

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED Docket No. 09-MD-2047
DRYWALL PRODUCTS LIABILITY New Orleans, Louisiana
Thursday, October 14, 2010

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

APPEARANCES:

FOR THE PLAINTIFF: HERMAN, HERMAN, KATZ & COTLAR
BY: RUSS M. HERMAN, ESQ.
820 O'Keefe Avenue
New Orleans, LA 70130

LEVIN, FISHBEIN, SEDRAN & BERMAN
BY: ARNOLD LEVIN, ESQ.
510 Walnut Street, Suite 500
Philadelphia, PA 19106

FOR THE DEFENDANT: FRILOT L.L.C.
BY: KERRY J. MILER, ESQ.
Energy Centre - Suite 3700
1100 Poydras Street
New Orleans, LA 70163-3700

FOR TAISHAN: HOGAN LOVELLS
BY: JOE CYR, ESQ.
875 Third Avenue
New York, New York 10022

Official Court Reporter: Karen A. Ibos, CCR, RPR, CRR
500 Poydras Street, Room HB-406
New Orleans, Louisiana 70130
(504) 589-7776

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P R O C E E D I N G S

(THURSDAY, OCTOBER 14, 2010)

(STATUS CONFERENCE PROCEEDINGS)

(OPEN COURT.)

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

THE DEPUTY CLERK: MDL No. 2047, *in re: Chinese Drywall*.

THE COURT: Counsel make their appearance for the record.

MR. HERMAN: May it please the court, good morning, Judge Fallon, Russ Herman for plaintiffs.

MR. MILLER: Good morning, your Honor, Kerry Miller on behalf of Knauf entities and the Defense Steering Committee.

THE WITNESS: We're here today for our monthly status conference, I have a full courtroom, several hundred people, and we have an overflow courtroom with an equal amount. I have several hundred on the phone, and in addition to the attorneys I am pleased to report that I have with me Judge Joseph Farina from the 11th Judicial Circuit Court in Florida and Judge Scott Vowell from the 10th Judicial Court in Alabama.

The difficulty in these cases in an MDL is often that they're filed both in federal courts as well as state courts throughout the country. I've been blessed with the help of state court judges who have been very helpful to me. I've counted on their wisdom, on their suggestions in trying to gather all of the

1 cases and move them forward, and I am delighted that Judge Farina
2 and Judge Vowell can be with me today. Judge Farina and I have
3 been working together now for nearly a year on these cases and I
4 treasure his views and wisdom on these matters, and I appreciate
5 his being here.

6 One of the reasons for this conference is because at my
7 suggestion, as well as the state court judges, the parties have
8 tried to look at this matter globally. We have been through a
9 number of cases, I've tried or resolved about ten of these cases
10 already, and the parties have had an opportunity to see what
11 results of those judgments have been. They've listened to the
12 evidence and the state courts have done likewise in their
13 particular areas. So it's given the parties an opportunity to look
14 at these matters and see whether or not some global resolution
15 could be worked out.

16 And we've got the first step in that global resolution
17 reporting today, so I'll hear from the parties. First from the
18 plaintiffs.

19 MR. HERMAN: May it please the court, Judge Fallon, Judge
20 Farina and Judge Vowell. I am the court appointed liaison counsel
21 for the Plaintiffs Steering Committee in the MDL. My name is Russ
22 Herman. I am going to outline the major deal points of a pilot
23 program which we signed off on yesterday at approximately four
24 o'clock.

25 As I understand it, Judge Fallon will post the complete

1 agreement with its exhibits at www.laed.uscourts.gov and you can
2 link to the Chinese drywall from that. And you can find the pilot
3 program.

4 At inception I want to thank Leonard Davis from my
5 office, lead counsel Arnold Levin and Fred Longer from his office,
6 and Chris Seeger, our lead trial counsel in all of these cases, who
7 represent the negotiating team on behalf of plaintiffs.

8 We learned many of us in law school that two thirds of
9 the world's law today is a civil code law that comes from the Roman
10 civil code and in Louisiana through the French Napoleonic code and
11 the Spanish /HRAS pee a/ TES par tee /T*EUZ tissue, and the concept
12 or one concept in that law is the difference between a hope and an
13 expectancy. With this pilot program we have both a hope and an
14 expectancy that it will work, it needs to be tweaked as we go
15 along, and hopefully can be expanded to all Knauf homes.

16 Primarily the Knauf entities, without admitting
17 jurisdiction or alter ego for any purpose, have entered into a
18 pilot program with the PSC that will remediate up to 300 homes that
19 have substantially all KPT Plasterboard, but plasterboard of no
20 other Chinese manufacturer. And there are other issues of
21 eligibility. Those that are predetermined as eligible are listed
22 on Exhibit A to the agreement and it is anticipated that by Monday
23 41 of those homes will begin the remediation process outlined in
24 the agreement.

