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UNITED STATES DISTRICT COURT.
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED
DRYWALL PRODUCTS
LIABILITY LITIGATION

CIVIL DOCKET NO. 09-MD-2047 "L"
NEW ORLEANS, LOUISIANA
WEDNESDAY, JULY 18, 2018

THIS DOCUMENT RELATES TO
ALL CASES

TRANSCRIPT OF FAIRNESS HEARING PROCEEDINGS
HEARD BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

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P-R-O-C-E-E-D-I-N-G-S

WEDNESDAY, JULY 18, 2018

M O R N I N G S E S S I O N

(COURT CALLED TO ORDER)

THE DEPUTY CLERK: All rise.

THE COURT: Be seated, please.

JUDGE HALL: Is anybody on this call? This is
Judge Hall speaking.

THE COURT: Hello, Judge Hall. This is Eldon Fallon.
How are you?

JUDGE HALL: Hi there, Judge Fallon. Long time, no
see.

THE COURT: I appreciate you being with us today. Let
me give some background information first.

I should start at the beginning. From 2004
through 2006, the housing boom in Florida, as well as the
rebuilding efforts necessitated by Hurricanes Rita and Katrina,
led to a shortage of construction materials, including drywall.
As a result, drywall manufactured in China was brought into the
United States and used to construct and refurbish --

JUDGE HALL: Judge Fallon, could you turn your mic up?
We're having trouble hearing you.

THE COURT: Can you do that, Dean?

10:01:01 1 Is it coming out now?

10:01:03 2 JUDGE HALL: Yes, that's much better. Thank you.

10:01:05 3 THE COURT: Fine.

10:01:06 4 In any event, sometime after the installation of
10:01:10 5 Chinese drywall, homeowners throughout the country began to
10:01:17 6 complain of emissions of foul-smelling gas, corrosion,
10:01:22 7 blackening of metal surfaces and various objects in the home,
10:01:27 8 and the breaking down of appliances and electrical devices.

10:01:29 9 These homeowners then began to file suit in
10:01:34 10 various state and federal courts against homebuilders,
10:01:38 11 developers, installers, realtors, brokers, suppliers and
10:01:42 12 others, as well as the manufacturers of the Chinese drywall.

10:01:45 13 Because of the commonality of facts in all of
10:01:49 14 these cases, the litigation was designated as a *multidistrict*
10:01:53 15 *litigation*. Pursuant to a transfer order from the
10:01:55 16 United States Judicial Panel on Multidistrict Litigation, on
10:02:00 17 June 15, 2009, over 10 years ago -- or close to 10 years ago,
10:02:05 18 all federal cases involving drywall were consolidated for
10:02:11 19 pretrial proceedings in MDL 2047 before this Court.

10:02:17 20 The Chinese drywall at issue was largely
10:02:20 21 manufactured by two groups of defendants, the Knauf entities
10:02:25 22 and the Taishan entities. Litigation is focused on these two
10:02:31 23 entities, as well as their downstream associates.

10:02:35 24 The cases which form the subject matter before
10:02:38 25 the Court today are cases filed in Virginia. This has given me

10:02:45 1 the opportunity to work with a great jurist,
10:02:51 2 Judge Mary Jane Hall, whose efforts and work has played a vital
10:02:56 3 role in bringing about the favorable conclusion in these cases.
10:03:04 4 The cases involved indemnification claims against Taishan and
10:03:10 5 its downstream associates and distributors.

10:03:14 6 After nearly 10 years of litigation, involving
10:03:18 7 extensive discovery, as well as a number of trials, a class
10:03:23 8 settlement was reached in these cases due to the good work of
10:03:28 9 Judge Hall. The settlement includes these indemnification
10:03:33 10 claims which were assigned to the Plaintiff's Settlement Class
10:03:38 11 as part of the settlement.

10:03:39 12 On March 13, 2018, class counsel filed a motion
10:03:45 13 seeking preliminary approval of the assigned claims settlement.

10:03:49 14 On April 17, 2018, the Court preliminarily
10:03:53 15 approved the assigned claims settlement and directed counsel to
10:03:58 16 send the approved proposed notice, class notice, and
10:04:04 17 established a protocol for disseminating the notice to the
10:04:09 18 various class members.

