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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED * Docket 09-MD-2047
DRYWALL PRODUCTS *
LIABILITY LITIGATION * October 21, 2014
*
This Document Relates to All Cases * 9:00 a.m.
* * * * *

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

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10 Proceedings recorded by mechanical stenography, transcript
11 produced by computer.
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1 Okay. Pretrial orders?

2 **MR. HERMAN:** Your Honor, PTO 28E was entered on
3 October 6th. It deals with attorney fee issues.

4 **THE COURT:** Okay. State court trial settings,
5 anything?

6 **MR. HERMAN:** There are three state court trial
7 settings in Virginia. They all occur between March 30th and
8 April 7th. And Mr. Serpe is here, who can further advise the
9 Court.

10 **THE COURT:** Okay. Anything, Dawn, that either one of
11 you-all have?

12 **MS. BARRIOS:** No, Your Honor. But on behalf of
13 Mr. Serpe, just to let you know, these last three trial dates
14 are cleanup cases that are still on the docket. So Judge Hall
15 is allowing motions to set these for trial.

16 And I just want to make a remark on the record
17 for the three Mississippi cases that are opt-outs that we
18 discussed, I'm more than happy to work with plaintiffs' counsel
19 on that at your convenience, Your Honor.

20 **THE COURT:** Yes. With regard to those, I've talked
21 with the attorneys and there are about three cases out of
22 Mississippi. They have opted out of the program and so I'm
23 scheduling them for trial and we'll try each of those some
24 place in Mississippi.

25 **MR. HERMAN:** Your Honor, if I might, a personal

1 privilege, just state for the record we're very proud that Dawn
2 Barrios has received the Professionalism Award from the New
3 Orleans Bar Association.

4 **THE COURT:** Yes, I got that word. I congratulate her
5 also. We're proud of you.

6 **MS. BARRIOS:** Thank you, Your Honor.

7 **THE COURT:** Anything on the omnibus class action?

8 **MR. LEVIN:** No, sir.

9 **THE COURT:** Plaintiffs' motions to establish
10 litigation, anything on that?

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

12 **THE COURT:** Okay. How about the remediation program,
13 any report on that?

14 **MR. HERMAN:** Mr. Miller's here to report.

15 **THE COURT:** Okay.

16 **MR. MILLER:** Good morning, again, Your Honor. Kerry
17 Miller.

18 On the remediation program, where things stand
19 right now, Your Honor, is that with respect to all
20 single-family homes under Option 1 of the settlement agreement,
21 that's the option where Moss oversees the remediation,
22 approximately 2,000 homes are complete, with another 100 under
23 construction and 30 scheduled for start coming up.

24 Same thing, Your Honor, for the remediation
25 program, Option 1, where Moss oversees the construction for

1 condominium units. It looks like, Your Honor, 450 condo units
2 are complete, 35 under construction, and that will pretty much
3 wrap up condo units under the program, Your Honor.

4 One more quick note, Your Honor, to get a home
5 or a condo unit into the remediation program, one of the
6 critical points in that path is a submission of the work
7 authorization by the homeowner back to Moss.

8 Your Honor, at one point there was a backlog of
9 3- or 400. That backlog is down to 25, which is just terrific.
10 So there's not a long queue of things to clean up.

11 We did file a motion, Your Honor, which has been
12 set for hearing on November 25th, though, which deals with work
13 authorizations that have been outstanding for a long time to
14 expedite the process of turning around work authorizations and
15 to complete the remediation program quickly and on time,
16 consistent with BrownGreer's administration of other aspects of
17 the settlement, Your Honor entered CAP 7 earlier this year
18 which set forth a 30-day turnaround time to get the work
19 authorizations in.

20 So for those that have been outstanding for much
21 longer than 30 days, there is a hearing date set,
22 November 25th, on a handful of those.

23 **THE COURT:** Okay. Well, we ought to have some kind
24 of deadline on that, too, at least from the response
25 standpoint. Two weeks before that date, I'd like to hear from

1 those individuals.