25 The agreement covers homes in Florida, Louisiana, Alabama

1 and Mississippi. Currently we know that there are homes in Texas,
2 North Carolina and Virginia that are now affected by Chinese
3 drywall, but they are not included in this agreement. Suppliers
4 such as Interior Exterior Builders and their insurers, are "other
5 participating companies". What that means is that those folks are
6 contributing funds to Knauf in order to effect the pilot program.
7 They shall be released to the extent they contribute funds to the
8 pilot program; however, the release is voidable under certain
9 circumstances if the homes are not remediated and indeed the homes
10 require, among other things, a contractor's warranty, the
11 contractor, a major contractor Moss has been fully vetted to
12 perform the pilot program, there will be other contractors down the
13 road.

14 Also the contractor will have to give a certification to
15 the homeowner that there is no Chinese drywall left in the home,
16 that all electrical's been replaced, et cetera, and that there is
17 no odor. There will also be a qualified environmental inspector
18 who will have to issue a certificate, and following substantial
19 completion, which is defined, the contractor and the homeowner will
20 have a punch list which must be performed, as well as an all clear
21 lien certificate or any liens will be bonded off.

22 Knauf entities stand behind the contractor's performance
23 and warranties.

24 A number of the features of the program are as follows:
25 Removing all drywall, replace -- once a home begins remediation it

1 must be completed even if other situations are found. All
2 electrical wiring, including switches and receptacles, will be
3 replaced. Replacement of all fire safety and home security
4 equipment and low voltage electrical, replacement of fixtures
5 damaged by problem drywall, restoration of the home to the same
6 construction quality and finishes that existed prior to the start
7 of the remediation work, compensation to the homeowner for
8 alternative living costs, which include move in, move out, storage
9 and personal property damage in the amount of \$8.50 a square foot.
10 A reservation of all rights for any bodily injury and all
11 attorney's fees and expenses to be paid by KPT and not by the
12 homeowner, that would be negotiated on a separate agreement. If we
13 cannot agree on attorney's fees, it will be submitted to Judge
14 Fallon and Judge Fallon will determine both the fees, expenses for
15 attorneys on contract as well as common benefit fees without any
16 appeals.

17 In the event that there is controversy between a
18 homeowner and a contractor, it will be resolved by a very quick
19 mediation paid 50 percent by each side, that is the homeowner and
20 the contractor, it will be submitted to John Perry and those he
21 selects. We expect a 24 hour, 48 max turn around. If the
22 agreement, the master agreement needs interpretation, it will be
23 submitted to binding mediation to John Perry and Knauf and the PSC
24 will pay those costs.

25 There's an additional payment of \$1.50 a square foot in

1 the event that remediation is longer than three months. What do we
2 expect? We expect that possibly 2,000 to 3,000 homes that could be
3 eligible if this program works. The PSC has vetted the Moss
4 contractor and is responsible for vetting all of the qualified
5 environmental experts, as well as any substitute contractors.

6 The cost of inspections for environmental certificates,
7 permits under state law, inspections by governmental authorities,
8 et cetera, will be at Knauf's cost.

9 Knauf will escrow 110 percent of the estimated cost with
10 U.S. Bank and under conditions stated in the agreement will release
11 those funds to the contractor in step payments. All electrical and
12 plumbing subcontractors must be fully licensed. Work will be
13 warranted by contractor and Knauf. And the courts will have
14 oversight.

15 We want to thank all of the judges for directing that we
16 proceed to attempt to resolve. The negotiations with Knauf have
17 been rigorous, professional, at arm's length, and frankly very
18 complex.

19 I want to thank the negotiators for Knauf, the primary
20 negotiators, Kerry Miller and Greg Wallins for their
21 professionalism and the fact that they have met with us on numerous
22 occasions in New York, Philadelphia, Florida and New Orleans,
23 face-to-face and in addition to that status conferences and
24 updates.

25 We want to thank the CPSC, the Consumer Products Safety

1 Commission, and it's fair to say that Exhibit D to the agreement
2 which gives the general scope of work conforms with the judge's,
3 Judge Fallon's rulings in the *Hernandez v. Knauf* case and the
4 reasons for his judgment as well as the CPSC recommendations for
5 remediation contained in its April release.

6 Lastly, I should have indicated that you need to really
7 look at Exhibit D as to replacement and testing of appliances and
8 that all copper plumbing will be required to be replaced.

9 Your Honor, I thank you for the opportunity to address
10 this. Kerry Miller, my counterpart, has a statement to make, and I
11 think both of us are available for any questions your Honor might
12 have.

13 THE COURT: All right, fine. Judge Farina, I know you
14 have to run. Can you listen to the defendants or do you have to
15 sign off?