10:04:10 19 In addition, the Court required that any
10:04:12 20 objections to the proposed settlement be postmarked no later
10:04:16 21 than June 27, 2018; and, that any response to any objections or
10:04:21 22 other papers in support of final approval would be filed on or
10:04:26 23 before July 5, 2018.

10:04:30 24 A formal joint fairness hearing before this Court
10:04:35 25 and Judge Hall, of the Norfolk, Virginia, Circuit Court, was

10:04:40 1 scheduled for July 18th, 2018.

10:04:45 2 It is now July 18, 2018. Judge Hall and I are
10:04:50 3 now available to participate in this final fairness hearing.
10:04:56 4 We'll hear from the parties at this time. We'll hear from
10:04:58 5 class counsel.

10:05:00 6 MR. SERPE: Good morning, Your Honor. Richard Serpe,
10:05:03 7 as class counsel for this settlement class.

10:05:05 8 I thank the Court for conducting this joint
10:05:07 9 fairness hearing, during which we'll seek approval pursuant to
10:05:12 10 FRCP 23 of the assigned claims settlement as fair, reasonable
10:05:18 11 and adequate.

10:05:19 12 Again, thank you to Judge Hall, whose conduct of
10:05:23 13 the state court litigation has served as a model of
10:05:27 14 state/federal coordination. Without the efficiency gained by
10:05:30 15 that cooperation, we would not have been able to have achieved
10:05:32 16 this settlement. I know I speak for all the parties when we
10:05:35 17 say how grateful we are for her and her court.

10:05:42 18 JUDGE HALL: Thank you.

10:05:43 19 MR. SERPE: Your Honor, a very brief procedural history
10:05:46 20 is necessary to understand the nature of this assigned claims
10:05:49 21 settlement.

10:05:49 22 In April of 2009, state court litigation began
10:05:53 23 against various builders, installers and, critically, the
10:05:58 24 supplier of Chinese drywall in Virginia, Venture Supply, and
10:06:02 25 its sister company, Porter-Blaine, which was a drywall

10:06:06 1 installation company.

10:06:07 2 By December of 2011, those cases had been
10:06:10 3 consolidated, and Venture Supply and Porter-Blaine, in state
10:06:14 4 court, filed a third-party motion to bring Taishan into the
10:06:18 5 litigation, seeking indemnification for whatever amounts that
10:06:22 6 they might be held responsible for.

10:06:24 7 Judge Hall conducted a hearing, found that
10:06:28 8 service had been perfected against Taishan, and entered a
10:06:33 9 preliminary default against Taishan on behalf of Venture Supply
10:06:37 10 and Porter-Blaine on December 1, 2011.

10:06:41 11 Two years later, in July of '13, I acted as class
10:06:49 12 counsel, with Mr. Herman and Mr. Levin, when we settled the
10:06:52 13 Venture Supply and Porter-Blaine claims here in federal court.

10:06:56 14 That settlement was approved by the Court on
10:07:00 15 July 9th of 2013, and included all of the remaining insurance
10:07:05 16 coverage that Venture Supply and Porter-Blaine had available to
10:07:08 17 it; but, in addition, we sought assignment, as part of that
10:07:12 18 federal settlement, of the default judgment that had been
10:07:15 19 entered in state court against Taishan on behalf of
10:07:20 20 Venture Supply and Porter-Blaine, and that was a material term
10:07:24 21 of the settlement.

10:07:24 22 Thereafter, the Allen claimants, who were the
10:07:27 23 plaintiffs in that state court matter, pursued the default
10:07:32 24 judgment. Motion practice, expert witnesses, Judge Hall
10:07:36 25 conducting litigation over a period of years, and, ultimately,

10:07:39 1 we reached a proposed settlement of the assigned claims, that
10:07:46 2 is, Venture Supply's default against Taishan, for
10:07:55 3 \$1,978,528.40.

10:07:56 4 It was on behalf of the class, that is, the class
10:08:00 5 that had applied for and had claims approved through the
10:08:03 6 Venture Supply-Porter Blaine class from 2013. So it was a
10:08:08 7 discrete class. The members were specifically identified. We
10:08:12 8 knew who they were.

