

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED * Docket No. 09-MDL-2047
DRYWALL PRODUCTS LIABILITY *
LITIGATION *

* November 16, 2015
*
*

Relates to all cases * Section "L"

REPORTER'S OFFICIAL TRANSCRIPT OF THE
STATUS CONFERENCE

BEFORE THE HONORABLE ELDON E. FALLON,
UNITED STATES DISTRICT JUDGE.

REPORTED BY: Mary Thompson, RMR, FCRR
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FINAL TRANSCRIPT * FINAL TRANSCRIPT

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P R O C E E D I N G S

(Call to order of the court.)

THE COURT: Be seated, please.

Call the case.

14:10:42 THE CASE MANAGER: MDL 2407, *Chinese-manufactured Drywall Products Liability litigation.*

THE COURT: Counsel, make your appearances for the record, please, for liaison.

MR. HERMAN: Yes, Your Honor.

14:10:55 May it please the Court. Judge Fallon, it's Russ Herman for the Plaintiff Steering Committee.

MR. MILLER: Good afternoon, Judge. It's Kerry Miller on behalf of Knauf and the Defense Liaison Committee.

THE COURT: Okay.

14:11:11 MR. HERMAN: May it please the Court. Mr. Rosenberg may be on the phone as liaison counsel for various defendants and Mr. Tim Egan is here for local counsel.

14:11:30 THE COURT: Okay. This is our usual monthly status conference. We're having it at 2:00 instead of 9:00 because of the hearing tomorrow.

I've received from the parties proposed agenda. I met with the lead liaison counsel a moment ago to discuss it with them. We'll take it in the order presented.

14:11:47 Pretrial orders. Is there anything on the agenda

1 under No. I?

2 MR. HERMAN: No, Your Honor.

3 THE COURT: And state court trial settings, anything?

14:11:58

4 MR. HERMAN: I understand from Ms. Barrios that
5 there's nothing new.

6 THE COURT: All right. And any coordination? Is
7 there anything?

8 MR. HERMAN: (Shakes head.)

14:12:07

9 THE COURT: Okay. Omnibus class action complaints,
10 anything there?

11 MR. HERMAN: No, Your Honor.

12 THE COURT: How about the --

13 MR. HERMAN: I have nothing under the plaintiffs'
14 motions to establish litigation fee and expense fund.

14:12:17

15 Under the Knauf remediation program, Mr. Miller is
16 here. And BrownGreer is also here, Your Honor.

17 THE COURT: Let's hear from BrownGreer, then, on the
18 report, on what's happening.

14:12:57

19 MR. WOODY: Good afternoon, Your Honor. My name is
20 Jake Woody. I'm here from BrownGreer to give the monthly status
21 report for the settlement program.

22 I'll start with the payments. We are largely in a
23 payment mode, as we have been for the past few months.

24 Our total payments to date are \$81,566,167.

14:13:14

25 Of that number, \$60.9 million has been for Global,

1 Banner, and Inex repair and relocation damages. That's
2 75 percent of our payments.

3 And \$20.6 million has been for what we call other loss
4 claims. That's 25 percent of our total payments.

14:13:28 5 Since the last status conference we have paid out
6 \$560,470.

7 Our other loss claims are broken up into seven claim
8 types.

9 Loss of use, rent and sales has received \$5.8 million.

14:13:44 10 Pre-remediation alternative living expenses, which we
11 abbreviate here to PRALE, has received 5.3 million.

12 Foreclosure short-sale, \$5.1 million.

13 Miscellaneous claims, \$4.1 million.

14 Those are largely personal property claims and claims
15 that don't fit into other categories.

16 And finally bodily injury has received \$113,000, which
17 is less than 1 percent of the total.

18 Again, the total payments there are \$20,664,762.

19 I'll talk briefly about the status of the other loss
14:14:19 20 claims because that is where we are doing all of our work right
21 now.

22 We do have just under 8,000 total claims; 7,985 total
23 claims.

24 Of that number, 5,145 were eligible for some type of
14:14:35 25 compensation.

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 We denied 2,817.

2 And we have currently 21 incomplete claims.

3 That incomplete number is important because those
4 claims remain open. Those claimants still are within the time
5 period to cure the incompleteness.

6 I will note that 18 of the 21 are loss of rent, use
7 and sales claims, and they come from one claimant. We've been
8 working very closely with that firm to clear up those claims so
9 that we can close them, which is important because we want to
10 finish the other loss program and pay everyone the remainder of
11 the amounts pending in the other loss fund.

12 THE COURT: On the denial, that's because of what?
13 More than one person has claimed --

14 MR. WOODY: Largely the denials here are for
15 incompleteness. People just failed to produce the documents
16 that we needed to pay the claims. I would say that is well over
17 90 percent of the reason we would deny someone.