2 **MR. MILLER:** Yes. I think you've issued a briefing
3 schedule on that, Your Honor. So, hopefully, that will help
4 clear up the work authorizations. But, by and large, we're at
5 a point now where the homes, 99.5 percent of the cases, are
6 either in the pipeline or it appears they're not going to get
7 into the pipeline, for one reason or another.

8 **THE COURT:** All right. I have a Moss representative
9 here. If anybody has any issues with their structures, this is
10 the opportunity to at least talk to the individual from Moss
11 and see if you can work it out.

12 Where are we? Anything, InEX, Banner, Knauf?
13 Anything with Global settlements?

14 **MR. HERMAN:** No, Your Honor, not at this time. There
15 is a BrownGreer report and this may be the opportunity for the
16 Court to hear that report.

17 **THE COURT:** Sure. Okay.

18 **MR. WOODY:** Good morning, Your Honor. My name is
19 Jake Woody. I'm from BrownGreer, here to give the Court's
20 monthly status report for the Chinese Drywall settlement
21 program.

22 **THE COURT:** Okay.

23 **MR. WOODY:** To date, we've received 22,451 claims and
24 we've reviewed 19,142 of those claims. The only claim type
25 that we haven't completed review on is our miscellaneous

1 claims. Everything else, we're finished with and are either
2 completely done with the claims or in the process of receiving.

3 **THE COURT:** What falls into that, Jake?

4 **MR. WOODY:** Miscellaneous?

5 **THE COURT:** Yes.

6 **MR. WOODY:** Those are various claims. Most of them
7 seem to be for personal property damage, things of that nature,
8 maybe some inspections, but there -- I would say that if there
9 is a common theme, it is that personal property issue.

10 **THE COURT:** Okay.

11 **MR. WOODY:** Our largest claim type is our Global,
12 Banner, InEX repair and relocation claims. Again, we're done
13 with these claims. We have 10,049 eligible; 1,603 denied; and
14 only 14 are currently incomplete.

15 These are pro rata settlements. Meaning that
16 each claimant gets a share of the total amount. The way we
17 calculated our pro rata amount is that we took the total
18 settlement amount available for each settlement, divided it by
19 the total eligible under area square footage for all the
20 eligible properties and came up with a per square foot amount.

21 We multiplied that per square foot amount by the
22 square footage of each home, and that's how we determined how
23 much to pay for each claim.

24 For Banner, the per square foot amount is \$2.97;
25 for InEX, it's 36 cents; the Global fund is divided into three

1 separate pools depending on whether you're a builder, supplier
2 or installer. The Global builder is \$2.03; the Global supplier
3 is \$3.36; and the Global installer is 95 cents.

4 There are many claimants who have received more
5 than one payment. For instance, if you have Banner and you
6 also have a Global builder, you would be eligible for the \$2.97
7 and also the \$2.03.

8 We have been making payments for some time now.
9 We made the total of 9,555 payments. The total amount we've
10 paid is \$44,722,673. Since the last status conference, we have
11 paid \$38,215,912.

12 So we're making good progress in distributing
13 these funds. We're going to continue to do so. Now is a good
14 time to remind people that if they have an eligible claim and
15 haven't received payment, we do need a completed IRS W-9 form,
16 as well as our verification of claims form. Both are available
17 on our Web site, and I'll give that address at the end of this
18 presentation.

19 **THE COURT:** Okay.

20 **MR. WOODY:** We do have four major other loss claim
21 types. Those are bodily injury, foreclosure and short sale, a
22 lost rent use and sales, and pre-remediation alternative living
23 expenses.

24 We have, to date, across all four claim types,
25 2,067 potentially eligible claims. I say "potentially" because

1 they have submitted all the required documents under the
2 settlement agreement, 400 incomplete, and 1,584 denied.

3 The best measure of where we are with the claim
4 type is the number of incompletes. Until we are able to either
5 put the claim into the "eligible" or "denied" category, we
6 don't really know how it will turn out, which affects how we
7 figure out how much we can pay for each claim.