16 JUDGE FARINA: No, Judge, I am able to listen to
17 Mr. Miller and then I need to be back in my court at 10:30.

18 THE COURT: Okay. Fine.

19 JUDGE FARINA: Thank you so much, and then if I can have
20 a brief thank you opportunity as well.

21 MR. MILLER: Thank you, Judge Fallon and Judge Farina, I
22 will be quite brief.

23 Mr. Herman's outline presentation is a good summary of
24 the demonstration project that we're going to offer to the court
25 and importantly to homeowners in Louisiana, Mississippi, Alabama

1 and Florida.

2 I would like to start off on behalf of myself and my
3 co-counsel Greg Wallins and also thanking the professionalism shown
4 by Mr. Herman, Arnold Levin, Fred Longer, Lenny Davis and Chris
5 Seeger. Top notch lawyers, your Honor, a pleasure to deal with
6 them.

7 I would also like to thank, your Honor, from my
8 perspective a pivotal contribution made to this pilot program
9 settlement by Interior Exterior Supply, Louisiana Building Supply
10 Company here in New Orleans. As the court is aware from the
11 history of the negotiations on this settlement, we initially looked
12 at homes in Louisiana and Mississippi primarily because of the fact
13 that there's a lot more KPT product here than in Florida. Florida
14 unfortunately presents a quagmire of a lot of mixed homes and real
15 difficulty.

16 But Interior Exterior was a supplier of the KPT board
17 here out of New Orleans and they really stepped up and participated
18 with us in the mediation and is contributing to the settlement of
19 these homes, they've inspected a lot of homes, provided us with a
20 lot of information on those homes, so we want to thank that company
21 and their counsel Mr. Rick Duplantier.

22 Your Honor, other contributing parties to the pilot
23 program include State Farm insurance, QBE Insurance Company Group
24 and Louisiana Builders Indemnity Trust. Again, they really stepped
25 up, came to mediation, put differences aside and contributed on

1 behalf of their insured builders to this pilot program in Louisiana
2 and Mississippi.

3 Your Honor, to go back to where Mr. Herman started.
4 There's a lot of hope and expectation here. And the hope and
5 expectation is that this program is going to be expanded and it's
6 going to be expanded through the cooperation that we have with the
7 lawyers for the homeowners and that we've had with Mr. Duplantier
8 and Exterior Interior Supply, that we will have with other
9 suppliers and other home builders. I can tell you since the word
10 has gotten out about the settlement, I've had a tremendous response
11 from lawyers representing various defendants and insurers that want
12 to participate in this program, that want meet and discuss that
13 participation, so that's very encouraging.

14 Certainly I encourage them to contact us, work with us,
15 we'll have mediations, we'll have meetings. It's our goal to get
16 as many participants in the program as it involves. Obviously the
17 issue is we're just dealing with Knauf TMG board, so those are
18 really the only eligibility requirements that Mr. Herman talked
19 about, dealing Knauf Plasterboard Tianjin, and we also need to have
20 a situation where you have a particular home or groups of homes,
21 everyone who was involved in the supply and the building of that
22 home sitting down and talking about dealing with it. Once we have
23 that in place, your Honor, we think this program can really grow
24 and the foundation is already in place right now.

25 So we're here, ready, willing and able to work with

1 folks. John Perry has been a great mediator. He sat with a number
2 of us on several occasions over the last six weeks, produced some
3 good outcomes. Our mediation sessions have been long, tough, but
4 they've been productive. We welcome more sessions. In fact, we
5 have one on Monday involving 29 additional homes in the state of
6 Alabama, so the idea would be after Monday we may be offering
7 additional Alabama homes into some settlement context and we're
8 very optimistic about that.

9 Your Honor, with that I would like to close. If there
10 are any questions from the bench. Any bench, either the bench here
11 or the benches that are on the phone, we would be happy to address
12 those questions.

13 THE COURT: Fine. From my standpoint I thank counsel. I
14 know that it's taken a lot of effort to do this, and hopefully this
15 will be a program that as both sides said will be rapidly expanded
16 to include all of Knauf. Then that'll give the judges an
17 opportunity then to focus on the remaining producer of the drywall
18 Taishan and we'll move forward with their claims and try to
19 expedite those remaining claims.

20 I do again reinforce the concept that this is a joint
21 effort. I appreciate and am grateful to Judge Farina for all of
22 his work and counsel over this period of time and feel I couldn't
23 have done it without his cooperation and help. And I look forward
24 to working with Judge Vowell in the future.

