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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

In Re: CHINESE-MANUFACTURED
DRYWALL PRODUCTS LIABILITY LITIGATION, CIVIL DOCKET NO. 09-MD-2047
SECTION L
NEW ORLEANS, LOUISIANA
Thursday, March 26, 2015

STATUS CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE ELTON E. FALLON
UNITED STATES DISTRICT JUDGE

OFFICIAL
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P-R-O-C-E-E-D-I-N-G-S

M O R N I N G S E S S I O N

March 26, 2015

(COURT CALLED TO ORDER)

THE CASE MANAGER: All rise.

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

We are here today for -- call the case, sorry.

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

THE COURT: Will counsel make their appearances for the record, please.

MR. MILLER: Thank you, Mr. Herman.

Good morning, Your Honor. It is Kerry Miller on behalf of the Defense Hearing Committee and Knauf.

MR. TAYLOR: Your Honor, Bernard Taylor on behalf of Taishan and TTP.

THE COURT: Okay. Mr. Taylor, welcome to the Court. I appreciate your being here.

MR. TAYLOR: Thank you, Your Honor.

MR. HERMAN: If it please the Court, good morning, Judge Fallon, Russ Herman on behalf of the Plaintiffs' Steering Committee.

THE COURT: Okay. We're here today for our

1 annual -- monthly status conference.

2 I met with liaison and lead counsel a moment ago to
3 discuss the agenda with him. I will take it in the order in
4 which they have proposed.

5 First, pretrial orders, is there anything on that?

6 MR. MILLER: Your Honor, if you don't mind, I would
7 like to respond to this point.

8 We do have something new for the first time in quite
9 awhile. It is Pretrial Order 1J, Your Honor, which pertains to
10 a recent amendment the Court has entered to Pretrial Order 1B
11 which governs evidence preservation as it relates to
12 Homebuilders only.

13 THE COURT: Okay. Why don't you tell me about that.

14 MR. MILLER: Your Honor, as the Court is aware since
15 2009, Homebuilders were involved in the repair of homes.

16 Your Honor, in June of 2009, we received this MDL --
17 entered PTO No. 1 -- which required general evidence
18 preservation of tangible things.

19 That order was later specified in the fall of 2009,
20 with Pretrial Order 1B, which spoke generally, Your Honor,
21 about what the parties that repaired Chinese drywall homes,
22 both homeowners and homebuilders, needed to preserve.

23 Your Honor, that order generally applied to drywall
24 samples; it applied to appliances; it applied to HVAC
25 components.

1 Your Honor, as the Court is aware, some of these
2 components are large and heavy and expensive to store.

3 Pursuant to Pretrial Order 1B, these items have been in
4 storage for quite some time with parties incurring costs.

5 What Pretrial Order 1J does, Your Honor, given where
6 this litigation is at with respect to the repair of those
7 homes, it alleviates the burden of preserving and continuing to
8 preserve these appliances and other heavy and large components,
9 while at the same time maintaining photographs and other
10 evidence of the information.

11 MR. DAVIS: If I may, Your Honor, Leonard Davis on
12 behalf of Plaintiffs' Liaison.

13 Just so that it's clear, and in particular for those
14 who may be on the phone, PTO 1J was negotiated with the
15 Homebuilders, that is correct, but it applies to all parties
16 and it also applies to the individual plaintiffs/claimants and
17 their obligations to preserve going forward.

18 I just wanted to make sure it was clear.

19 THE COURT: Yes. One of the things in this case, I
20 wanted to preserve evidence to give folks an opportunity to
21 look at it and to use it in their trials. But there comes a
22 time where we don't have that issue anymore and to just keep
23 spending money -- we have had several warehouses full of this
24 material, and it's costly to maintain that. Some of it we have
25 had to maintain in warehouses, have air conditioning and things

1 of that sort to stop deterioration, and that is the problem.

2 So to me, it looked to me like it was time to try to
3 remove those costs, and so I issued the 1J for that reason.

4 Are there any state court trial settings?

5 MR. HERMAN: Ms. Barrios is here and she will report on
6 that, and the issue of coordination, Your Honor.

7 MS. BARRIOS: Thank you, Mr. Herman. Good morning,
8 Your Honor. Dawn Barrios, State Liaison Counsel.

9 The three cases that are set in Norfolk are still set,
10 and I would also like to make a report on III and XI.

11 THE COURT: Okay.

12 MS. BARRIOS: The Garretson Resolution Group is the
13 settlement administrator for the Virginia settlement.

14 They filed yesterday a status report on their
15 settlements and asked me just to bring to the Court's attention
16 and to those on the phone the highlights of that settlement.

17 They have paid out \$9,072,000 for 262 real property
18 claims. They have now evaluated the other loss claims and will
19 be sending a notice of determination of those claims by
20 April 1st. And they hope to, within the next 60 to 90 days,
21 have the entire matter wrapped up and ready for the Court.

22 THE COURT: That is in the Virginia claims?

23 MS. BARRIOS: Yes, Your Honor. Thank you.

24 THE COURT: Thank you very much.

25 Judge Hall, in Virginia, has been doing a great job

1 there. I appreciate working with her and the cooperation that
2 I have received from her. I'm obliged to her for that.

3 MR. HERMAN: Judge Fallon, Items No. 4 and 5 on the
4 class action complaints, and in the class action complaint,
5 there is nothing new.

6 With respect to Item No. 6, plaintiffs' motions to
7 establish plaintiffs' litigation fee and expense fund, there is
8 nothing new. And we anticipate once the Taishan funds arrive
9 and are deposited, we will be coming in with something in
10 regards to a QSF for those funds so that the Court can make its
11 determinations.

12 THE COURT: What about remediation?

13 MR. HERMAN: We can hear from Mr. Miller on that.

14 MR. MILLER: Kerry Miller, again, Your Honor. With
15 respect to Item No. 7 on the agenda remediation program, that
16 is an aspect of the Knauf PSA settlement.

17 Judge, it continues to be in what I call the wind-down
18 phase.

19 Your Honor, yesterday I had meetings with Jake Woody
20 from BrownGreer, and as you know, he will give his report
21 shortly.

22 But in terms of an overall Knauf settlement process, we
23 think, Your Honor, it may be appropriate at the April or May
24 status conferences, prior to the status conferences, to present
25 Your Honor with certain types of orders that may be entered

1 that provide only a limited amount of time to submit additional
2 paperwork; for example, Your Honor, if someone is in the
3 remediation program or applied for the remediation program but
4 have not submitted their work authorization or submitted some
5 paperwork that is necessary to get it going.

6 As part of the wrap-up of this, Your Honor, we would
7 like to get some orders in to get a final deadline to get
8 paperwork in to keep it going forward or not going forward with
9 the claims.

10 As we have indicated before, Your Honor, it's Knauf's
11 intention to wrap up its performance obligations under this
12 settlement by the end of this year. It's not very many at all,
13 Your Honor. It may only be a handful.

