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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED \* MDL No. 2047  
DRYWALL PRODUCTS \*  
LIABILITY LITIGATION \* Section L  
\*  
\* New Orleans, Louisiana  
\*  
Relates to: All Actions \* March 17, 2015  
\* \* \* \* \*

ORAL ARGUMENT BEFORE  
THE HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

Appearances:

For the Plaintiffs: Herman Herman & Katz, LLC  
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23 Proceedings recorded by mechanical stenography using  
24 computer-aided transcription software.  
25

PROCEEDINGS

(March 17, 2015)

08:52:37 1  
08:52:36 2  
08:58:07 3           **THE COURT:** Be seated, please. Good morning, ladies  
08:58:09 4 and gentlemen.

08:58:09 5                   Call the case, please.

08:58:11 6           **THE DEPUTY CLERK:** MDL No. 2047, In Re:  
08:58:12 7 Chinese-Manufactured Drywall Products Liability Litigation.

08:58:16 8           **THE COURT:** Counsel, make your appearance for the  
08:58:18 9 record, please.

08:58:21 10           **MR. HERMAN:** Good morning, Judge Fallon. Russ Herman  
08:58:22 11 of Herman Herman & Katz, New Orleans, on behalf of plaintiffs  
08:58:29 12 and the PSC.

08:58:33 13           **MR. TAYLOR:** Good morning, Your Honor. Bernard  
08:58:34 14 Taylor from Atlanta, and I'm honored to be here in your  
08:58:38 15 courtroom and to be in New Orleans. We are here to represent  
08:58:41 16 Taishan with my colleagues, Mike Kenny and --

08:58:46 17           **MR. KENNY:** Good morning, Your Honor.

08:58:50 18           **THE COURT:** Good morning.

08:58:53 19           **MR. WEINBERGER:** Good morning, Your Honor. I'm  
08:58:54 20 Alan Weinberger for Taishan as well, Your Honor. Thank you.

08:58:57 21           **MR. BARR:** Your Honor, Michael Barr from Dentons on  
08:59:00 22 behalf of BNB Group and BNB, PLC. I'm also here with my  
08:59:05 23 partners, Michael Moore and Richard Fenton, and Harry  
08:59:08 24 Rosenberg, who I'm sure the Court knows.

08:59:11 25           **MR. ROSENBERG:** Good morning, Your Honor.

08:59:12 1 **MR. STENGEL:** Good morning, Your Honor.

08:59:12 2 James Stengel of Orrick Herrington for CNBM Group and  
08:59:18 3 CNBM Limited.

08:59:24 4 **MR. LEVIN:** We usually let Russ speak, but  
08:59:27 5 Arnold Levin on behalf of the PSC, Your Honor.

08:59:30 6 **THE COURT:** Let me make some background comments to  
08:59:35 7 try to summarize this matter. It's very hard. It's been a  
08:59:39 8 long and tortured history, but I will do my best to shorten it  
08:59:44 9 as much as I can.

08:59:48 10 As we know, this case began sometime in 2005  
08:59:53 11 through 2008 when the hurricanes left us with a lot of damage  
09:00:03 12 to houses and other structures and the building boom on the  
09:00:08 13 East Coast depleted the United States' supply of drywall.  
09:00:14 14 Drywall, or sheetrock as we call it in our area, needed to be  
09:00:18 15 procured.

09:00:20 16 It was found that there were some opportunities  
09:00:25 17 in China. Knauf had a wholly owned subsidiary in China that  
09:00:34 18 manufactured drywall. They were able to begin shipping drywall  
09:00:38 19 in.

09:00:42 20 Taishan and various affiliates of Taishan,  
09:00:45 21 seeing the Knauf entities prosper, joined in the act and began  
09:00:54 22 shipping drywall into the United States.

09:01:01 23 Shortly after the drywall came in and was used,  
09:01:05 24 problems apparently developed. There was an odor. There was  
09:01:09 25 also some problem with a lot of appliances because of excess

09:01:14 1 amount of sulfur in the gypsum, which is the basis of drywall,  
09:01:20 2 which caused chemical reactions with copper wires and silver  
09:01:28 3 wires primarily, copper being the predominant building metal in  
09:01:33 4 the United States as well as the world for refrigerants and  
09:01:38 5 ground wires and things of that sort, and silver being the  
09:01:43 6 contact points for all switches. This created a problem  
09:01:48 7 because it caused those things to malfunction. In addition, as  
09:01:55 8 I said, it created odors that were distasteful for people who  
09:02:01 9 were living in buildings.

09:02:03 10 In any event, a lot of suits started and because  
09:02:06 11 of the numbers, the multidistrict panel declared it an MDL. On  
09:02:16 12 a personal note, I thought I was safe from this MDL because I  
09:02:19 13 did not have one case filed in Louisiana, but somehow or  
09:02:23 14 another I got all of them.

09:02:27 15 In any event, among the suits filed were the  
09:02:33 16 *Germano*, the *Mitchell*, the *Gross*, the *Wiltz* cases, which were  
09:02:39 17 class actions, each of those representing various states.  
09:02:44 18 These suits were against TG and TTP. A lot of the other suits  
09:02:52 19 were against other affiliates of Taishan. The suits were  
09:02:56 20 properly served.

09:02:58 21 No answer was filed by Taishan or TG or TTP,  
09:03:04 22 which I will refer to as Taishan. During the course of the  
09:03:13 23 proceedings, I tried to call their attention, particularly to  
09:03:16 24 the people who were in the room, as well as I put on my website  
09:03:20 25 that it was very important that answers be filed. There came a

09:03:26 1 time when I felt that I could do no more than to instruct the  
09:03:32 2 plaintiffs to take a default. That's not something that any of  
09:03:39 3 us in this jurisdiction take lightly. At first they were  
09:03:46 4 reluctant to take a default, but they took a default because I  
09:03:51 5 needed to move the cases.

09:03:54 6 The Court granted a preliminary default in  
09:03:56 7 September of 2009. Again, I put on the website that it was  
09:04:03 8 important for the Taishan entities to enter the case to no  
09:04:09 9 avail. After affording Taishan more than a reasonable time to  
09:04:16 10 answer, I moved forward with an evidentiary hearing in  
09:04:20 11 furtherance of the preliminary default in the *Germano* case.  
09:04:26 12 They had 14 people intervene in *Germano*.

09:04:31 13 I felt it was important to determine whether or  
09:04:36 14 not the material was defective and also what was the result of  
09:04:41 15 its defective nature. I heard experts. About four or five  
09:04:50 16 days of testimony was produced. I have no way of knowing, but  
09:04:55 17 I'm advised that the plaintiffs spent about a million dollars  
09:05:00 18 in presenting the case for default. It was an extensive  
09:05:09 19 hearing. Following that matter, I issued findings of fact and  
09:05:14 20 conclusions of law.

09:05:16 21 On May 11, 2010, I issued a default judgment in  
09:05:21 22 favor of the intervening plaintiffs in the total amount of  
09:05:25 23 \$2,609,129.99. As I said, there were about 16 people, about 8  
09:05:33 24 couples or so, 8 to 10 homes, with interest and court costs.

09:05:40 25 The case proceeded and on the last day for

09:05:45 1 appealing, TG entered an appearance and appealed the Court's  
09:05:53 2 judgment, seeking to vacate the judgment for lack of personal  
09:05:56 3 jurisdiction. This was the first time that lack of personal  
09:06:04 4 jurisdiction was claimed. It was the first time that they  
09:06:07 5 entered the lawsuit. So to be fair, they didn't claim it.  
09:06:12 6 They claimed it when they entered the lawsuit.

09:06:17 7 The Fifth Circuit felt that it was better for  
09:06:22 8 them to stay the appeal to allow enough time for the Court to  
09:06:30 9 rule on the issue of personal jurisdiction. At that point I  
09:06:36 10 had no record for personal jurisdiction. I wanted to give the  
09:06:42 11 parties an opportunity to present themselves on that issue.

09:06:48 12 The plaintiffs felt that, because of contacts  
09:06:53 13 and things of that sort that are germane to personal  
09:06:57 14 jurisdiction, it was important for them to get discovery. They  
09:07:01 15 went to China. Taishan cooperated to the extent of providing  
09:07:10 16 witnesses to be deposed in China. It was easier for the  
09:07:15 17 lawyers to go to China than it was for the witnesses to come to  
09:07:18 18 the United States, so that's what I ordered them to do.