25 Judge Farina, would you like to say anything?

1 JUDGE FARINA: Yes, Judge Fallon, thank you so much.
2 This is Joe Farina. I want to echo Judge Fallon's remarks as well
3 as the lead plaintiff and Defense Steering Committee counsel.
4 Listen, I am fortunate to be working with and guided by Judge
5 Fallon throughout these proceedings, and I believe we're all
6 blessed with his leadership. A special thanks, if you don't mind,
7 Judge Fallon, to Victor Diaz who represented the Florida plaintiffs
8 in the *Harrell* case; Mr. Todd Erinright, who was involved with
9 Banner Supply, and I did personally deal with Mr. Kerry Miller and
10 Mr. Greg Wallins and Mr. Don Hayden representing Knauf through some
11 discussions.

12 Again, a special thanks to the Plaintiff and the
13 Defendant Steering Committees on both the federal and the Florida
14 level, as well as my appreciation to the national and local counsel
15 on behalf of Banner, Knauf entities and the insurance companies,
16 and we couldn't do it without John Perry and his extraordinary
17 efforts, and I'm glad he is going to continue to be on board.

18 So I am appreciative, I look forward to this being the
19 beginning of many more successes. To paraphrase an old saying,
20 success has many parents, and so I am hopeful that we can continue
21 to expand and continue to be successful.

22 Judge Fallon, it has been an honor and a pleasure.
23 Folks, I have to dash off to my trial, but thank you for making all
24 of this possible, each and every one of you.

25 THE COURT: Thank you, Judge. Anything from Judge

1 Vowell?

2 JUDGE VOWELL: No, I just appreciate very much being
3 included. And from a case management viewpoint, I will be in touch
4 with you to see how our state court cases in Alabama can be tied in
5 to this great effort.

6 THE COURT: Great. Well, thank you very much Judge
7 Vowell and thank you Judge Farina, I appreciate all of the help
8 that both of you have given to us.

9 JUDGE FARINA: Our pleasure.

10 JUDGE VOWELL: Thank you, sir.

11 THE COURT: Now, we will go into the other aspects of the
12 conference. I know the judges have other things to do.

13 JUDGE VOWELL: All right. Thank you, Judge.

14 THE COURT: You bet. Thank you, Judge Vowell.

15 Okay. We'll take it in the proposed agenda in the order
16 given to me.

17 Pre-trial Orders discussion.

18 MR. HERMAN: May it please the court, good morning, your
19 Honor, under Pre-trial Orders, your Honor will be presented order
20 1H which has been agreed to by the parties, and that will be
21 submitted to your Honor for consideration later today. Other than
22 that, all of the pre-trial orders, of which there are 24 and some
23 subparts, are listed on your Honor's web site.

24 With regard to Property Inspections, there's nothing new
25 other than the fact that the other eligible homes can be qualified

1 through inspections under the agreement reached in the pilot
2 program.

3 Under Plaintiff and Defendant Profile Forms, there's
4 nothing new, other than we have been advised that I'll say
5 generically Taishan, quote end quote, will be providing the
6 Defendants Manufacturers Profile Form and filing it today.

7 Under your Honor's Preservation Order, there's nothing
8 new.

9 Under State/Federal Coordination, as far as we're
10 advised, there's nothing new. There are state court cases --

11 THE COURT: Dawn, do you have anything on that?

12 MS. BARRIOS: Yes, your Honor, I do, thank you. Thank
13 you, Judge Fallon, Dawn Barrios for the State Steering Committee.
14 We have for you our usual discs that will lay out all state cases
15 of which we are aware of the contact information and pending
16 motions in the various cases.

17 I would like to use this opportunity to ask all counsel
18 who are listening to this conference to please alert either the
19 defense or the plaintiff state steering committee dealing with
20 state cases. If you know of anything, please alert either one of
21 us so that we can provide the information to Judge Fallon. Our
22 contact information is on the web site.

23 Through PTO No. 19 we have all remands that are current,
24 there have been no CTOs filed since the last status conference. We
25 have received notice from Mr. Gonzales that Judge Farina has

1 ordered a case set for trial on January 10th, 2011, the *Alvarez v.*
2 *Banner Supply* in Miami Dade, and I have a copy that I will give to
3 Lexy of the order setting it for trial.

4 I'd like to thank both Galloway Johnson and Minor Pipes
5 for assisting me in putting all of these CD's together.

6 THE COURT: Dawn, Judge, get with Judge Vowell and I told
7 him you would be talking to him about making sure that he has some
8 representative on your committee so that you can keep him advised
9 because he is going to be moving fast in the case.

10 MS. BARRIOS: Certainly, your Honor. And Judge Vowell, I
11 will be happy to contact you today.

12 MR. HERMAN: I want to apologize to Dawn, I also want to
13 indicate, your Honor, that we had some notice yesterday that
14 Taishan had filed a jurisdictional motion for hearing, which was to
15 be heard today in Alabama. We'd appreciate in the future since
16 Taishan is before your Honor that they provide us in advance with
17 any motions that they're going to file and have heard in state
18 court.

