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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED * Docket 09-MD-2047
DRYWALL PRODUCTS *
LIABILITY LITIGATION * February 12, 2015
*
This Document Relates To: * 9:00 a.m.
09-6687, 09-6690, 10-361, 11-1672, *
11-1395 and 11-1673 *
* * * * *

MOTION HEARING BEFORE
THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Herman Herman Katz & Cotlar
BY: RUSS M. HERMAN, ESQ.
BY: LEONARD A. DAVIS, ESQ.
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New Orleans, Louisiana 70113

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7 Proceedings recorded by mechanical stenography, transcript
8 produced by computer.
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PROCEEDINGS

(February 12, 2015)

(OPEN COURT)

THE COURT: Let's go into the next item of business, the motion for damages. Dean, do you want to call that motion, the motion for assessment of class damages.

THE DEPUTY CLERK: MDL-2047, *In re: Chinese-Manufactured Drywall Products Liability Litigation*. It's Document 18086, plaintiffs' motion for assessment of class damages pursuant to Rule 55(b)(2)(B) and request for approval of supplemental notice.

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

MR. LEVIN: Arnold Levin on behalf of class counsel and the Plaintiffs' Steering Committee.

THE COURT: Anybody from the defendant? Anybody from either the defendant or any of their affiliates?

As was reported before, there was at least a rumor that they were interested in having a continuance, but they didn't put anybody up to represent them formally and ask for a continuance. There was an e-mail that was sent to their former attorney, who's been discharged, and he indicated that

1 he didn't represent them.

2 **MR. LEVIN:** We have some activity in the back of the
3 courtroom, Your Honor.

4 **THE COURT:** Yes.

5 **MR. HERMAN:** Your Honor, could we have a moment?

6 **THE COURT:** Okay.

7 **MR. LEVIN:** Your Honor, may we see you sidebar on a
8 completely different matter just to report to you during this?
9 It'll take two minutes.

10 **THE COURT:** Wait. Do we have somebody?

11 **MR. HERMAN:** May we approach, Your Honor?

12 **THE COURT:** Sure.

13 (WHEREUPON, the following proceedings were held at
14 the bench.)

15 **MR. HERMAN:** Your Honor, this is Mr. Block from
16 Alston & Bird. This is judge Fallon. Tom advises that the
17 gentleman will be making an appearance. For which party?

18 **MR. BLOCK:** For BNBM.

19 **THE COURT:** Okay. Make your appearance. I'll have a
20 couple of comments, and then I'll call for your appearance, and
21 make your appearance and, if you wish, a continuance. I'll
22 take that into consideration, the fact that you just came in.
23 But I need to have an appearance on the record.

24 **MR. BLOCK:** Yes, Your Honor.

25 (WHEREUPON, the following proceedings were held in

1 open court.)

2 **MR. HERMAN:** Thank you, Your Honor.

3 **THE COURT:** Okay. The motion that I have is a motion
4 for assessment of class damages. I didn't receive any
5 opposition, any written opposition to it.

6 By way of background, on September the 26th of
7 2014, the Court granted a motion of the PSC to certify a class
8 of existing class members with claims against Taishan.

9 Now, the certified class explicitly excluded
10 claims for personal injury. It doesn't mean that they don't
11 have a claim for personal injury. Those claims can be pursued
12 outside of this proceeding. But this class was based on
13 damages to real property which could be assessed on a square
14 footage basis.

15 I did that in the *Murphy Oil* case and it was
16 approved by the Circuit. We didn't have any personal injuries.
17 There's always a problem with class actions involving personal
18 injuries because of the lack of commonality or the lack of
19 predominance. But this case, as in *Murphy*, is only for damages
20 to property.

21 The PSC now requests that the Court award
22 damages to the class on an aggregated basis. Largely, they
23 base their argument on the *Germano* case. They hired an expert
24 to estimate the cost. He utilized the *Germano* program that I
25 devised in the *Germano* case and he updated it to the present

1 numbers.