09:07:25 19 The plaintiffs took about a week to ask  
09:07:28 20 questions. I got the transcripts back and, frankly, there were  
09:07:34 21 too many interpreters in the room. The plaintiffs had their  
09:07:37 22 interpreter, the defendants had their interpreter, and the two  
09:07:42 23 interpreters got together and hired a third interpreter to  
09:07:46 24 check them both. In any event, page after page I read, the  
09:07:50 25 interpreters were arguing as to what was meant, what was said.

09:07:53 1 I couldn't make much out of it, frankly. Notwithstanding the  
09:07:57 2 efforts of both sides, I could not make much out of it. I felt  
09:08:01 3 that it was necessary to take the depositions again and this  
09:08:05 4 time, as assistance to the parties, I would go over and  
09:08:09 5 participate and rule on the matters.

09:08:12 6 I didn't look forward to it. It was five days I  
09:08:16 7 spent in a basement without any windows. We worked eight hours  
09:08:20 8 a day, and on the last day they finished I flew home. That was  
09:08:26 9 the extent of my visit to Hong Kong, but it gave me an  
09:08:33 10 opportunity to preside over the depositions. I ruled on the  
09:08:38 11 objections immediately, and I thought the depositions at least  
09:08:43 12 gave me some information that would be of assistance as I  
09:08:48 13 focused on personal jurisdiction. I was able to listen to the  
09:08:53 14 witnesses. I was able to observe the witnesses. I was able to  
09:08:56 15 make some sense out of what they were saying and test their  
09:08:59 16 credibility.

09:09:02 17 I came back and wrote a rather long opinion.  
09:09:07 18 Too long. If I had more time, I would have written a shorter  
09:09:12 19 opinion, but I wanted to get it out as quickly as I could. So  
09:09:15 20 I wrote an opinion on it. Taishan appealed the opinion.

09:09:21 21 The Fifth Circuit decided to have two panels  
09:09:25 22 look at this issue. My opinion dealt with the four cases  
09:09:33 23 together, but they divided it up. One panel took one case and  
09:09:38 24 another panel took three cases. The cases were argued. The  
09:09:43 25 panels wrote extensive opinions affirming the Court.



09:09:58 1 I had found that I had personal jurisdiction. I  
09:10:00 2 had found that the entities solicited business, that the  
09:10:05 3 entities negotiated the business, that the entities complied  
09:10:11 4 with putting the appropriate United States logos on the  
09:10:20 5 drywall, and did other things that were significant, I thought,  
09:10:28 6 in establishing contacts and personal jurisdiction. As I said,  
09:10:35 7 the Fifth Circuit agreed with me and both panels affirmed the  
09:10:39 8 opinion. Now, we have 17 judges in the circuit court. A third  
09:10:48 9 of the judges in the circuit court focused on this issue and  
09:10:54 10 affirmed the Court.

09:10:58 11 At this point, unfortunately, Taishan began  
09:11:05 12 discussing it with their attorneys at that time. I saw the  
09:11:10 13 e-mail subsequently and ruled the e-mail admissible. They  
09:11:18 14 discussed what to do about it and they made the decision at  
09:11:23 15 their highest levels to just walk away. They decided not to  
09:11:27 16 participate. They decided to absent themselves and instructed  
09:11:32 17 their attorneys to take no action. Then they fired their  
09:11:36 18 attorneys.

09:11:37 19 At this point, time for a rehearing en banc,  
09:11:41 20 time for a cert to the United States Supreme Court had passed.  
09:11:50 21 The plaintiffs had a judgment of \$2 million, plus prejudgment  
09:11:55 22 interest, plus court costs, and they wanted to execute it. So  
09:12:01 23 the way you do it, obviously, as we all know, is to get a  
09:12:05 24 judgment debtor rule set. They set a judgment debtor rule. I  
09:12:10 25 instructed the prior attorneys for Taishan to advise Taishan

09:12:16 1 and its affiliates that a judgment debtor rule was set and that  
09:12:24 2 they should participate in it.

09:12:29 3 The judgment debtor rule was noted. I put it on  
09:12:33 4 the website. I had the prior attorneys for Taishan advise me  
09:12:39 5 that they had advised Taishan and its affiliates that the  
09:12:48 6 judgment debtor rule was set. Everybody knew about it.

09:12:55 7 Taishan decided not to show up. So I had no  
09:13:02 8 alternative, no choice but to hold them in contempt. I held  
09:13:06 9 them in both civil and criminal contempt. After I noticed it,  
09:13:12 10 I held a hearing which they didn't participate in. I issued an  
09:13:17 11 order holding them in, as I say, criminal and civil contempt.

09:13:23 12 I charged them with penalties of \$40,000. I  
09:13:28 13 felt it appropriate to also have them pay \$15,000 attorneys'  
09:13:33 14 fees for the work that the plaintiffs had done in working on  
09:13:39 15 the judgment debtor rule, being present and presenting  
09:13:47 16 themselves.

09:13:50 17 I also enjoined Taishan, TTP, and their  
09:13:53 18 affiliates from doing business in the United States until they  
09:13:59 19 participated in the process. When they do business in the  
09:14:03 20 United States, they look to the criminal and civil justice  
09:14:07 21 system of our country to protect them and they have a right to  
09:14:11 22 do that. Anybody doing business lawfully in our country has a  
09:14:16 23 right to look to our courts to be of assistance to them. But  
09:14:21 24 at the same time, they also have a duty to comply with the  
09:14:24 25 requirements of the courts, with the judgments of the courts.

09:14:27 1 So I said don't do business in the United States until and  
09:14:32 2 unless you comply with the Court's order; and if you do, you  
09:14:37 3 are going to forfeit 25 percent of the earnings that you make  
09:14:44 4 in violating the Court's order.

09:14:48 5 The case proceeded and the PSC, in July of 2014,  
09:14:54 6 filed a motion for class certification seeking to certify all  
09:15:00 7 existing class members with claims against all of the Taishan  
09:15:06 8 defendants for property damage only. They didn't seek class  
09:15:14 9 action in our district for personal injuries. That is about  
09:15:20 10 gone to history now. It is very difficult to have commonality  
09:15:26 11 and predominance in a personal injury case.

09:15:32 12 I have had experience with it in *Murphy Oil* and  
09:15:38 13 a couple other matters. You can have commonality and  
09:15:42 14 predominance in property damage because you really focus on  
09:15:47 15 square footage. All properties are not the same, but you  
09:15:54 16 simply arithmetically determine how much square footage in a  
09:15:59 17 particular case and that's what it is. So this Court as well  
09:16:05 18 as the circuits have approved class actions in property damage  
09:16:09 19 cases.

09:16:11 20 So I looked at this case, and I had had some  
09:16:17 21 experience with 14 other claims, and I was able to fashion a  
09:16:25 22 square footage allotment. I knew what the damage was. I knew  
09:16:33 23 the defective condition of the drywall and how much square  
09:16:38 24 footage it costs to repair or remedy the situation. So I  
09:16:45 25 granted the class certification. I certified the class.

09:16:52 1 Taishan and all of the defendants in that class  
09:16:56 2 action failed to respond. I certified the class in September  
09:17:03 3 of 2014 for the claimants who had defectively manufactured  
09:17:12 4 drywall in their home for property damages resulting therefrom  
09:17:18 5 on a square footage basis. I saw that would be the appropriate  
09:17:23 6 way of doing it.

09:17:25 7 No defendants responded, no appeals were taken,  
09:17:27 8 and several months later I set a date for a hearing to  
09:17:36 9 determine the damages. The first class action determined the  
09:17:41 10 scope of the class and the liability of the defendants, and the  
09:17:48 11 second one had to do with damages.

09:17:52 12 I set the date for damages, February 12, 2015.  
09:17:57 13 I gave people notice for a couple of months. I put that on our  
09:18:02 14 website. I announced it in open court. On February 12 I  
09:18:08 15 called the case. PSC counsel, Arnold Levin, announced he was  
09:18:16 16 present for the plaintiffs and ready to proceed. I asked the  
09:18:21 17 audience -- we had a full house at that time -- whether anyone  
09:18:24 18 was here for any of the defendants or any of the affiliates of  
09:18:27 19 the defendants.