18 There are a few where they submitted a claim for
19 something that's excluded under the terms of the agreement or a
20 claim that they're simply not eligible for. In which case we
21 would deny them.

22 But most of those people were incomplete for one
23 document or another. They got an incompleteness notice, and a
24 follow-up incompleteness notice, and then an incompleteness
25 denial. So they've had ample time to clear those deficiencies

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 and have not done so.

2 THE COURT: Okay.

3 MR. WOODY: I'll talk quickly about our eligible other
4 loss claims.

14:16:01 5 Again, 5,138 have received eligibility notices.

6 Of those, 16 remain open meaning they have time to
7 either accept the offer or appeal it.

8 Seven loss of rent, use and sales.

9 Four miscellaneous.

14:16:15 10 And five for tenant loss.

11 So we are getting down to the end of these claims. We
12 don't have very many more to deal with.

13 We do have -- of the 5,138, 4,375 accepted their offer
14 and we paid them, and those claims are now closed.

14:16:30 15 734 requested special master review of their claim
16 because they felt that the offer that we made them under the
17 terms of PTO 28 was insufficient.

18 We've worked closely with the special master to, A,
19 get him those claims, and get him all the supporting documents
14:16:48 20 submitted by claimants. He's reviewed almost all of the 734.

21 The only ones he has not reviewed yet are the ones that have
22 come in over the last few days so that's a very small handful.

23 We've worked closely with him to formulate a plan to
24 notify people of the results of his review. It will be through
14:17:07 25 our portal just like we've done with every other notice. It

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 will be a formal notice explaining the award, what it means, and
2 what the steps are after that. And we expect to be able to do
3 that hopefully in the near future.

4 Finally, just a summary of what we've done since the
5 last status conference.

14:17:23

6 We've made 160 payments totalling \$560,470.

7 65 other loss claims have been accepted.

8 Again, that's important because it allows us to close
9 those and makes the special master's job easier.

14:17:36

10 156 notices issued.

11 18 incompleteness denials.

12 We talked about that just a moment ago. Those people
13 are incomplete and we eventually deny them, and we can now close
14 them because they're denied.

14:17:48

15 And 222 claims closed either because we paid them or
16 incompleteness denied them or some other reason.

17 But, again, you can see that we are running out of
18 claims to process and running out of claims to pay, which I
19 think is a good thing.

14:18:02

20 Finally our contact information. If anyone needs to
21 contact us, they can e-mail us at CDWQuestions@browngreer.com or
22 go to our web portal at www3.browngreer.com/drywall.

23 THE COURT: Okay. And as I always remind everyone,
24 this is in addition to the remediation aspects of the Knauf
25 settlement which amounted to -- or is anticipated to amount to

14:18:31

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 \$1 billion or thereabouts.

2 MR. WOODY: Yes.

3 THE COURT: This is in addition to that.

4 MR. WOODY: Yes. That's correct.

14:18:43

5 Thank you, Your Honor.

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

7 MR. HERMAN: May it please the Court.

8 Continuing with Your Honor's agenda, there's nothing

9 new in Item No. VII, Inex, Banner, Knauf, L&W, and Global

14:19:00

10 settlements.

11 Item VIII, Taishan, BNBM, and CNBM defendants, the
12 only matter really to speak to is that tomorrow there will be
13 submissions, at the hearing that Your Honor has scheduled, by
14 both parties, opening statements and submissions about them.

14:19:26

15 It's no more than an hour each beginning at 10:30.

16 And the PSC, with regard to the Foreign Sovereign
17 Immunity Act raised by CNBMG, will submit its supplemental brief
18 on November 20th [sic] and Your Honor has scheduled a hearing on
19 December 8th.

14:19:48

20 It's worth mentioning, I think, that with regard to
21 this status conference, the agenda and the status conference
22 report will be published on Your Honor's website. And we will
23 be submitting within one week a supplement to the agenda and
24 status report after we confer with Mr. Harry Rosenberg, who is
25 liaison counsel for BNBM and CNBM, and will also provide it to

14:20:18

1 Mr. Taylor for Taishan.

2 The plaintiff and defendant profile forms are
3 continually being updated, and we intend to provide those
4 directly to Mr. Bernard Taylor.

14:20:43

5 Under Item XI, there were no frequently asked
6 questions added.

7 Under No. XII, matters set for hearing following the
8 current status conference, I believe that there are two of
9 those.

14:20:58

10 THE COURT: We have actually three motions. I'll take
11 those after the status conference.

12 MR. HERMAN: Nothing new, Your Honor, on the physical
13 evidence preservation order.

14:21:17

14 On entry of preliminary default, and with respect to
15 already remediated homes, BrownGreer has made its report.

16 And Your Honor will give us a date for the next status
17 conference.

18 THE COURT: Okay. And anything from anyone in the
19 audience, any issues that need to be raised by anybody?

14:21:37

20 (No response.)