14 THE COURT: Okay. My main concern is that those
15 individuals get adequate notice and have enough time to make a
16 decision.

17 People move on with their lives, and I recognize that.
18 If they don't wish to pursue it, that is their right, but I do
19 want them, at least, to think about it and have notice.

20 I have also, in these matters, asked a representative
21 from Moss to be present, so if anyone in the audience has any
22 issues that they need to talk about specifically with the
23 builder, with the restorer, with the remediator, they have
24 access directly to them.

25 I have also appointed an ombudsman, somebody who is

1 skilled in that area, who is neutral. He can communicate by
2 and between the parties, and that's worked very well, too.

3 MR. MILLER: Your Honor, on the issue that I brought up
4 -- and I agree, the program has worked very well with the work
5 of Moss and with the ombudsman, really with all involved, lots
6 of cooperation.

7 On the issue that I brought up, and that is these
8 handful of claims that seem to be in some kind of limbo. There
9 may be the right application, but haven't been able to get all
10 the right paperwork in.

11 What I will do, I will work with BrownGreer and PSC
12 over the coming weeks in the next few status conferences to try
13 to create a list, provide notice, and follow up with Your Honor
14 on those claims.

15 THE COURT: All right. Thank you very much.

16 Our next thing, the Global settlements?

17 MR. HERMAN: No. 8, Your Honor. I have given it to
18 Mr. Woody to report.

19 THE COURT: Okay.

20 MR. WOODY: Give me one second, Your Honor.

21 THE COURT: Sure.

22 MR. WOODY: Good morning, Your Honor. My name is Jake
23 Woody. I'm from BrownGreer in Richmond, Virginia, here to give
24 the March status report.

25 Over the last few months, the settlement program has

1 moved largely from a claims processing program into more of a
2 payment program. So I thought I would start and talk about the
3 payments we have issued so far.

4 We have issued a total of \$70,979,559 to claimants so
5 far. Eighty-two percent of that has been for Global, Banner,
6 INEX, repair and relocation claims, which are claims for repair
7 and relocation damages against three settlements, the Global
8 settlement, the Banner settlement, and the INEX settlement.

9 We have paid \$57,923,953 for those claims and that is a
10 *pro rata* distribution based on the square footage of the
11 eligible properties.

12 The other 18 percent has been other loss payments.
13 Other loss claims and payments are for a variety of other claim
14 types. These are largely, four large claim types:
15 Foreclosure, short sale, bodily injury claims, loss of rent use
16 and sales, and pre-remediation alternative living expenses.

17 We have paid \$13,055,605 to those claimants.

18 Global, Banner, and INEX constitutes the largest of all
19 of our claim types. To date, we have paid 8,937 claims which
20 is 91 percent of all of the eligible claims.

21 We do have 868 claims that we haven't paid yet. Those
22 claims fit into three main categories: One category is claims
23 submitted by Knauf pursuant to an assignment they have
24 received. And there is a large chunk of those claims where
25 remediation is in progress. They may not have a release yet.

1 So we know eventually they will receive those funds, but it's
2 not quite ready to issue yet.

3 The other category is claimants that are eligible but
4 haven't submitted a W9 form and the verification of claims
5 form. We need those two documents before we can issue
6 payment. They are available on our website and I will give
7 that out at the end of this presentation.

8 The final category is claims where we received
9 conflicting claims for one property or multiple claims for one
10 property. We are reconciling those. Every day we have worked
11 through those, and when we are able to determine who has the
12 rights to the claim, we will pay that claim and deny the other
13 claims. And that process is ongoing.

14 I also wanted to report on the status of our
15 disbursements from these settlement funds. There are three
16 settlement funds.

17 This chart shows -- it's yellow on the screen and green
18 on mine, but the yellow portion is the amounts we have paid
19 out, and the red portions are amounts that we haven't paid out
20 yet.

21 You can see from the total bar at the bottom the screen
22 that we have paid out about 75 percent of all of the funds we
23 have.

24 And the reason that -- I told you a minute ago that we
25 had 90 percent of the claims left, and now I'm telling you we

1 have 75 percent of the funds gone, so we have 25 percent left.

2 The reason for the difference between the number of
3 claims left and the money left is that when we set this up, we
4 did a three-percent holdback. And we did not -- that money is
5 included in the amount we haven't paid.

6 And we have also found as we have gone through the
7 process, that claims that we thought we would have to pay,
8 we're not paying.

9 And part of the reason, as I mentioned a minute ago, is
10 there are multiple claims for properties. We're able to deny
11 claims and that money stays in the pot.

12 So even when we reached 100 percent GBI payment there
13 will still be some funds remaining, and when we are able to
14 figure out exactly how much, we will work with the Court and
15 the parties to make a second distribution or to figure out what
16 to do with those funds.

17 THE COURT: Okay. Yeah, that is something that I want
18 some input on from everyone to at least talk about it. We will
19 be dealing with that.

20 MR. WOODY: I'd like to quickly turn to our other loss
21 payments.

22 Loss rent use and sales, we have paid \$4,172,163. That
23 is 32 percent of the total payments.

24 Pre-remediation alternative living expenses which we
25 abbreviate to "Prale" here, we have paid \$4.6 million, 35

1 percent as the total payments.

2 Bodily injury we have paid \$74,000, as one percent.

3 Foreclosure and short sale, we have paid 4.1 million,
4 which is 32 percent of the total.

5 So you can see that the payments are pretty evenly
6 distributed among the three claim types with a much smaller
7 amount going towards bodily injury.

8 THE COURT: What is the -- what is the main one in
9 pre- --

10 MR. WOODY: Pre-mediation?

11 THE COURT: Yeah.

12 MR. WOODY: That's -- that is a variety of claims.
13 It's really -- it's really a claim for money spent to move out,
14 obtain a new residence before remediation took place.

15 During remediation, there is money available through
16 the Knauf pilot program, but that only covers the time period
17 during remediation, so this covers the other time periods.

18 THE COURT: Okay. With bodily injury, what is the
19 predominant injury?

20 MR. WOODY: Mostly asthma, skin irritation, things of
21 that nature.

22 THE COURT: Okay.

23 MR. WOODY: This chart just shows what I showed you in
24 table form.

25 The only new information I wanted to point out here is

1 the number of payments we've issued. Across all the payments
2 we've issued 16,170 individual checks, and I think this process
3 is well on its way and working well.

4 I did want to touch, also, on the other loss claims
5 review, mainly because of what you see in Row 4 here, which is
6 miscellaneous claims. We are working through those claims.

7 Miscellaneous claims are claims submitted for a variety
8 of reasons, mostly personal property damage, HVAC repair,
9 refrigerators, TVs, and things of that nature. We received a
10 very large number of those. We've reviewed 2,306. I think we
11 received just one under 4,000.

12 Of the ones we have reviewed, we have seen 912 that we
13 think are eligible, 1,126 are incomplete, and 268 have been
14 denied.