09:18:31 20 There was silence for a moment and then there  
09:18:34 21 looked like a flurry of activity in the back of the courtroom  
09:18:38 22 and Mr. Aaron Block of Alston & Bird came forward and announced  
09:18:44 23 that he represented BNBM, one of the Taishan defendants. His  
09:18:51 24 firm had just been hired, apparently. Unfortunately for him,  
09:18:56 25 he probably caught the short straw. He was the last seat on

09:19:02 1 the last flight to arrive in New Orleans that day. He asked  
09:19:11 2 for a brief continuance.

09:19:13 3 I took him at his word -- he is a colleague, a  
09:19:18 4 lawyer -- that he just got the case. It seemed reasonable to  
09:19:23 5 me to give him a brief continuance, so I did. I granted his  
09:19:27 6 request and set the damage hearing for March 26, 2015.

09:19:36 7 Judging from the docket sheet, there was a  
09:19:38 8 flurry of activity after that and other attorneys were hired,  
09:19:44 9 some fired, some changed defendants. In any event, it looks  
09:19:51 10 like we have everybody here, at least from the Taishan area of  
09:19:55 11 defendants, or at least most of them.

09:19:59 12 We are gathered here today because of the  
09:20:03 13 plaintiffs' motion objecting to the right of the defendants to  
09:20:09 14 participate in the upcoming damage hearing. Basically the  
09:20:16 15 plaintiffs take the position that the defendants are in default  
09:20:26 16 and that they should not be allowed to participate.

09:20:30 17 I felt that I would profit from hearing oral  
09:20:33 18 argument on that motion and a response, so I received extensive  
09:20:39 19 briefs, all of which were helpful to me understanding your  
09:20:43 20 positions, but I always give oral argument if the parties  
09:20:48 21 request it, and the plaintiffs requested it. So let me hear  
09:20:52 22 from the movants.

09:20:55 23 **MR. HERMAN:** Good morning, Judge Fallon.  
09:20:55 24 Russ Herman. May it please the Court. I'm going to give a  
09:21:02 25 brief background of plaintiffs' position, and then I will call

09:21:08 1 on lead counsel, Arnold Levin.

09:21:12 2 Your Honor, we -- that is, on the plaintiffs'  
09:21:17 3 side -- once the Knauf settlement, along with the L&W, Banner,  
09:21:23 4 and Interior Exterior settlements were in place and funds were  
09:21:32 5 being paid out, Mr. Levin and I met and we organized a task  
09:21:38 6 force to proceed against Taishan and affiliates. Those folks  
09:21:42 7 are here. It's Mr. Meunier, Ms. Barrios, Mr. Irpino,  
09:21:51 8 Mr. Longer, and Mr. Davis. We continued to pursue, after the  
09:22:02 9 two Fifth Circuit arguments, the judgments, the briefing.

09:22:11 10 I'm going to cite to Your Honor's opinion at  
09:22:14 11 2014 WL 4809520. I'm going to separate my comments into two  
09:22:24 12 areas.

09:22:26 13 First of all, we have received no paid judgment  
09:22:29 14 from Taishan, which includes postjudgment interest, prejudgment  
09:22:35 15 interest, costs, the *Germano* judgment, and the costs are  
09:22:44 16 listed. Counsel for Taishan and the affiliates need only to  
09:22:52 17 consult the record. I indicate to Your Honor that just the  
09:22:57 18 service in that *Germano* case exceeded some \$200,000 in costs  
09:23:02 19 and, quite correctly, the plaintiffs, in proving the default,  
09:23:07 20 including deposition costs, expert costs, exceeded a million  
09:23:12 21 dollars just to prove up the default.

09:23:20 22 Your Honor at page 7 of the opinion begins to  
09:23:28 23 set forth the fact determinations which show that the  
09:23:34 24 affiliates, in concert with Taishan, engaged in alter ego or a  
09:23:42 25 single enterprise, and it's clear from the facts recited that

09:23:50 1 the issues of estoppel and res judicata also come into play.

09:24:01 2 With *Wiltz, Gross, Germano, and Mitchell* all  
09:24:09 3 having reached jurisdiction in this Court, I want to indicate  
09:24:14 4 we had a phone call that Taishan or one of their entities  
09:24:20 5 wanted to wire judgment to our offices to be put in a trust  
09:24:34 6 fund, but there was no accounting with it. After conferring  
09:24:40 7 with Mr. Levin and the task force at some length, we determined  
09:24:45 8 that the only appropriate payment of that judgment and indeed  
09:24:51 9 of the attorneys' fees -- and we have no indication as to  
09:24:55 10 whether they would be paid -- would be by check.

09:25:01 11 We felt that it was necessary under the given  
09:25:08 12 circumstances of this particular case, for reasons which I will  
09:25:13 13 not at this point list because we have new counsel in the  
09:25:17 14 case -- and we welcome them to the table. We felt it was  
09:25:22 15 important to know who was paying the funds, what's the source  
09:25:26 16 of the funds, who's signing the check, who's authorized to do  
09:25:32 17 it.

09:25:34 18 The only circumstance that I will recall is that  
09:25:39 19 there are de-privileged documents which conclusively show not  
09:25:46 20 only as direct evidence, as exceptions to the hearsay rule, as  
09:25:54 21 admissions against interest, that Taishan really is not the  
09:25:58 22 principal other than part of an alter ego or single enterprise.

09:26:07 23 So, Your Honor, at this point, citing directly  
09:26:14 24 from Your Honor's opinion at page 8:

09:26:18 25 "Based upon the Court's above findings of fact,

09:26:23 1 the Court concludes that Taishan, TTP, BNBM, BNBM Group, CNBM,  
09:26:32 2 CNBM Group constitute a single business enterprise for purposes  
09:26:38 3 of piercing the corporate veil and holding each of these  
09:26:41 4 entities liable for the conduct of their affiliated entities."

09:26:50 5 The interesting thing to those of us that have  
09:26:54 6 been before Your Honor for eight years attempting to get relief  
09:26:58 7 for 4,000 homeowners, some of whom have lost their homes, some  
09:27:04 8 of whom have suffered bankruptcy, some of whom have had to live  
09:27:14 9 under undesirable circumstances, it was revealing to us that  
09:27:22 10 Your Honor's opinion in 2014 in September -- I believe it's  
09:27:35 11 September. I wrote the date down. Yes. September 26, 2014 --  
09:27:40 12 has been reinforced in the last two months after a fight over  
09:27:46 13 privileged documents.

09:27:55 14 At this point, Your Honor, there are a number of  
09:28:02 15 matters that Mr. Levin will address. Before I sit down,  
09:28:10 16 though, defendants may be able, particularly Taishan, to  
09:28:18 17 satisfy a contempt, but they can't purge themselves of it.  
09:28:26 18 *Purge* is a different word. *Purge* means it's obliterated as if  
09:28:32 19 it never happened.

09:28:37 20 We believe that before contempt is lifted,  
09:28:42 21 Your Honor must be satisfied -- not the PSC, not our task  
09:28:47 22 force, Your Honor must be satisfied -- that the funds are going  
09:28:51 23 to be paid. We ask that they be paid by certified check and  
09:28:59 24 those individuals providing the funds also provide the sources  
09:29:05 25 of the funds. Having an attorney's trust account issue a



09:29:12 1 check, given the circumstances of this case, we feel is not  
09:29:16 2 warranted, nor do we feel a wire transfer going from one  
09:29:19 3 attorney's account to another satisfies this matter.

09:29:25 4 At this juncture I would like to have, if  
09:29:28 5 Your Honor will permit, lead counsel Arnold Levin --

09:29:33 6 **MR. LEVIN:** If you have been here for eight years,  
09:29:36 7 Your Honor -- I do love the man, but he leaves me very little  
09:29:39 8 to say after he has a few moments to say something, so I will  
09:29:43 9 say very little.

09:29:45 10 Your Honor, on Friday we worked very diligently,  
09:29:50 11 last week, to give the newly engaged attorneys a road map as to  
09:30:01 12 where we are so that they at least know what we perceive to be  
09:30:06 13 the issues that have to be resolved in this litigation to get  
09:30:12 14 it started and to move and not have a repeat performance of  
09:30:18 15 four years of going to Hong Kong and taking depositions and  
09:30:22 16 establishing personal jurisdiction, which we do not need  
09:30:26 17 because we have established personal jurisdiction in the three  
09:30:31 18 basic forums of this litigation, Virginia, Louisiana, and  
09:30:36 19 Florida. Their liability, other than Taishan's liability, is  
09:30:42 20 derivative of their stalking horse, Taishan. We think we have  
09:30:51 21 alter ego proven.

