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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
THURSDAY, SEPTEMBER 27, 2018, 9:00 A.M.

09:02:40

THIS DOCUMENT RELATES TO
ALL CASES

TRANSCRIPT OF STATUS CONFERENCE 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

THURSDAY, SEPTEMBER 27, 2018

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

(COURT CALLED TO ORDER)

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09:11:04 25

THE COURT: Okay. We have two motions today.

The first motion has to do with the plaintiffs' motion to certify a ruling of the court.

The Court two and a half years ago ruled on a matter and granted dismissal in a particular case. The plaintiffs now seek to have a certification at the Fifth Circuit so they can appeal that particular issue.

I'll hear from the movants. Go ahead.

MR. LONGER: Good morning, Your Honor. Fred Longer on behalf of the plaintiffs. I've asked Mr. Oser to set up the Elmo, which I intend to use.

Just as preliminary matters, Pearl Robertson is also going to join me in this argument. We're going to split this argument up a little bit. She's going to address some of the factual matters that we think are pertinent, and I'll follow through afterwards and address some of the legal matters that we think are pertinent.

THE COURT: Okay.

MS. ROBERTSON: Good morning. May it please the Court,

09:11:06 1 Pearl Robertson on behalf of plaintiffs.

09:11:09 2 I will open today argument with an explanation of
09:11:11 3 how we got here. We should address the issues of timeliness
09:11:15 4 that may be of the Court's concern. Following this brief
09:11:19 5 outline of the circumstances that brought us here today,
09:11:22 6 Fred Longer will resume the PSC's argument to justify
09:11:27 7 certification.

09:11:28 8 Without belaboring the points in our briefs, I
09:11:30 9 will quickly explain why the time is ripe for the PSC's motion
09:11:35 10 to certify Your Honor's March 10, 2016, Orders and Reasons.

09:11:38 11 First, there is no time line for request for
09:11:42 12 certification. 28 U.S.C. § 1293(b) contains no time limit for
09:11:49 13 filing a request for certification. In fact, logic and
09:11:55 14 judicial efficiency supports certification of the March 10,
09:12:00 15 2016, order for immediate review just as this court has done
09:12:04 16 for the other jurisdictional rulings.

09:12:06 17 Second, plaintiffs' recent discovery of
09:12:10 18 translation -- recent discovery and translation of documents
09:12:13 19 provide additional proof that there is separation between the
09:12:16 20 Chinese state and CNBM Group and that CNBM Group was involved
09:12:24 21 in the commercial activities of its subsidiaries.

09:12:27 22 To offer additional context, on May 3, Your Honor
09:12:32 23 entered an order regarding the January 2016 sanction order
09:12:37 24 against Taishan for certain discovery abuses related to
09:12:40 25 documents produced from Peng's computers and e-mails,

09:12:44 1 Record Document 21318.

09:12:46 2 As part of that order, the Court instructed the
09:12:50 3 PSC to conduct its own relevancy review of Mr. Peng's computer
09:12:55 4 and e-mails. Thereafter, the PSC would advise Taishan of
09:12:59 5 relevant documents discovered and request manual translation of
09:13:02 6 those documents, all to comply with the Court's May 3rd order.

09:13:06 7 The PSC and Taishan engaged in this process
09:13:09 8 amicably, but return of manual translations takes between 30
09:13:14 9 and 35 days. So, upon discovery of documents that appear to
09:13:18 10 speak to the indirect ownership of PSC over CNBM Group and
09:13:24 11 documents that were suggestive of commercial activity by CNBM,
09:13:28 12 the PSC opted to expedite the translations and ask their
09:13:34 13 translator Yan Gao to translate those documents the PSC
09:13:36 14 determined relevant to the FSIA issues. Shortly thereafter, we
09:13:40 15 filed our motion for certification.

09:13:42 16 To be clear, the documents attached to the PSC's
09:13:47 17 certification briefing result from the PSC's relevancy review
09:13:50 18 of Peng's documents and e-mails. Further, the PSC conducted
09:13:56 19 additional due diligence and used search phrases from the
09:13:59 20 machine translation of these documents to discover whether CNBM
09:14:04 21 Group produced the documents in 2015. The PSC was unable to
09:14:09 22 match any such documentation in the CNBM group documents.

