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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: CHINESE-MANUFACTURED Docket No. 09-MD-2047  
DRYWALL PRODUCTS LIABILITY New Orleans, Louisiana  
Thursday, May 26, 2011

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TRANSCRIPT OF STATUS CONFERENCE AND MOTION PROCEEDINGS  
HEARD BEFORE THE HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

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1           Pretrial Orders, anything on that?

2           MR. LEVIN: Nothing new, sir.

3           THE COURT: Plaintiff and Defendant Profile Forms. We  
4 had some issue with the plaintiff profile forms.

5           MR. LEVIN: Your Honor, with regard to the plaintiff and  
6 defendant profile forms, as we discussed in the liaison committee  
7 meeting this morning, we worked out a procedure whereby both sides  
8 will talk to each other, for a change, and we'll be able to give  
9 missing profile forms, pass them along without incurring any  
10 substantial costs in the process.

11           THE COURT: Okay. That's important, you know my feeling,  
12 I've mentioned several times about profile forms, I think that  
13 that's essential in moving this case along, and it should be  
14 reasonably priced so that people can get them that need them and  
15 deal with it.

16           Okay. The Preservation Order, anything on that?

17           MR. LEVIN: Nothing new.

18           THE COURT: State and Federal Coordination.

19           MR. LEVIN: Ms. Barrios.

20           MS. BARRIOS: Thank you, Mr. Levin. Good morning, Judge  
21 Fallon, Dawn Barrios for the State Liaison Committee. I've  
22 prepared a disc, as usual, for today's conference. It contains the  
23 remands current through CTO-21. We have not had any new CTOs since  
24 February's status conference.

25           I would again like to thank counsel for providing me the

1 state court cases because it does assist me to provide the  
2 information to your Honor.

3 At our last status conference you had inquired as to  
4 where the new cases were coming, and while I could not handle that  
5 task with the MDL cases, I can tell you the state cases where they  
6 are and I have a census.

7 THE COURT: Okay.

8 MS. BARRIOS: Alabama has 71 state cases, Colorado one,  
9 Florida 220, Georgia one, Louisiana 142, Mississippi five, North  
10 Carolina one, New Jersey one, and Virginia 167; for a total of 609  
11 cases.

12 If any counsel believes that these numbers are incorrect,  
13 if you can provide me with the information, I would appreciate it.

14 THE COURT: And I have a list of the judges who are  
15 handling those cases and their telephone numbers?

16 MS. BARRIOS: Yes, your Honor, it's on the CD.

17 Your Honor, this week I also received a call from counsel  
18 from Florida who was concerned that there was seven or eight  
19 Florida state court judges who maybe have one or two cases each,  
20 and she would like to get those judges coordinating with the MDL.  
21 So she specifically asked me to ask your Honor if you would make  
22 the calls to these seven or eight judges, and that information is  
23 on the CD. But for your convenience, I'll e-mail and with your  
24 permission I'll e-mail to Lexy those specific judges' names so you  
25 don't have to go through the whole CD and find out who they are.

1           THE COURT: That would be fine. As you know, I've been  
2 trying to coordinate with the state judges, many of whom are on the  
3 phone today, and I do appreciate their help in this particular  
4 matter. I think it's to the benefit of the litigants to have it  
5 coordinated so that we can use the same depositions and we won't  
6 get in each other's way with certain dates and times. I've been  
7 trying to keep everybody up to speed on the dates and times of  
8 various things so that they are able to schedule their cases  
9 without interfering with others or vice versa.

10           So it's working, it's just needs some coordination, and I  
11 am willing to do that if you give me the information.

12           MS. BARRIOS: Thank you, your Honor. And the last bit of  
13 information is that there is a case, *Staggs v. Alvarez Homes*,  
14 that's set for trial in Florida for January 2012, there's a  
15 mediation set in July 2011, and the judge is Judge Bernard Silver.

16           THE COURT: Yes, okay. Good, I am aware of that one.

17           MS. BARRIOS: Thank you, your Honor.

18           MR. SCHILLING: Your Honor, my name is Steven Schilling I  
19 represent multiple home builders, and there is a case pending in  
20 the 22nd JDC, I don't recall the caption or the judge that's  
21 actually handling the matter right now. I have e-mailed my office  
22 and I will provide that information to Lexy as soon as I get it,  
23 your Honor.

24           THE COURT: Good.

25           MR. SCHILLING: The plaintiffs in that action have moved

1 to declare the Louisiana New Home Warranty Act unconstitutional,  
2 and in speaking with Mrs. Wimberly, she thought I should make the  
3 court aware of that.

4 THE COURT: Yes. Why don't you do that and give me the  
5 name of the judge so I can touch base with them.

6 MR. SCHILLING: I will, your Honor.

7 THE COURT: Thank you very much.

8 The next item is the motions. We'll deal with the  
9 motions -- we have several motions today, but I will deal with  
10 those after the conference.

11 Notice of Appearance and Default Judgments.

12 MR. LEVIN: There is nothing new on that, your Honor.

13 THE COURT: Insurance issues, anything?

14 MR. LEVIN: We continue to work with liaison counsel for  
15 the insurance committee to work out scheduling, discovery and all  
16 other matters. And that's been going smoothly.

17 THE COURT: Service of Pleadings Electronically.

18 MR. LEVIN: Nothing new, sir.

19 THE COURT: Any class action complaints?

20 MR. LEVIN: No, sir. There will be one filed against the  
21 Taishan and Chinese entity which will sort of track what we did  
22 with the Grabruder (PHONETIC) with regard to Knauf. As we find  
23 more entities through what limited discovery we've been allowed, we  
24 intend to bring them before the court.

25 THE COURT: Okay. All right. Anything on the Omnibus

1 Complaints?

2 MR. LEVIN: We filed an omnibus complaint captioned  
3 Omnibus 9 against Taishan entities, and we are in the process of  
4 preparing No. 10 for the Knauf entities, which will probably be  
5 filed the first or second week in June.

6 THE COURT: Okay. And anything on the Litigation Fee?

7 MR. LEVIN: Nothing there, sir.

8 THE COURT: Mediation, anything?

9 MR. LEVIN: There are several mediations, they continue  
10 to go on, with limited success which indicates that the, from my  
11 perspective, that only globally can we achieve something here.

12 THE COURT: And that is the advantage, if there is an  
13 advantage, with the MDL. It gives people an opportunity to do  
14 something globally, and in these cases that's the significant part.  
15 Because if you begin resolving it piecemeal, you find that from the  
16 defendant's standpoint the difficulty always is is that the next  
17 case expects that to be a floor on which they can build the  
18 ceiling. And then it just keeps going in a ladder fashion up the  
19 ladder. It's better to kind of do it globally once and for all.

20 Pilot Program, anything on that?

21 MR. LEVIN: I believe our pilot will speak to your Honor.

22 MR. WALLANCE: Good morning, your Honor, Gregory Wallance  
23 for the Knauf defendants.

24 Your Honor, we now have close to 250 homes in the  
25 pipeline. Seventy have either been remediated or in remediation,

1 and we are moving homes into the program just outside of Florida  
2 alone at the rate of about 15 a week; that is, turning them over  
3 for inspection for eventual acceptance into the remediation  
4 process. And I recently offered attorneys for 120 residences,  
5 freestanding homes in Miami and Broward County, Miami Dade and  
6 Broward County an opportunity to have their homes inspected for  
7 eventual acceptance into the pilot program.

8 THE COURT: How is the remediation coming, Greg?

9 MR. WALLANCE: Well, ten homes have been finished and as  
10 far as I can tell by all reports, the homeowners are quite pleased.  
11 I am also pleased to say that in the 70 homes that are in  
12 remediation or finished, we have not had to resort to the dispute  
13 resolution process, that is where the mediator John Perry or  
14 yourself to resolve disputes. Disputes have come up, some are  
15 still pending, but so far we have been able to address them. So I  
16 am pleased with that aspect of it as well.

17 THE COURT: One homeowner came from Florida here to tell  
18 me how good the remediation process was, and she just wanted me to  
19 know. So that's the feedback I am getting also.

20 MR. WALLANCE: Well, I heard you were invited, maybe it  
21 was the same homeowner, I heard you were invited to her house  
22 warming, as was everybody else practically in the room, after the  
23 completion and her move in.

24 THE COURT: Good. I think that's a good process, and  
25 I've been mentioning that to my colleagues around the country as a

1 potential method of trying to resolve these cases, cases of this  
2 sort. It gives an opportunity to the parties to get a look-see,  
3 sort of. You can do it theoretically, but until you do it  
4 actually, you don't know whether or not it's going to work. And  
5 this is a good way of doing it, you get a look at it, people who  
6 haven't done it ought to get a look-see at these pilot programs,  
7 see whether or not they want to join, and, of course, we expand it  
8 and eventually, hopefully, they'll have other options that you can  
9 participate in in addition to the remediation.

10 Stipulation concerning Service of Process, anything on  
11 that?

12 MR. WALLANCE: Thank you, your Honor.

13 THE COURT: Thank you, Greg.

14 MR. LEVIN: I have nothing new, your Honor.

15 THE COURT: Class Certification Hearings, I have them  
16 scheduled for August 23rd, 24th.

17 MR. LEVIN: The INEX hearing has been stayed as a result  
18 of your order on preliminary approval. Banner at this point is  
19 proceeding, Knauf is proceeding. We don't have a class hearing set  
20 for the domestic defendants in Virginia, but we just started to get  
21 active on that class certification, sir.

22 THE COURT: Let me know about that because I am in  
23 discussions always with the judge in Virginia and I try to keep her  
24 advised of all that happens.

25 MR. LEVIN: We certainly will, sir.

1 THE COURT: Anything from Taishan defendants?

2 MR. LEVIN: We have the Knauf defendants.

3 THE COURT: The Knauf defendants first.

4 MR. LEVIN: We have several depositions scheduled.

5 They're as firm as is it going to be the 21st of July or the 20th  
6 of July, that will be resolved tomorrow. Several are in New York,  
7 several are in Frankfurt; and in August -- they're July  
8 depositions. And in August there are depositions that are  
9 scheduled in Hong Kong.

10 THE COURT: Okay. And I know in a case of this sort and  
11 it's just one of those situations that complicates the process, but  
12 I don't know how to deal with it other than just the way that it's  
13 being done, and that is in the case of this sort where there's  
14 international involvement, depositions have to be taken all over  
15 the world. And that translates into costs, that's a problem, on  
16 both sides it's a problem. It's probably more of a problem from  
17 the plaintiffs because the defendants generally you go to where the  
18 defendants are and they don't have as much costs, although they do  
19 have a cost with the attorneys.

20 I don't know how to deal with that technologically.  
21 We're trying to work out some way of taking depositions so that the  
22 various entities can remain at home and the person or the entity  
23 that's being deposed also remains at home. It's a little more  
24 complicated when you're dealing with documents because technology  
25 is not able to deal with that in an effective way. You can't hold

1 up the document and deal with it and they don't know which document  
2 you're on and you can't show it to them.

3           It's a little bit more complicated, but hopefully  
4 eventually we will be able to deal with some of that  
5 technologically and it will minimize the cost. But the cost in  
6 these cases with this type of requirement going to Hong Kong, going  
7 to China, going to Europe several times, it really drives up  
8 expenses. And I am aware of it, I just don't have any my hands  
9 around it yet.

10           The next, Taishan defendants, anything?

11           MR. LEVIN: Lenny Davis is going to speak to one issue  
12 with regard to the Taishan defendants.

13           THE COURT: Okay.

14           MR. DAVIS: Your Honor, I am just reporting to the court.  
15 With respect to a subpoena that was issued and document request to  
16 Guardian who is one of the entities, they filed a motion to quash.  
17 That matter was set and we were under the understanding that we  
18 would have deposition dates and documents by today. We don't have  
19 them, and I am just alerting the court that we will be bringing it  
20 to your Honor's attention so that we can get that matter moved and  
21 expedited.

22           And we'll either file a motion if your Honor wants it, or  
23 a letter as you've asked for in the past so we can move this  
24 quickly.

25           THE COURT: Get me a letter from each side and I will get

1 you either on the phone or in conference and we will resolve it.

2 MR. DAVIS: We would like to do that next week if  
3 possible.

4 THE COURT: Okay. Fine.

5 MR. DAVIS: Thank you.

6 THE COURT: Interior/Exterior defendants, anything on  
7 that, Arnold?

8 MR. LEVIN: That is in the -- preliminary approval has  
9 been granted, it's in the notice process right now, and there is a  
10 fairness hearing in October, sir.