09:30:53 22 We have findings as to alter ego. We have very  
09:30:57 23 little discovery as to CNBM and BNBM, but we have enough to  
09:31:02 24 prove alter ego. Where do we go from here? We have default  
09:31:06 25 judgments in several cases against each of the major defendants

09:31:12 1 seated on my left. I don't think they will prevail, but I  
09:31:19 2 would imagine they are engaging right now in attempting to file  
09:31:25 3 papers to lift the default judgments. They can do that. That  
09:31:31 4 will establish and put the nail in the coffin on alter ego  
09:31:37 5 because they have less of a position in opening those default  
09:31:43 6 judgments than Taishan had, which was reviewed by Your Honor  
09:31:45 7 and a panel of the Fifth Circuit. Just one of the panels dealt  
09:31:51 8 with default judgment.

09:31:57 9 We may require discovery just as to alter ego.  
09:32:00 10 Personal jurisdiction is not an issue here because they are not  
09:32:03 11 the ones selling the product. They are the ones that had  
09:32:06 12 somebody sell the product on their behalf and alter ego comes  
09:32:10 13 in and out.

09:32:10 14 I believe sincerely, after 50 years of  
09:32:15 15 practicing law, that even paranoids have enemies. To say the  
09:32:23 16 least, I do not and we do not trust this group of defendants.  
09:32:32 17 Not the attorneys. Defendants. They dragged us for four or  
09:32:40 18 five years through litigation. They dragged Your Honor to  
09:32:44 19 Hong Kong. They dragged us in front of the Fifth Circuit.  
09:32:51 20 When we finally get close to getting relief for just a few of  
09:32:57 21 the 4,000 who have judgments in excess of \$2.7 million, what do  
09:33:03 22 they do? They fired their attorneys and they go back to China.

09:33:14 23 We went to work after that to find the assets.  
09:33:16 24 We served 30(b)(6) depositions. Why? Well, we wanted to know  
09:33:21 25 what's coming in on vessels to major distributors such as

09:33:26 1 Target and the like so that we could go against the cargo, let  
09:33:32 2 alone go against the vessels if we find that they are owned by  
09:33:37 3 SASAC.

09:33:38 4 We attempted to sue SASAC. There was a flurry  
09:33:44 5 of activity in China when we did that. The minister of justice  
09:33:50 6 would not serve SASAC because they are China. Everything in  
09:33:54 7 China is China, but we are not in China. We are here. The  
09:33:59 8 Foreign Sovereign Immunities Act gives us a cause of action  
09:34:02 9 against SASAC.

09:34:03 10 We will prepare a motion for alternative service  
09:34:07 11 on SASAC which will be filed shortly, but how do we make sure  
09:34:13 12 that when the going gets tough, the tough -- with a small T for  
09:34:23 13 China -- gets going? Because they can do the same thing again.  
09:34:29 14 So we ask them voluntarily to tell us where their assets are in  
09:34:34 15 the United States. Otherwise we would request the Court to  
09:34:36 16 allow us to keep pursuing our chase for assets.

09:34:41 17 In our chase for assets during the period of  
09:34:45 18 this contempt, we found out that they were doing business in  
09:34:51 19 Oregon. What do you do when you do business? They are not  
09:34:57 20 plaintiffs' attorneys. They are not injured people. They are  
09:35:00 21 not the 4,000 people that had their homes foreclosed and went  
09:35:04 22 into bankruptcy as a result of that client not doing what Knauf  
09:35:08 23 did and coming in and doing the honorable thing -- *honorable*,  
09:35:11 24 they use that word in China -- and cleaning up the mess that  
09:35:18 25 they created, whether it was intentional or not.

09:35:22 1 We found them in Oregon using our court system  
09:35:27 2 to recover money, and we believe that they are still there in  
09:35:31 3 Oregon. We haven't seen the settlement agreement of that case.  
09:35:37 4 We know they are in Plum Creek because what we found out is  
09:35:41 5 when we needed drywall, we went to China. When China needed  
09:35:45 6 wood/timber, they went to the United States. This cabal of  
09:35:51 7 CNBM and BNBM were involved in all of that.

09:35:55 8 They have to give us security that they will  
09:35:58 9 stay here and abide by this Court, the Fifth Circuit, and the  
09:36:03 10 Supreme Court's rulings in this case and not go home to China  
09:36:09 11 as soon as they see that something is happening that they don't  
09:36:12 12 like. We are fearful of that and we don't want to go through  
09:36:18 13 that again.

09:36:19 14 We don't want to drag this litigation out for  
09:36:21 15 four years where new counsel come in -- and I'm not being  
09:36:26 16 pejorative as to new counsel because there's rules, there's  
09:36:31 17 12(b) and 12(b)(2) and 12(b)(6) -- that we short-circuit this  
09:36:33 18 and get justice for these 4,000 homeowners, and we thought the  
09:36:38 19 class action was the way to do it.

09:36:40 20 Do they want to sit here for three years and  
09:36:42 21 bring in every one of these individual plaintiffs to come in  
09:36:46 22 and say, My square footage of my house is so and so?  
09:36:51 23 BrownGreer knows what the square footage of most of these homes  
09:36:56 24 are. We have already determined what it cost. Just to start  
09:37:02 25 at square one, we don't want that. We want to expedite this.

09:37:06 1 We want to know where they are.

09:37:08 2 With regard to the contempt, as Mr. Herman said,  
09:37:10 3 they are in contempt of Court. That's within Your Honor's  
09:37:13 4 province, but they have not satisfied *Germano*. There's a bill  
09:37:18 5 of costs. The clerk's office will come down with it just  
09:37:20 6 probably any week now. There's postjudgment interest. We  
09:37:26 7 don't see the money. Until we see the money, we can't even  
09:37:30 8 direct ourselves to that.

09:37:32 9 **THE COURT:** Okay.

09:37:33 10 **MR. LEVIN:** I think I have said enough because I have  
09:37:35 11 gone beyond what the issue is today, but I couldn't help  
09:37:38 12 myself, Your Honor.

09:37:39 13 **THE COURT:** Thank you.

09:37:40 14 Let me hear from the defendants.

09:37:43 15 **MR. TAYLOR:** Good morning again, Your Honor. As I  
09:37:46 16 indicated earlier, I'm Bernard Taylor, and I want to correct  
09:37:49 17 one thing. I didn't get a chance to properly introduce my  
09:37:52 18 other partner, Christy Eikhoff, who is here with us.

09:38:00 19 Your Honor, in one of the PSC's briefs -- I  
09:38:03 20 think it's the omnibus motion that is at Document 18475 at  
09:38:07 21 page 15 -- they use a quote from *Wizard of Oz* that I found  
09:38:13 22 amusing and clever. When I thought about where we are here in  
09:38:21 23 representing Taishan and where Taishan is in regards to this  
09:38:26 24 Court, I really looked up and thought that it would be  
09:38:31 25 appropriate to focus upon a more apt quote. That quote is that

09:38:35 1 the true courage is facing danger when you are afraid.

09:38:41 2 Your Honor, it was fear, fear by our client,  
09:38:45 3 that caused many of the issues that we are here dealing with  
09:38:49 4 today. The failure to attend the judgment debtor examination  
09:38:54 5 was fear of not understanding our system of justice, our court  
09:38:59 6 system, and not understanding how to maneuver through that  
09:39:03 7 appropriately.

09:39:05 8 The unintended result of that fear, Your Honor,  
09:39:09 9 was to show disrespect to this Court, to show disrespect to  
09:39:15 10 this process, to show disrespect to the plaintiffs, and also  
09:39:20 11 disrespect to the plaintiffs' attorneys. None of that was  
09:39:25 12 intended. As a result of that, this Court issued a contempt  
09:39:29 13 order that the Court has already talked about. Our client had  
09:39:33 14 dug a deep hole, a deep ditch, but our client is prepared to  
09:39:37 15 walk out of that ditch and back into this litigation.

09:39:42 16 **THE COURT:** Have they done anything to satisfy the  
09:39:46 17 judgment?

09:39:47 18 **MR. TAYLOR:** Your Honor, we are working on satisfying  
09:39:49 19 the judgment. There are issues in China that we have to work  
09:39:54 20 through in order to get the money transferred from China to  
09:39:58 21 here. We have commitments from our client to pay the full  
09:40:02 22 amount of the judgment.