19 THE COURT: I talked to Judge Vowell about that and
20 hopefully we'll get those motions, and he is going to be in touch
21 with the judge before whom that matter was set and see if we can
22 coordinate it.

23 MR. HERMAN: Your Honor, with regard to State Court Trial
24 Settings, the *Harrell* trial is scheduled to commence December 1st,
25 2010. The Virginia cases are now set, were set in January,

1 February and now are off the calendar. However, they are listed,
2 these particular cases are listed at page 6 of your Honor's
3 pre-trial order.

4 With regard to Trials, I think it's fair to say that
5 without your lightening docket and the fact that *Germano* was tried
6 and the *Hernandez* case was tried, your Honor set two other cases
7 for trial, we would not be where we are today.

8 Motions committee has communicated with the court's
9 directive regarding Pre-Trial Order 1G and the potential for
10 amendment to that order, and they're being addressed by the motions
11 committee.

12 With respect to Discovery Issues. It should be clear,
13 may it please the court, to everyone who is listening to these
14 proceedings that discovery and litigation against Knauf continues
15 and will continue till this ultimate resolution. To that end, the
16 Stuermer continuation deposition is tomorrow in New York City.
17 Professor Hummel, the research and science director for Knauf, his
18 deposition is October 19th and October 20th in New York. The
19 Norris deposition is November 11th and November 12th in Hong Kong.
20 The Robson deposition is November 17th and 18th in London. The
21 Isabel Knauf deposition is December 7th and December 8th in
22 Germany. And Director Grundke's deposition is set for December
23 15th and December 16th in Germany.

24 Both of those depositions will occur in Frankfurt at the
25 Frankfurt office of Kaye Scholer, the London deposition will be the

1 at London office of Kaye Scholer, and the deposition notices
2 reflect dates, times, et cetera. And I believe that we have not
3 posted them on your Honor's web site but we shall so that everyone
4 will have notice.

5 Your Honor, the Taishan Gypsum depositions are a matter
6 of discussion and potential argument before your Honor.

7 THE COURT: Okay.

8 MR. HERMAN: At this time I would like to present, as
9 briefly as I can, the PSC's position as to why these depositions
10 must go forward and why written discovery must go forward.

11 Taishan was served in *Germano* cases. That service cost
12 \$100,000 a pop. To say that the Haig Convention is a horse and
13 buggy and we're in an international economy is an understatement.
14 Every time Taishan has been served it's been 100,000 a pop. We had
15 a very expensive trial, expensive for the court, the court's time,
16 expensive for the attorneys that were involved. Your Honor had
17 seven cases before your Honor, those cases cost about \$1 million to
18 try, Taishan never appeared, even though they were served.

19 A legitimate default in our view was taken, your Honor
20 rendered a legitimate government. Taishan has now appeared. We're
21 very pleased that they're here, we welcome Taishan's counsel, they
22 are excellent attorneys. They contest jurisdiction and by
23 inference alter ego, and we have claimed that the People's Republic
24 of China actually and BNBK which we understand was served
25 yesterday, and CNBK are actually the puppets of an alter ego.

1 We want discovery. We think we're entitled to discovery.
2 They may contest jurisdiction, but we're certainly entitled to
3 discovery on jurisdiction and alter ego, and we ask that it go
4 forward and that it be accelerated under your Honor's aegis as the
5 MDL judge designate.

6 I believe that failing puts our issues in a context, and
7 either Mr. Stanley, local counsel, or Mr. Cyr are present, I'm sure
8 that --

9 THE COURT: This is a motion to lift the stay on the
10 class certification in *Germano*, and I'll hear from the other side.

11 Let's make your appearance and tell us who you represent.

12 MR. CYR: Thank you, your Honor. My name is Joe Cyr and
13 I am with Hogan Lovells, and we represent Taishan. Thank you very
14 much, your Honor, it's a privilege to be before you. I will try to
15 address the couple of issues that are before you with respect to
16 Taishan as briefly as I can.

17 I think it is important though for the record and for
18 others to appreciate that we appeared on behalf of Taishan within a
19 few months after the default judgment was entered. You and I and
20 Mr. Stanley had an opportunity to confer. You made it very clear
21 to me that you expected Taishan to proceed expeditiously, even
22 though you did show some sensitivity to the position that we were
23 in and that our client does not have any representatives that speak
24 English and that we were new to the case and that it would be a
25 real challenge. And I promised you that we would do everything we

1 could to get up to speed on the case as soon as possible.

2 We've had two groups of lawyers go to China already
3 investigating the facts, as well as educating our client through
4 interpreters with respect to the U.S. judicial system and
5 everything that's going on here. And as I mentioned to you in a
6 call, there was a likelihood that we were going to attempt to move
7 to vacate the default judgment in *Germano*, which was one of the few
8 cases in which Taishan Gypsum has been served.