11 THE COURT: Okay. And then while you're here, Banner  
12 defendants, anything?

13 MR. LEVIN: Nothing new to report there at this point.

14 THE COURT: And the next item on the agenda is Trial  
15 Settings in Federal Court.

16 MR. LEVIN: Nothing, sir.

17 THE COURT: I keep updating my frequently asked  
18 questions, that's helpful. If I get several letters from  
19 individuals, I generally try to answer it and put it on my  
20 frequently asked questions Web site.

21 I have several matters set for hearing after this  
22 conference, so the next hearing date is the June 14th date. I've  
23 been trying to coordinate this with Judge Barbier in his case,  
24 today unfortunately we had some conflict, but he and I are trying  
25 to work together so people who have both cases can come in for one

1 and stay for the other, whichever it is, and hopefully we will be  
2 able to work it out that way to minimize problems for lawyers.

3 Anything from anybody for the good of the cause?

4 Dorothy.

5 MS. WIMBERLY: Yes, your Honor, Dorothy Wimberly for the  
6 builders. We had discussed in chambers, and I don't know whether  
7 or not your Honor wants to deal with it in the form of an order or  
8 make some remarks on the record, and that was regarding the status  
9 of the Banner settlement.

10 THE COURT: Yes. Let me make a comment about the  
11 settlements in these particular cases. In this case I have 1,000  
12 defendants. Oftentimes I have a number of plaintiffs, but not many  
13 defendants. In this case we have it looks like maybe about 20,  
14 30,000 plaintiffs, we have about 1,000 defendants in the case.  
15 It's hard to get everybody in the room the way that I have done  
16 before in cases of this sort with that many people, and so it's  
17 just not able to be done.

18 So I have to deal with it, like somebody said, the way to  
19 eat an elephant is one bite at a time, and that's what I am trying  
20 to do with this particular case. So I have been trying to group  
21 the people so that they have manageable groups and then encourage  
22 them to focus on their issues in that manageable group.

23 When they do that, there's preliminary discussions and  
24 there's some puffing and there's various remarks made that is  
25 probably best kept in that room with that local or small group.

1 When it's thrown into the open, it's misunderstood and it's  
2 magnified and it gets out of hand and it defeats the whole purpose  
3 of getting the group together. So when I get these groups together  
4 to talk about their particular issues, I need those negotiators in  
5 those groups to keep their own counsel at the preliminary stage.

6 Now, that doesn't mean that things are going to get  
7 resolved and people are going to find out that they're resolved  
8 later on. That's not the purpose of it. I believe in  
9 transparency, I put these things on the Web site, I give everybody  
10 an opportunity to speak against it or for it or whatever it is, but  
11 in the early stages it's necessary to keep it confined so that  
12 people can do what they do.

13 You know and I know and they get in the room and at first  
14 everybody is pushing each other and they're saying some things just  
15 for effect and testing each other out, and that's part of the  
16 process. But it has to be confined so they can deal with that.  
17 When it gets closer to the end or when things begin to gel a little  
18 bit, then it's appropriate to spread the news, get input, get  
19 everybody on board and make sure everybody is on board before it's  
20 inked into a settlement resolution. But there are stages in it and  
21 I need everybody to understand those stages.

22 Okay. Anything else from anybody? Danny.

23 MR. BECNEL: The people that have remediated their houses  
24 and paid for it themselves and made loans to pay for it themselves,  
25 I really think, like Sean Payton, I know especially either he would

1 like -- he has nothing to coach this year it looks like, he would  
2 like to try his case or try to get it mediated or --

3 THE COURT: He has some extra time this year.

4 MR. BECNEL: He is trying to learn soccer right now, your  
5 Honor. But a lot of these people want to sell their houses and  
6 move to other houses and that makes it particularly difficult for  
7 the lawyers handling it because they might have to give up their  
8 remediated costs.

9 THE COURT: Sure. No, I've got it. Greg, do you have  
10 any solutions to that type of situation with people who have  
11 remediated their homes, is there any input you can give on that?

12 MR. WALLANCE: I can, your Honor. We're dealing with  
13 those on a case-by-case basis. I think in these instances we're  
14 talking about fairly high-end homes, which present some unique  
15 issues, that's why it's on a case-by-case basis. And we have had  
16 some success in effect putting these through a resolution process,  
17 so I think I would be happy to talk to you and see what we can work  
18 out.

19 THE COURT: That makes sense to me on a case-by-case  
20 basis because they're all over the place from the modest to the  
21 coach's and so forth that they need to be looked at differently.  
22 Okay. Thank you very much.

23 Anything else, folks?

24 MR. LEVIN: No, sir.

25 THE COURT: Okay. Thank you very much. I will be back

1 in about five minutes to hear the motions.

2 THE DEPUTY CLERK: Everyone rise.

3 (WHEREUPON, A RECESS WAS TAKEN.)

4 (OPEN COURT.)

5 THE COURT: Be seated, please.

6 I have a number of motions, five motions to deal with.

7 The first one I'd like to take is No. 5, the RCR Holdings motion to  
8 file a third-party complaint. That is unopposed, so I'll grant  
9 that motion.

10 The next one is the Knauf defendants' motion to enforce  
11 the settlement agreement.

12 THE DEPUTY CLERK: Would you give the record document.

13 THE COURT: The record document on that one is record  
14 document 8606. The other document is 8760.

15 Anything on the Knauf defendants' motion to enforce  
16 settlement?

17 MR. MILLER: Good morning, your Honor, Kerry Miller on  
18 behalf of Knauf. I would like to note at the outset that these  
19 briefs were filed under seal, so I am not sure how the court wants  
20 to proceed. They were filed under seal because it was in  
21 connection with the mediation and there were draft settlement  
22 agreements attached, and so on and so forth.

23 THE COURT: The thing that we have issues as to which law  
24 is applicable, but under either state law, or either Louisiana or  
25 the other state law involved, the thing that concerns me is that

1 the settlement agreements under those laws, both state laws, seem  
2 to indicate that the agreement must be in writing or must be  
3 dictated into a record for it to be enforceable. What's the answer  
4 to that?

5 MR. MILLER: I think you can have under both state laws,  
6 I mean, our brief indicated that if there was an accord, and we  
7 thought there was an accord on the basic terms, that those basic  
8 terms could be enforced. And the point that we have, your Honor,  
9 is that from the position of Knauf and I think some of the other  
10 parties that attended this mediation back last fall here in New  
11 Orleans that was done under the auspices of the MDL because the  
12 idea was that this would be a medication done with respect to  
13 properties that would become part of the pilot program.

14 So while these cases were pending I think in state court  
15 in Alabama, the idea was is that they would become -- the MDL would  
16 have jurisdiction for the purposes of the pilot program over these  
17 homes. There was a day-long mediation, some follow-up discussions.  
18 It was my impression, as well as I think the impression of the  
19 plaintiff attorneys, the attorneys from INEX, that a deal had been  
20 struck.

21 THE COURT: I mean, I was advised that there was some --  
22 I thought that there was a deal. What's the problem?

23 MR. MILLER: We start to paper the deal and word gets  
24 back that one of the contributing defendants, the builder of the  
25 project says, no. That wasn't the deal. We want to get paid

1 \$150,000. And that wasn't my impression, nor was it the impression  
2 of the plaintiffs or INEX, as I appreciate it.

3 THE COURT: I think maybe the best way of handling this  
4 is that I really ought to have a discussion with the parties  
5 involved, with the defense counsel as well as the plaintiffs  
6 counsel, for various reasons. But I do think this ought to be  
7 handled in that form and fashion as opposed to open hearings of  
8 motions back and forth.

9 MR. MILLER: I agree, your Honor.

10 THE COURT: Any input from the defendant?

11 MR. NICHOLAS: Your Honor has seen our response.

12 THE COURT: Right.

13 MR. NICHOLAS: Steve Nicholas for the Mitchell Company.  
14 The notion that we were somehow not telling anybody that we weren't  
15 willing to give a release unless the Mitchell Company was paid is  
16 belied by the facts, we told them that, we told the mediator that  
17 in writing. But I am happy with your Honor, however your Honor  
18 wants to do it.

19 THE COURT: Let's meet and talk about it. The law seems  
20 to be both in the State of Louisiana with the Napoleon cases, as  
21 well as the *Holmes* case in Alabama, that it favors some written  
22 matter. But this may not be as much of a legal issue as it may be  
23 a communication issue, and maybe I can facilitate the communication  
24 between the parties in that way. That's my sense of it in any  
25 event.

1 MR. NICHOLAS: So whatever your Honor would like to do is  
2 fine with us.

3 THE COURT: I'll set up a status conference. We will  
4 check with you all and make sure that your calendars are available,  
5 and I'll set up a status conference and we'll deal with it.  
6 Hopefully we will be able to get it resolved.

7 MR. NICHOLAS: Thank you, your Honor.

8 MR. TAYLOR: Your Honor, may it please the court, I am  
9 Richard Taylor and I represent the plaintiff in that case. And my  
10 client is here, came over today for the hearing hoping that we  
11 might could have some kind of conference. The settlement was seven  
12 months ago and this is rental houses and he is losing money monthly  
13 to the tune of \$20,000 a month.

14 THE COURT: Right. I can meet with you all today if  
15 you're available.

16 MR. NICHOLAS: I'm here, that's fine.

17 MR. TAYLOR: That would be great.

18 THE COURT: All right. I'll do it right after the  
19 conference.

20 MR. TAYLOR: Thank you.

21 THE COURT: The motions, I've got motions one and two,  
22 Preservation of Alliance of New Orleans motion to intervene and  
23 Meadows of Estero-Bonita and also a motion to intervene. Both of  
24 the motions are similar.

25 My thinking on the motions is that I like to have

1 everybody in a tent, and I think it's good for the process if you  
2 have everybody in the tent.

3 MR. REDFEARN: Robert Redfearn, Jr., for the PRC,  
4 preservation of rights. Our motion is essentially moot. We're now  
5 a named plaintiff in the latest omnibus.

6 THE COURT: That's fine.

7 MR. REDFEARN: The only concern we had had prior to this  
8 hearing was -- and we've been talking to plaintiffs counsel -- we  
9 wanted to be sure that because we're nonprofit that costs weren't  
10 going to be assessed. Prior to the end what I've been told by the  
11 plaintiffs attorney that they would not.

12 MR. LEVIN: We've done that for profits, your Honor, so  
13 we will certainly do it for a nonprofit.

14 MR. REDFEARN: So anyway, our motion is moot.

15 THE COURT: I think that's the issue really, everybody  
16 that has a claim I want them in, but they have to come in through  
17 the right door, they have to come in through the plaintiffs  
18 committee; and the reason for that is we have to have some  
19 structure in the litigation.

20 As I said at the outset, I have 1,000 defendants in this  
21 case. It has to be structured, otherwise it's not going to work.  
22 So we have 20, 30,000 plaintiffs and a lot of defendants. So I  
23 want everybody in who has a case but if they want to come in,  
24 they're going to have to come in through the portal of the  
25 plaintiffs committee; otherwise, file your own lawsuit and incur

1 the expense of getting it served and all of the rest of it.

2 So I don't have any problem with third parties coming in,  
3 but we need to come in through the right portal.

4 MR. KING: Your Honor, I am Adam King on behalf of  
5 Meadows of Estero.

6 THE COURT: Sure.

7 MR. KING: Basically our motion tracks Lenore and Taylor  
8 Morrison's motion. We got leave to file our motion three days  
9 late. Basically we're requesting the exact same relief that they  
10 had. They're participating as a named plaintiff for purposes of  
11 the settlement and they're also class representatives, so we would  
12 like the same relief that they obtained from your Honor to be able  
13 to do the same thing, participate for purposes of the Banner  
14 settlement; and to the extent our services are needed, to also  
15 serve as a class representative.

16 THE COURT: Okay.

17 MR. LEVIN: This is like Lou Costello once said,  
18 everybody wants to get into the act. Or was it Bud Abbott?

19 Your Honor, there's no class papers filed, there is no  
20 class hearing, there has been no litigation of a class hearing.  
21 Suddenly there perhaps is a pot and anybody that has damages that  
22 can prove damages can participate in the allocation, and we believe  
23 that this gentleman's client can participate in the allocation.  
24 But to come in here and now say I represent a class and I want the  
25 class to participate in the allocation, it just ain't going to

1 work, sir.

2 MR. KING: Your Honor, if I may, Meadows of Estero has  
3 paid money out of its pocket, we're trying to remediate these homes  
4 to get people back into them, so we have assignments from the  
5 people that we have remediated. And we just want to protect the  
6 interests in those assignments and the money that we have paid out.