09:40:02 23 As Mr. Levin indicated, there is the issue of  
09:40:07 24 court costs and attorney's fees that we would need to talk to  
09:40:13 25 the PSC about that so we can get that resolved and then that

09:40:18 1 will be paid, but immediately -- and by "immediately" I mean we  
09:40:22 2 are working through the process.

09:40:24 3 **THE COURT:** Would you guarantee it, as a firm, that  
09:40:26 4 they will pay?

09:40:28 5 **MR. TAYLOR:** Well, I can guarantee, Your Honor, that  
09:40:30 6 it has been fully represented to us by our client that they  
09:40:34 7 will pay.

09:40:36 8 **THE COURT:** See, they did that before, though.  
09:40:37 9 That's the problem I have.

09:40:38 10 **MR. TAYLOR:** Can I raise one other point, Your Honor?  
09:40:41 11 I can guarantee also that they have already begun the process  
09:40:45 12 of making those payments. The fact is we have already received  
09:40:50 13 some money, and they are trying to work through getting the  
09:40:53 14 rest of the money into the U.S. so that we can pay the full  
09:40:58 15 amount.

09:40:58 16 We think that's going to happen fairly quickly,  
09:41:00 17 and I understand the Court's concern about that. If that is  
09:41:05 18 the Court's concern, what we would ask the Court is to give us  
09:41:11 19 time to make that happen. Then we can agree on whatever the  
09:41:17 20 Court says is that time, and we will work hard to make sure we  
09:41:21 21 make it happen at the same time as we confer with the court  
09:41:26 22 clerk and with the PSC attorneys on the amount of the  
09:41:31 23 attorneys' fees and the court costs that's due.

09:41:39 24 So, Your Honor, the PSC and this Court, as you  
09:41:41 25 have indicated and as Mr. Levin has indicated, has said that we

09:41:46 1 cannot participate in this litigation unless and until we purge  
09:41:51 2 ourselves of the contempt. Your Honor, we have paid the  
09:41:55 3 penalty, as the Court knows. We have already communicated with  
09:41:59 4 the PSC attorneys regarding the method for paying them the  
09:42:05 5 \$15,000 in attorneys' fees. Obviously today we are here to  
09:42:10 6 participate.

09:42:11 7           What we are also willing to do -- and some folks  
09:42:15 8 may refer to this as lagniappe, which I understand is a term  
09:42:19 9 that you all use down here, but it's more than that, it's  
09:42:22 10 substantive -- is to compensate the Morgan family, the Baldwin  
09:42:26 11 family, the Leach family, the Orlando family, the Michaux  
09:42:30 12 family, the McKellar family, and the Heischober family, the  
09:42:37 13 *Germano* plaintiff families, by satisfying that judgment and  
09:42:39 14 allowing them to move on with their lives, and we have  
09:42:44 15 committed to do that.

09:42:51 16           Your Honor, the PSC's motion to preclude is both  
09:42:58 17 moot and unconstitutional. It's moot because, as we have  
09:43:03 18 indicated here, we have complied with the terms of the Court's  
09:43:07 19 contempt order, and we have gone beyond that by indicating that  
09:43:12 20 we will also pay the judgment.

09:43:14 21           It's also unconstitutional because what they are  
09:43:18 22 trying to do is to prevent us from defending ourselves in a  
09:43:26 23 situation where they are attempting to obtain, to attach our  
09:43:32 24 property, to get us to pay additional amounts of the judgment,  
09:43:38 25 and defend ourselves against the damages that are in the



09:43:42 1 underlying lawsuit, the class action where they are asking for  
09:43:49 2 \$1.2 billion or \$1.3 billion.

09:43:53 3 Your Honor, we cited to the Court the cases and  
09:43:57 4 the Court has already indicated that it has read our briefs.  
09:44:02 5 Reading our briefs, the Court knows that in the *Hovey* case and  
09:44:06 6 in the *Bonilla* case, which is at page 8 of our briefing, it  
09:44:14 7 states that "a defaulting defendant is entitled to contest  
09:44:19 8 damages and to participate in a hearing on damages." So  
09:44:23 9 constitutionally they cannot preclude us from participating  
09:44:28 10 fully, aggressively, and totally in the damages phase of this  
09:44:34 11 case, Your Honor.

09:44:36 12 Your Honor, Justice Kennedy in the *Degen* case,  
09:44:39 13 citing back to *Hovey*, basically concluded that to prevent a  
09:44:47 14 defendant from participating in the damages phase is  
09:44:50 15 unconstitutional, but it's also rough justice, and rough  
09:44:55 16 justice would not be tolerated by the Supreme Court. We  
09:45:00 17 request that it not be tolerated by this Court.

09:45:04 18 Your Honor, the issue of additional attorneys'  
09:45:08 19 fees that counsel spent a good bit of time talking about today,  
09:45:14 20 we contend -- and the Court supports us -- that any request for  
09:45:20 21 additional attorneys' fees requires another proceeding for the  
09:45:25 22 Court to look at that particular issue and decide whether or  
09:45:28 23 not those fees are appropriate, for the Court to decide whether  
09:45:33 24 or not we have indeed violated the Court's order in any way,  
09:45:37 25 shape, or form, because, Your Honor, we would have purged

09:45:41 1 ourself of the underlying contempt order, met all of their  
09:45:47 2 requirements. Therefore, under those circumstances, if they  
09:45:50 3 are contending that there was a subsequent violation of some  
09:45:54 4 kind, they would have to ask this Court to convene a new  
09:46:00 5 proceeding for us to be able to defend ourselves in that  
09:46:03 6 proceeding.

09:46:05 7 Your Honor, I'm prepared to respond to any  
09:46:07 8 questions the Court may have.

09:46:08 9 **THE COURT:** No. Let me hear from your other  
09:46:11 10 colleagues.

09:46:21 11 **MR. BARR:** Good morning, Your Honor. Michael Barr,  
09:46:21 12 as I stated earlier, on behalf of BNBM, PLC and BNBM Group. I  
09:46:33 13 want to thank the Court for the opportunity for us to appear  
09:46:35 14 before you in this matter and to address what is the sole  
09:46:36 15 motion before the Court today, which is to preclude  
09:46:38 16 participation not only by the Taishan defendants but also by my  
09:46:42 17 clients, who are separate corporations, to participate in the  
09:46:46 18 damages hearing that the Court has set. Your Honor, there are,  
09:46:49 19 respectfully, five different reasons, and each and every one of  
09:46:53 20 them suffice for Your Honor to deny the motion that is before  
09:46:56 21 you, and that is the sole motion that is before you today.

09:47:00 22 First of all, as Mr. Taylor has described as a  
09:47:03 23 matter of due process, we are entitled to participate in that  
09:47:06 24 hearing. We have cited authority in our brief not only with  
09:47:09 25 respect to the *Hovey* case but also additional authority that

09:47:13 1 both indicates, number one, that the issue of the right to  
09:47:15 2 participate in a damages hearing applies equally to a defaulted  
09:47:20 3 defendant and, for that matter, also applies equally even to a  
09:47:24 4 defaulted defendant found in contempt.

09:47:27 5 Your Honor, with respect to my clients, the  
09:47:30 6 issues are different and additional. First of all, the Court's  
09:47:35 7 contempt order was directed solely against Taishan. The remedy  
09:47:39 8 Your Honor provided with respect to the 25 percent of profits  
09:47:42 9 may have spoken more broadly, but Your Honor's order could not  
09:47:47 10 have been clearer stating that the Court holds Taishan in  
09:47:50 11 contempt of Court both criminally and civilly. There is no  
09:47:56 12 reference to any of the other defendants that are here today.

09:47:59 13 Furthermore, that contempt order was entered in  
09:48:04 14 the *Germano* case and my clients, BNBM Group and BNBM, PLC, were  
09:48:06 15 not parties in that case, so they could not have been held in  
09:48:08 16 contempt. Since they were not parties to that case, they could  
09:48:11 17 not have had the opportunity to be heard with respect to any  
09:48:14 18 attempt to impose contempt on them.

09:48:17 19 Respectfully, the references made in the omnibus  
09:48:20 20 brief that they filed last Friday, where they are attempting to  
09:48:23 21 try to bootstrap subsequent rulings in order to create contempt  
09:48:29 22 against my clients, does not suffice as a matter of law, does  
09:48:32 23 not give us that opportunity to be heard and, respectfully,  
09:48:36 24 should be denied.