10:08:13 9 Minus, Your Honor, the seven *Germano* plaintiffs,
10:08:17 10 who served as intervenors. Their cases had been fully
10:08:22 11 litigated. Your Honor entered judgments. Taishan ultimately
10:08:26 12 had paid those judgments on behalf of the *Germano* seven. So
10:08:29 13 those seven now have been excised from the class that we're
10:08:32 14 talking about today.

10:08:33 15 As Your Honor noted, we sought preliminary
10:08:38 16 approval of this settlement in March. Your Honor gave
10:08:40 17 preliminary approval April 17th, including the form of the
10:08:46 18 notice to those class members, as well as a proposed pro rata
10:08:51 19 distribution of the funds.

10:08:52 20 By April 25th, Your Honor, I supervised notice
10:08:56 21 going to all the class members. I have filed a declaration in
10:09:00 22 the record demonstrating that everyone in the class received
10:09:02 23 notice via first-class mail. We redundantly sent it via
10:09:07 24 e-mail. It was posted on all of the Court's websites, as well
10:09:10 25 as the *Chinese Drywall* website in this Court.

10:09:12 1 The notice that was sent to the members provided
10:09:18 2 the following things: First, that this is a settlement only of
10:09:22 3 the assigned claims, that is, of Venture Supply-Porter Blaine's
10:09:27 4 default judgment to Taishan. It does not settle any of these
10:09:30 5 claimants' litigation with Taishan and its affiliated
10:09:34 6 companies.

10:09:35 7 It is subject only to a setoff for the monies
10:09:38 8 that they actually received, so that, by way of example for
10:09:43 9 Your Honor, if an individual class member here has a final
10:09:46 10 judgment entered against Taishan, there would be a credit for
10:09:51 11 the amount that Taishan is now paying to them through this
10:09:54 12 class supplement vehicle, as a setoff.

10:09:57 13 The notice provided for an attorney's fees to be
10:10:00 14 paid for the PSC and class counsel at 32 percent, plus the
10:10:04 15 costs that were incurred in pursuing this litigation.

10:10:08 16 The notice provided that there be a bar entered,
10:10:10 17 that no one could pursue this default judgment that had been
10:10:13 18 entered against Taishan after the approval of this settlement.
10:10:16 19 The notice told the class members that there would be a pro
10:10:20 20 rata distribution in accordance with the way that the money was
10:10:24 21 distributed initially in 2013 from the insurance proceeds that
10:10:27 22 were provided.

10:10:29 23 Finally, Your Honor, there was an objections
10:10:31 24 deadline of June 27th for anyone who objected to this
10:10:35 25 settlement. It gave very specific instructions on how

10:10:39 1 objections were to be made.

10:10:40 2 Your Honor, as class counsel, we heard from many
10:10:44 3 of these class members in the ensuing three months. Everyone
10:10:50 4 uniformly was grateful and appreciative of the settlement that
10:10:54 5 had been achieved today; but, every call included a request to
10:11:02 6 ask, as class counsel, when does this case end, and, you know,
10:11:07 7 explain that in context.

10:11:08 8 But, really, I would say it was the fervent
10:11:12 9 desire of every class member to have their case remanded to the
10:11:15 10 Virginia court, so that their cases could seek a conclusion,
10:11:19 11 here approaching the 10th year of this litigation. But,
10:11:21 12 Your Honor, no objections to the settlement from any class
10:11:24 13 member.

10:11:25 14 For all of those reasons, we ask today for this
10:11:28 15 Court to approve the settlement as fair, reasonable and
10:11:32 16 adequate under FRCP 23.

10:11:35 17 THE COURT: Judge Hall, do you have any questions of
10:11:37 18 class counsel?

10:11:40 19 JUDGE HALL: No. Thank You, Judge Fallon. I have no
10:11:42 20 questions.

10:11:46 21 I will just note that present in Norfolk,
10:11:48 22 Virginia, are only two lawyers, one for the plaintiff class,
23 Mr. Breit, and a lawyer for Taishan is here.

24 What's your name?

25 Ms. Sanny (spelled phonetically) is here for

1 Taishan. But there are no objectors or other persons of
2 interest. Mr. Breit has checked to be sure that no one else is
10:12:00 3 here, and no one is.

10:12:00 4 THE COURT: Thank you, Judge Hall.

10:12:08 5 You mentioned attorney's fees. Would you flesh
10:12:09 6 that out a little bit. You said something about 32 percent.
10:12:12 7 How about the common benefit fees?