7 THE COURT: See, that's an allocation issue though as  
8 counsel said. I think you ought to be involved in it, but the  
9 issue is which area you get involved in. You really ought to be  
10 involved in whether or not and how much you get back as opposed to  
11 the other aspect of it. You seem to me to be interested in getting  
12 money back.

13 MR. KING: Well, your Honor, the people that would  
14 negotiate the settlement are the same people that are suing us for  
15 other claims, so it seems like they have a conflict so we want to  
16 be a participant in more than just the allocation. We want to be  
17 standing in the shoes of home builders that have paid money out to  
18 help these people remediate.

19 THE COURT: Why don't you sue, file your own suit, what's  
20 the issue there? I mean, you have a right to do that always. It's  
21 a question of intervening in an ongoing proceeding. You can file  
22 your own lawsuit, I mean there's no problem there.

23 MR. KING: Here, your Honor, Meadows has taken  
24 assignments from plaintiffs who are included in the class. So  
25 we're essentially just standing in their shoes. We have the same

1 rights that the plaintiffs do, but we're home builders, we have  
2 out-of-pocket costs, so I think that makes our interest a little  
3 unique and at current under the current procedural posture that  
4 interest is not protected. So I think we're entitled to mandatory  
5 intervention under 24A.

6 THE COURT: All right. Let me hear from you and then  
7 Banner.

8 MR. LEVIN: One thing, your Honor. As was done in INEX,  
9 your Honor has scheduled a hearing after preliminary approval, for  
10 preliminary approval. Those arguments could be made there. At  
11 that point they will see that if there is a settlement, the money,  
12 all of the money that's there, you will be in the same shoes as  
13 anybody else as to prove your entitlement to that money on behalf  
14 of your clients, if they are indeed entitled to that money, in an  
15 allocation proceeding which will not be conducted by the class  
16 plaintiffs, it will be conducted by a special master and this  
17 court, and you should be protected.

18 THE COURT: Let me hear from Banner, you have something  
19 to say.

20 MR. PANAYOTOPOULOS: Your Honor, we stand on our  
21 briefing. There is no need for me to elaborate.

22 THE DEPUTY CLERK: Your name for the record, please.

23 MR. PANAYOTOPOULOS: Nick Panayotopoulos.

24 MR. KING: Briefly one more point, your Honor, is we are  
25 not technically included in the class. The class is made up of

1 homeowners, we're the home builders. So to the extent they say we  
2 will be included, technically there could be some legal defense or  
3 objection to our participation, and that's why we want to be there  
4 to preserve our interest.

5 MR. LEVIN: You will be able to see everything in the  
6 preliminary approval process and you will see that you're  
7 protected.

8 THE COURT: I understand the issue and I'll deal with it.  
9 Thank you very much.

10 Okay. The last motion that I have is the Plaintiff  
11 Steering Committee motion to compel production of documents in  
12 further jurisdictional discovery from the Taishan defendants, and  
13 there are many individuals also who join in that motion.

14 I've looked over the documents that you all have given to  
15 me. I have not read all of the depositions, I've been in trial for  
16 the last two and a half months so it's been a little tight for me.  
17 But it's obviously apparent to me that the depositions did not go  
18 well. I am not saying who is at fault or whether there is any  
19 fault at all involved, it's just that clearly the depositions  
20 didn't go well.

21 So it's by in large on a scale of ten, the information on  
22 both sides, the best you can look at those depositions is probably  
23 a one or a two, you don't even get over five. They just did not go  
24 well for both sides. I mean, we have most of the interpreters  
25 fighting with each other or talking about accents or dialogues and

1 dialects and things of that sort, but it consumed it.

2 Plus the attorneys' part. If I exclude the attorneys'  
3 discussions and the translators' discussions and take out the I  
4 don't know, I could probably read those pages in about an hour.  
5 So they just didn't go well. I am going to need your input as to  
6 how we do it more effectively and more efficiently.

7 What I have done in some cases with depositions is that  
8 I've had the depositions done online and each side has the  
9 capacity, there's a questioner and there's a laptop person, and  
10 anybody who wishes to participate in the deposition logs in with  
11 their social security number and the deposition goes on. As you  
12 all know, on the right-hand side of the page there's running  
13 transcript; on the left-hand side there's voice and image. And  
14 there are chat rooms, plaintiff chat rooms or the defendants'  
15 expert chat rooms and so forth, and you can participate in it by  
16 asking questions, which shows up on the laptop next to the person  
17 who is asking the question and at the appropriate time that  
18 individual elbows the questioner and says New Orleans wants this,  
19 Hawaii wants that, so forth and so on, and those questions are  
20 asked.

21 The neat thing from my standpoint is that I can log in  
22 also, and if there is an issue or an objection, I'll rule  
23 immediately on it. And also instruct witnesses to do whatever  
24 needs to be done. That's one way of doing it, and maybe that's the  
25 way it should have been done early on.

1           But it's obvious to me that -- it's very hard for me to  
2 look at the jurisdictional aspect of the case without having some  
3 information before me, and it just didn't work, it honestly didn't  
4 work. And I am not saying one person is to blame or the other  
5 person is to blame, I am not in the blame game, we need to get some  
6 mechanism for dealing with this issue. And you guys are the  
7 experts, and I look to you for some guidance on it. But we need  
8 it. I am not able to deal with it without any information. I  
9 can't do it in the blind. I think they're serious motions of  
10 questions of jurisdiction and I want to view it, but I don't have  
11 anything to view, except colloquy between counsel and arguments and  
12 translators.

13           I mean, we have one translator and we have a translator  
14 who checks that translator. So everything he asks the other guy  
15 says, no, it's not right. And then they get in an argument. And  
16 it's just a problem. And it's not you folks who participated, both  
17 sides must have been just frustrated, both sides. And it's not  
18 your fault, it's obviously just either a miscommunication or  
19 it's --

20           And we have to recognize that we're dealing with cultural  
21 differences, it's not like taking a deposition of somebody in Texas  
22 and somebody in Louisiana or Mississippi or wherever it is. I  
23 mean, we have a whole culture and it's a difficult situation and  
24 it's difficult for the lawyers to handle that.

25           I just can't go with you to Hong Kong or China, I just

1 can't do it that, but I can be present in some form or fashion.

2 MR. SEEGER: Judge, might I take a stab at addressing  
3 some of those issues?

4 THE COURT: Yes.

5 MR. SEEGER: I had a presentation here that I was going  
6 to get into, it sounds like your Honor kind of gets the gist of  
7 what happened over there, so I am not going to spend a tremendous  
8 amount of the court's time on that.

9 There are a few things that I think that -- in terms of  
10 moving forward, there's a few things that I think we can do that  
11 would make this better. One is we've given you a brief, and I  
12 think we've outlined for your Honor, there were a number of  
13 speaking objections by counsel and maybe -- I try not to, my style  
14 is not to tell people talk, not talk, I try not to get into  
15 arguments. But if counsel defending depositions feels the need to  
16 give a speaking objection because he thinks that's what he needs to  
17 do to protect the record, maybe that concern could be alleviated by  
18 your Honor; because, you know, in addition to fighting with the  
19 interpreter, we had that issue we were dealing with.

20 Just a little example, your Honor, a question like does  
21 anyone on the board of directors at BNBM make recommendations  
22 regarding TG's business. The objection was on the ground of the  
23 question is vague. My opinion is the objection could have stopped  
24 there. "It doesn't indicate recommendations to whom or in what  
25 context." I say I am going to object. Again, because there are a

1 number of times, because it's just sufficient to say objection  
2 under the Federal Rules; and I said if you want to say vague,  
3 that's fine.

4 Remember, your Honor, everything is being interpreted for  
5 the witness, too, so they're hearing the speaking objections. So  
6 then I get accused, I said, you're wasting time giving me speeches  
7 about that. You can take it to the judge. Well, that's the kind  
8 of thing I do want to take to the judge because I think we should  
9 limit the attorneys --

10 Look, for the most part, your Honor, everyone tried to be  
11 very professional, I don't want to condemn anybody; but the  
12 speaking objections are a problem, in addition to two interpreters  
13 fighting. So maybe the solution is in addition to the court  
14 reminding that saying the word objection in most cases to form is  
15 sufficient because they preserve their rights, is having maybe a  
16 special master on the scene. Maybe that's one way to deal with  
17 some of this.

18 THE COURT: I am trying to do it as cost effectively as  
19 possible for you all also, but we do need to deal with objections.  
20 And the objection, I don't have any problem if you object and then  
21 even if each side has the opportunity to flesh out those  
22 objections, if necessary, later on in writing and make them a part  
23 of the record or make it a part of the deposition. But I do think  
24 we've got to be able to simply say objection. If you want to say  
25 another word, that's fine, leading or vague or misstates facts or

1 something of that sort. But with the understanding that you have a  
2 right to supplement with legal memorandum or attach fleshing out  
3 your objection, the objection on page five when I made the  
4 objection, I made it for these reasons and this is whatever you  
5 want to say on it and attach that to the record and make it a part  
6 of the record so that you're clear on it.

7 But it's particularly problematic, and we've all been  
8 there, I mean, I've taken depositions before in foreign countries  
9 and maybe that's why I've lost my hair. It's very, very difficult  
10 to deal with interpreters. You ask one question and it takes them  
11 five pages to interpret it and then the answer that you get back is  
12 no. It's very difficult.

13 So we have to figure out a way of doing it, and I look to  
14 expert counsel. I mean, one of the reasons cases of this magnitude  
15 are able to be handled, and probably the key reason, is the  
16 experience and talent and ability of counsel that it attracts and  
17 people who participate in it. They know what they're doing and  
18 they do it well. And so I always look first to counsel to come up  
19 with some suggestions how to spot the problems. I will give you an  
20 opportunity to come up with the answers; but if you don't, then  
21 I'll make the answers, I'll come up with it.

22 MR. SEEGER: The other issue, Judge, and I don't know if  
23 you have a recommendation on this, but I don't know how to deal  
24 with this part. You know, we asked the defendant Taishan to  
25 propose an interpreter, they didn't do it. We located an

1 interpreter and then we had a series of conference calls. Both  
2 sides agreed on the main interpreter.

3 Now, I don't want to assert an objection to them bringing  
4 whoever they want to a deposition, if they want to bring somebody  
5 to check what's going on, that's fine. But I think it's enough  
6 again if they don't agree with the interpretation, to just simply  
7 lodge an objection and deal with it later. If both sides agree on  
8 an interpreter then we cast our lot with that interpreter. The  
9 check interpreter I think should just allow the attorney, she  
10 should be talking to the attorneys saying that's incorrect, let the  
11 attorney make an objection, try to resolve it quickly; if you  
12 can't, move on.

13 THE COURT: What I can do, too, from an interpreter  
14 standpoint is that I can get to the U.S. Embassy and get some names  
15 and then I can make that person a 706 expert interpreter; and if  
16 you all can't agree, then that's a way of doing it. And we'll have  
17 just one interpreter and it will be called the court's interpreter.

18 MR. SEEGER: And then we can just live with that.

19 Your Honor, on the briefs, and Mr. Montoya can go into  
20 the specifics, if you want, but we do have some issues here. We  
21 asked a number of questions of Mr. Jia, he is a director, a  
22 managing director of both TG and he holds a position at BNBM,  
23 Beijing National Building Material Company.

24 We asked him did he review monthly statements from all of  
25 the entities that he was involved with, this is an exhibit, just to

1 give you an idea, everywhere there is an ML, this is a company that  
2 Mr. Jia has either a board or managing position on. And it goes on  
3 and on and on and on. If you want to look at this yourself, your  
4 Honor.

5           But here is the issue: We say to him so, you go to the  
6 board of directors meeting with BNBK, you review financial  
7 statements? Yeah, we look at financial statements. They weren't  
8 produced. What about all of these companies that you're involved  
9 with, do you get monthly reports, is there reporting to you on the  
10 business? He acknowledged he gets reports. They were not  
11 produced.

12           You know, this is all important to jurisdiction, your  
13 Honor, and it's going to tie in very nicely we believe with the  
14 brief that you'll be getting from us on this, because if you look  
15 at a number of e-mails, some of which are attached to the brief by  
16 some of the employees that are employed by, we believe it's Taishan  
17 Gypsum, this particular employee said he only had a position with  
18 TTP, which was the entity that shipped a lot of drywall here.

19           But we think at the end of the day if you start to really  
20 look through these e-mails, you'll see this guy Peng who really  
21 uses the name Frank Clem, which is an Anglicized name, has an  
22 English literature degree, wrote this e-mail in English boasting  
23 how much drywall they shipped to the United States. And we were  
24 not allowed to ask him questions about, you know, when you wrote  
25 this in English, can we talk to you in English about this

1 particular e-mail? We were told we had to stop.

