

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED  
DRYWALL PRODUCTS  
LIABILITY LITIGATION \* Docket 09-MD-2047  
\*  
\* October 18, 2011

This Document Relates to All Cases \* 9:00 a.m.

STATUS CONFERENCE BEFORE THE  
HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

## APPEARANCES:

For the Plaintiffs: Herman Herman Katz & Cotlar  
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Also Participating: Dorothy H. Wimberly, Esq.  
Dawn M. Barrios, Esq.  
Arnold Levin, Esq.  
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PROCEEDINGS

(October 18, 2011)

**THE DEPUTY CLERK:** All rise.

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

Call the case, please.

**THE DEPUTY CLERK:** MDL 2047, In Re: Chinese Manufactured Drywall Products Liability Litigation.

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

MR. HERMAN: Good morning, Judge Fallon. Russ Herman  
for plaintiffs.

**MR. MILLER:** Kerry Miller, Your Honor, for the defense steering committee.

**THE COURT:** We are here today for our monthly meeting. I have a number of people on the phone, so please use the microphones when you are reporting. I have met with the liaison lead counsel in this matter beforehand. I talked to them about the proposed agenda. I will take it in the following order. Anything on pretrial orders?

MR. HERMAN: Your Honor, there's no new pretrial orders. However, I will be conferencing with Hilarie next week with regard to a potential amendment to Pretrial Order 1B.

**THE COURT:** Yes. I understand that we have some issues regarding the disposal of material that has been kept in

1 place since the beginning of the litigation. It involves not  
2 only board but also air-conditioning coils, refrigerators,  
3 things of that sort. The material has just gotten voluminous  
4 and something has to be done with it. The home builders feel  
5 that it is becoming a burden. They agree to hold the board and  
6 samples of the board but that some of the other material such  
7 as refrigerators and air-conditioning coils and the like are  
8 posing a storage problem.

9 I have asked the individuals to get together to  
10 see if they can resolve it. If not, then I will consider  
11 shifting the costs to those individuals who wish to have it  
12 kept if they are interested in keeping it. What I have  
13 suggested is that a sample of the material be taken, one  
14 refrigerator instead of 100,000 refrigerators, and then take  
15 photographs of all of the material so that you have that in  
16 place. Maybe some stipulations on accuracy and authenticity  
17 can also be entered. There's got to be an easier way of doing  
18 it.

19 The next item is state court trial settings.  
20 Anything on that?

21 **MR. HERMAN:** Your Honor, Dawn is here. There was a  
22 home builders' fees and cost issue. I think Ms. Wimberly may  
23 want to address that. There's a current issue on that. That's  
24 roman numeral IV, Your Honor.

25 **MS. WIMBERLY:** Just briefly, Your Honor. We should

1 have the final list to you in the next day or so of those  
2 builders who have not complied. We have been trying to  
3 double-check and not include anyone on the list who is not a  
4 builder and also who has not made an appearance or been served.  
5 We don't want to be unnecessarily ruling people into court.

6                   We would encourage any builder who is just  
7 realizing that such an order exists to please go ahead and  
8 comply or contact our office and let us know that you intend to  
9 comply, and we will remove you from the list to be sent to the  
10 Court.

11                  **THE COURT:** Yes. I likewise suggest that they do  
12 that because if not, then I'm going to have to rule them into  
13 court. The easiest way is to just comply. We have thought  
14 about this motion. The amounts requested are fair and  
15 appropriate. There's no way anybody could participate in this  
16 litigation for less than that. I think it's a fair deal and  
17 they ought to take advantage of it.

18                  Anything on the state court trial settings?

19                  **MR. HERMAN:** Excuse me, Your Honor. On roman numeral  
20 III, the insurance issues, I just want to report that we met  
21 with Mr. Pipes and conferred with Mr. Miller yesterday  
22 regarding insurance matters and we are making headway. I would  
23 like to address that when we get to the question of plaintiff  
24 profile forms and defendant profile forms.

