedings until I hear from
20 anyone else.

21 MR. LEVIN: Thank you, sir.

22 MR. HERMAN: Your Honor, under item XIX on the agenda
23 for today, Knauf Gips KG Personal Jurisdiction Matter. As we
24 indicated in the discovery section, those depositions are being
25 taken and the dates have been set.

1 **THE COURT:** Okay.

2 **MR. HERMAN:** With regard to item No. XX, FRE 706
3 Database Management Expert, there's nothing new.

4 With regard to Frequently Asked Questions, those
5 questions and answers are at
6 www.laed.uscourts.gov/drywall/faq.htm. That's
7 [/drywall/faq.htm](http://drywall/faq.htm).

8 The next item on the agenda, Your Honor, is item
9 XXII, Matters Set for Hearing Following the Current Status
10 Conference.

11 **THE COURT:** Those are several motions to intervene.
12 The plaintiff in the *Payton* case, motions to intervene in the
13 *Wiltz*, motions to intervene in *Rogers*, and motions to intervene
14 in *Gross*. I thought that those matters were somewhat resolved.

15 **MR. LEVIN:** I think all of those motions are
16 resolved, Your Honor. And the clerk will deem the intervention
17 complaints filed in accordance with the order, if Your Honor
18 chooses to sign it. And then we will serve the Taishan Chinese
19 group through the Hague, we'll hold off on the Knauf group, and
20 we'll serve all domestic defendants.

21 **THE COURT:** Okay.

22 **MR. HERMAN:** Your Honor, with regard to item XXIII on
23 the agenda at page 20, there's nothing new.

24 With regard to item XXIV, there have been --
25 Your Honor has appointed Richard Duplantier, Jr. to the defense

1 steering committee and Joe Cyr and Rick Stanley to the defense
2 steering committee.

3 With regard to item XXV, Your Honor has under
4 advisement, plaintiff's steering committee, either appointments
5 or reappointments.

6 With regard to new items, Your Honor, which is
7 item XXVI, on September 13th, the insurers' steering committee
8 filed a motion to add five additional members to the insurance
9 steering committee. That motion is pending without objection
10 from the PSC or any other parties.

11 **THE COURT:** I want to get with Judy on that, Minor,
12 to deal with this --

13 **MR. PIPES:** Actually, you haven't even signed the
14 order.

15 **THE COURT:** Yes. The thing that I don't want, and I
16 understand you have to do things for political reasons and
17 that's fine, but I don't want so many people on committees that
18 it becomes a town hall meeting as opposed to a committee to
19 function. So I want to talk with her about that before we get
20 to this.

21 **MR. PIPES:** That's fine, Your Honor, and we are too.
22 That's why the committee only has 13 members.

23 **THE COURT:** Right.

24 **MR. LEVIN:** Only 13?

25 **MR. PIPES:** Out of the hundreds of insurers involved.

1 **THE COURT:** Right. Yes.

2 **MR. HERMAN:** Did you say 13?

3 **THE COURT:** We may have some shadow committees.

4 **MR. HERMAN:** The fact that they chose 13, the
5 plaintiffs applaud.

6 **THE COURT:** Mediation is the next item.

7 **MR. HERMAN:** The mediations have been ongoing. We've
8 had three face-to-face mediations since the last status
9 conference. And this week Your Honor ordered Knauf entity
10 representatives and plaintiffs' steering committee
11 representatives to meet face to face. And as of yesterday, we
12 made a great deal of progress.

13 As Your Honor has previously indicated, John
14 Perry has been most helpful as a mediator. And we appreciate
15 Kerry Miller and Greg Wallance at Kaye Scholer. Those
16 mediations have been very professional and we've made headway.

17 **THE COURT:** Yes. I'm just concerned because some of
18 the earlier conferences were in New York or Germany and I'm
19 more comfortable if everybody meets down here. So I ordered
20 everybody to come to New Orleans and sit in a room and have
21 access to me to deal with these issues. I feel that that has
22 been helpful. Hopefully, within the next day or so we'll bring
23 that to a conclusion.

24 **MR. HERMAN:** Your Honor, I believe that brings us to
25 any remarks that Your Honor may have and a setting of the next

1 status conference.

2 **THE COURT:** What's the date?

3 October 14th at 9:00, and I'll meet with the
4 committees beforehand.

5 I continue to feel that in a case like this if
6 we can get a program, a plan, even if it starts initially as a
7 pilot program, that is able to function, and then expand that
8 to include the universe, and then after that is done anyone
9 else, any other defendant who wishes to adopt that particular
10 program or plan of settlement, they at least have something
11 that has proven to be workable. And I think we can bring that
12 to fruition, hopefully, in the near future and get on with
13 other things.

14 I appreciate the work that everybody has been
15 doing on this. It started out as a very complicated matter.
16 It's still, to some extent, complicated, but at least we're
17 getting our hands around it; and, hopefully, with the
18 assistance of capable counsel that we have in the room, we'll
19 be able to bring this to fruition sooner than initially
20 thought.

21 Court will stand in recess. Thank you.

22 **THE DEPUTY CLERK:** Everyone rise.

23 (WHEREUPON, the proceedings were concluded.)
24
25

CERTIFICATE

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

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