2 Another item -- and this is really just to give you the  
3 flavor, I am not going to spend a lot of time on this right now,  
4 your Honor -- but we can't find a single e-mail from this one  
5 employee that acknowledges his employment with a company called  
6 TTP. Shandong Taihe Dongxin is the predecessor to Taishan Gypsum.  
7 So this employee while he is selling drywall to U.S. purchasers all  
8 the time is representing himself as an employee of TG.

9 And there's a number of things, I can -- here is another,  
10 here is complaint letter from a U.S. customer addressed to Shandong  
11 Taihe Dongxin because that's who this U.S. customer thinks they're  
12 buying the gypsum from, which is TG, your Honor.

13 And one little interesting thing here, and this is a  
14 problem, your Honor, that we are going to have to talk about at  
15 some point and deal with, another e-mail here from this e-mail  
16 address is that guy Peng Wenlon, it's also Frank Clem, the name he  
17 uses. He writes this in English, he represents himself to be  
18 Shandong Taihe Dongxin. Again, boasting on the amount of drywall  
19 they ship to the U.S. and throughout the world.

20 Now, if you look where his name is below, in the  
21 translation which was provided by the defendant, there is no  
22 description of what company he is affiliated with. Yet in the  
23 Chinese version he represents himself to be Taihe Dongxin employee.

24 The picture I am trying to paint, your Honor, is that as  
25 we pull the documents and we go through these witnesses, it's very

1 clear that the relationships are incredibly incestuous, that there  
2 is not a lot of corporate formality, that the employees that are  
3 really TG employees, although they say they're employed by other  
4 entities that are shipping the drywall, are really just TG  
5 employees. And they, in fact, represent themselves that way to  
6 their own customers.

7           So we need to really to make this motion to your Honor in  
8 a way that's going to be helpful to this court, and frankly to all  
9 of the people that have this drywall in their home. We are going  
10 to need this discovery, we need to get these documents produced, we  
11 need to be able to talk to the witnesses. They have other witness  
12 that we haven't been able to question that Mr. Montoya will go into  
13 that also write e-mails in English, that we've got marketing  
14 documents that we've taken off their Web site but were not produced  
15 in discovery that show that they were actively marketing to the  
16 U.S. their drywall.

17           So, I mean, I think that we're at a point, we're at  
18 crossroads with this particular defendant where, I mean, and I  
19 don't mean to be rude to anybody on the defense side, but where the  
20 gamesmanship needs to stop and we need to get to discovery, we need  
21 to get to depositions, and we need get the court an answer on  
22 jurisdiction.

23           At this point I'll hand it off to Patrick.

24           THE COURT: Either that or let me hear from -- do you  
25 want to come in now and respond at the end.

1 MR. SPANO: Your Honor, Frank Spano. I think it would be  
2 most efficient if I just heard it all and responded.

3 THE COURT: Okay. That's fine. Let me hear. Sure.

4 THE DEPUTY CLERK: Your appearance, please.

5 MR. MONTOYA: Thank you, your Honor. Patrick Montoya.  
6 Your Honor, coupled with our motion for sanctions was also a motion  
7 to compel for the production of documents, and I would like to  
8 address those issues as they relate to the depositions as well. If  
9 that's how your Honor would like to handle it.

10 THE COURT: That's fine.

11 MR. MONTOYA: We first start with the deposition Mr. Jia,  
12 who is the chairman of TG that Mr. Seeger addressed. One of the  
13 first problems right off the bat was, as you can see from the  
14 blowup here, Mr. Jia was -- is the chairman of TG. This was a  
15 document that was not produced in the litigation that we had to  
16 find ourselves. You will see it says very clearly down in the  
17 lower portion says: We have a self-supported import and export  
18 ability. Our products not only sell well in our domestic market,  
19 also export to many countries, especially to UAE, Indonesia, India,  
20 Russia, U.S.A., et cetera." These are the type of documents that  
21 we've asked for in discovery, about contacts in the United States  
22 that we are not receiving. We've had to do this work on our own.  
23 When asked about these documents, when ask asked about Web sites,  
24 when asked about sales, when asked about marketing in areas that  
25 Mr. Jia was designated in his 30(b)(6) subpoena, he didn't know

1 about them, he didn't have the answers. We need better prepared  
2 and better witnesses for that reason.

3 Mr. Seeger also addressed the BNBM documents.

4 THE COURT: Vic is one of my law clerks, he speaks  
5 Chinese, French, English, and a couple of other languages, so he is  
6 going to sit in.

7 MR. MONTROYA: Thank you, your Honor. We addressed the  
8 BNBM documents, Beijing New Building Materials. We've been before  
9 your Honor twice before on motions to compel further production of  
10 documents on upstream and downstream entities, as your Honor has  
11 called them the surrogates. Twice our motion was denied. We're  
12 back before your Honor again because your Honor ruled on those  
13 motions that the scope of discovery should be broad as to those  
14 entities.

15 We've asked those questions of the witnesses in Hong  
16 Kong. Here is what we found out. Mr. Jia is on the board of  
17 directors of Beijing New Building Materials, BNBM. BNBM is the  
18 entity that's holding the strings on the puppets that are TG, that  
19 are TTP, that are the defendants that are in this court. We  
20 previously asked for that information and were not able to get it.

21 We also found out that BNBM owns 42 percent of Taishan  
22 Gypsum and that they have a controlling voting share of Taishan  
23 Gypsum. They've also guaranteed loans on behalf of Taishan Gypsum.  
24 Mr. Jia admitted that they had a joint venture, TG had a joint  
25 venture with BNBM. We don't have those documents, we need those

1 documents. In order to conduct an effective cross-examination of  
2 the chairman, we have to have those documents. And in order to --  
3 it goes right to the jurisdictional argument because we've alleged  
4 alter ego and veil piercing and agency theories, so those documents  
5 need to be produced and Mr. Jia needs to be prepared for those if  
6 that's going to be the 30(b)(6) witness.

7 Mr. Jia also testified that he did not generally write  
8 e-mails for himself, he had two or three others that would write  
9 e-mails for him or they would receive e-mails for him. We don't  
10 have those e-mails that were sent on his behalf. Taishan would  
11 make the representation that they're not relevant to the  
12 litigation, I'm sure, but we haven't seen them; but we found out  
13 that someone else is writing for him or receiving those e-mails, we  
14 need those custodial files of those three witnesses.

15 Mr. Jia also testified he got a monthly report on  
16 operations from TTP, which was TG's subsidiary. Audited financial  
17 statements and had exchanges, conversations back and forth with  
18 TTP's directors. We don't have those documents, they were not  
19 produced. That witness was not prepared to discuss those topics.

20 Mr. Jia also testified, and you can see it in this  
21 exhibit, your Honor, it's Exhibit 2 to Mr. Jia's deposition, that  
22 Taishan Gypsum drywall was good for health. Now, we asked a  
23 series of questions when we found out that Taishan Gypsum actually  
24 conducted testing of their drywall after receiving complaints or  
25 hearing about complaints in the media. We believe that testing

1 that they did they said they conducted customer surveys of  
2 hundreds, if not up to 1,000 different customers. They built a  
3 building with the drywall. We don't have those test results, we  
4 don't know if Taishan took efforts to advise consumers, to advise  
5 its customers in the United States and elsewhere that the drywall  
6 was safe for health. That would be relevant to personal  
7 jurisdiction, your Honor.

8 Mr. Jia also testified that the Chinese government did  
9 further testing and said this drywall is fine. You can go on  
10 producing it. We don't have any information about that testing  
11 from the Chinese government and what TG or TTP or BNBK for that  
12 matter or any downstream entity did with that information. Did  
13 they transmit it to the United States, did they assure their  
14 customers that bought the drywall in the United States, hey,  
15 everything is fine? Were they purposely availing themselves to the  
16 jurisdiction of the United States? These are the questions we have  
17 and the documents that we don't have answers for.

18 The next area was, the next deposition was Mr. Zhang.  
19 And to put it simply, that was more of a deposition about what was  
20 not produced once again. Mr. Zhang was the chairman -- secretary  
21 of the board of directors for TTP and Taishan Gypsum, so he sat on  
22 the boards of both entities. He testified that he drafted  
23 documents for the board of directors, both boards of directors, and  
24 assisted in the day-to-day operations. He has knowledge of the TTP  
25 and TG subsidiaries downstream, that whole list that Mr. Seeger

1 showed you, the organization and structure.

2 We never received the custodial file from him, we don't  
3 know what's in his documents. So he was able to talk about it  
4 generally, but as your Honor knows, without the documents in front  
5 of you with an interpreter, with fighting interpreters, it's very  
6 difficult to cross-examine a witness without having the documents  
7 to be able to lock them in. So we need those files.

8 Mr. Zhang also testified there were annual reports from  
9 TTP from 2006 and 2009. He testified he had access to them but he  
10 did not review them, even though he was designated in those areas,  
11 financial statements, reports, et cetera, from TTP. They have not  
12 produce them.

13 Your Honor has made it very clear at the beginning of  
14 this hearing that you weren't placing blame one way or the other.  
15 We are laying a foundation for our motion for sanctions, we believe  
16 that these witnesses were inadequately prepared, these documents  
17 were not produced. My flight was 17 hours over, 15 hours back.  
18 Twelve other lawyers had the same experience from the other side,  
19 thousands of dollars in lodging, time, preparation.

20 There's also arguments by Taishan's counsel that we were  
21 inadequately prepared. We don't know what documents they produced  
22 to us based on the issues we raised in our motion to compel. Your  
23 Honor has appointed a PSC, and my math is poor, that's why I went  
24 to law school, but probably about 400 years of collective legal  
25 experience, thousands of hours in document review, translation,

1 expense, costs, I think the PSC has the ability to prepare for  
2 these depositions, ask the right questions to know what's relevant  
3 to personal jurisdiction. We were adequately prepared, what we  
4 didn't get was adequate document production and adequately prepared  
5 witnesses.

6           Moving on to Mr. Zhang further. There were sales record  
7 from 2006 and 2007 that he did not review, even though he was  
8 designated in those areas for TTP. And he also testified that  
9 there were times when TG provided services to TTP and that there  
10 were invoices for those services. We don't have any of those  
11 invoices for those services. Those are directly relevant to the  
12 alter ego, veil piercing type theories that we have. Those were  
13 not produced to us. He was designated in those areas, he did not  
14 review those documents, we don't have the documents.

15           He also testified TTP had a business plan. TG set up TTP  
16 based on the Taishan witnesses' testimony for tax purposes. Now,  
17 we would certainly like to review their business plan to see if  
18 what they wanted to do was export outside of the United States. We  
19 haven't seen that business plan although we know it exists based on  
20 the testimony of Mr. Zhang. That's troubling. That's another  
21 series of documents that we don't have.

22           We also know that Mr. Zhang testified that TG decided to  
23 shut down TTP, to stop their production in 2008 or 2009 if my  
24 memory is correct. Again, no documents on that decision. He  
25 testified there was a joint decision between TG and TTP. I would

1 also like to know, we would also like to know who controlled that  
2 decision, did it come from BNB, did it come from further up the  
3 stream? We don't have those documents, we don't know.

4           There is a lot of argument in the briefing back and forth  
5 on the manufacturer profile forms. Your Honor set up the  
6 manufacturer profile forms for a reason, to give us basic core  
7 discovery that we would need in a cheap and cost-effective manner.  
8 We believe it's accomplished those goals. But the way Taishan set  
9 up their witnesses and designated them led to a lot of difficulty.

10           Mr. Jia, the chairman of Taishan Gypsum, signed the  
11 manufacturer profile form, sworn statement, subject to perjury.  
12 But he cannot testify about the amounts of drywall that Taishan  
13 Gypsum shipped to the U.S. even though he was general manager of  
14 Taishan Gypsum. He didn't have the knowledge. He was designated  
15 on precisely that topic, he didn't have the knowledge. He said  
16 Mr. Peng, who is the third witness that we took, Peng Wenlon, who  
17 also goes to by Frank Clem, he said he had the most knowledge. He  
18 did not sign the manufacturer's profile form, which begs the  
19 question who is signing for what and what knowledge do they have.  
20 So we have one person who signs a profile form yet they designate  
21 somebody else to testify on those matters. So we've got crossed  
22 messages.

23           For TTP's profile form, a gentleman named Song Qinghai  
24 signed the profile form. He was the manager of production for TTP.  
25 He was apparently fired or let go but he is now working for a

1 Taishan subsidiary. He was not made available to testify about the  
2 PPF and he was not designated as a 30(b)(6) witness but he works  
3 for a Taishan subsidiary. He could have been produced, he was not,  
4 they didn't have a knowledgeable witness for TTP's profile form  
5 either.