9 And after our investigation we decided to do two things:
10 One, we appealed to the Fifth Circuit and that divested this court
11 of jurisdiction. But at the same time, we moved to vacate the
12 default judgment.

13 And as your Honor knows, that does provide this court
14 limited jurisdiction to do one of three things under 62.1: The
15 first to defer the motion to vacate the default judgment. To grant
16 the default judgment -- I'm sorry, the second is to deny; and then
17 the third is to grant or indicate to the Fifth Circuit that there
18 is a substantial issue. And if the court does indicate to the
19 Fifth Circuit that there's a substantial issue, then the Fifth
20 Circuit can remand for the purpose of allowing the court to
21 continue to address the default judgment.

22 And so under those circumstances, Judge, respectfully,
23 we're just all dealt with the very real fact that this court's
24 jurisdiction is limited. And you recognize that when you denied
25 our motion to actually have our brief, excess pages, you said you

1 lacked jurisdiction to do that and you were right about that.

2 And so point number one, and I have other points that I
3 want to make briefly, is that the court actually doesn't have
4 jurisdiction to order the discovery requested. Nor does it have
5 jurisdiction to entertain the motion for class certification while
6 this case is on appeal. It can only do the things that I've
7 mentioned under Rule 62.1.

8 But I would rather in addition to that just offer this,
9 your Honor, the one thing -- and please, I don't mean to preach to
10 anybody in this courtroom -- but representing a Chinese company I
11 am very sensitive to the international comedy issues and the
12 expectations that they have that we go by the rules. And one of
13 the rules, of course, is that you do proceed under the Haig
14 Convention.

15 And by the way, just for the record, the default judgment
16 was based on the second amended complaint in *Germano* which was
17 never served on Taishan, nor was the motion to intervene on behalf
18 of the intervening plaintiffs that obtained that default judgment
19 rather than the named plaintiffs.

20 Our company asked the court that we go by the rules and
21 the rules require us that it's not an accident what 62.1 does. The
22 rules require that we go step by step. Now, we've moved based on
23 the facts that we've investigated, Judge, for vacation of the
24 default judgment in this case as well as in *Mitchell* because we
25 believe that the appropriate, that the relevant courts lack

1 personal jurisdiction and we filed all of the papers in that
2 regard.

3 And by the way, I apologize for not notifying the PSC
4 with respect to the motion before the Alabama court, and we will
5 make a serious effort to always coordinate any activities we have
6 going on in the state.

7 But again, just for the record, is that Taishan Gypsum
8 manufactured some drywall in 2006 and 2007 and all of that drywall
9 was sold in China to distributors that were covered by arbitration
10 agreements. And they have no expectation whatsoever that they were
11 going to purposely avail themselves of the state markets of any
12 particular state in the United States. And I, also, I know this is
13 a very positive day for a lot of people that are involved with all
14 of the Knauf negotiations for the past year, but since I have these
15 brief moments, I have to say, your Honor, is that based on our
16 investigation and our discussions with the client, they absolutely
17 do not understand why their high quality drywall allegedly emitted
18 excessive amounts of hydrogen sulfide. They don't understand the
19 causation issues. We are not right behind Knauf in any kind of
20 settlement negotiations, even if the court finds that it has
21 personal jurisdiction. I wanted to be upfront with you about that.

22 THE COURT: Sure, okay. I understand.

23 MR. CYR: I have just a couple of other things to say,
24 your Honor. One is that, as I mentioned to you in the phone call
25 in June, and I am not trying to be critical because I know how

1 these things happen, but in the gross class action the PSC named I
2 think approximately 20 subsidiaries who have been served,
3 subsidiaries of Taishan. Now, our investigation, as I told you,
4 revealed that these subsidiaries are spread throughout this very
5 huge country of China and that they have nothing to do at all with
6 the drywall that was manufactured in China that apparently was
7 distributed to some extent in the United States and found its way
8 into some homes. And we see no good faith basis for including
9 those subsidiaries in the gross complaint.

10 I suspect that they were added because somebody went on
11 Google, did a web site, saw a whole bunch of subsidiaries and threw
12 them in the complaint. Again, I am not trying to be preaching,
13 your Honor, but we are not the only country that thinks you should
14 have a good faith basis for suing somebody before you sue them.

15 And then the second point of that is: It's very unfair
16 then to then require those subsidiaries to subject themselves to
17 discovery, offer declarations, declaring their innocence unless the
18 first step is taken and that is that the PSC demonstrates the
19 answer to this question: What was the good faith basis for suing
20 those companies? We've tried to have this discussion with them
21 because we join your Honor in wanting to narrow the issues. We
22 know what the companies are that manufacturer drywall that
23 eventually was distributed into the United States by others, we
24 want to address the personal jurisdiction issue, and if the court
25 finds that Taishan is subject to personal jurisdiction and Taishan

1 is in the lawsuit, that's the first step and then we go to the next
2 step.