09:48:39 25 Further, Your Honor what we have heard a lot

09:48:41 1 about today with respect to all the other defendants here other  
09:48:44 2 than Taishan, referencing issues in terms of piercing the  
09:48:48 3 corporate veil and again trying to bootstrap that claim of  
09:48:53 4 contempt to apply to other parties beyond Taishan based upon  
09:48:56 5 Your Honor's subsequent ruling with respect to alter ego  
09:49:00 6 issues, Your Honor, that does not create contempt against my  
09:49:04 7 client. That does not create an opportunity for them to try to  
09:49:07 8 extend the Court's ruling. Respectfully, that does not provide  
09:49:12 9 a basis to preclude us from participating.

09:49:17 10 First of all, as I stated, Your Honor, your veil  
09:49:20 11 piercing ruling did not exist at the time of the contempt order  
09:49:24 12 and, therefore, it could not have been intended as part of the  
09:49:26 13 contempt order to apply beyond Taishan.

09:49:29 14 Even more importantly -- and, Your Honor, this  
09:49:30 15 is an issue we will have to address with the Court subsequently  
09:49:34 16 and would want the opportunity to brief and address it, both  
09:49:38 17 with respect to the facts and the law -- is that the sole basis  
09:49:40 18 of Your Honor's findings in the class action decision on  
09:49:43 19 September 26 were based upon the deemed admissions because of  
09:49:48 20 Taishan's failure to respond to requests to admit.

09:49:53 21 Looking at Your Honor's decision beginning on  
09:49:55 22 paragraph 28 of that decision and going forward, which were the  
09:49:58 23 predicate holdings for Your Honor's finding, every single one  
09:50:02 24 of them specifically states that the basis for those factual  
09:50:06 25 findings, whether requests for admission and the fact that they

09:50:09 1 were not responded to, were deemed admissions. Your Honor,  
09:50:14 2 under binding Fifth Circuit authority, those findings cannot be  
09:50:18 3 applied to us with respect to their deemed admissions. They  
09:50:21 4 only apply with respect to Taishan, not with respect to us.

09:50:23 5 We will at an appropriate time, Your Honor,  
09:50:26 6 according to Your Honor's schedule, provide the Court with the  
09:50:29 7 facts that address piercing the corporate veil, with the facts  
09:50:33 8 that address personal jurisdiction, with the specific facts  
09:50:36 9 that deal with our clients and our clients' roles in these  
09:50:40 10 proceedings. We do want to address those issues at an  
09:50:46 11 appropriate time with the Court, we have preserved our defenses  
09:50:50 12 in that regard, but we are not here seeking any delay in this  
09:50:53 13 Court's proceedings.

09:50:55 14 The issue before the Court today is whether we  
09:50:57 15 are allowed to participate in the hearing that the Court will  
09:51:00 16 schedule and any other proceedings relating to the assessment  
09:51:03 17 of damages. Respectfully, Your Honor, based upon the existing  
09:51:08 18 orders of this Court, the Supreme Court authority with respect  
09:51:09 19 to the due process rights, the lack of our participation  
09:51:13 20 before, we should be entitled and found to be entitled to  
09:51:16 21 participate in those hearings. Thank you, Your Honor.

09:51:18 22 **THE COURT:** Thank you very much.

09:51:20 23 Who is next?

09:51:23 24 **MR. STENGEL:** Your Honor, just briefly, Jim Stengel  
09:51:24 25 for CNBM and CNBM Group. We will stand on the briefing and the

09:51:27 1 able argument that has been presented to you. Thank you.

09:51:31 2 **THE COURT:** Okay. Fine.

09:51:32 3 Let me hear a response just briefly, though, if  
09:51:33 4 you would.

09:51:33 5 **MR. HERMAN:** I'll briefly respond. I will take part,  
09:51:35 6 may it please Court, and Mr. Levin will take part.

09:51:41 7 In this country I thought we have nothing to  
09:51:44 8 fear but fear itself. I don't find that fear of a judgment  
09:51:50 9 debtor rule after this litigation to be any plausible excuse  
09:51:58 10 for violating Court orders. I'm not even sure how you can even  
09:52:05 11 pull that amorphous metaphor out of some ether and apply it in  
09:52:13 12 this case.

09:52:16 13 CNBM, BNBM, they are not new defendants. They  
09:52:21 14 were served in The Hague many years ago and declined to  
09:52:27 15 participate.

09:52:30 16 Due process, unfortunately, the way that  
09:52:34 17 defendants, particularly the People's Republic of China and  
09:52:41 18 these dominated business single enterprises, apply due process  
09:52:47 19 is to say, "We don't care if you get a judgment in the  
09:52:50 20 United States. We are not going to enforce it in China." I  
09:52:55 21 don't know what kind of process that is. It's certainly alien  
09:53:02 22 to all constitutional rights that these 4,000 folks have to  
09:53:07 23 proper redress. CNBM and BNBM have been aligned with Taishan  
09:53:17 24 since inception.

09:53:20 25 This argument about a Supreme Court case that's

09:53:23 1 not applicable here, where you are invited for years to  
09:53:28 2 participate and you refuse, certainly is not akin to the  
09:53:39 3 Supreme Court ruling I have cited.

09:53:44 4 The idea that we are working through how to pay  
09:53:53 5 contempt orders, what do you have to work through to pay a  
09:53:57 6 \$15,000 attorneys' fee, what arcane movement? Maybe it's not  
09:54:04 7 arcane. Maybe it's, as we argued to the Court some five years  
09:54:09 8 ago, that Taishan was controlled up the line. We introduced  
09:54:16 9 evidence and affidavits of their multiple control and  
09:54:22 10 participation, and the Court properly ruled at that time we are  
09:54:27 11 not going to allow up-the-line discovery per se at this  
09:54:35 12 juncture, but it was reserved.

09:54:39 13 What I haven't heard and what really is of great  
09:54:48 14 concern is are the defendants now claiming that this Court has  
09:55:02 15 jurisdiction or are we to go through this mechanical process,  
09:55:08 16 which isn't warranted and which denies 4,000 folks due process,  
09:55:14 17 to be told after we take more depositions, have more hearings,  
09:55:23 18 offer more proof that, "Well, the Court has no jurisdiction,"  
09:55:31 19 and then we end up in the Fifth Circuit again?

09:55:38 20 I'm not very good at forecasting what appellate  
09:55:47 21 courts will do, but based on history, even after these 4,000  
09:55:59 22 folks are confirmed, China still adopts the attitude that they  
09:56:08 23 don't have to pay, they are not going to enforce a judgment.

09:56:12 24 The last thing I want to indicate to the Court  
09:56:17 25 is the Court may recall that when this Honorable Court went to

09:56:21 1 China to monitor a deposition, there was some concern about  
09:56:27 2 whether a deponent put forth by Taishan had veracity in what  
09:56:41 3 that individual was saying, and we challenged repeatedly that  
09:56:48 4 the markings of compliance with safety codes and ASTMs were  
09:56:54 5 manufactured, that those stamps were manufactured. Very  
09:56:57 6 recently the head of a factory in China manufacturing  
09:57:06 7 floorboard sent to the United States admitted that they lied  
09:57:12 8 when they affixed a safety monogram to the flooring that they  
09:57:26 9 sent to the United States.

09:57:27 10 So my biggest concern is that we are going to be  
09:57:32 11 tied up for four years and not once have I heard -- I know it's  
09:57:36 12 in the background that these defendants want full process in  
09:57:42 13 the United States courts, but they don't admit jurisdiction.

09:57:46 14 **THE COURT:** Let me hear your response briefly.

09:57:53 15 **MR. LEVIN:** Some newly arrived individuals to this  
09:57:57 16 forum may wonder what Jerry Meunier is doing here. He  
09:58:02 17 whispered in my ear and I will repeat: If ignorance of the law  
09:58:08 18 is no excuse, how could fear of the law be an excuse? That's  
09:58:17 19 very apropos to what's here.

09:58:23 20 Your Honor, to cut through everything that's  
09:58:27 21 been said, until they move to open up a default judgment, we  
09:58:31 22 have alter ego, single enterprise liability, and we await that.

09:58:41 23 The contempt has to be properly satisfied, not  
09:58:48 24 promises from China, not the money hasn't gotten out of China.  
09:58:53 25 We know a little bit about Chinese law because we know a little



09:58:57 1 bit about the Chinese secrecy act, which was raised by Knauf in  
09:59:03 2 the deposition of Mark Norris in Hong Kong, but we don't want  
09:59:07 3 to delay compensation for our clients.