6 We've also in our motion asked for further depositions,  
7 particularly Mr. Yang and Mr. Cher, and these are their Anglicized  
8 names. And in our briefs, we submitted under seal to your Honor a  
9 series of e-mails from them. Much like Mr. Peng, or Frank Clem as  
10 he goes by, these e-mails are in English to United States  
11 customers. And what's particularly interesting about them -- and  
12 really the motion is twofold. The first is this is Bill Cher, and  
13 he writes to a shipping agent, "we confirm the final destination is  
14 port of Miami. We confirm that our customer's broker to clear the  
15 goods is Gelmar Logistics." That's Bill Cher.

16 My recollection two or three hearings ago, your Honor,  
17 was that Taishan's position and the position of the witnesses has  
18 been, we sold to exporters in China and then wherever they sent it,  
19 we didn't know anything about it. I can go through these e-mails,  
20 and there are several of them in Mr. Cher's package, which is  
21 attached as Exhibit F; in Mr. Yang's package, which is attached as  
22 Exhibit E, what do they talk about? Shipping, making shipping  
23 arrangements. So it's not simply that they were sold, it was they  
24 were making shipping arrangements.

25 So why do we want the depositions of Mr. Yang and

1 Mr. Cher? Precisely because they were in the foreign sales  
2 department along with Mr. Peng, they wrote e-mails in English to  
3 United States customers and they were making shipping arrangements  
4 to the United States, directly relevant to personal jurisdiction.

5 The third person we would like the deposition of would  
6 also be Mr. Qinghai, who I spoke about as well, who signed the  
7 manufacturer profile form for TTP.

8 In addition, if your Honor grants our motion to compel  
9 and obviously we get more documents, then our motion would remain  
10 open to the extent that there are other witnesses that we would  
11 want to have deposed.

12 Taishan has made the argument that discovery should be  
13 closed. Based on their inadequate preparation of their witnesses,  
14 based upon the lack of production of documents, it's a deliberate  
15 ploy to have your Honor set this up and rule on it right away when  
16 we don't have the information that we need. So discovery should  
17 not be closed, we should be granted our motion to compel to get the  
18 additional documents I've outlined here, and more fully outlined in  
19 our motion, and also, the additional depositions that we've  
20 requested.

21 If it pleases the court, there are also I think four or  
22 five, six, maybe seven other entities that joined in our motion to  
23 compel. I know Ms. Bass is on the phone, however your Honor would  
24 like to handle it from here. That concludes my presentation.

25 Thank you.

1 THE COURT: Do you want the others to weigh in, too?

2 MR. SPANO: Yes.

3 THE COURT: Anybody on the phone that wishes to speak to  
4 this issue?

5 MS. BASS: Your Honor, Hilarie Bass. I will be brief. I  
6 think you've heard everything you need to from Patrick and Chris.  
7 I would just suggest to you that whatever issues with translator,  
8 we can resolve that with whatever issues we need to whether we have  
9 the live stream so you can resolve objections, I think we can all  
10 resolve that.

11 But the one thing that I think we need your assistance to  
12 resolve is the fact that we need people who will testify who have  
13 knowledge of those profile forms, somebody on behalf of these two  
14 entities prepared and executed under oath those profile forms which  
15 describe each of the transactions where that drywall came to the  
16 United States. That's the narrow focus of our jurisdictional  
17 motion, and for them to have 13 attorneys travel halfway around the  
18 world for tens of thousands of dollars and not have one person who  
19 can testify with any knowledge at all about their own profile forms  
20 that were submitted to the court, I view as not having been done in  
21 good faith.

22 There was nobody who could say anything about the TTP  
23 profile form, and Mr. Zhang, who theoretically was designated on  
24 the other profile form, basically said he hadn't even reviewed it  
25 because of the deposition and had no personal knowledge of what was

1 in it. So if we're going to go back to Hong Kong and try and get  
2 this done right, we need to have Taishan's counsel commit that they  
3 are going to have these witnesses prepared to testify about what's  
4 relevant in this motion. And that's specifically obviously is  
5 these sales of Taishan board which they admit in their profile form  
6 were imported into the United States. Somebody knows something  
7 about it and they need to have witnesses who are prepared to be  
8 deposed about it.

9 THE COURT: Okay. Anyone else?

10 MS. BASS: Thank you, your Honor.

11 THE COURT: Thank you. Anyone else?

12 MR. HARDT: Your Honor, my name is Ken Hardt, and I am  
13 appearing on behalf of my company Venture Supply in the *Germano*  
14 class action.

15 We appeared at the depositions in Hong Kong, we noticed  
16 them separately in the *Germano* class action. Jurisdiction is kind  
17 of a unique situation as far as Venture Supply goes because  
18 according to TG or Taishan, Venture Supply is its only U.S.  
19 customer. And I was interested in exploring that with them, and  
20 that's one of the reasons that I traveled all the way to Hong Kong  
21 to ask questions. Unfortunately because, as your Honor recognized,  
22 the difficulty with the check interpreter, the difficulty with  
23 objections, we even had instructions not to answer questions on  
24 relevance grounds. I have never seen instructions not to answer  
25 questions on relevance grounds. That just may be a special master

1 appointed or maybe your Honor's suggestion about the chat rooms or  
2 whatever to rule on those kinds of objections, but to have us sit  
3 there and listen to interpretations of objections and cross, you  
4 know, arguments of interpreters is just ridiculous. I didn't get  
5 Mr. Jia, the CEO of Taishan, until 4:30 in the afternoon on the  
6 second day of his deposition. I was told over and over we're  
7 ending this at five, so I tried to narrow the scope of my questions  
8 to Mr. Jia, recognizing there was four or five other attorneys that  
9 had traveled halfway across the world to ask questions also.

10 And I didn't finish the questions I was asking, but the  
11 questions I had were very specifically focused on Virginia  
12 jurisdiction because that affects *Germano*. Because if this court  
13 has no personal jurisdiction over Taishan in that case, then this  
14 court has no subject matter jurisdiction over the *Germano* class  
15 action. So my questions were focused on that.

16 My client had authorized me to proceed against Taishan.  
17 I filed 160 third-party claims in the state court actions in every  
18 individual state court action, third-party claims against Taishan,  
19 we're serving those, we're participating with Taishan trying to  
20 enter into an agreement on service of the other. So in any event,  
21 for Venture Supply it was pretty unique, that's why my client  
22 authorized me to travel all the way over there and ask these  
23 questions.

24 And what I was trying to explore was, Taishan, if it's  
25 your position that the only customer you dealt with in the United

1 States was Venture Supply, it's kind of interesting that you sold  
2 the product to my client in December of 2005, you shipped in  
3 February of 2006, there were a bunch of other customers in the  
4 United States over there begging for their product. Mr. Jia says,  
5 well, he didn't care, he didn't ever think the U.S. was a market  
6 for his drywall because their corporate position was it's too heavy  
7 to ship. But they had a bunch of U.S. customers over there begging  
8 for their product. And also asking to be their exclusive  
9 distributors in the United States.

10 So what does Taishan do? In February 2006 they set up  
11 TTP, and thereafter Taishan makes no further sales, according to  
12 it, to any U.S. customers. But TTP does, TTP continues to make a  
13 number of sales in the United States. Taishan doesn't.

14 And also, on the first day of Mr. Jia's deposition, we  
15 get a document, and it's Chinese, and we're told this document, you  
16 know, one of their Chinese attorneys interpreted it for us, and  
17 we're told it's a sales of a production line from Taishan to TTP in  
18 February of 2006. And it's an authorization for TTP to use  
19 Taishan's name in the same time frame, February 2006, at the same  
20 time it set up TTP, at the same time Taishan supposedly stopped  
21 selling to U.S. customers and all of a sudden TTP starts selling to  
22 U.S. customers.

23 Those were the kinds of questions that I was exploring  
24 with them, and I had maybe 20, 30 minutes, and then I had to just  
25 out of respect to other counsel that had travelled all the way over

1 there, I turned the witness over to Mr. Brenner who was --  
2 represents our broker Tobin Trading over there. Mr. Brenner  
3 started asking questions, again tailored specifically to  
4 jurisdiction over Taishan in Virginia, which is what this court  
5 needs to focus on in *Germano*, and he was cut off. He said, we're  
6 leaving, bye.

7           So we joined in the PSC and the HC's motions to compel.  
8 And frankly, we want witnesses that can answer these questions that  
9 relate to personal jurisdiction. And frankly, I don't think my  
10 client wants to pay for it again. So that's why we join in the  
11 motion for sanctions.

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

13           MR. BRENNER: Good morning, Judge.

14           THE COURT: Good morning.

15           MR. BRENNER: I'm Theodore Brenner, the heretofore  
16 mentioned, and I represent Tobin Trading in the *Germano* case.

17           Our position is laid out in the briefs, that we filed  
18 that your Honor has, and not to repeat things that Mr. Seeger said  
19 or Mr. Montoya said or even Mr. Hardt said. Our position in the  
20 case was we were authorized in for the jurisdictional purposes in  
21 Virginia for the reasons that Mr. Hardt explained to travel to Hong  
22 Kong. I was able to question Mr. Jia literally for seven minutes,  
23 which included the time that it took for the translator to  
24 translate my questions into Chinese and the respondent's answers  
25 into English.

1           There was no time to effectively develop any line of  
2 cross-examination dealing specifically with the jurisdictional  
3 issue. As a matter of fact, the last question that I asked dealt  
4 specifically with a company we believe associated with Taishan that  
5 had approached Venture Supply, which led to the contract that was  
6 made to manufacture the drywall which was shipped to the United  
7 States. The question was asked of the witness, do you know of this  
8 company? His answer was, I know of this company. And the Taishan  
9 witness then terminated the deposition. We're here, it's 5:30  
10 hour, we are not answering anymore questions.

11           Literally my client paid me to travel halfway across the  
12 world to be in the middle of an examination, seven-minute  
13 examination when the witness got up and left. The other questions  
14 that were asked, which Taishan takes issue with in its briefs, had  
15 to do with paper manufacturing.

16           What we have over in China and what we had specifically  
17 with Taishan was an industrial complex. You had the gypsum  
18 manufacturing plant, you had a paper plant that was used, all of  
19 which the witness admitted in his deposition was owned by TG. So  
20 you have TG owning the paper plant, which it is actively purchasing  
21 paper in the United States of America, we had no time to explore  
22 whether TG personnel came to the United States of America or any  
23 state in the United States of America to purchase the paper, to  
24 deal with the paper, all of which went into this manufacturing  
25 process, all of the questions that would go specifically to whether

1 there is jurisdiction over TG in these cases.

2 That was the seven-minute examination. Mr. Peng, who was  
3 the manager of foreign trade who was an individual who dealt face  
4 to face and in e-mail with my client on hundreds of occasions, we  
5 were given pitifully little time to examine Mr. Peng.

6 The court mentioned earlier as far as the difficulty in  
7 the depositions in presenting documents to witnesses and eyeballing  
8 the witness, if you will, Mr. Peng's deposition is a very good  
9 example of that. He was questioned about activities that TG made  
10 after the original contracts were sent to Venture Supply. He  
11 denied that there were any, he denied that he knew where the  
12 documents were going, he denied that there had been any follow-up  
13 marketing efforts as to TG.

14 Mr. Peng was then confronted with a document entitled  
15 Taishan Gypsum Limited Export Report. As it turns out, Mr. Peng  
16 wrote this report for Taishan Gypsum. In the report it indicates,  
17 "after October 2006 --" now, remember this is when Mr. Peng says he  
18 is working for TTP and not TG -- "we repeatedly requested Venture  
19 Supply to place follow-up orders and feedback. He also  
20 acknowledges that he knew that the product was shipped to Norfolk,  
21 Virginia, and that he had made questions about the use of the  
22 product.

23 All of which were answers that he had denied in his  
24 testimony until he was confronted with the document. It would be  
25 very difficult to do that online, your Honor, and to create any

1 sort of effective examination.

2           These are the problems that we have. My client did incur  
3 significant expense to go over.

4           With respect to Mr. Peng, there were many more questions  
5 that needed to be developed. However, it was late in the afternoon  
6 and there were at least four or five other counsel who had traveled  
7 the same distance who had totally been shut out of the deposition  
8 of Mr. Jia because they got up and left during my examination of  
9 him, the seven-minute examination, so I curtailed my examination of  
10 Mr. Peng early in order that they might have the opportunity to at  
11 least ask some questions.