3 Thanks for your time.

4 THE COURT: Thank you very much for your time.

5 MR. HERMAN: Your Honor, just a brief response statement,
6 and Mr. Levin has a brief statement.

7 While learned counsel was sending lawyers to China who
8 couldn't speak Chinese, his client was on a web site in English
9 that said that it did business in the United States of America. We
10 think that there should be no delay in going forward with
11 jurisdiction and alter ego discovery.

12 In terms of good faith, we're not subject to
13 cross-examination at this time, but we believe that we've acted in
14 very good faith given the non-appearance of Taishan after they were
15 served.

16 THE COURT: Okay. Thank you very much.

17 MR. LEVIN: Does your Honor want to hear a response?

18 THE COURT: I really don't need to. I understand the
19 issue.

20 MR. LEVIN: I wanted to give one but I didn't think you
21 wanted to hear one.

22 THE COURT: I understand the issues. I make no decision
23 on jurisdiction, that's another issue. But both sides ought to
24 have a right to at least look into this matter. I think counsel
25 for Taishan makes a point about he's interested in why some of his

1 individual companies or why the individual "subsidiaries" are
2 brought into the litigation, I think he has a right to discover
3 that and pursue that with the plaintiffs. He should know why.

4 But likewise, I think the plaintiffs ought to have a
5 right to discover whether or not they have jurisdiction over it.
6 To the extent of lifting the stay to permit discovery, particularly
7 on jurisdiction, I am going to do so for those reasons.

8 Let's move onto the next. I have in addition several
9 motions before me, the motions to enjoin the state court in Georgia
10 from proceeding further. The case has taken a different turn now.
11 Under the law that's developed, until there is some *** rees or
12 program, settlement program, it's very difficult for federal courts
13 to enjoin any state court from proceeding.

14 The situation has changed now, I am involved in a rees,
15 it is a settlement program, a pilot program, but it is a settlement
16 program. And so I am very conscious of protecting that particular
17 program. So I really do now have to take a look at whether or not
18 it is appropriate for the federal court to act on that to protect
19 its jurisdiction and protect its program.

20 So I am going to set the motion within ten days to
21 determine whether or not to enjoin the state court in Muskogee
22 County. I'll take briefs on that particular. I'll check my
23 calendar and set it sometime within the next ten days alerting all
24 of the parties.

25 The other motions for class certification of the Florida

1 homeowners class for claims against Banner and claims against other
2 Florida homeowners against Knauf, it seems to me that both of those
3 should be delayed. I am going to delay moving on those for at
4 least 30 days and I will talk with you all about that at the next
5 conference.

6 I really want everybody to put their attention and all of
7 their resources into making this pilot program work. I think
8 everybody is looking at this pilot program. If it works then this
9 may be an avenue to resolve this whole matter globally, and it's
10 going to take a lot of effort to get this matter off the ground and
11 I don't want to distract the parties with other matters.

12 There's a motion for leave to amend third-party complaint
13 in the Vickers. I am going to grant that motion, I think that it's
14 essential for me to get all of the people before me. That doesn't
15 mean they're going to stay there, but I want them present so that
16 they can at least speak for their respective interests, so they can
17 participate to the extent they wish to participate. If they're not
18 a party, they can't, they're a spectator. When they're a party,
19 they're a participant and they can actively advocate for their
20 client. Again, doesn't mean that they're going to stay in it, they
21 may well get out and they may get out quickly, but at least they
22 ought to be given an opportunity to participate and I see that by
23 allowing an amendment not third-party complaint, so I am going to
24 grant that.

25 Are there any motions that I haven't dealt with? Lowe's

1 Home Centers opposition to plaintiff's motion intervening *Gross*.

2 MR. HERMAN: No further motions. I do want --

3 MR. LEVIN: I do. Excuse me, your Honor, I seldom push
4 Russ aside, he's pretty difficult to push aside. We filed
5 intervention claims and you granted them, and there's another set
6 that's pending that we haven't moved for, we just filed. Lowe's
7 objected to being named in that intervention complaint because of
8 the All Writs Act that was pending. You did not grant the Lowe's
9 intervention at that time. So it's hanging there and I guess it
10 should hang there until we deal with the all writs.

11 THE COURT: Yes. And by all writs that means enjoining a
12 particular state court. It's an All Risk Act and that's what we're
13 talking about.

14 MR. HERMAN: He pushed so hard I'm bruised. Your Honor,
15 two things on discovery: We're continuing to negotiate various
16 discovery issues with Knauf; secondly, following this conference
17 there is an issue that involves a Banner Supply subpoena.