09:14:13 23 THE COURT: Why don't you focus, though, on facts in
09:14:17 24 that situation. In my opinion, I didn't see any evidence
09:14:24 25 adverse to the fact that the CNBM Group was wholly owned by the

09:14:30 1 People's Republic of China. There was nothing there and I made
09:14:36 2 the decision, but it was factual based decision. The appeal,
09:14:41 3 you're talking about appealing now, it's generally 1292 is
09:14:45 4 issues of law that are significant. You're focused on issues
09:14:51 5 of fact. Is that a 1292 appeal?

09:14:54 6 MS. ROBERTSON: Your Honor, what we feel is that the
09:14:56 7 documents show that the facts that are discovered in these
09:14:59 8 newly translated documents support the controlling question of
09:15:02 9 law of whether there is direct ownership by the PRC. Some of
09:15:06 10 the documents attached we feel show that CNBM Group is
09:15:11 11 reporting up the line, but they are not reporting up the line
09:15:13 12 to the PRC. They are reporting up the line to different
09:15:18 13 governmental entities that's showing a separation between
09:15:22 14 CNBM Group and the People's Republic of China.

09:15:25 15 As Mr. Longer will explain, we believe *Dole Foods*
09:15:28 16 is wholly applicable to the argument and certification for 1292
09:15:32 17 as *Dole Food* definitely stands for the fact that indirect
09:15:35 18 ownership, any indirectness there, absolutely -- is absolutely
09:15:40 19 fatal to defendant's argument that foreign sovereign immunity
09:15:44 20 applies.

09:15:44 21 On that point, Your Honor, as displayed in our
09:15:50 22 brief, the first brief, 21533-1, at page 8 that Mr. Longer will
09:15:59 23 discuss further with you, CNBM Group itself acknowledges that
09:16:03 24 it is 100 percent owned by SASAC. SASAC is not the PRC and PRC
09:16:09 25 is not SASAC; therefore, our argument remains that there is

09:16:13 1 separation between CNBM Group and the Chinese foreign state
09:16:22 2 itself.

09:16:22 3 It seems as though, Your Honor, perhaps
09:16:23 4 Mr. Longer should now address some of the other issues of law
09:16:26 5 unless you have any further issues questions regarding
09:16:30 6 documents or timeliness.

09:16:32 7 THE COURT: No, I'll hear from him.

09:16:33 8 MR. LONGER: So, good morning, again. Fred Longer.

09:16:38 9 So, to your point, Your Honor, everyone here is
09:16:42 10 familiar with Section 1292(b). There are three elements that
09:16:47 11 we have to require -- meet, satisfy, and I think we've easily
09:16:53 12 satisfied all of them of.

09:16:54 13 The concern that Your Honor raised about whether
09:16:57 14 there is a controlling question of law is something that the
09:17:00 15 defendants raised. We think it's very clear that whether the
09:17:05 16 PRC directly owns a majority of shares of CNBM Group is a
09:17:12 17 controlling question of law, if there are facts that support
09:17:18 18 it, but that is coming directly from the *Dole Food* case, which
09:17:22 19 is the United States Supreme Court, and the United States
09:17:25 20 Supreme Court has told us that there cannot be an intermediary
09:17:31 21 based on the precise language of the FSIA.

09:17:35 22 So, there are a number of points that, I guess, I
09:17:46 23 want to start with. So, as to a controlling question of law,
09:17:50 24 whether there has been an incorrect disposition that would
09:17:55 25 require reversal of a final judgment is recognized to be a

09:18:00 1 controlling question of law.

09:18:01 2 So even though there are facts involved in this
09:18:04 3 decision, any personal jurisdiction opinion, Your Honor, is
09:18:09 4 going to involve questions of fact. So, it's whether the
09:18:14 5 marriage of fact to law is worth going up on appeal right away.
09:18:23 6 That's basically the big picture that's at issue here.

09:18:26 7 Your Honor, as you've just heard from my
09:18:29 8 colleague, has heard, and we know, that for the April 21, 2017,
09:18:37 9 order of personal jurisdiction regarding the other Taishan
09:18:42 10 defendants in the CNBM and BNBM entities, Your Honor certified
09:18:46 11 that question. You said it made sense to go up right now and
09:18:49 12 that an immediate appeal would certainly help the ultimate
09:18:54 13 termination of the litigation.

09:18:55 14 All of the same reasoning that was rendered in
09:19:02 15 that opinion applies here.

