

STATUS CONFERENCE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: CHINESE-MANUFACTURED DRYWALL  
PRODUCTS LIABILITY LITIGATION

VS. MDL No. 09-2047  
Section "L"  
New Orleans, Louisiana  
April 23, 2019

THIS DOCUMENT RELATES TO ALL CASES

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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

(Call to order of the court.)

THE COURT: Be seated, ladies and gentlemen. Good morning.

Call the case, please.

THE DEPUTY CLERK: MDL No. 2047, In Re: *Chinese-Manufactured Drywall Products Liability Litigation.*

THE COURT: Counsel, make your appearance for the record, please, Liaison.

MR. HERMAN: May it please the Court, good morning, Your Honor, Russ Herman for the PSC.

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

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

THE COURT: We're here today for our monthly status conference. I met with the parties, with liaison and lead counsel, a moment ago to discuss the agenda with them. We'll take them in the proposed order.

MR. HERMAN: May it please the Court, the Taishan issues are listed in the status conference report at page 5, section 4. And it has to do with Record Document 18757, the Court's establishment of three tracks, Taishan, BNMB, CNMB in all matters and also can be found at Record Document 18844.

With regards to the trial plan, there will be

09:08:34AM 1 argument after the status conference, but for a review of the  
09:08:41AM 2 pleadings that's at page 10.

09:08:45AM 3 There is a former owners' motions that will be heard  
09:08:53AM 4 today for a review. It's at page 24. Then there are several  
09:09:01AM 5 motions regarding attorneys fees at -- recounted at page 28,  
09:09:10AM 6 section 8, and a motion for disbursement at page 29.

09:09:17AM 7 All of these are listed on --

09:09:32AM 8 MR. MILLER: Page 31.

09:09:41AM 9 MR. HERMAN: Yeah. I'm trying -- when you get old,  
09:09:41AM 10 you need help finding and I need all the help I can get.

09:09:42AM 11 Matter's set for hearing at page 31, 1 through 7.  
09:09:49AM 12 Also, set are Knauf motions which are items 6 and 7 at  
09:09:57AM 13 page 31.

09:10:00AM 14 Mr. Serpe is here to report on Virginia, and  
09:10:15AM 15 Ms. Duggan is here to give a quick update on Florida.

09:10:23AM 16 THE COURT: And in this matter, what I did, it seems  
09:10:26AM 17 to me the end game is to remand the cases. And so I remanded  
09:10:34AM 18 1,000 or so of the cases to Florida and an equal amount  
09:10:37AM 19 probably to Virginia. And the Florida cases are proceeding.

09:10:42AM 20 What's happening with the Florida cases?

09:10:45AM 21 MS. DUGGAN: Good morning, Your Honor, Sandra Duggan  
09:10:47AM 22 for the plaintiffs.

09:10:48AM 23 As Your Honor knows, on November 16, 2018, Judge  
09:10:53AM 24 Cooke entered a trial plan. She adopted all of Your Honor's  
09:10:56AM 25 prior rulings in this litigation, and she set two tracks.

09:11:00AM 1 One track was for remediation damages.

09:11:06AM 2 There's 1,700 approximately *Amorin* plaintiffs that  
09:11:07AM 3 are in that track. She appointed Special Master. There was  
09:11:10AM 4 product ID discovery taken of Taishan in January of this  
09:11:13AM 5 year.

09:11:13AM 6 The parties submitted simultaneous briefs, and then  
09:11:20AM 7 there was a hearing before the Special Master on March 10th.  
09:11:21AM 8 And on April 8, 2019, the Special Master issued her Report  
09:11:25AM 9 and Recommendation on the various product ID categories  
09:11:28AM 10 attributable to Taishan. The parties can serve their  
09:11:34AM 11 objections to Judge Cooke to that Report and Recommendation.  
09:11:36AM 12 Those are due on April 29th.

09:11:39AM 13 Then the Court in Florida allowed the defendants to  
09:11:42AM 14 challenge ownership, product ID, and square footage with  
09:11:47AM 15 regard to all of the *Amorin* plaintiffs. The defendants  
09:11:50AM 16 served preliminary contests and requests for setoffs as to  
09:11:55AM 17 all of the plaintiffs in Florida. We responded to those.