12           We think our motion is well taken, we think our motion  
13 should be granted.

14           THE COURT: Okay. Thank you very much. Anyone else  
15 either on the phone or in the courtroom?

16           MR. BECNEL: Judge, may I suggest something to you?

17           THE COURT: Sure.

18           MR. BECNEL: No. 1, I think your idea about the U.S.  
19 Embassy or the interpreters used by the president would be  
20 well-founded. And that would eliminate that, in fact, I suggested  
21 to the plaintiffs' committee they do that and go the U.S. Embassy  
22 and get one interpreter appointed by the court from the embassy.

23           No. 2, in taking depositions in Brussels, in Amsterdam,  
24 in Vienna, Austria, then France for weeks with interpreters, the  
25 only way it works where you get real information is by having the

1 court -- as Judge Davis did and Judge Bechtel did -- appoint a  
2 special master with the authority that you vest in that special  
3 master to call balls and strikes. It eliminates all of this  
4 clatter and it eliminates this. And unless you do that, foreign  
5 depositions are a waste of time, and in 42 years, that's the only  
6 way it works. Thank you, sir

7 THE COURT: All right. Thank you.

8 MR. SLAUGHTER: Good morning, your Honor, Brian  
9 Slaughter, I represent Atlantic Homes and a number of other  
10 builders in the Virginia litigation. We are in the *Wiltz* and *Amato*  
11 matter, and we've also filed a third-party complaint in the state  
12 cases in Virginia against Taishan. I am not going to belabor this  
13 too much, I join in the comments of all of my colleagues.

14 The only other thing I would mention in objection that we  
15 have as to how this proceeded, in deference to my counsel Mr. Hardt  
16 and Mr. Brenner whose clients were closer in relation to Taishan, I  
17 let them go forward first and I had planned to question these  
18 witnesses as well to the extent there were additional questions  
19 that I would have. But I never got the opportunity to because  
20 these depositions were cut off arbitrarily at times decided by  
21 Taishan's counsel.

22 And one of the things that was raised was, well, you  
23 know, you guys have had this many hours. The PSC has asked eight  
24 hours worth of questions. Well, your Honor, one thing I want to  
25 point out is that Atlantic Homes is not represented by the PSC,

1 we're an independent party in this matter, we have an independent  
2 right to question these witnesses, and the Home Builder Steering  
3 Committee doesn't represent us, Mr. Hardt doesn't represent us, we  
4 wanted our opportunity to ask questions as well; and regardless how  
5 much time others have taken, I don't have any control over the PSC  
6 and how long they take to ask questions.

7           And so we feel aggrieved but not having an opportunity to  
8 ask our own questions. And that's the only additional point I  
9 would add, and we join in the motions previously filed. Thank you,  
10 your Honor.

11           THE COURT: Thank you very much. Anyone else in the  
12 motion, advocating the motion?

13           MR. PANAYOTOPOULOS: Good morning again, your Honor, Nick  
14 Panayotopoulos on behalf of certain Banner entities. I am going to  
15 keep it short because I think your Honor has got it. In addition  
16 to the points previously raised by other counsel, my client -- also  
17 on behalf of my client traveled to Hong Kong and I was not --  
18 denied the opportunity to ask a single question of at least  
19 Mr. Peng. The witness was seen the next day all day being a  
20 tourist in Hong Kong, so obviously the witness was there and our  
21 request to continue the deposition was denied. They just said, no,  
22 sorry. You're going to have to go back to the states and take it  
23 up with the court.

24           But in addition to that, the most troubling aspect of  
25 these depositions was these are witnesses, there was a pattern.

1 And if you read the depositions you will see it, I have many  
2 examples. If there was a topic they didn't like, that the  
3 witnesses didn't like, if you started to ask a question about  
4 exporting to the United States, we get an objection to form or a  
5 speaking objection. All of a sudden the witness would turn and say  
6 a response that had nothing to do with the question and would steer  
7 you in a different direction.

8           You would go back and ask the same question, interpreter,  
9 cross interpreter, ask the same question, no answer to that  
10 question. Please answer yes or no and clarify if you need to.  
11 Again, you just couldn't get an answer to the questions when they  
12 didn't like the topic. And all of a sudden you get an objection to  
13 form, then this is the answer from Mr. Zhang on page 211 of his  
14 deposition. When I was asking about the exemption that TTP had  
15 claimed from the Chinese government in instances where I believe  
16 they were claiming they were exporting products to the United  
17 States and they were claiming an exemption to the VAT tax. And I  
18 said, "and that was, that exemption was an instance where TPP was  
19 exporting its products, correct? Objection. Witness: I don't  
20 know. Mr. Attorney, when you're referring to export, I don't know  
21 concretely what you're talking about, export. How do you define  
22 concretely the behavior called export?"

23           I never got an answer to my question, your Honor, I kept  
24 getting the exact same spiel from the witness about what you want  
25 to say, and I'd finish with saying I am going to note for the

1 record this witness is not answering my question, I'll move on and  
2 will take it up later with the judge.

3 In response to a question about another example, your  
4 Honor. "Do you know where the VAT related documents for TTP are  
5 today? Documents related to VAT, where are they being kept today?"  
6 The witness asked. "Correct. What documents are you referring  
7 to?" I am going around in circles and the other counsel all went  
8 through the same thing. These witnesses were just not answering  
9 the questions, but instead of saying they're they not going to  
10 answer they played this little game. And in addition to that when  
11 you add the problems with an interpreter and a check interpreter,  
12 you couldn't get answers to your questions.

13 So even in the instance where I got a chance to ask the  
14 witnesses questions, we never got responses to the questions asked.  
15 So unfortunately I think a special master is going to be necessary  
16 just so we can at least get an immediate response about what the  
17 law is, whether witnesses should be answering the questions asked,  
18 and whether certain objections are proper.

19 I have plenty of other examples, but I think the court  
20 has got it, and we appreciate the court's time.

21 THE COURT: All right. Thank you. Is that it? Okay.

22 MR. CLARK: Good morning, your Honor. Matthew Clark, I  
23 represent Southern Homes in the MDL, and as your Honor also knows  
24 in the Southern Homes parallel proceeding in the New Orleans state  
25 court, the Louisiana state court. I'll keep it very brief.

1 I just wanted to emphasize the point that your Honor made  
2 clear earlier, it's very difficult to take depositions in foreign  
3 countries, you have cultural differences, you have translators, I  
4 guess you can also have check interpreters as well. So I think a  
5 great effort was made on the part of the questioners to distill  
6 down their thoughts into very short, concise questions.

7 Even those questions were met with what I find to be a  
8 lack of forthrightness, a lack of honesty. And I have just one  
9 example from my I'd say maybe 15 minutes of questioning time I got  
10 through the course of the week. Question by me, "Who contacted  
11 you? Mr. Spano: Objection to form. The Witness: I don't  
12 understand contact, I don't understand. Can you tell me more  
13 concretely?" Well, if you flip back to the prior page, and this is  
14 the witness's immediately prior response, here is the witness  
15 saying, "I did not take the initiative to contact those people of  
16 that state, that Louisiana, I did not contact the people there  
17 after the year 2009 I was certain that some people from foreign  
18 countries come to our company, they were from the United States but  
19 I cannot recall where from the United States." Frank Clem the  
20 English major, he is talking to me about contacts, he is using that  
21 word, that's his word, using it fluently, and then after he gets an  
22 objection now he doesn't understand the word contact that he just  
23 used to explain his thoughts to me.

24 That's really all I have for you, your Honor. Thank you.

25 THE COURT: All right. Thank you. Anyone else in favor

1 of the motion?

2 MR. GRAU: Your Honor, Benjamin Grau for  
3 Interior/Exterior, but I don't think you need to hear anymore.

4 THE COURT: All right. Opposed to the motion?

5 MR. SPANO: Good morning, your Honor, Frank Spano, Hogan  
6 Lovells for Taishan Gypsum and TTP. Along with me is my colleague  
7 Matthew Galvin. And with the court's permission, I am going to  
8 address the issues related to what occurred at the depositions in  
9 Hong Kong, and Mr. Galvin, who has been in direct charge of our  
10 document production, will address those issues.

11 THE COURT: Okay.

12 MR. SPANO: There have been a lot of very, very  
13 inaccurate allegations about what went on at these depositions,  
14 what the witnesses testified, what the attorneys did, and I will  
15 address them. But the principal question before the court really  
16 is how much jurisdictional discovery is enough.

17 My client Taishan Gypsum has a default judgment entered  
18 against them. We moved to vacate that default judgment in  
19 September, and one of the principal grounds for moving to vacate it  
20 was that we did not have the minimum contact with any state in the  
21 United States to be subject to personal jurisdiction. We submitted  
22 client affidavits laying out the facts that establish the minimum  
23 contacts. The PSC and whoever opposed our motion said they needed  
24 jurisdictional discovery. Now they've had it. Five days of  
25 jurisdictional depositions, 25,000 pages of document production.

1           And I think a fair look at that whole record would lead  
2 to the conclusion that the jurisdictional facts are clear and  
3 uncontroverted and that we're ready to complete briefing on those  
4 motions and for the court to decide the legal issue.

5           THE COURT: Do you feel, do you really feel that those  
6 depositions were adequate for any purpose at all, other than just  
7 getting everybody upset, riled, and making comments? I mean, I  
8 read those depositions and most of them were just comments from the  
9 lawyers, from the interpreters, the witness saying I don't know,  
10 what's the definition of this word and that word. I mean, the  
11 depositions themselves were just -- I mean, you folks spent most of  
12 the time arguing. I mean, it was very, very limited amount of  
13 questioning, very limited amount of answering.

14           I mean, you can say that there's been five hours of  
15 depositions, but if there's 20 minutes of answers in those five  
16 hours, I would be surprised. Most of it's just the lawyers.

17           MR. SPANO: Well, I think the substance of the testimony  
18 is there if a fair reading is done.

19           THE COURT: See, you're making the objection to  
20 jurisdiction, which is a significant issue in this particular case,  
21 it's obviously a significant issue. But when you raise the  
22 question of jurisdiction, then the other side has the opportunity  
23 to go into the contacts that you have raised.

24           MR. SPANO: Precisely.

25           THE COURT: And I am trying to get a focus on that, but

1 the depositions that are taken are no help to me in that. It's  
2 just a blank hole. I mean, you've taken depositions but the  
3 depositions were of no value.

4 MR. SPANO: Your Honor, Mr. Peng is the director of the  
5 foreign trade department of TG and he worked for TTP for two years.  
6 He was designated as our principal witness on contacts, sales,  
7 attempted sales, marketing, shipments, indirect shipments. He was  
8 the principal witness on the jurisdictional facts. He was  
9 specifically designated to testify about the manufacturer's profile  
10 form. I told them that in February, they never objected. He  
11 testified that he worked on preparing the manufacturer's profile  
12 form, that he reviewed it, that he was familiar with the  
13 transactions, and he was the supervisor of the other salesmen who  
14 they now say they want to depose.

15 Your Honor, they made a false allegation in their papers  
16 that we didn't produce the supporting documents of the  
17 manufacturer's profile forms. I don't know why they said that.  
18 We've produced every contract, invoice, or correspondence  
19 supporting over 200 transactions listed in the manufacturer's  
20 profile forms.

21 They had the witness, they had the documents. This  
22 argument that he was not the right witness because he didn't sign  
23 the profile form is improper. That is not the way that Rule  
24 30(b)(6) works. They designate the topics, we designate the  
25 witness, and the witness is appropriate if he is imbued with the

1 knowledge of the company. That was Mr. Peng. Mr. Peng assembled  
2 all of the information. He went out to the company, he was  
3 prepared to testify about the manufacturer's profile forms and the  
4 sales activities related to them.

5 And they had him for two days. In fact, they had him  
6 available for two and a half days. Before his deposition we said,  
7 we understand, we had discussions, we understand he is the most  
8 important guy, and perhaps if you finish Mr. Zhang first, we can  
9 increase him for two and a half days. They didn't take us up on  
10 it.

11 He testified also that the manufacturer's profile form  
12 was accurate. So he was clearly ready, willing, and able to  
13 testify about all of those transactions that are at issue and all  
14 of those transactions that are discussed in various ways in the  
15 e-mails that counsel put up for you. They put up those documents  
16 saying they need discovery on them. They had the documents. They  
17 had the witness. They didn't ask any questions about those  
18 documents. I don't know why.

