

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED DRYWALL
PRODUCTS LIABILITY LITIGATION

VS. MDL No. 2047
Section "L"
New Orleans, Louisiana
May 17, 2019

THIS DOCUMENT RELATES TO ALL CASES

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

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P R O C E E D I N G S

09:01:18AM

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(Call to order of the court.)

09:01:18AM

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THE DEPUTY CLERK: MDL No. 2047, *In Re:*

09:01:22AM

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Chinese-Manufactured Drywall Products Liability Litigation.

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09:01:26AM

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THE COURT: Liaison Counsel, make your appearance for the Court first.

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MR. HERMAN: May it please the Court, good morning,

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Judge Fallon. I'm Russ Herman. I'm here on behalf of the

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PSC.

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MR. ROSENBERG: Good morning, Judge Fallon. Harry Rosenberg, liaison counsel for Taishan, BNMB and CNMB, Your Honor.

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THE COURT: Okay. Thank you.

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MR. MILLER: Judge, Kerry Miller, liaison counsel for Knauf.

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THE COURT: We're here today for our monthly status

09:01:59AM

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conference and also any motions. I met with the parties a

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moment ago to discuss the agenda. We'll take it in the order

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presented.

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09:02:24AM

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MR. HERMAN: If, Your Honor, please, this is Joint Report of Status Conference 111. It is 38 pages long. About

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70 percent or 80 percent of it is history of what's happened

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in the preceding 110 Status Report beginning generally in

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2018 and 2019.

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As I made my way through it, I noted the May orders

09:02:52AM 1 issues, et cetera. I'd like to call on Sandy Duggan who will
09:02:59AM 2 report to the Court on the various activities which are
09:03:04AM 3 occurring and have occurred in Florida. And Bernard or
09:03:11AM 4 Christy may -- may want to amplify.

09:03:11AM 5 THE COURT: All right.

09:03:17AM 6 MS. DUGGAN: Good morning, Your Honor, Sandra Duggan
09:03:20AM 7 for the plaintiffs.

09:03:21AM 8 Your Honor remanded 175 *Amorin* cases to the Eastern
09:03:26AM 9 District of Virginia before Judge Mark Davis on April 30th of
09:03:29AM 10 this year. The parties appeared before Judge Davis to engage
09:03:35AM 11 in oral argument on competing plans for resolution of those
09:03:39AM 12 cases. That motion -- those motions are now pending before
09:03:41AM 13 the Court.

09:03:42AM 14 Your Honor also remanded approximately 30 actions in
09:03:46AM 15 *Brooke* to the Eastern District of Virginia. Those have gone
09:03:51AM 16 to Judge Smith. The plaintiffs yesterday filed a notice of
09:03:55AM 17 related action before Judge Davis with the intention that the
09:03:58AM 18 30 cases get transferred to Judge Davis, but we don't have
09:04:01AM 19 any word from the Court on that.

09:04:01AM 20 Approximately 1,700 cases were remanded to Florida,
09:04:05AM 21 Southern District of Florida, before Judge Cooke. Those
09:04:08AM 22 cases have been proceeding on an aggressive schedule. We
09:04:14AM 23 right now have appeared before the Special Master on
09:04:17AM 24 remediation damages. There have been two hearings before the
09:04:21AM 25 Special Master; one was on product ID and one was on various

09:04:26AM 1 contests and requests for setoffs by the defendants.

09:04:27AM 2 The Special Master has issued a Report and
09:04:31AM 3 Recommendation on product ID. The plaintiffs have filed
09:04:35AM 4 objections to that report, and they are pending right now
09:04:37AM 5 before Judge Cooke. The Special Master issued a two-part
09:04:42AM 6 Report and Recommendation on the contests, the first report
09:04:44AM 7 and the second report. The second report was filed on
09:04:47AM 8 May 10th, and the parties have until May 31st to file
09:04:51AM 9 objections to the Special Master's Report and Recommendation
09:04:54AM 10 on the various contests.

09:04:56AM 11 THE COURT: What's the special master's name there?

09:04:59AM 12 MS. DUGGAN: Tiffani Lee. She's with Holland &
09:05:04AM 13 Knight and she was appointed by the Court.

09:05:07AM 14 And a separate track from the remediation damages
09:05:07AM 15 resolution, we have 20 priority plaintiffs in Florida that
09:05:10AM 16 have been deposed. Experts were named by both sides and
09:05:16AM 17 expert discovery has closed. And the parties are currently
09:05:20AM 18 negotiating a joint pretrial stipulation that is due on
09:05:24AM 19 May 31st. The parties have to provide short paragraphs,
09:05:29AM 20 mutual paragraphs, on each plaintiff to be read at *voir dire*.
09:05:31AM 21 The parties can exchange motions *in limine*, and there's
09:05:35AM 22 various other requirements. And it has to be a joint
09:05:38AM 23 submission. And we're in the process right now of
09:05:38AM 24 negotiating that, and that will get filed at the end of this
09:05:41AM 25 month.