8 This is a set fund. Meaning that we'd like to
9 have as many closed as we can before we figure out how to pay
10 them.

11 **THE COURT:** Do you have any anticipation as to when
12 you're going to be able to make any payment at all?

13 **MR. WOODY:** I think, just to give you some
14 perspective, last month we had 927 incomplete. This month we
15 have 400. The numbers are dropping quickly. For bodily injury
16 and pre-remediation, you can see we have three incompletes for
17 each. Meaning that those are substantially complete.
18 Foreclosure has the most at 244. That number is going to
19 continue to drop over the next few weeks.

20 Once we get a few more out of the incomplete, we
21 can work with the parties, with the special master, to come up
22 with a plan, and I think we'll be able to issue payments pretty
23 quickly after that.

24 You can see from our Global payments, we're
25 pretty quick once we get a plan set up.

1 **THE COURT:** Why so many in foreclosure and short
2 sale? Why so many incomplete there?

3 **MR. WOODY:** Because that is the claim type that we
4 have most recently reviewed. We did bodily injury first and
5 pre-remediation first. We did it in sort of an order. So
6 foreclosure and short sale has the most incompletes because we
7 have recently issued incompleteness notices to them. It's not
8 anything specific to that claim type, it's just the order in
9 which we took the claims.

10 **THE COURT:** All right.

11 **MR. WOODY:** Our contact information is as follows:
12 The best way to contact us is by e-mail at
13 cdwquestions@browngreer.com. You can also call us at
14 (866)866-1729. Our web portal is www3.browngreer.com/drywall.
15 The documents I mentioned earlier, the W-9 form and the
16 verification of claims form are available on our web portal for
17 download.

18 **THE COURT:** Okay. Thank you very much.

19 **MR. WOODY:** Thank you.

20 **THE COURT:** Anything on Taishan defendants?

21 **MR. HERMAN:** Yes, Your Honor. May it please the
22 Court, first of all, I'd like to indicate that pages 13 through
23 20 of the status report filed and available for those that are
24 interested in the various Taishan defendants is available. The
25 discovery issued to Taishan, Arnold Levin, lead counsel, will

1 address. And I do note that the related Taishan defendants,
2 their depositions have been continued without date.

3 **MR. LEVIN:** Your Honor, as you know, with regard to
4 the motion withdrawal filed by Taishan's clients, they have
5 produced a privilege log. All of the pleadings have been filed
6 under seal. Yesterday they served us with their reply brief
7 and requested that that be filed under seal. We agree that
8 that will be under seal. I think at this stage of the
9 litigation everything should be under seal.

10 We will be responding to their reply brief.
11 Since our response will be under seal, I think it's appropriate
12 that I not address our response right now.

13 **THE COURT:** Yes. The reason for it being under seal
14 is that this is a situation where Taishan has, in effect, fired
15 their counsel, and the issue is why, whether it's appropriate,
16 what's the reason, and things of that sort. Some of these
17 issues go into potential attorney/client privilege and various
18 other privileges.

19 So rather than deal with that at this time, it's
20 easier to have it all under seal, and then I'll be able to take
21 a look at it and deal with it specifically.

22 **MR. LEVIN:** Right. Thank you, sir.

23 **THE COURT:** Thank you.

24 Anything from Venture Supply, Porter Blaine?

25 **MR. HERMAN:** Your Honor, Garretson's organization may

1 have a report to make regarding their administration of the
2 Virginia settlement, which I believe is still ongoing.

3 **THE COURT:** All right. Yes?

4 **MR. BAUER:** Your Honor, good morning. Ben Bauer here
5 on behalf of Special Master Matthew Garretson and the Garretson
6 Group, may it please the Court.

7 We currently have 262 real property claims. The
8 work on those claims is complete, and we have the frame work
9 set for allocation. The one outstanding matter is the appeal
10 that I understand will be heard after the conference today.

11 **THE COURT:** Right.

12 **MR. BAUER:** Upon resolution of that appeal, we are
13 prepared to move forward with allocation, more or less
14 immediately, and from there we can begin issuing payments to
15 those 262 claimants.