09:59:11 4 If they can appear at the damage aspects of the  
09:59:18 5 class certification hearing and partake in the class  
09:59:26 6 certification hearing on the state of the record as it now  
09:59:29 7 exists, we have no problem if they appear next Thursday, listen  
09:59:33 8 to what we have to say, and then say what they have to say, but  
09:59:38 9 those damages in *Germano* were tried. They are aligned with  
09:59:44 10 Taishan. Taishan was aligned, at least with the proofs, with  
09:59:49 11 Knauf.

09:59:50 12 These damages are a mathematical formula. It's  
09:59:57 13 a question of arithmetic, and the case law is such that it's  
10:00:02 14 easy to present arithmetic to lawyers and judges. Even we who  
10:00:06 15 are not mathematicians know how to add and subtract. So next  
10:00:13 16 Thursday they can be here. They have already our proposed  
10:00:16 17 findings of fact. They can prepare from it and make an  
10:00:19 18 argument. We don't want these 4,000 people who have gone  
10:00:24 19 through four or five, six, eight years to have to go through  
10:00:29 20 four more years and be tortured as if they haven't been  
10:00:34 21 tortured already.

10:00:35 22 We can't lose sight of the fact that Taishan  
10:00:39 23 caused the *Germano* plaintiffs to lose their homes, suffer  
10:00:43 24 foreclosure, and suffer bankruptcy because they say they didn't  
10:00:47 25 understand the law when the record, the privileged documents

1 show that counsel from Taishan was talking to CNBM and BNBK and  
2 they were privy to the decisions, CNBM and BNBK, that Taishan  
3 made to walk away from these proceedings. Thank you,  
4 Your Honor.

5 **THE COURT:** Thank you very much. I have read the  
6 briefs. I understand the issue. I appreciate the comments of  
7 counsel. Let me tell you the way I see it.

8 There are three issues in this case as I see it.  
9 First, the contempt issue. TG and TTP are still in contempt of  
10 Court. Here present counsel I have respect for and confidence  
11 in indicates that they intend to pay. While I believe him, I  
12 have a problem with this defendant, obviously, because this is  
13 a defendant who refused to participate and thumbed its nose at  
14 the Court.

15 I understand it's a foreign individual.  
16 Sometimes they may not understand our law, but that's why they  
17 hire good lawyers. They had a very fine firm prior to this  
18 representing them, advising them, and they have no excuse for  
19 their conduct.

20 The contempt order had four parts. First, they  
21 had to pay the judgments in the *Germano* cases, some  
22 200-some-odd thousand dollars, plus prejudgment interest of  
23 100-some-odd thousand dollars, plus now postjudgment interest.  
24 They had to pay a penalty of \$40,000, which I understand that  
25 they put in the registry of the Court. They had to pay the

1 attorneys' fees of \$15,000.

2 Also, I enjoined them as well as their  
3 affiliates from doing business in the United States until they  
4 did what they had to do; and if they did business in the  
5 United States or their affiliates did business in the  
6 United States, they had to forfeit 25 percent of the earnings.

7 At the present time, as I mentioned, it looks  
8 like they have paid \$40,000 into the registry of the Court.  
9 They haven't paid the \$15,000 attorneys' fees, they haven't  
10 paid anything on the judgment, and there's total silence on the  
11 25 percent. I don't know whether they have done business or  
12 whether their affiliates have done business or not. To me it's  
13 clear that TG and TTP can't participate while they are in  
14 contempt.

15 Now, I also think it's fair to give the attorney  
16 two weeks to get them to have it paid. So I'm going to  
17 instruct them to fully pay the judgment, the attorneys' fees,  
18 the \$40,000, and court costs within the two-week time. They  
19 have had since July 17, 2014, to do what the Court ordered them  
20 to do. They haven't done it.

21 Now, with regard to the 25 percent, that to me  
22 is going to depend upon whether Taishan, TTP, parents or  
23 affiliates have done business in the United States. If so, how  
24 much have they earned? This may be factually pregnant and  
25 require some discovery. I'm going to instruct Taishan to

10:04:59 1 willingly participate in the discovery of this matter. If they  
10:05:05 2 don't participate in the discovery, I'm going to strike their  
10:05:11 3 defenses and rule accordingly.

10:05:15 4 The second issue, as I see it, is a relationship  
10:05:17 5 between CNBM and BNBM on the one hand and TG and TTP on the  
10:05:26 6 other. I think the relationship is important to determine  
10:05:29 7 whether they are affiliates or whether they are alter egos of  
10:05:34 8 TG and TTP.

10:05:37 9 There may be some factual dispute here. It may  
10:05:42 10 be necessary for the plaintiffs to take depositions. If they  
10:05:47 11 look at their material and they find that the material is not  
10:05:53 12 necessarily admissible or that they need to go further, they  
10:05:56 13 ought to be able to take depositions of the BNBM people and the  
10:06:03 14 CNBM people.

10:06:06 15 I'm going to look to BNBM and CNBM to willingly  
10:06:12 16 participate in that discovery. If they don't, that to me means  
10:06:18 17 that they should not participate in this litigation and I will  
10:06:23 18 act accordingly. This relationship, whether it exists or not,  
10:06:30 19 will determine the applicability of res judicata and/or  
10:06:33 20 collateral estoppel. It will also determine the scope of the  
10:06:42 21 contempt order.

10:06:45 22 If they have a relationship, the scope of the  
10:06:59 23 hearing will to some extent be connected to that, but the  
10:07:12 24 hearing that I'm looking to have is really the hearing on  
10:07:19 25 damages. That's what is before the Court, damages. I think

10:07:26 1 that there may be some factual question as to how many homes  
10:07:33 2 you're dealing with in this particular case, and that may be  
10:07:39 3 something that BNBM or Taishan is willing to examine and deal  
10:07:49 4 with.

10:07:55 5 The hearing, as I say, will be on damages. I  
10:08:00 6 think that it's fair, however, for the parties to have some  
10:08:06 7 time to discover the relationship between BNBM and CNBM. I  
10:08:14 8 think five weeks is sufficient to do that.

10:08:18 9 I'm going to instruct the parties to meet and  
10:08:21 10 confer, for the plaintiffs to tell the defendants who they want  
10:08:27 11 to depose, and for the defendants to produce those individuals.  
10:08:39 12 I will reserve my right to determine whether a bond should be  
10:08:46 13 put up before allowing participation. I will also determine  
10:08:58 14 who has a right to participate, and I will be guided to some  
10:09:08 15 extent by the willingness of the defendants to cooperatively  
10:09:13 16 participate in this discovery process.

10:09:15 17 So I'm going to reschedule the hearing on  
10:09:21 18 damages for approximately five weeks hence. I will put in a  
10:09:27 19 minute entry the date of the hearing at a time when I'm not in  
10:09:29 20 trial. If I am in trial, I will take a break for a day and  
10:09:35 21 handle this matter.

10:09:36 22 I'm going to move this case, folks. These  
10:09:41 23 individuals, the claimants, have been, many of them, out of  
10:09:45 24 their homes for a long time. Some of these individuals have  
10:09:53 25 been and, as far as I know, still are living in tents in their

1 backyard because they can't abandon the house. If they abandon  
2 the house, their insurers have told them that they are going to  
3 cancel their fire insurance. So they live in the backyard and  
4 run in and out of the house to use the bathroom facilities.  
5 That's not fair to these folks. It's about 4,000 of them out  
6 there, and we have to get some resolution. So I urge you all  
7 to cooperate.

8 Anything from the parties?

9 **MR. TAYLOR:** Yes. Your Honor, tomorrow we have a  
10 date when we are to file some briefing in regards to the  
11 damages, and we have some fairly comprehensive briefing that we  
12 wanted to file. I assume the Court still wants us and will  
13 allow us to file that briefing tomorrow?

14 **THE COURT:** Well, don't file it for two weeks.  
15 Satisfy the judgments first, pay the court costs, pay the  
16 penalties, and then I will entertain a request to file a brief.

17 **MR. TAYLOR:** Thank you, Your Honor.

18 **MR. HERMAN:** Your Honor, I just want to address two  
19 matters. I'm not certain that learned counsel for Taishan  
20 understands that with regard to the four settlements that were  
21 paid, those claimants paid no attorneys' fees. Here, in  
22 *Germano*, there's no provision for attorneys' fees. Your Honor  
23 might want to issue an order saying there will be no attorneys'  
24 fees or however Your Honor appreciates that.