18 Your Honor, it's listed at page 12, there is no Freedom
19 of Information Act pending.

20 The Trial Settings under 10, your Honor has already
21 stated and it's in the status report.

22 Nothing new in terms of Filings in the MDL.

23 Nothing new on the notices of appearance and default
24 judgment.

25 That brings us to 13 insurance issues. There is an issue

1 brought by Robert Pate as trustee for the Chinese Drywall Trust,
2 motion to compel. Mr. Steckler has been handling those issues, he
3 is in court, and I suggest your Honor may want to hear that after
4 this conference.

5 THE COURT: Sure, I'll do that afterwards.

6 MR. HERMAN: Nothing new on Service of Pleadings
7 Electronically.

8 Nothing new under item 15, Master Complaint.

9 Mr. Levin has already addressed class action complaints
10 and indeterminate defendants, and it is spelled out; as well as in
11 No. 17 along with a class action complaints to be posted on your
12 web site, there really is nothing new to really discuss there.

13 Nothing new under article 18 regarding special master.
14 As far as the court appointed mediator, again we want to
15 acknowledge John Perry and his good offices in helping us reach a
16 pilot program. The Knauf Gips KG, personal jurisdiction matter was
17 already addressed at page 8.

18 Section 8, nothing new under item 20. Database
19 management.

20 Nothing new under frequently asked questions that have
21 again been posted at www.laed.uscourts.gov/drywall/faq.htm. Knauf
22 attorneys Mr. Wallins and Kerry Miller and Arnold and myself and
23 Chris will attempt to have some additional Q and A's regarding the
24 pilot program to submit to your Honor for potential posting on the
25 web site.

1 Your Honor has under item 22 detailed the various motions
2 and determinations as to those motions.

3 Under item 23 motion to establish a Plaintiff's
4 Litigation Expense Fund that's deferred.

5 Your Honor has under consideration the re-appointment
6 and/or appointment of members of the Plaintiff's Steering
7 Committee.

8 There is under item 25 a mediation schedule in Alabama,
9 as Mr. Miller, Kerry Miller originally indicated it's October 18th
10 in New Orleans and it is in regard to a significant number of
11 Alabama properties.

12 THE COURT: Kerry, keep me advised of that. If you need
13 me in any event, give me a call and I'll get to it.

14 MR. HERMAN: I believe that Mr. Levin for the PSC is
15 going to attend that mediation.

16 Regarding class certification motions, they're pending.
17 And really there has been no determination of when those matters
18 have been set. And as I understand it, it's the court's directive
19 that they be continued for at least 30 days.

20 THE COURT: Right.

21 MR. HERMAN: With regard to the Lowe's settlement, your
22 Honor has addressed that issue, that's at page 25, it's item 27.

23 And, your Honor, the next status conference is what
24 remains. I don't know if Mr. Miller --

25 THE COURT: The next status conference is December the

1 2nd, and I'll meet with the parties again, lead counsel at 8:30 and
2 the open court at nine o'clock.

3 Does Knauf have anything to anything to add to any of
4 this, Kerry?

5 MR. MILLER: No, your Honor, I think that's it for today.
6 We thank the court.

7 THE COURT: Okay. All right. The other matter that we
8 have talked about or that's listed is in the *Harrell* matter and the
9 parties will discuss that. It's the court's urging that that
10 matter be resolved so that we can integrate it into the program and
11 give everybody an opportunity to be equally treated.

12 MR. MILLER: Your Honor, since we ended a little bit
13 earlier today, we're prepared to discuss that matter right now in
14 your Honor's courtroom.

15 THE COURT: That's fine. So I'll ask counsel for *Harrell*
16 to meet with the parties here, get me involved in it if you need
17 me. I know that Judge Farina's also interested in having this
18 matter resolved, and I am confident that I would like somebody from
19 the PSC to participate in those conferences.

20 MR. HERMAN: We'll participate, your Honor. I want to
21 point out that PSC and Knauf are in New York beginning tomorrow for
22 virtually a week and it may be an opportunity if those matters
23 aren't resolved that perhaps John Perry could be notified and in
24 the event it's okay with Victor's schedule maybe we could resume
25 there.

1 THE COURT: I hope it's not necessary to resume, I hope
2 that you all before you leave today will resolve it, that's my
3 strong hope.

4 All right. Folks, thank you very much.

5 MR. HERMAN: Thank you, your Honor.

6 THE COURT: The court will stand in recess.

7 THE DEPUTY CLERK: Everyone rise.

8 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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12 REPORTER'S CERTIFICATE

13
14 I, Karen A. Ibos, CCR, Official Court Reporter, United States
15 District Court, Eastern District of Louisiana, do hereby certify
16 that the foregoing is a true and correct transcript, to the best of
17 my ability and understanding, from the record of the proceedings in
18 the above-entitled and numbered matter.

19
20
21 _____
22 Karen A. Ibos, CCR, RPR, CRR

23 Official Court Reporter
24
25