2 As I read his report, he feels that it's
3 appropriate, using those numbers, that the Court award damages
4 for remediation costs of \$782,944,292.37, and for ultimate
5 living expenses, he computes based on the *Germano* program that
6 it be \$95,186,588.82, and for the loss of use and enjoyment, he
7 computes that it be \$385,200,000, for a total of
8 \$1,263,330,881.19 as the total damage. And as I said, he based
9 his figures using the *Germano* program and updated it to current
10 dollars.

11 But let me have the appearance of counsel first.

12 **MR. LEVIN:** Arnold Levin, sir, for class counsel, the
13 class, and the PSC.

14 **THE COURT:** Okay. Anybody representing the
15 defendant, either Taishan or any of its affiliates?

16 **MR. BLOCK:** Yes, Your Honor. Aaron Block from Alston
17 & Bird entering an appearance on behalf of BNBM.

18 **THE COURT:** Okay. So you're entering a formal
19 appearance for BNBM?

20 **MR. BLOCK:** Yes, Your Honor.

21 **THE COURT:** Okay. What's your request?

22 **MR. BLOCK:** Your Honor, we'd like to request a brief
23 extension given that we were just retained this morning and
24 just heard about this yesterday. I got on the last seat on the
25 last flight. In order for us to have time to understand and

1 get our arm's around this, we would ask for an extension of two
2 months, if that were permissible.

3 **THE COURT:** Two months. What's the plaintiffs'
4 position?

5 **MR. LEVIN:** The plaintiffs' position is that this is
6 a short proceeding. Your Honor has stated our position better
7 than I could state our position with regard to the damages. We
8 would like the hearing to be -- to take place today, to put in
9 the exhibits, make our statement, for the Court to take it
10 under consideration, for us to file, within a short period of
11 time, proposed findings of fact and conclusions of law.

12 And I think that would give the gentleman from
13 Atlanta two weeks to find out what's going on here.

14 **THE COURT:** What's your response to that?

15 **MR. BLOCK:** Your Honor, if I may. I understand that
16 there is a lengthy history here, but we are just getting up to
17 speed, and it's obviously very complicated. And in order to be
18 able to provide reasonable advice to our clients, we just need
19 more time.

20 **THE COURT:** All right. This matter involves a lot of
21 money and a lot of issues. I'll grant the continuance, but not
22 for two months. I'll grant a 30-day continuance for you to
23 look at the material. The thing that I need you to look at is
24 the material. If you have any problems with the admission of
25 the material, let me know. If you have any desire to have

1 witnesses, let me know, and then I'll schedule a hearing in
2 accordance with that.

3 **MR. BLOCK:** Thank you, Your Honor.

4 **THE COURT:** Okay.

5 **MR. LEVIN:** Your Honor, one thing. He's entered his
6 appearance for BNBK. There are other entities that have been
7 defaulted other than BNBK.

8 Are you in contact with the parents of BNBK,
9 CNBK, the parent of CNBK, SASAC, the state enterprise in China?
10 And are you apprising them of these proceedings so that they
11 could not come in one month from now and request another two
12 months?

13 **THE COURT:** Yes. Let me get in on this. From BNBK's
14 point, I'll grant you the continuance. But I want you to alert
15 the other people to this situation and alert them to the fact
16 that if they do not retain counsel, then I will be acting on
17 the motion and granting a default and damages to them.

18 But right now you only represent BNBK?

19 **MR. BLOCK:** That's correct, Your Honor.

20 **THE COURT:** All right. Let's get a list of the
21 people with their addresses and I direct you to alert them to
22 that.

23 **MR. LEVIN:** We will send Mr. Block a letter with all
24 of the entities that we're looking at. There's a docket full
25 of them, Aaron.

1 **THE COURT:** All right.

2 **MR. LEVIN:** May we see you for two minutes, Your
3 Honor, on another matter?

4 **THE COURT:** Okay. Anybody else on this matter?

5 All right. Thank you Mr. Block for coming over.
6 I appreciate it.

7 **THE DEPUTY CLERK:** All rise.

8 *****

9 **CERTIFICATE**

10 I, Jodi Simcox, RMR, FCRR, Official Court Reporter
11 for the United States District Court, Eastern District of
12 Louisiana, do hereby certify that the foregoing is a true and
13 correct transcript, to the best of my ability and
14 understanding, from the record of the proceedings in the
15 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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