25 Secondly, Your Honor, we are willing today,

1 since counsel are here, to meet all day to see if they have  
2 some things they would like to resolve because five weeks is a  
3 short time.

4 We will be filing motions in connection with the  
5 30(b)(6) depositions in which we request that representatives  
6 of BNBM and CNBM appear here in the United States, in a  
7 courtroom somewhere in this building, so that discovery that  
8 plaintiffs have to do are not going to be exorbitant costwise  
9 and we are not going to be faced without having rulings as  
10 these depositions are taken.

11 **THE COURT:** File a motion and I will deal with it.

12 **MR. MILLER:** Good morning, Your Honor. Kerry Miller  
13 on behalf of Knauf. I've been in the back of the courtroom  
14 listening. I understand Your Honor wants to have basically a  
15 five-week schedule on the issue of class damages.

16 Your Honor, since new counsel -- I haven't met  
17 any of these gentlemen who have appeared, but I have received  
18 phone calls and e-mails from some of their colleagues over the  
19 last two weeks -- have appeared in the litigation and appeared  
20 to want to engage on the issue of damages, I received a number  
21 of requests for information, either in my capacity as defense  
22 liaison counsel or in my capacity as counsel for Knauf.

23 Knauf, my office, has a lot of information on  
24 damages. BrownGreer has a lot of information on damages.  
25 Your Honor, in light of the contempt order, my response has

10:13:25 1 been I can't provide that information as defense liaison  
10:13:31 2 counsel.

10:13:33 3           Secondly, Your Honor, in my capacity as Knauf's  
10:13:36 4 counsel, my client has instructed me not to provide any  
10:13:39 5 information to Taishan or any of its affiliates because of the  
10:13:42 6 damages that these parties caused my client.

10:13:45 7           So if there's going to be a five-week discovery  
10:13:48 8 schedule for damages, I would like to get some guidance from  
10:13:52 9 the Court as to what the Court's expectations are of me in  
10:13:58 10 terms of providing that information as liaison counsel.

10:14:02 11 Secondly, I wanted to advise the Court of my client's  
10:14:06 12 instruction to me not to provide that information, certainly  
10:14:09 13 not to provide it for free, to these requests, Your Honor.

10:14:11 14           **THE COURT:** Okay. Well, you ought to meet and confer  
10:14:14 15 with them and see what they want, and then I will deal with the  
10:14:17 16 costs as well other matters.

10:14:20 17           **MR. LEVIN:** Your Honor, in order to complete the  
10:14:22 18 discovery within five weeks, we will deliver informally a  
10:14:29 19 letter to counsel for the defendants with an abbreviated --  
10:14:33 20 abbreviated -- list of documents that we need translated from  
10:14:41 21 Chinese into English so that we are prepared to go forward in  
10:14:45 22 this five-week compressed time.

10:14:47 23           We appreciate the fact that you have given us  
10:14:50 24 only five weeks because time is very important to our clients,  
10:14:56 25 but we do need some documents before we can get involved in



10:15:00 1 that. What I suggest is we will regroup, we will give the  
10:15:06 2 defendants a list of what we need, and then we will talk about  
10:15:09 3 that list on Thursday.

10:15:11 4 If that's okay?

10:15:14 5 **MR. TAYLOR:** We will talk.

10:15:17 6 Your Honor, just one other thing, and I hate to  
10:15:18 7 keep jumping up.

10:15:20 8 **THE COURT:** That's all right.

10:15:20 9 **MR. TAYLOR:** I understood that counsel for the PSC  
10:15:23 10 indicated that they wanted to have -- this is Bernard Taylor,  
10:15:25 11 I'm sorry -- depositions of the Taishan defendants to occur  
10:15:32 12 here, and I didn't understand that the Court had ordered that.  
10:15:36 13 That may be of some difficulty to get everybody here, of  
10:15:39 14 course, in a five-week period of time. It would be much  
10:15:42 15 easier, I think, if we are going to pursue this discovery, to  
10:15:45 16 take the depositions as was done before, in Hong Kong or  
10:15:49 17 somewhere like that, so we can easily get the deponents to the  
10:15:54 18 deposition.

10:15:54 19 **THE COURT:** Well, the problem is twofold: One is  
10:15:57 20 time and the second is cost. It's not fair to stick the  
10:16:00 21 plaintiffs with costs, for sure. To me, the problem that I  
10:16:06 22 have faced before is that there are often disputes and  
10:16:11 23 difficulties in these depositions that require some  
10:16:13 24 supervision, and I'm not able to go back to Hong Kong. I'm  
10:16:17 25 just not able to do that. I'm able to be here and participate

10:16:20 1 in it if either one of you all need me.

10:16:23 2 We are at a point here where your client is in  
10:16:31 3 contempt of Court. They really are. Whether they are afraid  
10:16:35 4 or whether they don't know or whether they don't speak the  
10:16:38 5 language or whatever it is, they are in contempt of Court, and  
10:16:41 6 they have been in contempt of Court since July.

10:16:44 7 **MR. TAYLOR:** Correct.

10:16:44 8 **THE COURT:** It's unfair for them to ask me at this  
10:16:48 9 time, when they are in contempt of Court, to do them a favor.  
10:16:52 10 It's just not fair.

10:16:53 11 **MR. TAYLOR:** I understand.

10:16:54 12 **THE COURT:** I'm a reasonable person. I walked in  
10:16:57 13 your shoes for 30-some-odd years as a litigator.

10:17:01 14 **MR. TAYLOR:** I understand.

10:17:01 15 **THE COURT:** I know the problems you have, but it's  
10:17:03 16 not fair to me.

10:17:06 17 **MR. TAYLOR:** We appreciate that, Your Honor.

10:17:08 18 One other point, and I'm probably treading on  
10:17:13 19 dangerous ground to raise this. The costs that plaintiffs have  
10:17:17 20 indicated for translating the documents from Chinese to  
10:17:22 21 English, is the Court ordering that we cover that cost?

10:17:25 22 **THE COURT:** No. I'm talking about the court costs in  
10:17:28 23 connection with these cases. The other costs, that may be  
10:17:33 24 something that I can deal with, but I'm not concerned about  
10:17:36 25 that at this time. At this point I have issued a judgment in

1 cases, 200-plus thousand dollars, plus prejudgment interest,  
2 postjudgment interest, plus court costs in those cases, and I  
3 get nothing but silence.

4 **MR. TAYLOR:** We understand, Your Honor. We  
5 understand, Your Honor, we need to establish credibility with  
6 this Court, and we are working on that.

7 **THE COURT:** Now, I'm going to also set up a telephone  
8 conference with you all in about three weeks to see where we  
9 are.

10 **MR. TAYLOR:** Thank you, Your Honor.

11 **MR. BARR:** Your Honor, if I may just speak from here  
12 rather than up to the podium?

13 **THE COURT:** Sure.

14 **MR. BARR:** We also were under, at least currently,  
15 the Court's direction to file with respect to damages by  
16 tomorrow. Am I to take it that likewise we should wait that  
17 period of time and then file thereafter?

18 **THE COURT:** Yes.

19 **MR. BARR:** Thank you.

20 **MR. STENGEL:** Your Honor --

21 **THE COURT:** The same.

22 **MR. STENGEL:** Another question. CNBM Group and  
23 Limited will have jurisdictional objections. We have no wish  
24 to delay the proceedings. We are willing to work with  
25 plaintiff to find a way we can proceed. That creates a problem

1 with us to voluntarily present witnesses in the case. We may  
2 need a Court order.

3 **THE COURT:** I'll give you a Court order. If you  
4 don't participate, I'm just going to strike your pleadings.  
5 You have to participate in discovery. If not, then I have a  
6 duty and responsibility just to strike it. You can't  
7 participate and not participate. Reserve whatever you want to  
8 reserve, that's one thing. I will give you a Court order if  
9 that's necessary.

10 **MR. STENGEL:** Understood, Your Honor. Thank you.

11 **THE COURT:** Folks, thank you very much.

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

13 (Proceedings adjourned.)

14 \* \* \*

15 **CERTIFICATE**

16 I, Toni Doyle Tusa, CCR, FCRR, Official Court  
17 Reporter for the United States District Court, Eastern District  
18 of Louisiana, certify that the foregoing is a true and correct  
19 transcript, to the best of my ability and understanding, from  
20 the record of proceedings in the above-entitled matter.

21  
22  
23 s/ Toni Doyle Tusa  
24 Toni Doyle Tusa, CCR, FCRR  
25 Official Court Reporter

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