09:11:58AM 18 There was about a two-month period of discovery back  
09:12:02AM 19 and forth between the parties. Final contests were submitted  
09:12:05AM 20 to the Special Master. We responded to that.

09:12:06AM 21 And then there was a hearing before the Special  
09:12:08AM 22 Master on April 10th and 11th. Supplemental briefing to the  
09:12:12AM 23 Special Master occurred yesterday, and there will be some  
09:12:15AM 24 follow-up briefing that will occur this week.

09:12:17AM 25 With regard to BNMB, unfortunately, there was a

09:12:20AM 1 30(b)(6) deposition noticed of BNMB with regard to product  
09:12:24AM 2 ID. The witness was granted a visa, authorized to get a visa  
09:12:33AM 3 but never actually given the visa. So, unfortunately, the  
09:12:35AM 4 witness was not able to travel to the United States.

09:12:38AM 5 There was the possibility of having a deposition  
09:12:39AM 6 occur last week in Hong Kong, but given the time constraints  
09:12:42AM 7 involved with the Court's order and the logistics, the  
09:12:42AM 8 parties decided by agreement and with approval from the  
09:12:45AM 9 Special Master to just submit -- the plaintiff submitted  
09:12:49AM 10 written questions to BNMB. They are to respond to those  
09:12:50AM 11 questions this week, and then we will submit simultaneous  
09:12:54AM 12 briefing. And then there will be a Report and Recommendation  
09:12:57AM 13 on product ID with regard to BNMB, we imagine, shortly.

09:12:59AM 14 Now, the Special Master's Report and Recommendation  
09:13:04AM 15 on the contest is due on April -- I believe -- no. I'm  
09:13:07AM 16 sorry. May 3, 2019. She may need a little extra time  
09:13:11AM 17 because the defendants did assert 17 different objections to  
09:13:15AM 18 the remediation damages for the plaintiffs, and then her  
09:13:20AM 19 final Report and Recommendation is due on May 31 of this  
09:13:23AM 20 year.

09:13:23AM 21 THE COURT: What about the other damages?

09:13:26AM 22 MS. DUGGAN: So the non-remediation damages, there  
09:13:29AM 23 are 20 priority plaintiffs. Fact discovery was completed in  
09:13:32AM 24 January, I believe, might have been February. I lost track.  
09:13:32AM 25 I apologize.

09:13:35AM 1 The parties each designated expert witnesses. The  
09:13:39AM 2 plaintiffs identified six experts. The defendants identified  
09:13:42AM 3 six rebuttal experts. All of the expert discovery is  
09:13:46AM 4 complete.

09:13:46AM 5 THE COURT: What were the experts about?

09:13:49AM 6 MS. DUGGAN: There was a home inspection designated  
09:13:52AM 7 by the plaintiffs. The plaintiffs identified a realtor.  
09:13:56AM 8 They identified an expert to talk about stigma damages,  
09:14:02AM 9 permanent damages to the property because of the Chinese  
09:14:05AM 10 drywall. There was also a CPA that analyzed all of the  
09:14:10AM 11 non-remediation damages of each of the plaintiffs. And then  
09:14:14AM 12 Your Honor will probably recall that we had Brad Krantz and  
09:14:17AM 13 Lori Streit who are experts in *Germano*. They tested some of  
09:14:22AM 14 the various items that were removed from some of the  
09:14:25AM 15 remediated homes to show that there was corrosion, and the  
09:14:31AM 16 defendants identified corrosion experts in rebuttal.

09:14:31AM 17 The *Daubert* briefing in Florida on those 20 priority  
09:14:35AM 18 plaintiff cases is due on the 29th as well as case  
09:14:39AM 19 dispositive motions.

09:14:40AM 20 THE COURT: These are all property damage issues.  
09:14:42AM 21 What about any personal injury or anything of that sort in  
09:14:45AM 22 Florida?