16 **THE COURT:** Okay. The Virginia settlements involved
17 Taishan drywall. The suits were filed not only against
18 Taishan, but also against the various distributors.
19 Eventually, the distributors and installers, their insurers
20 came into the picture and a settlement was worked out.

21 The settlement involves the claimants who
22 primarily have residences in Virginia, but also in some
23 adjoining states in one or two of the claims. The settlement
24 is against Nationwide, Venture Supply, Porter Blaine
25 Corporation and their insurers, Hanover, Tobin Trading,

1 Building Plaster and Drywall, LLC, JMM Drywall, LLC, and State
2 Farm, and also Builders Mutual Insurance Company.

3 The defendants put up \$10 million in
4 Nationwide-insured settlements, \$3 million in Porter Blaine,
5 \$2 million in Tobin Trading, and \$1,700,000 in Builders Mutual.
6 The difference in the amounts primarily have to do with the
7 coverage issues and also amounts of coverage, and also some
8 evaluation liability-wise, but primarily based on the amounts
9 of coverage, for the most part, for about \$17,400,000.

10 That's the amount that has to be distributed,
11 and the settlement terms are rather specific, and that's what's
12 going on at this time in Virginia.

13 **MR. BAUER:** That's correct, Your Honor.

14 **THE COURT:** Good. Thank you very much.

15 Okay. Anything?

16 **MR. HERMAN:** Your Honor, there are two matters set
17 for hearing after the status conference, a motion for
18 reconsideration in the matter of Ralph Mangiarelli, Jr., and
19 Phillip and Clarine Allen's appeal from the special master.

20 **THE COURT:** Right.

21 **MR. HERMAN:** I see that Mr. Robert Johnston is here
22 with regard to a pro se claimants report.

23 **THE COURT:** All right.

24 **MR. JOHNSTON:** Good morning, Your Honor. Robert
25 Johnston, curator for pro se plaintiffs. I'm holding a copy of

1 the 32nd curator's report that I have provided to the Court.

2 As the Court well knows, there has been a
3 continuous level of communications by pro se plaintiffs who
4 have, in various ways, gotten my name, including the Court's
5 Web site, and have reported to me that they have learned,
6 basically, in the last six months, say, eight months that their
7 homes are infested with Knauf drywall.

8 I, for each and every one of those individuals,
9 have requested that they provide inspection reports to me, and
10 on receipt of that, with verification that it's Knauf, and what
11 I've termed the "late Knauf claimants," at the suggestion of
12 the Court months ago, I have sent to the Plaintiffs' Steering
13 Committee, and counsel for Knauf, and a "CC" to the Court, the
14 names. And as you can imagine, the names continue to inch up.
15 They're still not, in my view, a substantial amount, but the
16 stories are all basically the same.

17 One of the things that it was my appreciation
18 was that the Court was certainly interested in seeing, to use
19 my terminology, if this issue could be worked out. I have had
20 discussions with Kerry Miller, I've had discussions with Lenny
21 Davis to make sure I'm not stepping on anybody's toes or what
22 have you.

23 And the reason that I've taken the time to bring
24 all this to the Court's attention is that in July a pro se
25 plaintiff who is someone that I know well as an attorney in New

1 Orleans, Peter Thriffley, who's here in the back with his fine
2 wife, had filed a motion asking that the Court, given the
3 unique circumstances of the virtual impossibility that these
4 individuals would have even known that they had Knauf drywall
5 until just very recently, the Court continued that, I believe
6 it was in the July hearing -- status conference.

7 And Mr. Thriffley called me yesterday, and as he
8 would tell the Court, and certainly, but I'll relay it, he's
9 going to request that the Court set this -- to bring it to a
10 head one way or the other at the Court's next status conference
11 on, I believe, it's November 25th.