15 The only claims we have denied are claims submitted for
16 excluded claims. There are certain claims that are excluded,
17 things like stigma, mental anguish, attorney's fees, and when
18 we see a claim for that in the miscellaneous category, we issue
19 a denial notice.

20 The incompleteness process is just like the other
21 claims. If we are missing some key points of data, proof of
22 drywall, proof of expenses, anything like that, we issue a
23 incompleteness notice, and people have 30 days to respond to it
24 with the missing documents.

25 I also wanted to talk quickly about the other loss

1 offer process. PTO 29, the Court issued it in early January.
2 It sets forth the process by which we resolved the other loss
3 claims. It allows us to offer a set amount for each claim
4 type.

5 For bodily injury that said amount is \$1,000.

6 Foreclosure and short sale, it's \$10,000.

7 For loss of rents, use, and sales, it's also 10,000 or
8 three months of the verified lost rent for the affected
9 property.

10 And for pre-remediation, it's \$14,400.

11 We began issuing eligibility notices with these offers
12 in January. So far we have issued 2,476, and we have received
13 responses to almost 100 percent of those.

14 There are 27 where the eligibility notice has been
15 issued and there is still time for the claimant to respond.
16 That is less than one percent of the total we've issued.

17 We will issue eligibility notices for the 928 claims I
18 mentioned earlier. We expect to do that in next week or so.

19 In terms of what people are doing with these offers, we
20 have received 2,115 acceptances, that's an 85 percent
21 acceptance rate. Those people that have accepted have, in
22 large part, been paid, as I mentioned earlier.

23 PTO 29 does allow people to make what we call a Special
24 Master award request. People who are unhappy with the offer
25 can request an additional amount from the Special Master.

1 So far we have received 335 of those requests, which is
2 15 percent. About half of those are foreclosure and short sale
3 claims.

4 And I have talked extensively with Special Master, Dan
5 Balhoff about how to handle those 335. We expect to have the
6 process in place fairly soon to start dealing with those
7 requests.

8 THE COURT: Let me know about the process. I'd like to
9 hear from you and see whether or not I need any input on that.

10 MR. WOODY: We will, Your Honor. And I expect that
11 there is a provision in the Knauf settlement agreement that
12 allows people to appeal directly to you from any Special Master
13 decision.

14 THE COURT: All right.

15 MR. WOODY: With that, I will give out our contact
16 information, as always.

17 Our web portal is www3.BrownGreer.com/drywall. That is
18 where the people can get the W9 form and verification of claims
19 form as well as check the status of their claims and things of
20 that nature.

21 Our e-mail address is: Cewquestions@BrownGreer.com,
22 and our phone number is (866) 866-1729.

23 THE COURT: Okay. The challenge in this case, as in
24 many of the MDLs that I have been involved in, there's been one
25 or two defendants. In this particular case, in addition to

1 about 26,000 or so claimants, there is 1,000 defendants, which
2 is a difficult situation to deal with.

3 So we've had to deal with that by having multiple
4 settlement funds and also have some relationship between those
5 funds.

6 And that's why there has been some discussion on the
7 various settlement funds.

8 I think sometimes it's difficult for claimants, too.
9 They may get multiple checks, and so they get one check and
10 they say, "Is that all?" And when they either write me or
11 write someone else, and I get notice of it, I have them call
12 our counsel for people who don't have lawyers or who are
13 appointed counsel or someone to deal with that issue, but
14 hopefully, that will be cleared up.

15 I do understand the individuals who have some concern
16 that they have only gotten a portion of the amount and perhaps
17 another check is coming, so they should find that out.

18 Thank you very much. I appreciate your report.

19 MR. HERMAN: Your Honor, Mr. Levin will address us.

20 May it please the Court, the next item, Taishan
21 defendants, for the folks on the phone and in the courtroom if
22 you want to review the history, pages 14 to 27 of the status
23 conference report has the history of where we are right now.

24 Your Honor, I have handed to your law clerk the new
25 plaintiff profile forms for Taishan and other defendants.

1 They'll be distributed.

2 And now Mr. Levin will address us regarding these
3 issues.

4 THE COURT: Fine, the people on the phone -- we have
5 about 200 people on the phone -- so please use the microphone.

6 MR. LEVIN: Good morning, Your Honor. A lot has been
7 discussed with new counsel for CNBM, BNBM and Taishan.

8 A lot of what has been discussed, obviously, should be
9 kept between the parties at this early stage of the litigation,
10 so, I won't direct my attention to the contempt proceedings
11 because they are Your Honor's proceedings, and they are just in
12 place.

13 As to class damage, there is now the motions to be
14 heard on the 28th of April and the structure of that proceeding
15 will become evident as we go through other proceedings here and
16 communicate with the Court and get the Court's views.

17 The bill of costs has been entered by the clerk's
18 office in excess of \$400,000. And I understand that will be
19 paid.

20 The Oregon actions for intervention and declaratory
21 judgment, the intervention has been dismissed as being
22 untimely. The declaratory judgment action has been moved to
23 this Court by the panel.

24 But at this point, I think it's important for those on
25 the phone and those that will be communicating to discuss the

1 third-party discovery, which was filed by the plaintiffs.

2 We have agreements as to timing of discovery responses
3 both pre-March 17th and subsequent to March 17th with the
4 defendants.

5 But with regard to third parties, there's two sets of
6 discovery. One was discovery that we filed against third
7 parties to find contacts, assets, and activities in the United
8 States against the various banks who are transacting business
9 with CNBM, BNBM, Taishan, and SASAC entities, and those will
10 continue. As to those, we did not ask for expedited
11 proceedings; it was prior to the 17th, when Your Honor gave us
12 your marching orders with regard to discovery.

13 We filed a status report pursuant to Your Honor's
14 request, and unartfully said that this is the situation which
15 we would treat it as a motion to compel; well, we didn't mean
16 that. That was unartful. We would treat it as a motion to
17 compel if we filed the motion to compel.

18 So we will correct that with a memo and an order that
19 we will submit to you early next week, so that everybody's
20 third-party rights are preserved if they are objecting. It may
21 be advisable to handle all of those objections in one
22 proceeding.

23 They require -- there is banking institutions, and
24 there is commercial activity such as Wal-Mart, Amazon, getting
25 products in cargo, want to know whose cargo it is, how the

1 cargo is delivered, who owns the vessels, because we were
2 involved in an enforcement action with regard to the contempt.
3 We were also involved in looking at the activities of the
4 Taishan defendants, the Taishan affiliates, their appearance,
5 CNBM, BNBM, and SASAC in the United States. Because although
6 there is default judgments and nothing has been done on the
7 default judgments, they are raising personal jurisdiction which
8 we think is not an issue in the case because we already have
9 personal jurisdiction three times, Your Honor, and twice by the
10 Fifth Circuit Court of Appeal as to Taishan. But, we can
11 resolve that.