09:05:41AM 1 On the Judge's calendar, set for July 22nd, is a
09:05:45AM 2 two-week period for the trials of the 20 priority plaintiffs
09:05:49AM 3 non-remediation damages.

09:05:51AM 4 THE COURT: Do you know whether they're going to go
09:05:53AM 5 at one time or --

09:05:55AM 6 MS. DUGGAN: No filings have been made yet. The
09:05:58AM 7 plaintiffs are contemplating various groupings, and we just
09:06:04AM 8 have not reached the stage yet where we submit anything
09:06:06AM 9 either to the defendants or to the Court, but we -- that is
09:06:08AM 10 our intention to provide some sort of groupings of the
09:06:12AM 11 plaintiffs based on similarity of their cases.

09:06:16AM 12 Now, the Court also remanded 846 *Brooke* actions to
09:06:21AM 13 the Southern District of Florida. And those went to Judge
09:06:24AM 14 Williams. The plaintiffs filed a notice of related action
09:06:27AM 15 thinking they would get transferred to Judge Cooke, but last
09:06:30AM 16 week on Thursday, the parties appeared in Miami for a hearing
09:06:34AM 17 before Judge Cooke -- excuse me, before Judge Williams. And
09:06:37AM 18 it is not entirely clear that she will be transferring them
09:06:40AM 19 to Judge Cooke.

09:06:42AM 20 She had an argument that lasted approximately
09:06:45AM 21 45 minutes, asked a lot of questions about why we're here and
09:06:49AM 22 how can we resolve these cases. She ordered the parties to
09:06:54AM 23 submit a joint pretrial scheduling order by June 7th, and
09:06:57AM 24 we're in the process of talking to the defense about that.

09:07:02AM 25 THE COURT: All right. Christy, anything?

09:07:06AM 1 MS. EIKHOFF: Your Honor, I appreciate Ms. Duggan's
09:07:11AM 2 status report. The only thing I would add from the
09:07:14AM 3 defendants' prospective is with respect to the order of the
09:07:17AM 4 20 priority plaintiff trials that has not been resolved. In
09:07:21AM 5 fact, we haven't even really had any discussions with the
09:07:25AM 6 plaintiffs. So today was the first we're hearing about them
09:07:30AM 7 contemplating groupings. It has been our position that they
09:07:32AM 8 should be taken in order one-by-one but -- in sequence so
09:07:37AM 9 that it can be done efficiently. But we will continue to
09:07:41AM 10 discuss that, and if the Court needs to weigh in on that,
09:07:44AM 11 Judge Cooke will.

09:07:46AM 12 Thank you.

09:07:47AM 13 THE COURT: All right. Thank you.

09:07:48AM 14 Anything else?

09:07:51AM 15 MR. HERMAN: May it please the Court, we're now
09:07:59AM 16 dealing with other issues. I think that the status report
09:08:04AM 17 makes clear that there's some tax issues that really only
09:08:12AM 18 involve two parties who are third parties who have been
09:08:16AM 19 working in this case on behalf of everyone, and I'm not going
09:08:22AM 20 to cover those.

09:08:25AM 21 Under section 4, page 9 and 10, an extension was
09:08:35AM 22 granted in discovery. And I'll keep my remarks to *Amorin*
09:08:43AM 23 cases at this point. Further at page 25, the R.S. Means data
09:08:54AM 24 has been updated; and under the same rule or same agenda
09:09:05AM 25 item, the Florida cases at page 32 and progress of them has

09:09:09AM 1 been reported. And at page 37, there are references to the
09:09:17AM 2 Virginia cases and where we are.

09:09:23AM 3 On the agenda at 8 are the attorney fee issues in
09:09:32AM 4 Knauf settlement among lawyers claiming fees. They filed a
09:09:39AM 5 number of motions. All have been ruled on and the motions
09:09:45AM 6 have been dismissed.

09:09:49AM 7 THE COURT: Do you know whether there's been any
09:09:51AM 8 appeals from those rulings yet?

09:09:53AM 9 MR. HERMAN: No, sir. I did check this morning and
09:09:56AM 10 found no appeals yet. I might add as a matter of
09:10:05AM 11 professional courtesy -- I do not see any of the lawyers that
09:10:09AM 12 have filed appeals in the courtroom, but perhaps there are
09:10:16AM 13 some on the phone.