09:14:46AM 23 MS. DUGGAN: There are no personal injury claims per  
09:14:50AM 24 se, although the ailments that the plaintiffs suffered goes  
09:14:54AM 25 into the factual scenario of their cases. And there's been a

09:14:58AM 1 notice of mediation that's going to occur on May 22nd and  
09:15:02AM 2 23rd with regard to the Florida litigation.

09:15:06AM 3 THE COURT: With regard to the other damages, is that  
09:15:08AM 4 a Special Master or is that a jury trial?

09:15:11AM 5 MS. DUGGAN: No, those are going to be jury trials in  
09:15:15AM 6 Judge Cooke's courtroom. Those are scheduled to begin on  
09:15:17AM 7 July 22nd of this year.

09:15:18AM 8 THE COURT: Is she going to do flights or one at a  
09:15:21AM 9 time?

09:15:21AM 10 MS. DUGGAN: Well, we haven't reached that point yet  
09:15:23AM 11 where we proposed any scenario to the Court. Although my  
09:15:26AM 12 understanding is, we are going to be doing this sufficiently  
09:15:29AM 13 and there will be flights and groupings of the cases.

09:15:32AM 14 THE COURT: Okay. Thank you.

09:15:33AM 15 What about Virginia?

09:15:36AM 16 MS. EIKHOFF: I just want to respond to the status  
09:15:41AM 17 report just given by the plaintiffs --

09:15:41AM 18 THE COURT: Sure.

09:15:42AM 19 MS. EIKHOFF: -- just in a couple of aspects.

09:15:44AM 20 I think that some of the details of how Judge Cooke  
09:15:49AM 21 plans to try the cases that were just reported have not been  
09:15:51AM 22 established in any way. And so the plaintiffs may seek to do  
09:15:54AM 23 it in flights, but there has been absolutely no ruling  
09:15:58AM 24 whatsoever from Judge Cooke on that point.

09:16:00AM 25 Also, in terms of the -- on the remediation damages

09:16:06AM 1 track with the Special Master in Florida, we have asserted  
09:16:11AM 2 defenses pursuant to the contest and setoffs provision of  
09:16:13AM 3 Judge Cooke's trial plan. So Judge Cooke did not limit our  
09:16:17AM 4 contest to only certain categories as was stated by  
09:16:21AM 5 Ms. Duggan.

09:16:22AM 6 So I just wanted to make the record clear that we did  
09:16:27AM 7 assert those contests pursuant to a specific provision that  
09:16:32AM 8 allowed the contests to be submitted.

09:16:34AM 9 THE COURT: Okay. Thank you.

09:16:36AM 10 Does Virginia wish --

09:16:38AM 11 MR. SERPE: Good morning, Your Honor, Richard Serpe  
09:16:43AM 12 for the Virginia plaintiffs.

09:16:45AM 13 Your Honor, the matters were assigned to Chief Judge  
09:16:47AM 14 Davis of the Eastern District of Virginia. He conducted an  
09:16:51AM 15 initial status conference in December, set a briefing  
09:16:53AM 16 schedule for trial plans, as well as for the question of the  
09:16:56AM 17 adoption of Your Honor's prior rulings.

09:16:59AM 18 There's a conference next week on the 30th at which  
09:17:03AM 19 time additional argument will be presented, and we anticipate  
09:17:09AM 20 ruling shortly thereafter. Virginia, of course, is not  
09:17:12AM 21 burdened with the product ID issues that consumed a lot of  
09:17:15AM 22 time and attention in Florida because we are a single product  
09:17:19AM 23 state, Venture Supply, with direct evidence from -- literally  
09:17:23AM 24 from the factory right to the individual homes. But there  
09:17:27AM 25 are, you know, competing plans.

09:17:29AM 1 We have submitted one with a schedule that we believe  
09:17:31AM 2 these cases can be resolved within a matter of months, and  
09:17:35AM 3 we're hopeful that Judge Davis at the hearing next week will  
09:17:39AM 4 set that schedule and we'll be able to bring these cases to  
09:17:41AM 5 conclusion.

09:17:42AM 6 THE COURT: Are you dealing only in Virginia with  
09:17:44AM 7 property damage or are you dealing with any other damages or  
09:17:48AM 8 pain and suffering or disability or whatever?