10:12:19 8 MR. SERPE: Your Honor, the 32 percent would be a cap
10:12:21 9 on total fees to be paid, both common benefit as well as
10:12:25 10 private counsel that are involved in the litigation, subject to
10:12:27 11 this Court's previous rulings and any additional motions that
10:12:31 12 would be appropriate with respect to how that would be
10:12:34 13 allocated between common benefit and the private counsel.

10:12:39 14 THE COURT: So you would anticipate any common benefit
10:12:43 15 fees to be dealt with in separate motions filed by common
10:12:50 16 benefit counsel to seek common benefit fees from that
10:12:54 17 32 percent?

10:12:55 18 MR. SERPE: Yes, Your Honor.

10:12:56 19 THE COURT: Okay.

10:12:59 20 MR. SERPE: Any other questions, Your Honor?

10:13:00 21 THE COURT: No, I have none.

10:13:02 22 Anybody in the audience? I don't see any other
10:13:08 23 than attorneys here and some other individuals who are not
10:13:10 24 associated with this case.

10:13:10 25 I have had an opportunity to consider this

10:13:16 1 matter. I've had it now for over 10 years.

10:13:19 2 After reviewing the documents and hearing from
10:13:22 3 counsel, and having conferred with Judge Hall over many years
10:13:31 4 of this litigation, working closely with her and receiving from
10:13:34 5 her a lot of information and a lot of advice which was very key
10:13:42 6 in trying to resolve this matter, the Court finds that the
10:13:46 7 assigned claims settlement is fair, reasonable and adequate,
10:13:52 8 and was entered into in good faith and without collusion, a
10:14:00 9 word that has been frequently used by some in the current
10:14:05 10 times.

10:14:06 11 I also find that the settlement represents a
10:14:10 12 negotiated agreement.

10:14:12 13 The Court also finds that the revised proposed
10:14:15 14 allocation plan provides a fair and equitable basis upon which
10:14:21 15 the allocated funds among the eligible class members can be
10:14:28 16 perfected.

10:14:29 17 Finally, pursuant to Rule 54(b) of the Federal
10:14:34 18 Rules, it's appropriate to enter a final judgment with respect
10:14:39 19 to the assigned claims. I ask counsel to submit a proposed
10:14:45 20 judgment to the Court, and it will be executed.

10:14:50 21 Thank you, Judge Hall, for all of your good work
10:14:53 22 in this case. I appreciate the cooperation that you and I have
10:14:57 23 been able to give to each other. Hopefully, some of my
10:15:00 24 comments were helpful to you.

10:15:02 25 Anything further from anyone?

10:15:05 1 MR. SERPE: No, Your Honor.

10:15:06 2 THE COURT: Hearing none, the Court will be adjourned.

10:15:09 3 Thank you, Judge Hall. You can go back to your
10:15:11 4 trial now.

10:15:14 5 The Court will stand in recess.

10:15:16 6 JUDGE HALL: Thank you, Judge Fallon.

10:15:16 7 THE COURT: Thank you, Judge Hall.

10:15:16 8 JUDGE HALL: There are a lot of people here who say
10:15:16 9 thanks, too.

10:15:24 10 Take care, you all. Thanks again, Mr. Serpe.

11 (WHEREUPON, at 10:15 a.m., the proceedings were
12 concluded.)

13 * * *

14

15 REPORTER'S CERTIFICATE

16

17 I, Cathy Pepper, Certified Realtime Reporter, Registered
18 Merit Reporter, Certified Court Reporter in and for the State
19 of Louisiana, Official Court Reporter for the United States
20 District Court, Eastern District of Louisiana, do hereby
21 certify that the foregoing is a true and correct transcript to
22 the best of my ability and understanding from the record of the
23 proceedings in the above-entitled and numbered matter.