25                  **THE COURT:** All right. So the next item is

1 state/federal coordination, and we can fold that into state  
2 court trial settings.

3           **MS. BARRIOS:** Good morning, Judge Fallon. Dawn  
4 Barrios for the state liaison committee. The state court trial  
5 settings as listed in the joint report are accurate. There's  
6 been one change from the last status conference. The default  
7 judgment against Taishan in Virginia has been continued to  
8 December 1. Other than that, the rest are correct.

9           Your Honor, our work in the Gulf States really  
10 has been very successful and I think complete. With  
11 Your Honor's permission, I would like to now turn our attention  
12 to those states that are west of Texas.

13           The Consumer Product Safety Commission Web site  
14 lists some states with many cases. We have, for instance, one  
15 case in California that we know of, one case in Colorado, and  
16 these are not jiving with the numbers at the Consumer Product  
17 Safety Commission. So I'm going to turn my attention to those  
18 states to try to loop them in, particularly to get information  
19 to them on notice if that arises.

20           **THE COURT:** That's fine. Find out which courts are  
21 handling those cases, and I will make contact with those  
22 judges.

23           **MS. BARRIOS:** Yes, Your Honor. Those are on your CD.  
24 I have already made contact with the judges, but I know they  
25 would always appreciate something from Your Honor.

1                   The remands are current through CTO 22, and  
2 there's been no CTOs issued since the last conference. Thank  
3 you, Your Honor.

4                   **THE COURT:** Thank you.

5                   Anything on omnibus class action complaints?

6                   **MR. LEVIN:** No, sir. With regard to the Lafarge  
7 complaint, we have made service on the domestic Lafarge, and we  
8 are in the process of going to France for service.

9                   **THE COURT:** Plaintiffs' motions to establish a  
10 plaintiffs' litigation fee and expense fund, anything on that?

11                  **MR. HERMAN:** Nothing new.

12                  **THE COURT:** Anything on the pilot program?

13                  **MR. HERMAN:** Mr. Wallance is here.

14                  **MR. WALLANCE:** Thank you, Your Honor. Gregory  
15 Wallance, Kaye Scholer, for the Knauf defendants.

16                  It's pretty much on the same trajectory. We  
17 have turned over 975 homes to Moss, and in the case of Prichard  
18 Housing Authority one other contractor. Moss has been to 568  
19 of those homes to walk the home and start drawing the work  
20 authorizations. 256 work authorizations have been sent out to  
21 homeowners. 80 homes are finished, 44 under construction, and  
22 609 other homes in addition to 975 are in inspection. Thank  
23 you.

24                  **THE COURT:** Thank you very much.

25                  Anything on the term sheet?

1                   **MR. HERMAN:** Not at this time, Your Honor.

2                   **THE COURT:** I know discussions are being had even now  
3 as we speak, and hopefully we will be able to report something.

4                   Remediated homes, anything on that?

5                   **MR. HERMAN:** Nothing new, Your Honor.

6                   **THE COURT:** What about the class certification  
7 hearings?

8                   **MR. LEVIN:** They are on hold, Your Honor.

9                   **THE COURT:** Knauf defendants? Taishan defendants?

10                  **MR. HERMAN:** As far as Knauf defendants, we are in  
11 discussion. Taishan's attorney is present. There have been  
12 discussions with Taishan regarding the January 9 Hong Kong  
13 depositions and the logistics of those depositions. We  
14 understand that in compliance with Your Honor's prior order on  
15 discovery, Taishan is moving to comply.

16                  **THE COURT:** Anything on Interior Exterior?

17                  **MR. HERMAN:** No, Your Honor.

18                  **THE COURT:** What about the Banner defendants?

19                  **MR. HERMAN:** Anything further from the Banner  
20 defendants?

21                  **MR. PANAYOTOPoulos:** Good morning, Your Honor. Nick  
22 Panayotopoulos on behalf of certain Banner entities. We are  
23 proceeding in one of the state courts with the litigation. We  
24 have a trial scheduled for January 5. In the meantime, we are  
25 getting a few opt-outs from the settlement agreement. That's

1 all I have to report.