09:10:25AM 14 There's a matter set for hearing at page 31, but to
09:10:31AM 15 get through this docket and get through this proposed agenda,
09:10:39AM 16 what I did is, I went through this 38-page Status Conference
09:10:47AM 17 Report, Status Conference 111, to look at various issues in
09:10:56AM 18 May.

09:10:57AM 19 At page 10, on May 15th, a motion was filed to extend
09:11:07AM 20 in *Amorin* the trial plan matters, and that's Document No.
09:11:15AM 21 22243. The next thing that I noted was at page 16,
09:11:30AM 22 appellants filed a brief on jurisdiction orders on May 8th.
09:11:48AM 23 Of note, at page 25 are two issues, on May 3rd, Document No.
09:11:56AM 24 22237. Your Honor issued on May 3rd an order regarding
09:12:10AM 25 former owners. That's at 22237. And, also, again, I make

09:12:20AM 1 reference to updating the R.S. Means report at 22235 document
09:12:26AM 2 number.

09:12:27AM 3 Either Kerry Miller or Dan Dysart may want to talk
09:12:36AM 4 about the depositions that are scheduled for -- for today.

09:12:43AM 5 MR. DYSART: Good morning, Judge Fallon. Danny
09:12:45AM 6 Dysart on behalf of Knauf defendants.

09:12:48AM 7 On page 25 to 28, this is section 6, the *Bennett*
09:12:53AM 8 action. Following the Court's last hearing on our motion to
09:12:58AM 9 strike and the Court's order, we have gone ahead and started
09:13:01AM 10 to set the Louisiana depositions and inspections for the
09:13:06AM 11 Louisiana claimants. The depositions are going to commence
09:13:09AM 12 today. Inspections are going to follow in the coming weeks
09:13:13AM 13 through June. And after that, we will continue on through
09:13:15AM 14 the Florida plaintiffs, Alabama, Mississippi, and I believe
09:13:20AM 15 Texas.

09:13:21AM 16 It is possible that discovery issues will arise
09:13:23AM 17 during that time in terms of document productions and things
09:13:26AM 18 that we discussed during the hearing when we were here last.
09:13:29AM 19 We will raise those with the Court as necessary after meet
09:13:38AM 20 and conferring with opposing counsel.

09:13:38AM 21 One other matter is that as we work through these I
09:13:39AM 22 believe we have a discovery cutoff in July. Depending on how
09:13:44AM 23 fast we get through the depositions and inspections we may
09:13:47AM 24 come back to Your Honor in terms of extending that deadline
09:13:51AM 25 to get everything wrapped up.

09:13:51AM 1 THE COURT: All right. Confer with counsel. If you
09:13:52AM 2 need me, I can even set a periodic, you know, meeting or
09:13:57AM 3 something to deal with it if it becomes problematic. We'll
09:14:02AM 4 just do it every Thursday or second Thursday, something like
09:14:05AM 5 that.

09:14:06AM 6 MR. DYSART: Thank you, Your Honor.

09:14:19AM 7 THE COURT: Is that it, Russ?

09:14:19AM 8 MR. HERMAN: Yes, Your Honor.

09:14:20AM 9 THE COURT: Anything further other than the motion?

09:14:24AM 10 MR. HERMAN: Excuse me, Your Honor?

09:14:25AM 11 THE COURT: Anything further other than the motion?

09:14:28AM 12 MR. HERMAN: No, sir. I just note the May issues and
09:14:30AM 13 the rulings on the attorney's fees that Your Honor made in
09:14:30AM 14 the last day or so denying all of the motions and that
09:14:42AM 15 basically concludes the status report unless other
09:14:48AM 16 counsel have --

09:14:48AM 17 THE COURT: Anything else, Harry?

09:14:50AM 18 MR. ROSENBERG: No, Your Honor, other than I know the
09:14:53AM 19 Court's going to acknowledge the date for the next status
09:14:56AM 20 conference.

09:14:56AM 21 THE COURT: Yeah. The next status conference is
09:14:59AM 22 June 19th. And it's agreeable by counsel that we not set the
09:15:03AM 23 one in July until the June 19th meeting, and then we will
09:15:07AM 24 pick another date in July if necessary.

09:15:09AM 25 MR. ROSENBERG: That's correct, Your Honor.

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THE COURT: Thank you very much. Anything further?

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MR. ROSENBERG: No, Your Honor.

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THE COURT: Let's take a break and then I'll come

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back and we'll deal with the motion.

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(WHEREUPON, the proceedings were adjourned.)

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REPORTER'S CERTIFICATE

I, Nichelle N. Drake, RPR, CRR, Official Court Reporter, 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/ Nichelle N. Drake
Official Court Reporter