12 But, the post-March 17th discovery as against third
13 parties, Your Honor, in each of our requests, except one that
14 was filed last night, has granted an expedited proceeding
15 because that is part of getting all of this discovery done in
16 the next five weeks, or now, it's four weeks. It was five
17 weeks last week.

18 I understand that the Morgan Brothers are here, JP
19 Morgan and Morgan Stanley, they are not part of the expedited
20 discovery. So, for whatever reason, I have just told them, we
21 would be pleased to meet with them with regard to all when Your
22 Honor takes the break before the motions.

23 That's basically where we are today. Obviously, we
24 filed an agenda with the Court that is on the Court's docket.
25 It lists the witnesses that we want from Taishan, and lists a

1 lot of other things that Your Honor will rule on in due course,
2 if you haven't ruled on them already.

3 Does Your Honor have any questions?

4 THE COURT: No, I don't. Anything from Taishan?

5 MR. TAYLOR: Your Honor, Bernard Taylor. The only
6 thing from Taishan is we will work diligently with the PSC to
7 accomplish this discovery. And where there are some disputes,
8 we will raise with them and then with the Court.

9 But as we have raised with the Court, it may be
10 difficult to get it all done in five weeks, and we will let the
11 Court know about that issue as it becomes clear.

12 THE COURT: Okay. Meet and confer and see what you can
13 do. If both of you all have an issue with it, generally I can
14 deal with it over the phone. If you tell me what the issue is,
15 I will have a court reporter, and we will talk about it and you
16 can -- I can hear your view and then the plaintiffs' view, and
17 then I will rule, accordingly, and you all can deal with it.

18 MR. TAYLOR: Thank you, Your Honor.

19 THE COURT: Okay. Thank you very much.

20 MR. HERMAN: Your Honor, there are three other comments
21 on that section. It won't take long.

22 With regard to the profile forms for CNBM and BNBM, we
23 will ask Your Honor to set a date for responses.

24 Yesterday I received e-mails and phone calls from
25 attorneys for Amazon. They objected to our filings on

1 subpoenaeas and depositions. They were correct. They weren't
2 proper.

3 I advised them that no later than Monday, we would be
4 withdrawing those, and we would reserve our right to submit
5 proper documents.

6 As Arnold Levin mentioned, I was introduced to
7 attorneys from Morgan Stanley and JP Morgan. They are in the
8 room. We will meet with them afterwards. They have a concern
9 about when the depositions are scheduled. We will revolve it
10 today.

11 THE COURT: All right. And with regard to -- not
12 Amazon, but Ali Baba had indicated that they complied with the
13 Court's order and I appreciate that.

14 MR. LEVIN: Your Honor, Amazon will be taken care of,
15 will be -- receive the pleadings that we filed that -- which
16 will satisfy them as to the actual impropriety of not having
17 noticed them of the motion that was to being filed -- the
18 non-motion that was being filed that could be characterized as
19 a motion. So that will be taken care of in our pleadings that
20 we file on Monday.

21 THE COURT: All right. What about Venture Supply and
22 Porter Blane, is there anything? It is the next item on your
23 agenda.

24 MR. HERMAN: The most-frequently-asked questions,
25 additions, the matters that were set for hearing following the

1 current status conference, we advised the Court we'll not
2 object to the motion that Mr. Owen filed.

3 And I understand that Mr. Miller has a matter.

4 THE COURT: Yeah, we have several matters. What about
5 *pro se* claimants, have they filed anything?

6 MR. HERMAN: Mr. Bob Johnston, he will speak with
7 regard to that matter.

8 THE COURT: In these matters, for those new in the
9 case, oftentimes, we find that in the consumer area individuals
10 either can't or won't get lawyers, and they have questions
11 about things. They don't understand legalese and things of
12 that sort. So I have appointed Bob Johnston to at least be
13 available to them to explain any issues that they may have and
14 to see if he can assist them.

15 You have been doing great work and I appreciate it.

16 Let me hear your report, please.

17 MR. JOHNSTON: Thank you, Your Honor. Bob Johnston,
18 Curator for *pro se* plaintiffs.

19 As I do every month, I provided the Court with my 37th
20 status report. The last portion of which advised the Court
21 that there were ongoing discussions with Kerry Miller, counsel
22 for Knauf, that related to somewhere approximately 60 to 62
23 *pro se* claims that entered into this litigation by contacting
24 my office. And the Court is aware of the various steps over a
25 very long period of time.

1 With regard to those, they break down into three
2 categories: One is approximately 50 claims of *pro se*
3 plaintiffs, who, based upon the information provided, allege
4 that they were not aware that their property, their own
5 property, contained Knauf drywall until after the previous
6 deadlines had passed for asserting claims.

7 The next group is a group of eight, which are what I
8 have termed "self-remediation claims."

9 And then the last two are loss of sales value claims.
10 Jake Woody had up in one of the pie charts, the information
11 relating to that.

12 Last month when we were here, the discussions were, to
13 some degree, in flux. I met after that with Kerry Miller and
14 associate counsel for Knauf. And I'm pleased to notify the
15 Court that with regard to the bulk of these claims, the
16 approximately 50, Knauf has agreed to the remediation process,
17 which as with every one of these claims, requires the
18 individual to basically show that the property contains Knauf
19 drywall and he or she did not know when it was purchased. That
20 is ongoing.

21 I have been notified in the last two or three days that
22 there's already been some confirmatory inspections by
23 inspectors retained by Knauf. That's a very positive
24 development in terms of the bulk of these claims.

25 Now with regard to the eight self-remediation claims,

1 because of the fact that that was not part of the *Beane*
2 settlement, what has been going on is the fact that up until
3 just the last few days it was unresolved as to whether the
4 cutoff would go forward.

5 I received communication from Knauf counsel, which I
6 just was reviewing.

7 Essentially, I can inform the Court that with regard to
8 those few self-remediation claims, that Knauf has agreed to
9 review it on what it terms a, quote, "case-by-case basis."

10 I was provided with a seven-page owner disclosure
11 affidavit requiring and requesting significant -- not only
12 information -- but documentation. And the request by counsel
13 for Knauf was simply that I pass that on to these individuals
14 with the request that they deal directly with Baker Donelson.
15 That is going on, and I think that's a very positive
16 development.

17 The only thing left are two loss of sales value claims.
18 My notification was that Knauf, as it has in the past, did not
19 include that in the settlement, and so I have notified those
20 two individuals that it's sort of the end of the road for them
21 in terms of participation.

22 But as the Court has directed in the initial order
23 appointing me as curator, I am taking some steps to try to
24 assist them in seeing if they can locate counsel to prosecute a
25 claim.

1 THE COURT: Right.

2 MR. JOHNSTON: And with that, that really is the most
3 important thing I wanted to provide the Court.

4 And I end it, again, by telling you I think that there
5 has been positive movement here.

6 I really appreciate the dealings that Kerry Miller has
7 had with me, and I stand ready to continue to try to do what I
8 always do, which is to assist these individuals. Thank you.