2           **THE COURT:** I've been in touch with the judges in  
3 that area. All of us are looking at it and taking a close look  
4 at what the situation is. Hopefully we will be able to deal  
5 with those issues in another manner. We have got serious  
6 discussions going on today. I'll be available to meet with the  
7 parties. I understand we have some visitors from foreign  
8 countries and that it would be helpful if I can meet with them.  
9 I'll do so.

10           Anything on Venture Supply?

11           **MR. HERMAN:** Nothing new, Your Honor.

12           **THE COURT:** The plaintiff profile forms, we have  
13 talked about that. It seems that we are at the point where the  
14 profile forms are not as forthcoming as they initially were on  
15 both sides, both from the plaintiffs' standpoint as well as the  
16 defendants' standpoint.

17           These profile forms are really essential to  
18 moving the case forward, so I'm going to have to give some  
19 deadlines on getting the profile forms. If they are not  
20 forthcoming either from the plaintiff or the defendant, I'll  
21 have to take action to either dismiss the case insofar as the  
22 plaintiff is concerned and then issue judgment against the  
23 defendants insofar as the defendants are concerned.

24           As you-all know from past experience, I don't  
25 take this lightly from the standpoint of profile forms. I'm

1 not going to dismiss the case, however, immediately. I will  
2 give everybody an opportunity to deliver the profile forms.  
3 But if they feel they can't or won't, then I have no  
4 alternative but to either dismiss the case or issue a default  
5 judgment. I will have to do that.

6                   **MR. HERMAN:** Your Honor, we will meet with liaison  
7 counsel and attempt to provide a suggested schedule to  
8 Your Honor for filing. The PSC, given Your Honor's point of  
9 vantage, will not extend further extensions on defense profile  
10 forms.

11                   With regard to frequently asked questions, there  
12 is nothing new, Your Honor, and I know of no matters set for  
13 hearing.

14                   **THE COURT:** I know we have got other things on our  
15 plate today. I want you-all to continue discussions in the  
16 next few days hopefully in New Orleans. I appreciate everybody  
17 coming to New Orleans to deal with this. I know you-all have  
18 been doing it long distance, but we have got to bring it home.  
19 The way to do it is to move everybody into the New Orleans  
20 area. So hopefully we will be able to report on something  
21 shortly.

22                   The next meeting is December 15 and the  
23 following one is January 26.

24                   **MR. MILLER:** Yes, Your Honor. Typically at these  
25 conferences I look back in the courtroom to see what lawyers

1 I'm going to have meet with after the conference. It's  
2 usually, as Your Honor has noted, a succession of lawyers that  
3 have various issues to discuss with me.

4                   Your Honor, when I looked back today, I saw one  
5 lawyer in particular who I think is late on a profile form.  
6 That would be my niece, Your Honor. It's her first  
7 Chinese Drywall status conference. She's representing a party.  
8 I have informed Mr. Herman I think he needs to talk to her  
9 about profile form issues.

10                  **THE COURT:** Thanks for bringing that to my attention.

11                  Anything further? Anyone have any comments?  
12 Danny.

13                  **MR. BECNEL:** Judge, I don't know what the issue is  
14 about storing. I have a 100,000-square-foot building in  
15 Reserve that I could offer free of charge --

16                  **THE COURT:** Okay.

17                  **MR. BECNEL:** -- for plaintiffs. I have another one  
18 7,700 square feet, another one 5,000, all commercial, secured,  
19 fenced warehouses.

20                  **THE COURT:** Okay. Good to know.

21                  Anything further? Thank you. Court will stand  
22 in recess.

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

24                  (WHEREUPON the Court was in recess.)

25 \* \* \*

### CERTIFICATE

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

s/ Toni Doyle Tusa  
Toni Doyle Tusa, CCR, FCRR  
Official Court Reporter