09:17:52AM 9 MR. SERPE: Virginia law is clear that there is no  
09:17:56AM 10 pain, suffering, mental anguish with respect to a property  
09:18:00AM 11 loss. Your house burns down -- there was a case where a  
09:18:05AM 12 woman's treasured companion, animal, was killed in an  
09:18:09AM 13 accident. The Court has repeatedly ruled no sort of damages  
09:18:12AM 14 like that.

09:18:13AM 15 There are, you know, potentially, Your Honor, some  
09:18:17AM 16 classes of other losses out there. But we had the unique  
09:18:21AM 17 experience in Virginia. The four Virginia class settlements  
09:18:23AM 18 that we negotiated in 2013 and this Court approved that were  
09:18:27AM 19 disbursed required the owners to submit their other loss  
09:18:32AM 20 information. And it turns out to be a tiny fraction compared  
09:18:36AM 21 to the 800-pound gorilla of the property damages. And in an  
09:18:44AM 22 effort to expedite it, we're actively working to eliminate  
09:18:48AM 23 these other losses so that the Court can very efficiently  
09:18:48AM 24 resolve the damages for these people.

09:18:50AM 25 And, Your Honor, we believe that an ultimate issue is

09:18:53AM 1 the former owner issue that Mr. Meunier is going to be  
09:18:57AM 2 addressing. Virginia plaintiffs are hopeful that Your Honor  
09:19:03AM 3 will rule today and provide guidance to Judge Davis with  
09:19:06AM 4 respect to the former owners.

09:19:09AM 5 Thank you.

09:19:09AM 6 THE COURT: All right. Thank you, Rich.

09:19:10AM 7 Anything else?

09:19:10AM 8 MS. EIKHOFF: Your Honor, I'm sorry. I wasn't  
09:19:13AM 9 expecting to stand up, but with these status reports that  
09:19:15AM 10 we're getting from the plaintiffs, they're definitely coming  
09:19:16AM 11 from the prospective of the plaintiffs --

09:19:16AM 12 THE COURT: Sure.

09:19:18AM 13 MS. EIKHOFF: -- and are providing in the --

09:19:18AM 14 THE COURT: I understand.

09:19:20AM 15 MS. EIKHOFF: -- in the form of a status conference,  
09:19:22AM 16 providing some argument.

09:19:24AM 17 Of course, we have a different trial plan, a  
09:19:27AM 18 different view of how the damages in Virginia should be  
09:19:30AM 19 addressed by the Court. We will be arguing that to the Judge  
09:19:34AM 20 next week.

09:19:35AM 21 THE COURT: Okay. But you do agree it is just  
09:19:36AM 22 property and nothing else?

09:19:38AM 23 MS. EIKHOFF: I think sometimes the word property can  
09:19:41AM 24 be ambiguous because property is not synonymous with  
09:19:49AM 25 remediation, Your Honor. And so we agree that they are all

09:19:51AM 1 under the umbrella of property damages, but it is not  
09:19:54AM 2 necessarily limited to remediation damages. There are other  
09:19:57AM 3 aspects of property damages that they're seeking.

09:19:58AM 4 THE COURT: Okay. Fine. Thanks.

09:20:05AM 5 Anybody else on the status?

09:20:07AM 6 Okay. That's really the issues that we're dealing  
09:20:12AM 7 with the agenda. We have to move into the motions then.

09:20:19AM 8 The next status conference is May 17th of 2019 at  
09:20:24AM 9 nine o'clock, and the following one is June the 19th, 2019,  
09:20:28AM 10 at nine o'clock.

09:20:31AM 11 Okay. We have a number of motions. Anything else  
09:20:34AM 12 before the motions?

09:20:37AM 13 Russ?

09:20:37AM 14 MR. HERMAN: Not from the PSC, Your Honor.

09:20:40AM 15 THE COURT: Harry?

09:20:40AM 16 MR. ROSENBERG: No, Your Honor. Thank you.

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18 (WHEREUPON, the Status Conference concluded with Motion to  
19 Adopt Trial Plan for Louisiana *Amorin* Cases to follow.)

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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