9 THE COURT: Thank you. Thank you for your help and
10 work.

11 Okay. We have talked about the physical evidence
12 preservation already.

13 MR. HERMAN: With Your Honor's permission, we can
14 remove the old PTO 15 from the report.

15 With the entry of preliminary defaults, there is
16 nothing new.

17 With regard to already remediated homes, Mr. Miller has
18 that report.

19 MR. MILLER: Thank you, Russ. Again, Kerry Miller on
20 behalf of Knauf.

21 Your Honor, a different aspect of the Knauf settlement
22 is "already remediated homes," and it is what Mr. Johnston
23 generally referred to as "self-remediated homes," but in the
24 Knauf settlement agreement, it's referred to as "already
25 remediated homes."

1 Your Honor, we have been able to settle about 300 of
2 those, including a recent uptick in the last month or so.

3 Your Honor, I reported at the last status conference
4 that I would have Knauf representatives here in the U.S., so we
5 spent almost a week in Florida two weeks ago.

6 Your Honor, generally we were able to resolve almost
7 all of the Colson and Hicks already remediated homes, and
8 Patrick Montoya was very helpful in producing his clients and
9 producing documentation at those hearings -- at those sessions
10 to allow for some good outcomes.

11 Your Honor, Mr. Lambert is also in the courtroom and we
12 were able to meet with his remaining clients by phone while we
13 were in Miami, basically on the same time zones. We were able
14 to completely resolve all of Mr. Lambert's inventory.

15 So, Your Honor, what we were able to do as we make
16 these resolutions, the day we make the resolution or the day
17 after, we send counsel settlement agreements, and they sign it
18 right away. We were able to pay those settlements, Your Honor,
19 in a week. So that's the way we are doing things.

20 However, Your Honor, I mentioned in chambers in a
21 pre-meeting, we are at a transition point. We have pretty much
22 settled almost all of the ones that we can settle.

23 What we have left approximately, 100, Your Honor, or 25
24 percent of the inventory, really don't have adequate
25 documentation such that we can even make a settlement offer on.

1 So for those, Your Honor, we're going to pick up the
2 activity and filing motions to dismiss. We will set up a
3 process where we meet with a PSE representative, give them
4 notice, let them know what we plan to do with those particular
5 claims.

6 But again, it's probably time to wrap up this phase.
7 It may involve some increased activity by Mr. Balhoff. Some of
8 these may get mediated. But at any rate, Your Honor, we have
9 made great progress.

10 Your Honor, while I'm up here, I would like to credit,
11 I think the reasons why we made such great progress. I'm
12 graced to have three representatives of Knauf in New Orleans
13 this week working with us. They are here in Court today, and
14 I'd like to acknowledge them before Your Honor.

15 Your Honor, we have Ellen Campbell from Knauf, Theresa
16 Michel from Knauf, and Laura Nadal.

17 THE COURT: Would you all stand up please.

18 MR. MILLER: And then, Your Honor, we are pleased to
19 have them. They have done all of the detail work.

20 THE COURT: The Court appreciates it, and I know the
21 individuals appreciate it. This has been a real difficult
22 thing for them. It affected their homes, and many of them
23 didn't have any other place to live. Some were living, as you
24 know, in the backyard while they were there because they
25 couldn't abandon their home because the insurance would be --

1 the fire insurance would be discontinued. So some families
2 told me that they had to pitch a tent in their backyard so they
3 and their kids would have someplace to stay and they used the
4 facilities inside.

5 So you've done good work, and I appreciate it, I am
6 letting you know the Court appreciates it.

7 MR. MILLER: They have been very dedicated and
8 committed, Your Honor, and are a big part of the success of the
9 Knauf settlement program.

10 THE COURT: You may sit down. Thank you.

11 What about the Attorney General, the Louisiana Attorney
12 General, do you have anything that you have to report?

13 MR. BLACK: Duane Black for the State of Louisiana.

14 I have nothing specific to report.

15 I might just point out just for the benefit of those
16 new to the litigation, that one of the state agencies has been
17 changing out homes, the agency that administers the Road Home
18 Loan programs. Road Home loans were given to the people who
19 were victims of the hurricanes.

20 Among the homes that are being changed out are homes
21 that have Taishan drywall. The state maintains its claims
22 against the Taishan entitles as well as the Knauf entitles for
23 its claims.

24 THE COURT: Okay. Let's make sure you keep a record of
25 that so that that will be available.

1 MR. BLACK: Thank you.

2 THE COURT: Thank you very much.

3 All right. Folks, is there anything else from anybody
4 in the audience that needs to speak?

5 Yes, ma'am. Would you come forward please.

6 MS. FERCHAUD: Your Honor, my name is Jody Ferchaud,
7 and I live in the State of Hawaii.

8 I have been here in the City of New Orleans for
9 approximately three months. I was brought here when Moss
10 Construction said there was a code violation against my home
11 and they shut down the remediation on my job.

12 The city inspected my house five days later and said
13 there was no violation. That began my plight.

14 I'm asking that the Court consider having Moss
15 Construction removed from the job. I have serious substandard
16 work.

17 I have burnt wiring that was discovered by one of my
18 inspectors that could cause me serious problems down the line.

19 I have burnt PVC pipe.

20 I have issues with plumbing, leaky pipes, and
21 unsoldered pipes, and the list goes on.

22 The last day and today I have had a mechanical
23 inspection by David C. Flettrich that will, you know, disclose
24 a lot more errors that are substandard with materials, cinching
25 of ducts -- all sort of problems that I'm having. I have had

1 to fight to get the house back the way it was.

2 I wasn't on the ground when it started, but I'm very
3 familiar with the home because my son reconstructed the home
4 after Katrina.

5 I'm at a complete impasse with Moss.

6 I took the home off hold -- I put it on hold and asked
7 them to respond to some of the defects that Donny Nate
8 [phonetic] had found in the HVAC system before I took it off
9 hold. They refused.

10 Instead, they have come on to the property
11 clandestinely, when it's on hold, and not assuming any
12 responsibility for it.

13 I am in a position to completely and utterly remediate
14 the house myself. I'm in the business. It's what I do for a
15 living.

16 So I beg the Court to please consider me asking this.
17 And if I could meet with you privately to show you some of the
18 pictures and the e-mails that have transpired, I would love to
19 do so.

20 THE COURT: Well, I'm not able to meet with a person
21 without the presence of the opposing counsel, so I'm not able
22 to do that.

23 But I do think that there may be -- we ought to see
24 whether or not there is some way of resolving this one way or
25 the other.

1 You, you know, still have an opportunity to pursue the
2 matter, but maybe some mediation might be helpful.

3 MS. FERCHAUD: I have asked for that repeatedly through
4 my attorneys and have been denied to meet with -- I have asked
5 to speak to you and the Special Master. I have asked to speak
6 to Lewis Valez -- anyone I could get to so I could have some
7 resolution, because at this time I don't feel or remain
8 confident that this company can fix my home properly meeting
9 IRC standards.