21 THE COURT: Okay. Anything from the government?

22 MR. BECNEL: Nothing public, Your Honor.

23 THE COURT: Okay.

14:21:56

24 The next date is then -- oh, yes, ma'am. You wanted
25 to come forward?

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 MS. HOHNE: I do.

2 Hi, Your Honor. I'm Rebecca Hohne. I've been here
3 in July and August.

4 THE COURT: Okay, Ms. Hohne.

14:22:00

5 MS. HOHNE: And you suggested previously that I hire
6 an attorney for the issues that I was having with my house, and
7 I talked to only one attorney who would actually take my case
8 and he wants a retainer. And because of everything that I've
9 been through, I've lost everything. I don't have the money to
10 hire an attorney.

14:22:15

11 I've been forced into a rental. It's ruined my
12 credit. My credit score has dropped over 200 points, so I can't
13 look at buying another house because no bank or mortgage company
14 would end up loaning me any money for that.

14:22:32

15 THE COURT: Okay. And, Ms. Hohne, as I recall, your
16 house was remediated but you felt that they remediated it with
17 contaminated drywall?

14:22:45

18 MS. HOHNE: Well, I don't know if it's -- I think
19 there needs to be more testing done on my house. I'm not sure
20 if the drywall itself is contaminated or if it's
21 cross-contamination from maybe the wood.

22 But, I mean, I've got some testing that I can show
23 you.

14:23:04

24 THE COURT: Well, you can give it to me and also the
25 parties.

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 You'll recall that in this type of litigation, what's
2 done is that when the remediation is finished, before the
3 drywall is put back into the house, the house is tested by a
4 chemical company who is assigned to that task, and they have to
5 give a report.

6 Apparently they gave a report that your house was free
7 of any contamination after the matter was restored, but you feel
8 that, notwithstanding that, you still have had problems with it,
9 and you feel that it's still contaminated?

10 MS. HOHNE: Yes, sir. I mean, me and my son, we moved
11 back in and we started having similar health problems that we
12 did before, and I knew that something wasn't right.

13 And a few month ago, Knauf and Moss representatives,
14 they came to my house for a dog-and-pony show. They stayed
15 there maybe ten minutes. They looked at the house -- I had
16 already pulled out all of the wiring and all of that months and
17 months prior to that -- and they said that they didn't see
18 anything.

19 But the results prove -- and if you look at the
20 results on here, there's a lot of different testing that was
21 done. If you look at the results, it proves that the sulfur
22 dioxide levels are higher in my house than any other samples
23 that are from the United States, Canada, and Mexico.

24 I have proof that my house has issues still. I mean,
25 this is proof. I think there needs to be more testing. And I

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 want Knauf to step up to the plate and pay me for my loss.

2 And I would like to have an immediate settlement
3 because I cannot move on with my life. You know, my credit has
4 been messed up, which if I look to try to find another job, that
5 will affect me there because a lot of employers nowadays, they
6 check your credit. So because of this, you know, that could
7 affect me trying to have a better life for me and my child.

8 THE COURT: Yes, ma'am. Okay.

9 MS. HOHNE: And I think that they need to take my
10 still-toxic home off my hands. I would like to have a
11 settlement, and I would like to be reimbursed for all my losses
12 because they are a lot.

13 THE COURT: All right.

14 Anything from Knauf?

15 MR. MILLER: Your Honor, after this came up -- Kerry
16 Miller with Knauf, by the way. Sorry.

17 After this came up in July or August, as Ms. Hohne
18 points out, we did send to her home representatives from Moss as
19 well as GFA, the third-party inspection company that would have
20 done the inspection after the KPT drywall was removed from her
21 home the first time.

22 And I also sent someone from my office to personally
23 inspect it, Your Honor.

24 And what these inspections revealed to us was, number
25 one, that all drywall in the home -- all new drywall in the home

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 was manufactured in Florida. It was not Chinese drywall, it was
2 drywall from Florida.

3 Number two, Your Honor, that there was no detectible
4 odor in the home despite the fact that it was August and the air
5 conditioner had been running.

6 And, number three, Your Honor, the property owner is
7 correct that she had pulled out the electrical sockets in the
8 home so you could look at the wires. There was no tarnishing on
9 the wires in her home.

10 So back in 2009 and 2010 when we did test trials and
11 looked at remediation protocols and those things evolved into
12 the remediation program, we looked at whether or not you could
13 have cross-contamination from the studs into the new drywall,
14 and the answer was no. And the CPSC has looked at it and
15 various federal and state agencies have looked at it.

16 And there have been thousands of Chinese drywall homes
17 repaired, and once the homes are cleaned and the drywall is
18 removed, there is no cross-contamination from studs into the new
19 drywall.