19 The PSC deposed Mr. Peng for a day and a half. Do you  
20 know how many questions they asked him about the manufacturer's  
21 profile form? Zero. The HSC claims he wasn't qualified, but, in  
22 fact, what the HSC counsel asked him was does the manufacturer's  
23 profile form reflect that 1.7 million sheets of drywall of TTP's  
24 ended up in the U.S.? And he wouldn't agree to that and he  
25 couldn't answer that yes or no. And it wasn't evasive because

1 that's not what the profile form says. The profile form says we  
2 sold this quantity of drywall, we sold it mainly to Chinese  
3 companies in China who didn't tell us anything about what they were  
4 doing with it; and where we sold it to a handful of U.S. companies,  
5 they were in charge of the shipping arrangements. Yes, and he also  
6 testified very clearly and honestly when they asked him the  
7 questions that we assisted the customers with shipping  
8 arrangements. If they wanted to arrange a ship, we would contact  
9 the shipping agent, put them in touch with each other, and they  
10 could work it out.

11 It's not that complicated, your Honor. Those are the  
12 jurisdictional facts. We believe those jurisdictional facts are  
13 insufficient for jurisdiction but they're not really in dispute.  
14 So I think the depositions to the extent they asked questions on  
15 the relevant topics confirmed what we said in our profile form,  
16 confirmed what we said in our client affidavits.

17 And I just want to address your Honor's concerns about  
18 the "I don't know" questions. We went through this in great detail  
19 in our briefs, but they consistently asked questions that were off  
20 topic, so they asked Mr. Zhang, the CEO of the company, about this  
21 or that transaction on the manufacturer's profile form, he couldn't  
22 questions about it, he didn't know, he wasn't designated to testify  
23 about that. Neither was Mr. Zhang, the secretary of the board of  
24 directors. He hadn't reviewed TTP's manufacturer's profile form  
25 but he wasn't designated to testify about that. So where you see I

1 don't know, odds are it was not within the witness's purview.

2           The other thing I would point out is where a witness, a  
3 30(b)(6) witness says I don't know, and part of this may be due to  
4 translation difficulty, that's the knowledge that the company has.  
5 That's not an inadequate witness, that's the company's knowledge.  
6 When Mr. Peng says I don't know if the drywall ended up in the  
7 U.S., I don't know for a fact where it was shipped, that's not his  
8 inadequacy as a witness, that's the company's knowledge.

9           They're free to argue they should have known more or they  
10 really knew more, but that's the company's testimony and it's  
11 binding on the company.

12           THE COURT: Okay.

13           MR. SPANO: There's been a lot of accusations about why  
14 it is Mr. Peng testified through an interpreter. The goal of  
15 someone testifying through an interpreter is to have an accurate  
16 transcript, and the law is very, very clear, there's lots of cases,  
17 that a witness is entitled to testify in his or her native  
18 language. English is not Mr. Peng's native language. He is not  
19 fluent in it, that was his testimony. He explained that he took a  
20 few courses in business English and they make a big deal out of  
21 this, which in Chinese is labeled as English literature degree.  
22 But all that means is that he took a few courses in business  
23 English.

24           He testified he wrote rudimentary e-mails in English on  
25 shipping and stuff like that with the help of dictionaries. That's

1 the evidence. This seems like a red herring because whether he  
2 knows a lot of English or doesn't know a lot of English, I don't  
3 see how that's really relevant to the question of whether my client  
4 is subject to personal jurisdiction, and it is an example of  
5 perhaps not a prudent use of time. They spent an hour  
6 cross-examining him and badgering him about how much English he did  
7 or didn't know.

8 With respect to chairman Jia, chairman Jia was the CEO of  
9 TG. He is the CEO of TG. He was designated to testify regarding  
10 the company's corporate structure, its ownership, and its relations  
11 with its affiliates. And he did that. With Mr. Jia, again, they  
12 point to questions regarding the manufacturer's profile forms or  
13 individual transactions like Venture Supply that they could have  
14 covered with Mr. Peng who was designated on those topics.

15 There are complaints about his alleged lack of knowledge  
16 about BNBK's U.S. operations. Mr. Jia was not a 30(b)(6) witness  
17 for BNBK, but he did testify with TG's knowledge on that subject  
18 and TG has no knowledge of operations of the U.S. by BNBK. Again,  
19 that doesn't mean he is an inadequate witness, that's the  
20 information the company has, that's what the CEO testified.

21 They complained that Mr. Jia said he might not be the  
22 best witness about the government's -- about any relationship  
23 between TG and the Chinese government or with investment banks. He  
24 said he was knowledgeable in the area, and as a matter of fact,  
25 they have a sworn interrogatory answer that says we had no

1 relations with the investment banks. And they never asked him any  
2 questions, it was a lot of, your Honor, with all due respect, a lot  
3 of the questioning in this deposition was designed more to set up  
4 the arguments for motions than to gather facts.

5 When you ask a witness, are you the best person to answer  
6 questions about this? And he says I am not sure if I am the best  
7 person but I know about it, you should ask them questions. They  
8 didn't ask him any questions.

9 Mr. Zhang is the secretary of the board of directors of  
10 TTP and TG. He was designated principally on topics concerning  
11 TTP's corporate structure and its relationship with TG. He was  
12 prepared to answer questions for two days, your Honor, but all of  
13 the attorneys decided in advance that they'd only question him for  
14 one day. And then they didn't question him thoroughly.

15 But to the extent they asked him factual questions on the  
16 topics for which he was designated, he established the independence  
17 of TTP from TG; specifically, he testified that the Chinese  
18 government required TG to set up TTP as an independent company in  
19 order to preserve the parent company's exemption from VAT tax,  
20 which TG enjoyed because it used synthetic gypsum, which is  
21 considered favorable environmentally in China. This is at his  
22 deposition at pages 140 to 142.

23 He testified that TTP had separate facilities from TG,  
24 that it had separate accounting systems, that it had separate  
25 officers and employees, and that it followed the corporate

1 formalities required under Chinese law for operating subsidiaries.

2 I have been coming here month after month hearing  
3 allegations that the corporate veil should be pierced between  
4 Taishan Gypsum and various other companies. They had the  
5 opportunity to lay the foundation for those allegations that we've  
6 been telling you were baseless at those depositions, they didn't do  
7 it. In fact, the deposition testimony -- and this is what I meant  
8 when I said we did get substance here -- the deposition testimony  
9 established to the contrary.

10 There is no basis for piercing the veil for  
11 jurisdictional purposes and there's no basis for further discovery  
12 on the issue. We produced thousands of documents related to how  
13 the companies interacted with each other, the agreements between  
14 them, the resolution setting up the company. They all show an  
15 ordinary parent-subsiidiary relationship. The speculation just  
16 cannot be allowed to continue with the burden of useless and  
17 expensive discovery on my client.

18 Along the same lines, your Honor may also recall we've  
19 had extensive discussions at prior conferences about TG's, Taishan  
20 Gypsum's other subsidiaries besides TTP, and that includes  
21 approximately 20 companies that declined to appear in the gross  
22 action because, as we've told you, those companies never  
23 manufactured or sold drywall made to U.S. dimensions.

24 And in response you recall counsel said they couldn't  
25 take my word for it, they needed to take discovery about the issue.

1 At the deposition they asked no questions about any of those other  
2 subsidiaries. Under these circumstances, their argument about  
3 needing further document discovery about other downstream entities  
4 is just completely baseless.

5 And I just, before I turn it over to Matt, I just want to  
6 briefly talk about the joinder motions.

7 Long before we went to Hong Kong all of the parties were  
8 on notice that we had allocated two days per witness. Under the  
9 letter of Rule 30(b)(6), a deposition is supposed to be seven  
10 hours. Going to the issues with the interpreter, we doubled that,  
11 two days per witness. No one complained to the court about that  
12 schedule before the depositions and most importantly during the  
13 depositions.

14 As I mentioned, the depositions got cut to five days, not  
15 by our doing but by examining counsel's doing. Just because  
16 certain parties only were able to ask limited questions doesn't  
17 entitle them to reopen the depositions. Your Honor's directives  
18 was for us to have a single jurisdictional deposition for all  
19 cases. I don't think your Honor intended us to give multiple  
20 depositions in a case like this where there are dozens and dozens  
21 of parties, and it shouldn't matter that they copied the PSC's  
22 deposition notice and made it theirs.

23 And the practical reason, your Honor, is that when it  
24 comes to jurisdiction, when it comes to the jurisdictional facts,  
25 they all have the same interest. They all want to establish that

1 my client is subject to personal jurisdiction, and there are only  
2 so many questions you can ask about how did you speak to people in  
3 the U.S., how did you go about marketing and selling the drywall.  
4 And over five days, the examining attorneys had an opportunity to  
5 ask them and indeed no one has yet identified a single question  
6 pertinent to a jurisdictional contact that they didn't have a  
7 chance to ask.

8 I would like to just give you a tangible example about  
9 what I mean about shared interest. Taishan Gypsum single sale to a  
10 U.S. company was made in China to a Virginia entity Venture Supply.  
11 The Venture Supply transaction was covered by the PSC, by the HSC,  
12 by Venture Supply, and by Tobin's counsel. They all questioned  
13 Mr. Peng, who was designated on transactions, about that  
14 transaction. We did not limit anyone's questioning at all about  
15 that. If counsel decided to limit their questioning based on  
16 agreements or allocations among themselves, that's not our issue.  
17 The Steering Committee pursuant to your Honor's own pretrial orders  
18 are responsible for managing the depositions.

19 And while, again, while they were in Hong Kong, if they  
20 felt the need for further time, they had five days to raise the  
21 issue; they didn't, they didn't. They didn't contact the court.  
22 What they really did, your Honor, is they all changed their flight  
23 arrangements to go back on Friday so they could be home for the  
24 weekend. No one pursued this.

25 I would just like for a moment to respond specifically to

1 counsel for Tobin's complaint about being cut-off questioning  
2 Mr. Jia. He was trying to question Mr. Jia about issues related to  
3 the Venture Supply transaction, he wasn't designated on that. He  
4 had an opportunity to question Mr. Peng as much as he wanted about  
5 the Venture Supply transaction and he didn't. This is also true  
6 with any interest he may have had about asking about Taishan  
7 Gypsum's purchases of waste paper from the U.S.

8 Matt can give me the number but we produced about this  
9 many documents about purchases of paper from the U.S. (INDICATING).  
10 Several months ago, no secret, it was all there for people to ask  
11 questions about. Mr. Peng was designated, topic No. 21, to testify  
12 regarding our client's contacts with the U.S. in connection with  
13 manufacturing drywall. They didn't ask them about paper purchases  
14 to any significant degree. And we didn't prevent that.

15 Since it appears that counsel said they are pursuing  
16 claims for sanctions against our clients, I'll try to address that  
17 briefly.

18 THE COURT: All right.

19 MR. SPANO: The first and most important point is that  
20 the witnesses for our clients were adequately prepared, they  
21 provided responsive and informative testimony when they were asked  
22 appropriate questions on the topics for which they were designated.

23 Your Honor has noted the frustration with the problems  
24 with the translation. I do place blame. The problems with the  
25 translation belong on the PSC's doorstep. They failed to engage a

1 capable interpreter, they intentionally withheld background  
2 information from her that caused her to feel very insecure in the  
3 way she was translating, and that's in Mr. Jia's transcripts  
4 between pages 83 and 90. And they didn't replace her when it  
5 became patently obvious that she was inadequate.

6           The transcript reflects she had a lot of difficulty with  
7 mainland China words and idioms. She was Cantonese, they speak, in  
8 mainland China they speak Mandarin, and she got important things  
9 wrong, this wasn't us objecting for the sake of objecting,  
10 important things. She got Mr. Jia's job title wrong, she couldn't  
11 translate board of directors meeting, that's Jia transcript page 24  
12 to 25, Jia transcript page 62 to 63. She didn't get the time  
13 frames of questions correct, which is obviously critical in a  
14 jurisdictional deposition. That's in Mr. Peng's deposition between  
15 pages 78 and 81.

16           There were many other errors she made because she didn't  
17 use the agreed upon glossary of translated terms that we and the  
18 PSC had agreed on before the deposition, and she had to be  
19 constantly admonished, including by the PSC's counsel, to use those  
20 translated words that everyone agreed on. So that led to a lot of  
21 unnecessary colloquy and objections because she wasn't doing her  
22 job right.

23           Another thing the court will see if you look at a video,  
24 because it's not in the transcript, is that the translator was  
25 often engaging in a colloquy with the witness where she would ask

1 follow-up questions, re-interpret questions, that's not on the  
2 record, none of us knew what she was talking about, but then an  
3 answer would come out that reflected that she had changed the  
4 question. And that caused a lot of difficulty.

5 And over all there were problems with her demeanor, as  
6 you saw she argued with everyone, including the PSC. It was not an  
7 issue with our side in exclusivity.