10 THE COURT: All right. Are you represented by counsel?

11 MR. FERCHAUD: At this point, no. I released the
12 Becnel firm yesterday because they're not helping me.

13 THE COURT: All right. It's easier when you do have
14 counsel to deal with, and you've had other counsel, too?

15 MS. FERCHAUD: Lenny Davis released me because he had a
16 conflict of interest since he acted as liaison between the
17 Court and you.

18 THE COURT: Right. Mr. Balhoff?

19 MR. BALHOFF: Yes, Your Honor.

20 THE COURT: Could you get involved in this to get the
21 parties together and listen to each side and give me some
22 report on that, see whether or not it can be resolved? I'd
23 like your input on it.

24 MR. BALHOFF: Yes, Your Honor. If I can meet
25 outside --

1 THE COURT: Right.

2 MR. BALHOFF: -- and we'll exchange information.

3 THE COURT: Yeah, if you could do that. Let's see
4 whether or not this matter can be mediated by him. He's been
5 doing really good work. I would like him to at least look at
6 it and give you some input on it.

7 MS. FERCHAUD: Okay. Thank you, Your Honor.

8 THE COURT: Okay. Thank you, Tom.

9 Anything else?

10 All right. Folks, the next status conference, as you
11 know, will be April the 17th and the following one will be May
12 the 20th -- May the 20th.

13 MR. MILLER: Your Honor, are you going to take a break?

14 THE COURT: I'm going to take a break and then come
15 back.

16 We will take a five-minute break.

17 THE CASE MANAGER: All rise.

18 (Recess taken.)

19 THE COURT: Be seated, please. We have several motions
20 to discuss.

21 One is a motion to withdraw.

22 MR. TAYLOR: May I raise a point?

23 THE COURT: Sure.

24 MR. TAYLOR: I'm pleased to announce, Your Honor, that
25 the money to fund the *Germano* judgment has now arrived in the

1 U.S. We have it, and we are working with the PSC to make sure
2 the money is transferred to them and all of the payments can be
3 paid.

4 THE COURT: Let's make sure we get that as quickly as
5 we can to the plaintiffs in the case. They have waited so long
6 for this, so do what you can.

7 MR. HERMAN: As soon as we leave here, we're going to
8 set up a completely separate trust account for these funds, and
9 we will be filing hopefully by Monday, either some motions or
10 matters that we need the Court to determine.

11 THE COURT: Sure, okay.

12 All right. Thank you very much. I appreciate
13 everybody's help on that.

14 Okay. The motion to withdraw.

15 Tom, are you here?

16 Tell us what it's about.

17 MR. OWEN: Tom Owen, counsel of record for Taishan
18 Gypsum and TTP.

19 We have filed -- the firms, Hogan Lovells, and Reuter,
20 Ross, Thornton & Alford have filed motions to withdraw last
21 July after we had been discharged by Taishan Gypsum and TTP as
22 their counsel.

23 The motions have been pending. We've responded on some
24 discovery requests and now substitute counsel has appeared on
25 behalf of TG and TTP.

1 We request that the Court resolve and decide the
2 motions to withdraw, and we think with the presence of
3 substitute counsel, who are actively participating in the case,
4 representing the clients, communicating with the clients that
5 there is no basis -- one, that there is good cause for the
6 withdrawal, and that there is no concerns about any severe
7 prejudice to the litigation with the presence of substitute
8 counsel to our withdrawal from the case.

9 THE COURT: Anything from opposing counsel?

10 MR. HERMAN: Your Honor, first, immediately, the PSC
11 has no objection.

12 We want to thank Mr. Owen, who is not only
13 extraordinary counsel, but practices with the highest order of
14 professionalism. We've been on opposite sides of this
15 litigation, and we have great respect for him.

16 THE COURT: Okay. I have heard the motion. I
17 understand it. I think it's well-taken, and I will sign the
18 order granting the motion.

19 I do appreciate the work that you've done and your
20 co-counsel. You have represented your clients very
21 effectively, and I appreciate your hard work on it while you
22 were in the case.

23 MR. OWEN: Thank you, Your Honor.

24 Also, I think we are planning on submitting a motion to
25 have us removed as the attorneys for service of process.

1 THE COURT: Right. That would go along with it, so put
2 that in the same motion.

3 MR. OWEN: Okay. Thank you, Your Honor.

4 THE COURT: Okay. The next motion is a motion to amend
5 by interlineation.

6 Do you want to help me on that, Fred?

7 MR. LONGER: Good morning, Your Honor. Fred Longer on
8 behalf of the PSC.

9 Your Honor, this is a motion that was filed by the
10 Podhurst firm on behalf of the individual plaintiff, Damien
11 Querol, which is spelled Q-u-e-r-o-l.

12 Mr. Querol, in the papers, was written as being a
13 member of Subclass 7. He's actually a member of Subclass 6.
14 That was a typographical error and that should be corrected.

15 But the motion was filed because this is in the *Amato*
16 action which is the insurance cases that we have filed. It's
17 an anomaly complaint dealing with insurance.

18 There is direct filing claims against the insurance
19 companies.

20 The motion was filed in January 14th, 2015.

21 Your Honor ordered that the matter be disseminated to
22 parties.

23 Mr. Davis, here, on January 21, pursuant to Your
24 Honor's order presented the order to counsel of record on the
25 docket here in the MDL. Her name was Anaysa Gallardo Stutzman.

1 Her e-mail address which was used was agallardo@cozen.com.
2 Apparently they didn't get the e-mail, or at least, that's
3 their contention that they didn't get it.

4 It really is of no moment because Your Honor had
5 originally scheduled this hearing for February. It's now been
6 postponed to this hearing. There has been briefing. There has
7 been briefing even as recently as the 24th. So there is really
8 no prejudice in terms of procedure.

9 Your Honor, in terms of substance, this is a matter
10 that we believe what we're trying to do, or what the Podhurst
11 firm is trying to do, is substitute the primary carrier who has
12 exhausted its policy coverage with the excess carrier.

13 So American Home is the primary. Westchester is the
14 excess. To the extent that there are any issues with regard to
15 the substantive matters that have been raised in opposition to
16 the motion, we defer that to Mr. Lutz who is here on behalf of
17 American Home, and he can present the substantive arguments
18 which we joined in and which the Podhurst firm joined in, in
19 its papers.

20 THE COURT: Okay. Let me hear from American Home.

21 MR. LUTZ: Good morning, Your Honor. Warren Lutz
22 appearing for defendant, American Home.

23 I appreciate the opportunity to appear before the Court
24 to provide argument in support of a plaintiffs' motion to amend
25 the *Amato* complaint which would attempt to do two things:

1 First, it would dismiss American Home, the primary
2 carrier, which, as Mr. Longer mentions, paid its \$4 million
3 policy limits, exhausting those limits, and replacing it or
4 substituting in the excess carrier, Westchester.

5 THE COURT: There was some issue as to whether or not
6 there was \$1- or \$3- or \$4-million amounts and the Judge in
7 Florida held that it was only one, so you paid that.