12 Well, I just walked over and I talked to Kerry
13 Miller and all I can tell the Court is is that it's been
14 reported to me that there is some level of communications with
15 Knauf. And I certainly, you know, as curator, not having an
16 attorney/client relationship, but I can tell you professionally
17 and personally, I have no problems that if the Court wishes to
18 set that for hearing, I filed a brief motion to simply tell the
19 Court that Mr. Thriffley's story is the same as the others so
20 that the Court would at least know that there are numbers of
21 other people.

22 So I think this may be a vehicle to bring it to
23 a head one way or the other. Either it can be worked out to
24 the benefit of everybody; or the Court, in it's consideration,
25 could set it for hearing in November. Because from July to

1 November seems to me would be adequate time for Knauf to make a
2 decision relating to what I continue to term the "late Knauf
3 claims."

4 You certainly will not come over to my office to
5 hear the tales or, you know, talk to these good people --
6 mostly good people, but I think that that's where we are, and I
7 just wanted to advise the Court.

8 **THE COURT:** Do you have any feel for what's the
9 number of those late-filed claims?

10 **MR. JOHNSTON:** Well, I do. I asked my paralegal that
11 yesterday and the number's now 52.

12 **THE COURT:** Any input from Knauf on that?

13 **MR. MILLER:** Kerry Miller, again, on behalf of Knauf.

14 Your Honor, this issue has been reported to our
15 client. I think, as Bob says, it's time to bring the issue to
16 a head one way or the other. From Knauf's standpoint, they
17 made a deal with the class counsel and the PSC. The deal
18 between Knauf and the PSC has been fulfilled by both parties.
19 It was a settlement involving a captured inventory based on
20 allegations of patent defect, and they fulfilled it.

21 I've communicated basically what Mr. Johnston
22 has said to my client. There's also been some discussions with
23 the PSC about some other ideas or options. But I tend to agree
24 with Mr. Johnston, it's time to bring it to a head one way or
25 the other. It may be that the pro ses, they can pursue rights

1 in litigation. That may be the answer. But we can deal with
2 that on November 25th.

3 **THE COURT:** All right. Well, let's file a motion
4 then and I'll set it and we'll deal with it the next time.

5 You mentioned something about an attorney.

6 **MR. JOHNSTON:** Yeah, Peter Thriffiley.

7 **THE COURT:** Would you like to speak, sir? If you
8 have any comments, I do recognize you.

9 **MR. JOHNSTON:** Should he, since he's the one that
10 filed the motion, file a motion to set it for hearing on the
11 25th?

12 **THE COURT:** Sure. Yes, that's fine.

13 **MR. THRIFFILEY:** Good morning, Your Honor.

14 **THE COURT:** Good morning.

15 **MR. THRIFFILEY:** May it please the Court, Peter
16 Thriffiley. I'm the pro se claimant. I filed the motion for
17 authority to file a claim in the matter July 11th and Your
18 Honor continued the same, and I would request that it be set
19 for hearing on November 25th.

20 **THE COURT:** Okay. Are you okay with it being set on
21 the 25th?

22 **MR. THRIFFILEY:** Yes, Your Honor.

23 **THE COURT:** Okay. I'll do that then.

24 **MR. THRIFFILEY:** Now, do I need to file a notice or
25 anything?

1 **THE COURT:** No. I'll set it on the 25th and I'll
2 notice everybody.

3 **MR. THRIFFILEY:** And that will be at 9:00 a.m?

4 **THE COURT:** Yes.

5 **MR. THRIFFILEY:** Thank you, Your Honor.

6 **THE COURT:** Good. Thank you very much for being
7 here.

8 **MR. HERMAN:** Your Honor, may it please the Court, I'd
9 like to briefly address a part of this issue. In the last
10 three or four weeks, we've gotten a few calls, which we've
11 referred, of course, to Bob Johnston, and we've advised these
12 folks to get an attorney. And at least one of those occasions,
13 it was reported that, "Well, we know we have Chinese Drywall,
14 it says 'Made in China.'"

15 I just want to indicate for the record that as
16 far as we know, quote, Made in China, end quote, drywall is not
17 Knauf drywall. So I don't want any misunderstanding by any
18 interested parties. They're going to have to be very, very
19 careful about their inspections.