20 And, then second, Your Honor, you know, this has never
21 been a latent defect case. The issues with Chinese drywall are
22 the odors and the corrosion, and there were just no symptoms in
23 her home.

24 We've had various scientists take a look at these
25 tests. These are the same tests we looked at back in August.

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 There's just no context for them. We don't know what was
2 sampled or what the purpose was. You see a range of sulfur
3 compounds, but there's no real context.

4 MS. HOHNE: But it shows that the sulfur content is
5 higher in my drywall than in the other drywall.

6 THE COURT: Well, yes, ma'am. The only way that we
7 can deal with this is that I may have to set an evidentiary
8 hearing on it, and you can call your witness and he can be
9 examined and cross-examined. And they can put on their witness
10 and you can examine and cross-examine.

11 That's a difficult thing. That's why I mentioned to
12 you it would be better to have an attorney, but you have a right
13 to represent yourself if that's what you want to do.

14 So we'll have to do that. Then I'll make an
15 evidentiary finding one way or the other and then it will be
16 resolved.

17 MS. HOHNE: So are you saying that Lafarge's drywall,
18 the new drywall, they have higher amounts of sulfur so it's not
19 cross-contamination? It's from the new drywall from Lafarge?
20 Is that what you're saying?

21 MR. MILLER: I'm not saying that at all. All I'm
22 saying is what we found was drywall manufactured in Florida.

23 MS. HOHNE: But you said they looked at it. Did they
24 do any kind of testing on the new drywall?

25 THE COURT: Well, ma'am, that's not the way we do it.

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 The way we do it is that we have a hearing, and you
2 can call your witness and let him examine -- and let him tell
3 me, and then they can cross-examine.

14:28:37

4 MS. HOHNE: But that requires me to come back down
5 here again, is that right? And it's costing me money, and I'm
6 losing --

7 THE COURT: Well -- but I'm not able to do it right
8 now. If I do it right now, it's not going to be good for you.

14:28:46

9 MS. HOHNE: Well, I just -- I don't understand why
10 this courtroom -- you know, I was put into this just like
11 everybody else. It didn't work for me, and I just don't know
12 why the U.S. court system is not taking care of it.

13 THE COURT: Well, they dispute this. They say that
14 their evidence is not --

14:29:01

15 MS. HOHNE: They can dispute it, but did they do
16 testing to dispute it? Do they have facts?

17 THE COURT: But that's what I have to hear.

18 MS. HOHNE: Okay. So I need an attorney for the
19 hearing, is that what you're saying?

14:29:11

20 THE COURT: Well, you can represent yourself, but I'm
21 going to have to have a hearing. And you can put on your
22 evidence and they put on their evidence, and then I make a
23 finding of fact. I can't just believe him or believe you. I
24 have to hear the evidence.

14:29:23

25 MS. HOHNE: Well, couldn't you say that there's

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 required to be new testing? Can't you require Knauf or the
2 court system to do some testing on my house?

3 THE COURT: They say they've done it already, ma'am.

4 MS. HONE: They haven't done testing. They came in
5 and they looked at it. I'm telling you, it was a dog-and-pony
6 show. They just walked in there, they were there for a few
7 minutes, and they walked out.

8 THE COURT: Yeah. Okay.

9 MR. MILLER: And we didn't find anything.

10 MS. HOHNE: You didn't do anything.

11 MR. MILLER: Well the document is not --

12 THE COURT: All right. I understand.

13 MR. MILLER: I'm fine with having an evidentiary
14 hearing.

15 THE COURT: Yeah, I understand. I'll have to have an
16 evidentiary hearing, Ms. Hohne.

17 MS. HOHNE: So when will that be?

18 THE COURT: I'll put it out. We have your address?

19 MS. HOHNE: I've moved.

20 THE COURT: Okay.

21 MS. HOHNE: Again.

22 THE COURT: Give us your address. And then I'll set
23 it in a minute entry, and I'll let you know. If you have a
24 problem with the date, let me know and I'll pick a date that you
25 are satisfied with.

FINAL TRANSCRIPT * FINAL TRANSCRIPT

1 MS. HOHNE: Okay.

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

3 MR. HERMAN: May it please the Court. I'm advised I
4 misspoke again.

14:30:13

5 Our brief on the Foreign Sovereign Immunity Act is due
6 on November 30th, not November 20th.

7 THE COURT: Okay.

8 MR. HERMAN: And some folks at this side of the table
9 are very anxious that I correct the record.

14:30:26

10 THE COURT: Okay. Fine.

11 All right. I'll be back in five minutes and we'll
12 deal with the motions. Thank you.

(Proceeding concluded.)

* * * *

CERTIFICATE

18 I hereby certify this 19th day of November, 2015, that the
19 foregoing is, to the best of my ability and understanding, a
20 true and correct transcript of the proceedings in the
21 above-entitled matter.

/s/ Mary V. Thompson

Official Court Reporter

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