8 MR. LUTZ: That is correct. The payment is undisputed.
9 So as we stand here today, my client contends it has exhausted
10 by that payment.

11 The insureds, under the policy, Pentu [phonetic] and
12 Griffin -- Griffin is the defendant of *Amato* -- also agree that
13 American Home paid and exhausted.

14 The plaintiffs in *Amato*, that seek the amended agreed
15 that we have exhausted, and then we have Judge Seitz, who
16 issued a 20-page decision appended to the plaintiffs' motion,
17 that sets forth her rationale and reasoning.

18 So we believe that with respect to the first part, the
19 dismissal of American Home, that can be supported on several
20 independent grounds under 41(a).

21 Under 41(a)(1) the plaintiffs, made by notice,
22 dismissed without Court order so long as the defendant has not
23 filed an answer or a motion for summary judgment.

24 We have done neither. We have neither served an answer
25 or a motion for summary judgment. And you can confer -- or

1 infer from the motion for leave to amend, the plaintiffs'
2 intent to dismiss us.

3 In the case law in the Fifth Circuit on papers that we
4 have submitted, the *Harvey Specialty* decision, Fifth Circuit,
5 you may infer that intention from the plaintiff.

6 Separately under Rule 41(a)(2), Your Honor may, by
7 order, dismiss at the request of the plaintiffs.

8 They have, in essence, requested this be their motion
9 for leave to amend, and that that should be freely granted
10 unless the dismissal would cause some legal prejudice to my
11 client.

12 There would be no prejudice, in fact, we join in and
13 seek that dismissal.

14 The only prejudice would be if we had to remain in the
15 *Amato* case having exhausted our limits and having all of the
16 insureds and the plaintiffs also agree with us, but we're done,
17 and should be moving on.

18 So I don't really think the dismissal of American Home
19 is so much the issue.

20 There is an issue, and Western District has thoroughly
21 briefed this matter, they filed, by the way an *ex-parte* motion
22 and had to file a serve reply. We have no objection if Your
23 Honor were to grant that and consider that as well in your
24 taking.

25 But with respect to Westchester's argument, they raise

1 a variety of grounds to preclude the amendment to add them,
2 which in our judgment, do not comport the legal amendment
3 standards under Rule 15.

4 The case law interpreting Rule 15, cited in our papers,
5 indicate that there must be a substantial reason to deny the
6 amendment. That flows from the *Jameson* decision in the Fifth
7 Circuit.

8 Westchester has seized upon the futility of the
9 amendment argument as one such substantial reason, but we
10 believe that argument is misplaced.

11 A futility argument under Rule 15, involves a pleading
12 that cannot withstand a 12(b)(6) motion, failure to state a
13 claim. That is set forth in the *Marucci Sports* and the
14 *Stripling*, Fifth Circuit decisions that we cite in our reply
15 and Footnote 18.

16 So it has to go to a 12(b)(6) motion to compel.

17 What Westchester is really arguing is that there is no
18 right of direct action, here. This is a Florida matter
19 involving policies issued in Florida. The plaintiff in *Amato*,
20 is a Florida resident. They do not fall within the ambit of
21 the Louisiana Direct Action Statute.

22 So in fact, the way the *Amato* complaint is framed, they
23 have a Louisiana direct action subclass for those individuals
24 who are in Louisiana or had policies issued delivered here,
25 versus the other groups of subclasses which are everyone else

1 around the United States.

2 And with respect to their challenge, Westchester argues
3 there is no case or controversy, here, because of the inability
4 to bring that direct action.

5 A case with controversy challenge is 12(b)(1). It may
6 still be a meritorious challenge, but it's not a 12(b)(6)
7 argument that would render it futile for purposes of amendment.

8 So, again, they may have a meritorious argument
9 ultimately, but at this stage -- in this stage, it's not
10 sufficient.

11 Westchester argues several other points. One is the
12 first filed matter, which again, we have argued in our papers
13 first filed is not one of the legal challenges that the case
14 law has recognized as a substantial reason to deny an amendment
15 to a pleading.

16 First of all, it may also not apply, if for no other
17 reason, that plaintiff, *Querol*, in the *Amato* case is not a
18 plaintiff in the coverage action in Florida. The Florida Court
19 will not be adjudicating Mr. *Querol*'s rights or claims against
20 Westchester.

21 Where that may come into play, Your Honor, is if you
22 add Westchester to the *Amato* case, and if Westchester and the
23 insured, *Griffin*, assert claims against each other, then there
24 would be, in my view, some application for first filed, which
25 under Your Honor's discretion, you can stay that portion of the

1 claim until Judge Seitz resolves any coverage issues there.

2 There is also another argument by Westchester that
3 Mr. Querol has assigned his property damage claims, and has
4 submitted some documentation that in order to effectuate the
5 remediation of his unit -- and by the way, let me pause with
6 some good news, the Peninsula II Condo building was fully
7 remediated several years ago, so that's no longer an issue.

8 To the extent he has assigned his claims, it's limited
9 clearly to a property damage claim.

10 To the extent he has any bodily injury claim or medical
11 monitoring claim, those were not assigned, and therefore, there
12 may still be a viable claim.

13 So in short, Your Honor, we would submit that under
14 41(a), Your Honor may dismiss American Home for the several
15 reasons that we have indicated.

16 We honored our policy obligations. We paid the
17 \$4 million aggregate. That's not disputed. We are joined by
18 the plaintiffs. We are joined by the insureds in taking that
19 position, and we would ask for the dismissal of American Home
20 and for the addition of Westchester.

21 Mr. Longer has made the housekeeping typo correction to
22 note that Paragraph 647 of the *Amato* complaint should reference
23 Subclass 6, American Home Assurance Company, not as currently
24 drafted, Subclass 7, which is American Insurance Company.

25 Finally, Your Honor, I would like to express my

1 appreciation on the record to the cooperation and assistance of
2 the PSC and the plaintiffs' liaison counsel, who put me in
3 touch, then, with Mr. Amato's counsel, who asked good
4 questions, asked for information which we provided before he,
5 then, reached the conclusion that he did, that we were
6 exhausted, and it was time to move on to the excess carrier.

7 THE COURT: Is there any issue as to Westchester Fire
8 being the excess insurer?

9 MR. LUTZ: I don't believe so.

10 Their counsel, Mr. Ziemianski, is present in the
11 courtroom. They are -- they may very well have independent
12 coverage defenses. But I don't think there is any dispute that
13 American Home was the primary and the Westchester Fire was the
14 excess carrier.

15 THE COURT: Right. That's what I was asking, but let
16 me hear your view, counsel.

17 MR. ZIEMIANSKI: Thank you, Your Honor. I am Joseph
18 Ziemianski on behalf of Westchester Fire Insurance Company.

19 First of all, let me say that after looking at this a
20 bit further, we really have no objection to American Home being
21 released from the lawsuit.