8 What about the check interpreter? I think in a case like  
9 this the check interpreter served a useful purpose. And the PSC  
10 knew beforehand we were bringing a check interpreter and  
11 acknowledged on the record that we had a right to bring her. And  
12 the idea that the only reason to have a check interpreter there is  
13 to make objections later and argue that the testimony should be  
14 different really wasn't practical because the check interpreter  
15 served a very useful purpose, there were numerous corrections that  
16 were made on the spot. We wanted an accurate record. We needed to  
17 get these fixed while we were there, because at least for our side  
18 we didn't want to come back, we wanted to get it right the first  
19 time.

20 Speaking objections. They've identified a handful over  
21 the course of five days. Very few considering what I would regard  
22 as numerous, complex, argumentative questions that were asked.  
23 Lots of questions that assumed incorrect facts that weren't in  
24 evidence and had a real risk of causing a confusing record,  
25 particularly here. The interpreter had difficulty with questions,

1 so when they asked complicated questions, they were especially  
2 problematic. And the record shows that the witnesses were often  
3 asking for simpler questions, not because they were being evasive,  
4 not because they were coached, because they didn't understand them.

5 The alleged speaking objections cited in the briefs, many  
6 are not speaking objections at all. The HSC's brief cites  
7 Mr. Peng's deposition pages 78 through 80, objection to form. I  
8 think that's an appropriate objection. The HSC cites Mr. Zhang's  
9 deposition, pages 147 and 148, the objection was to form and to the  
10 fact that the interpreter had rephrased the question adding a word  
11 that wasn't in the questioner's original question. I don't think  
12 that's an inappropriate objection.

13 The PSC makes allegations of coaching, but the transcript  
14 shows that after the objections the questions were typically  
15 clarified and the witness provided an informative answer.

16 Mr. Jia's transcript at pages 95 and 96, there was a  
17 speaking objection, led to a correction of the missing time frame  
18 in the question. At 151 and 153 of Jia, the objection resulted in  
19 the correction of an interpretation error.

20 The PSC in their reply brief cites Mr. Zhang's deposition  
21 at pages 35 and 36 as a speaking objection. The objection was the  
22 question was outside the scope of his designated topic, so he's  
23 testifying on personal knowledge. I don't think that was  
24 inappropriate.

25 The PSC cites 146 and 147 of Mr. Jia's deposition as a

1 speaking objection. The stated objection was that the question was  
2 vague and ambiguous. Again, I don't think that's an improper  
3 speaking objection.

4 In short, I think the motions to compel should be denied,  
5 and certainly there's no basis to conclude that either we or our  
6 clients obstructed the depositions to warrant any sort of a  
7 sanction.

8 I'd like to turn it over to Matt now to briefly address  
9 the document issues.

10 THE COURT: Let's briefly do that. I've got the picture.  
11 I understand it pretty well.

12 MR. GALVIN: Very good, your Honor. Paragraph M of the  
13 PSC motion to compel addresses the underlying documents for the  
14 MPS. These are the invoices, the contracts, the correspondence.  
15 They seek sanctions for us for not producing these documents. They  
16 didn't ask hardly any questions of Mr. Peng of the MPF or use these  
17 documents in the course of the first day and a half of his  
18 testimony.

19 But every single document they asked for in that request  
20 was produced to them, it was produced -- the vast majority of which  
21 was produced to them before February 1st. Every invoice that they  
22 have -- in fact, you can go through the MPF and match it up with  
23 the invoices in the production. When counsel for Banner was asking  
24 Mr. Zhang where are the VAT invoices, the answer is in the  
25 production, they had them. They didn't use them, they didn't ask

1 about them. They seek us to again compel them, in fact, they seek  
2 sanctions for them when, in fact, they are in their position.

3           They go on to ask again, and your Honor will probably  
4 recall this, they've asked for the documents relating to the  
5 ownership interest and multiple TG subsidiaries located throughout  
6 China. They go -- show you a chart and say Mr. Jia has a position  
7 under a number of these subsidiaries, yet they have no basis to ask  
8 that question, they've established no groundwork for how any of  
9 these subsidiaries had anything to do with the U.S. or sales of  
10 drywall to China.

11           In fact, we've told them repeatedly that there are four  
12 subsidiaries in the whole Taishan family: Taishan Gypsum, TTP,  
13 Taishan Weifang and Taishan Jindun. They have anything at all to  
14 do with the U.S., and we've provided the corporate documents for  
15 Taishan Gypsum, TTP, Taishan Weifang and Taishan Jindun. They say,  
16 well, you haven't produced any of these documents. But there the  
17 two entities, Weifang and Jindun, we've given them the corporate  
18 files, it shows the ownership interest, it shows the management.  
19 They are in their possession. Not a single question, your Honor,  
20 at the deposition to Mr. Jia who is designated to testify on these  
21 very issues of control of these subsidiaries.

22           Some not only have they laid no groundwork for why these  
23 documents -- which are tremendously burdensome to get and these  
24 entities are located scatter shot though out China -- not only have  
25 they laid no groundwork for why they're relevant, but they haven't

1 asked any questions about the entities of whose documents they  
2 have.

3           They go on to ask about BNBK's interest in TG and the  
4 upstream entities. Well, again, your Honor, we've produced  
5 voluminous documents from TG's corporate files. This shows BNBK's  
6 acquisition of TG is reflected in resolutions, articles, bylaws; it  
7 shows resolutions related to BNBK's acquisition of a guaranty of  
8 TG; it shows BNBK's voting rights in TG. All of which go to show  
9 an arm's-length relationship between two entities, one of which has  
10 a substantial investment in the other. Yet, they continue to harp  
11 on we didn't have a chance to ask questions about these documents,  
12 we need more documents. But they haven't asked questions about the  
13 documents they have and they haven't shown any basis to say there  
14 is an alter ego relationship between the two, much less one that's  
15 relevant to jurisdiction.

16           They go on to say we haven't produced the e-mails from  
17 Mr. Jia. Well, we've looked through Mr. Jia's e-mail, we've done  
18 searches, we've produced e-mails from Mr. Jia. I think there's a  
19 misunderstanding. Mr. Jia testified, well, now and then two people  
20 would use my e-mail to send e-mails. Well, we've searched his  
21 e-mail account. When they used his e-mail, they used his e-mail  
22 account. So we searched the account. There is no other hidden  
23 secret cache of e-mails. We've searched the only e-mail account  
24 that could contain responsive e-mails that are relevant to the  
25 issue of sales and jurisdiction to the U.S.

1           They go on to say, well, there's issues about health, and  
2 what Mr. Jia testified that they responded to health -- and this  
3 might have a connection with marketing in the U.S. Well, again, in  
4 relation to the MPF, we've produced every document that relates to  
5 sales and marketing with U.S. customers, whether or not they've  
6 mentioned health or not. Any other documents they want about  
7 health are purely domestic and are irrelevant to jurisdiction.  
8 There's nothing there that can advance the current motion for  
9 jurisdiction.

10           Finally, they go through TTP. We've produced substantial  
11 documents from TTP's corporate files that shows TG's interest in  
12 TTP, the contractual relationship, the investment of TG into TTP,  
13 the transfer of assets to TTP, the transfer back of certain assets,  
14 we've shown TTP corporate documents that shows their business plan  
15 that says what TTP was set up to do, and a host of other documents.  
16 And most importantly, we've produced every document that has to do  
17 with TTP's purported sales of drywall to anyone that might have  
18 exported it to the U.S.

19           This is all in play, your Honor. So they seek to compel  
20 the production of documents that by in large they have, that they  
21 have documents containing very substantially similar information  
22 but they haven't asked about or that are really irrelevant to the  
23 issue of jurisdiction.

24           I want to leave you with one thing, your Honor.  
25 Mr. Montoya showed you this document, and this was the smoking gun,

1 said we had to find this on our own, we had to ask questions to  
2 Mr. Jia. But he didn't produce it. And he read I believe, you can  
3 correct me if I'm wrong, he said we have a self-supported import  
4 and export ability, et cetera, et cetera, he goes on to say UAE,  
5 Indonesia, India, Russia, U.S.A. This is an exhibit at Jia's  
6 deposition. This is a document we produced, your Honor. Virtually  
7 substantially the same with that exact same language he read. We  
8 have the self-supported import and export approval, et cetera, et  
9 cetera, UAE, Indonesia, India, and Russia.

10 This is the version that we found that was disseminated,  
11 we are not quite sure where, but around 2006, 2007. What they  
12 pulled off the Web site is substantially the same, almost identical  
13 document. In fact, this is a document that we submitted to you  
14 attached to letter to the court related to the markings a few  
15 months ago and it was produced. So whether they've identified  
16 alleged specific documents that we didn't produce, they've been  
17 produced, your Honor.

18 THE COURT: All right. Okay.

19 MR. GALVIN: Thank you.

20 THE COURT: Thank you very much. I really understand the  
21 issue.

22 This is my view of it. First, I am going to deny the  
23 motion to stop discovery; to me, more discovery is necessary. This  
24 has been a failed attempt. I am disappointed, I am disappointed  
25 that it's a failed attempt, but it is a failed attempt.

1           The areas that need to be focused on: We need a  
2 translator, you need to know the witnesses, you need to know the  
3 documents that you need, who requested them, what documents you  
4 have.

5           I feel like two ships are passing in the night. The  
6 plaintiffs say they need documents, the defendants say we've  
7 already given them the documents; one person is right, one person  
8 is wrong. The documents need to be identified and either produced  
9 or explained why they're not produced and rulings have to be made.

10           It's going to have to be supervised, either the court or  
11 the court's designee. The problem with my designating an  
12 independent person is that you have to pay for that independent  
13 person's time, and I am trying to minimize expense on this. So I  
14 may have to go myself. I'll check with the Justice Department and  
15 the people that I need to check with to see whether or not I can go  
16 without having security, because security is the most expensive  
17 part when I travel, and I would like to do away with that if  
18 possible. But I may have to go to the depositions.

19           We are going to have to change the length of time to the  
20 depositions, they're going to have to be expanded. I am not saying  
21 expanded unduly, but they may have to be expanded from the  
22 seven-hour rule.

23           I am going to have to focus on the attorneys, who can ask  
24 questions. I can't have 1,000 attorneys asking questions or 20  
25 attorneys asking questions. The attorneys are going to have to get

1 together and decide who is going to ask questions. I think the  
2 defense ought to know that there are not going to be just 10 or 12  
3 lawyers asking questions on your case, that has to be dealt with.

4           Objections, if I am there, I understand the rules of  
5 evidence reasonably well and I don't need a big explanation about  
6 why the objection is. You can make the objection, I'll rule on it  
7 immediately, if that's the way it's going to go. But we're going  
8 to have to redo these matters, it's just been a failure.

9           I am really at this time going to focus on the future. I  
10 may have to visit the past expenses, I may have to visit the past  
11 requests for sanctions, but I really am focussed now on the future.  
12 We've got to get together and deal with these depositions and see  
13 whether or not these same witnesses have to be redeposed or whether  
14 any new witnesses have to be redeposed.

15           The plaintiffs have to decide whether or not they have  
16 the documents. You really ought to meet and confer with counsel,  
17 he's saying that he's already given them to you. Either he's given  
18 them to you or he hasn't given them to you. But if he's given them  
19 to you, then you don't need them anymore, you've got them. So  
20 that's the first thing I would like you to do.

21           The second thing I would like you to do from the  
22 plaintiff's standpoint is designate the witnesses that you need,  
23 either the same witnesses or different witnesses, but tell the  
24 defendant; and the defendant then has a right to say that's  
25 improper, it's irrelevant, they don't have anything, whatever it

1 is, and then I'll rule on it.

2           With regard to time frames, I would like you all to see  
3 about dates so that I can see whether or not I can work my schedule  
4 into it. It seems to me to be the least expensive would be if the  
5 court goes or a magistrate goes as opposed to a third party who is  
6 going to charge you so much per hour to go and stay there. So I  
7 recognize the costs involved, but we need some supervision of the  
8 depositions, it's obvious that that's not going to work.

9           Translators, if you can't agree on a translator, then I  
10 will have to get the State Department to give me some suggestions  
11 about translators from the United States Embassy and we'll use  
12 that.

13           I'll put this out in an order, but that's the way I see  
14 it. I've looked at the material you all have given to me, I've  
15 heard your statements, and at this time I really am focused on the  
16 future. The discovery up to now has really been a failure, really  
17 has, it doesn't give any information. As I say, I think the  
18 defendants have a very significant motion on jurisdiction and I  
19 have to be able to focus on it, but I need some material to focus  
20 on it. I don't want to be guessing, that's not appropriate. It's  
21 a very serious motion and the plaintiffs ought to recognize it's a  
22 serious motion. And hopefully they do and that's why they need the  
23 discovery or want the discovery, they're entitled to it. Not  
24 discovery about anything but jurisdiction, but we need some  
25 jurisdictional discovery.