20 **THE COURT:** Yes. The importance of that is that
21 there are generally two areas of manufacturers. One is the
22 Knauf interests. Knauf, at the request of China, purchased
23 some assets, one of which was a manufacturing facility of
24 building products, a lot of it involving drywall. That wholly
25 owned subsidiary in China was owned by Knauf, and that's one of

1 the manufacturers involved.

2 There are also Chinese-based manufacturers,
3 which we've been referring to as "Taishan" and the "Taishan
4 entities." That's separate and apart from the Knauf entity.

5 The suits have been filed against the
6 manufacturers of that drywall because if the drywall is
7 defective and a manufacturer manufactures that defective
8 drywall, they are, under the laws of the United States, and
9 every state, strictly liable. They don't need to know that it
10 was defective, they don't need any knowledge, or should have
11 known, could have known, might have known. None of that.
12 Under this law, if you manufacture a defective product, you're
13 liable. So the suits have been filed primarily against the
14 manufacturer.

15 Now, the other downstream distributors,
16 installers, and people of that sort, they, for liability
17 purposes, for the most part, there's some exceptions, but for
18 the most part, they have to have some knowledge or opportunity,
19 or should have known or could have known or might have known,
20 something of that sort.

21 But as a result, the primary defendants in this
22 case have been the manufacturers. Knauf has, after a number of
23 trials, entered into settlements with the plaintiffs, but the
24 Taishan interests have not. They originally objected to the
25 jurisdiction. After some discovery, I ruled that I had

1 jurisdiction, the Fifth Circuit has affirmed me. The Supreme
2 Court has not been asked to look at writs, but those defendants
3 have now fired their lawyers and refuse to participate in this
4 proceeding. So that is being dealt with another way.

5 But that's the point that counsel raises: Not
6 all Chinese drywall was manufactured by Knauf.

7 Anything else? Anything from the Louisiana
8 Attorney General? Any comment?

9 **MR. BARTON:** Good morning, Your Honor. Dustin Barton
10 from the law firm of Perkins Coie on the behalf of the Attorney
11 General.

12 Your Honor, at the end of September, you
13 obviously granted the state's motion to withdraw their motion
14 to remand and also allowed us to file a second amended
15 petition, which we have done. The State of Louisiana currently
16 is in the process of serving that amended petition on the
17 defendants, and that's all we have to report at this time, Your
18 Honor.

19 **THE COURT:** Okay. Anything from the PSC?

20 **MR. HERMAN:** May it please the Court, Your Honor, we
21 only ask that the Attorney General advise Judge Fallon and the
22 Plaintiffs' Steering Committee of the attorneys or the
23 principal involved with the Road Home remediation fund, which
24 was, I believe, approximately \$5 million so we have a contact
25 with whoever the Road Home principal is.

1 **THE COURT:** Yes. There's some issue as to whether
2 Road Home's entitled to get the money back and other issues.
3 So at least I ought to know, and the plaintiffs' committee also
4 ought to know the name of the contact for that. So I ask that
5 you get that.

6 **MR. BARTON:** We'll do that, Your Honor. Thank you.

7 **THE COURT:** Thank you.

8 Anything else from anyone?

9 The next conference is November 25th, and the
10 following one is December the 17th.

11 Okay. I have two motions. I'll be back in five
12 minutes and I'll take the motions. Court will stand in recess.

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

14 (WHEREUPON, the proceedings were concluded.)

15 *****

16 **CERTIFICATE**

17 I, Jodi Simcox, RMR, FCRR, Official Court Reporter
18 for the United States District Court, Eastern District of
19 Louisiana, do hereby certify that the foregoing is a true and
20 correct transcript, to the best of my ability and
21 understanding, from the record of the proceedings in the
22 above-entitled and numbered matter.

22 *s/Jodi Simcox, RMR, FCRR*
23 Jodi Simcox, RMR, FCRR
24 Official Court Reporter
25