22 We are the excess insurer. In fact, American Home,
23 back in 2011, filed a 12(b)(1) motion, it's Docket No. 8357
24 with the supporting brief at 83571, on the very grounds that
25 what we're dealing with here is a Florida resident, ultimately

1 seeking coverage as a claimant under an insurance policy issued
2 to a Florida insured.

3 So there is no basis, in law or in fact, for Mr. Querol
4 to take advantage of Louisiana Direct Action Statute.

5 So we have no objection to American Home being
6 released. We agree with their motion that they shouldn't be
7 here. They probably should have never been here for purposes
8 of Mr. Querol, in any event.

9 And what we're saying is essentially the same thing
10 with regard to standing, which is a jurisdictional basis, and
11 if we are added, and we need to file a 12(b)(1) motion as
12 opposed to opposing this motion, so be it, we can do so. That
13 seems to me to be putting form over substance where no one
14 disputes the facts that I just articulated.

15 Also, I just want the Court to be aware that the order
16 upon which American Home applies is interlocutory.

17 The coverage case that's going on in Florida has been
18 stayed by Judge Seitz, who issued that ruling.

19 Pending the outcome of a separate lawsuit that
20 Peninsula II filed against Griffin and Skyline -- Skyline was
21 the contractor who put up the drywall, so that case has been
22 stayed, it is far from over.

23 Her Honor's order, while we certainly respect it, will
24 be the subject of an appeal, if and when that case is appealed.

25 Also, I just want to let the Court know that the action

1 in Florida before Judge Seitz was filed before this action.
2 Discovery in that case is complete.

3 We had a trial date. We were rapidly approaching the
4 trial date, when the Court, in addressing summary judgment
5 motions, said, "You know what, it's premature to have a trial
6 until liability is determined between Peninsula II, Griffin and
7 Skyline, or among those three.

8 So here, we think that where you have a situation
9 involving a Florida resident who has assigned his property
10 damage claims to Peninsula II, who is seeking recovery for
11 those expenses in Florida in the first filed case, that it
12 simply doesn't make sense to bring us -- to bring Westchester
13 into this lawsuit to run the risk of having to litigate those
14 same issues. And we think that, under these circumstances, it
15 would be futile to do so.

16 THE COURT: Okay. One issue always is the relationship
17 1407. Most of these cases, you know, I didn't have one case --
18 not one drywall case, and now I have got them all. So they
19 send them here, even though they're filed other places.

20 So it's not unusual for me to apply the applicable law
21 of the parties wherever they are. It's not necessarily going
22 to be Louisiana law. In some instances, it's the law of the
23 state that it was filed in.

24 But we have got to get you here so you can make
25 whatever arguments you will make. You are, at this point,

1 making an argument and you are not even in the litigation, so
2 that's rather difficult.

3 I'm going to allow American Home to withdraw. I'm
4 going to substitute Westchester and give you an opportunity to
5 argue 12(b)(1) or 12(b)(6) or whatever it is. The fact you
6 can, doesn't mean that you're stuck here, and doesn't mean that
7 any liability has been imposed upon you, but you've got to be
8 before the Court before you can deal with these issues.

9 I will write something to give you some comfort on it,
10 but that is basically where I'm going with it.

11 MR. LUTZ: Thank you, Your Honor.

12 THE COURT: Thank you very much.

13 All right. The next motion is to extinguish filed by
14 Mr. Miller.

15 MR. MILLER: Thank you, Your Honor. Kerry Miller,
16 again, on behalf of Knauf.

17 Your Honor, this motion pertains to the section of the
18 Knauf settlement on already remediated homes.

19 Your Honor, in connection with already remediated
20 homes, the settlement sets forth certain requirements on the
21 homeowner to submit documentation to support their claim.

22 Those requirements included submitting an affidavit or
23 disclosure affidavit, as well as submitting evidence that
24 comports with Pretrial Order 1B, the information on the drywall
25 before pictures, after pictures, and obviously, Your Honor, it

1 includes an obligation on the homeowner to provide all of its
2 construction costs information.

3 So, Your Honor, we processed many of these claims, and
4 reported earlier on about the settlements.

5 The instant motion, Your Honor, pertains to six claims
6 where homeowners have received numerous notifications from --
7 initially from the PSC, as a result of meetings I had with
8 Lenny over a year ago to file notices I would send.

9 And finally, Your Honor, the culmination was the filing
10 of the motion and the notice of the motion with the attached
11 list of affected homes sent last certified mail and other means
12 to the six homeowners at issue.

13 Your Honor, with respect to those six homeowners, from
14 five, we have heard nothing. No response. We would ask that
15 those claims or those obligations that Knauf would have be
16 extinguished with respect to those.

17 Your Honor, with respect to one of the names on the
18 list, the Jasper homeowner. That particular homeowner was
19 listed in our records as *pro se*. We sent it to a *pro se*
20 address. Certified mail came back to me on that, so it was not
21 delivered to him at the *pro se* address.

22 But apparently, Your Honor, this person had previously
23 been represented by the Diaz Law Firm. We were contacted by
24 the Diaz Law Firm with other contact information that they
25 believe is effective for Mr. Jasper.

1 So, if it's permissible to the Court, what I would like
2 to do this afternoon submit a revised order to Duncan that
3 contains the five homes. It doesn't include Jasper. What we
4 will do with Jasper, is we will re-notice him by way of
5 certified mail because we will have a group for the next
6 month's status conference as well. Perhaps his issue will be
7 included. He will either respond or it will be taken off the
8 list, or it will be included in May -- I'm sorry, at the April
9 status conference after being noticed by certified mail under a
10 new contact address.

11 THE COURT: Okay. I'm going to grant the order as to
12 the five people.

13 As I mentioned, I take it -- I don't take it lightly.
14 I try to give them notice. They have to comply with the Court
15 order. They have to supply certain information. I expect them
16 to do that.

17 If they don't do it, I give them notice to do it. I
18 give them several notices, and then eventually a motion is
19 filed to dismiss their lawsuit. I give them notice of that, at
20 least, once, if not twice.

21 When I don't even hear from them, I have no alternative
22 but to dismiss their case.

23 And I respect that. As I say, people want to move on
24 with their lives. They want to get this behind them. They are
25 not interested in pursuing it. They have a right not to pursue

1 a claim, so I will grant the motion.

2 MR. MILLER: Thank you, Judge.

3 THE COURT: Thank you very much. Thank you all. I
4 will see you all at the next status conference.

5 THE CASE MANAGER: All rise.

6 (Whereupon, the proceedings were concluded at
7 10:22 a.m.)

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10 REPORTER'S CERTIFICATE

11 I, Terri A. Hourigan, Certified Realtime Reporter,
12 Official Court Reporter for the United States District Court,
13 Eastern District of Louisiana, do hereby certify that the
14 foregoing is a true and correct transcript to the best of my
15 ability and understanding from the record of the proceedings in
16 the above-entitled and numbered matter.

17

18

19

s/Terri A. Hourigan

20

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