21

s/Cathy Pepper

22

Cathy Pepper, CRR, RMR, CCR
Certified Realtime Reporter
Registered Merit Reporter

23

Official Court Reporter

24

United States District Court

10:15:26

25

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\$	3600 [1] - 2:14 365 [1] - 2:18	Allen [1] - 8:22 allocated [2] - 12:13, 13:15 allocation [1] - 13:14 ALSO [1] - 3:7 ALSTON [1] - 2:22 amount [1] - 10:11 amounts [1] - 8:5 AND [3] - 2:3, 2:17, 2:21 anticipate [1] - 12:14 APPEARANCES [3] - 1:15, 2:1, 3:1 appliances [1] - 5:8 applied [1] - 9:5 appreciate [2] - 4:15, 13:22 appreciative [1] - 11:4 approaching [1] - 11:11 appropriate [2] - 12:12, 13:18 approval [6] - 6:13, 6:22, 7:9, 9:16, 9:17, 10:18 approve [1] - 11:15 approved [4] - 6:15, 6:16, 8:14, 9:5 April [4] - 6:14, 7:22, 9:17, 9:20 ARATA [1] - 3:3 ARNOLD [1] - 1:22 assigned [9] - 6:10, 6:13, 6:15, 7:10, 7:20, 9:1, 10:3, 13:7, 13:19 assignment [1] - 8:17 associated [1] - 12:24 associates [2] - 5:23, 6:5 ATLANTA [1] - 2:24 ATLANTIC [1] - 2:23 attorney's [2] - 10:13, 12:5 attorneys [1] - 12:23 audience [1] - 12:22 available [2] - 7:3, 8:16 AVENUE [3] - 1:19, 2:14, 3:5	BEFORE [1] - 1:12 began [3] - 5:5, 5:9, 7:22 beginning [1] - 4:17 behalf [4] - 8:9, 8:19, 9:4, 9:12 benefit [6] - 12:7, 12:9, 12:13, 12:14, 12:16 BENJAMIN [1] - 2:3 BERKOWITZ [1] - 2:13 BERMAN [1] - 1:21 BERNARD [1] - 2:23 best [1] - 14:19 better [1] - 5:2 between [1] - 12:13 BIRD [1] - 2:22 bit [1] - 12:6 blackening [1] - 5:7 Blaine [7] - 7:25, 8:3, 8:10, 8:13, 8:16, 8:20, 9:6 Blaine's [1] - 10:3 BNMB [1] - 2:16 boom [1] - 4:18 breaking [1] - 5:8 Breit [2] - 11:23, 12:2 brief [1] - 7:19 bring [1] - 8:4 bringing [1] - 6:3 brokers [1] - 5:11 brought [1] - 4:21 builders [1] - 7:23 BY [10] - 1:18, 1:22, 2:4, 2:9, 2:13, 2:18, 2:22, 3:4, 3:14, 3:14	CENTER [1] - 2:23 CENTRE [1] - 2:4 CERTIFICATE [1] - 14:15 CERTIFIED [2] - 3:10, 3:10 Certified [3] - 14:16, 14:17, 14:22 certify [1] - 14:18 CHARLES [2] - 2:14, 3:5 checked [1] - 12:2 China [1] - 4:21 CHINESE [1] - 1:4 Chinese [5] - 5:5, 5:12, 5:20, 7:24, 9:25 CHINESE-MANUFACTURED [1] - 1:4 CHRISTINA [1] - 2:22 Circuit [1] - 6:25 CIVIL [1] - 1:6 claimants [1] - 8:22 claimants' [1] - 10:5 claims [12] - 6:4, 6:10, 6:13, 6:15, 7:10, 7:20, 8:13, 9:1, 9:5, 10:3, 13:7, 13:19 class [29] - 6:7, 6:12, 6:16, 6:18, 7:5, 7:7, 8:11, 9:4, 9:6, 9:7, 9:13, 9:18, 9:21, 9:22, 9:23, 10:9, 10:12, 10:14, 10:19, 11:2, 11:3, 11:6, 11:9, 11:12, 11:18, 11:22, 13:15 Class [1] - 6:10 CLERK [1] - 4:7 close [1] - 5:17 closely [1] - 13:4 CNBM [1] - 2:17 CO [2] - 2:21, 2:22 collusion [1] - 13:8 coming [1] - 5:1 comments [1] - 13:24 COMMITTEE [1] - 2:8 common [6] - 12:7, 12:9, 12:13, 12:14, 12:15, 12:16 commonality [1] - 5:13 companies [1] - 10:6 company [2] - 7:25, 8:1 complain [1] - 5:6 COMPUTER [1] - 3:14 concluded [1] - 14:12 conclusion [2] - 6:3,
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