09:19:05 16 THE COURT: I don't have any objection to that. You
09:19:08 17 know my feeling on these matters, and I treat the MDL's
09:19:12 18 differently than I do the individual case. It seems to me that
09:19:16 19 seminal issues, gateway issues -- preemption, jurisdiction,
09:19:21 20 things of that sort, immunity -- really, if I can decide that
09:19:25 21 as quickly as I can, it's helpful to the litigation because you
09:19:29 22 don't have to spend a ton of money to get where you're going
09:19:33 23 and then all of a sudden find out that you're in the wrong
09:19:36 24 place and it was all for naught.

09:19:38 25 So I do try to focus on those. I think that

09:19:41 1 issue is a significant one, but the issue of timeliness is
09:19:47 2 giving me a little difficulty.

09:19:51 3 MR. LONGER: I want to get to that.

09:19:55 4 THE COURT: Why is it two and a half years late?

09:19:57 5 MR. LONGER: Let me take it on right now, Your Honor.

09:20:00 6 So there is a number of things that happened.
09:20:02 7 First of all, the FSIA ruling originally from March 10, 2016,
09:20:07 8 was not a final order. Everyone recognizes that there were
09:20:14 9 other defendants. The PSC was of the mind-set we didn't agree
09:20:20 10 with Your Honor's ruling -- we still don't agree with
09:20:23 11 Your Honor's ruling -- but because there were other defendants
09:20:26 12 in the litigation, it's not a final order; we can't take an
09:20:29 13 appeal right now.

09:20:30 14 As time has gone by, we knew that the other
09:20:34 15 defendants were moving for dismissal under Rule 12. Your Honor
09:20:38 16 ruled. That was April of 2017. They sought to take the
09:20:45 17 immediate appeal. Your Honor certified that question. That
09:20:51 18 was a trigger point.

09:20:53 19 Right after that or at that time the
09:20:56 20 Supreme Court came out with *Animal Science*, which said that you
09:21:01 21 can't take the word of a Chinese entity, the say-so of a
09:21:08 22 Chinese entity. In that case it was the Chinese government who
09:21:13 23 came in and said, hey, we do regulate the rates of the
09:21:19 24 defendant's pricing and you should take our word for it. The
09:21:25 25 Supreme Court goes, well, that's very nice, but we're only

09:21:29 1 going to give you deferential respect.

09:21:33 2 That, the immediately certification of the other
09:21:37 3 appeal, the Fifth Circuit has jurisdiction in front of it,
09:21:41 4 Your Honor. We're getting new documents, as Ms. Robertson just
09:21:46 5 mentioned. Everything is pointing to the fact that there are
09:21:50 6 new indicia that support an immediate appeal now.

09:21:56 7 As a practical matter, it makes sense that if the
09:22:00 8 Fifth Circuit is going to deal with the jurisdiction of the
09:22:03 9 underlings, it may have -- it may as well take jurisdiction
09:22:10 10 over the overling and that would be CNBM Group. So that's the
09:22:17 11 argument on that score.

09:22:19 12 I want to go back to the statute itself. I have
09:22:25 13 on the board here, this is on the Elmo, this is coming right
09:22:29 14 out of the *Dole Food* case. It talks about Section 1603 of the
09:22:35 15 FSIA, and it says that, you know, the definition of an agency
09:22:41 16 or instrumentality of a foreign state is any entity which is a
09:22:47 17 separate legal person, corporate, or otherwise, and -- and this
09:22:51 18 is a disjunctive -- which is an organ of a foreign state or a
09:22:55 19 political subdivision thereof or a majority of whose shares or
09:23:01 20 other ownership interest is owned by a foreign state or
09:23:04 21 political subdivision thereof.

09:23:06 22 As we know from *Dole Food*, that the ultimate
09:23:13 23 holding in the case was only direct ownership of a majority of
09:23:18 24 shares by the foreign state satisfies the regulatory
09:23:23 25 requirement. That's the United States Supreme Court.

09:23:25 1 So, in terms of majority ownership, Your Honor
09:23:32 2 expressed a finding just a moment ago that there was no
09:23:40 3 evidence, but at the hearing that took place on the FSIA
09:23:47 4 argument, we presented this slide.

09:23:57 5 It was argued that in the BNBK PLC annual
09:24:05 6 reports, there were ten of them listed here, Your Honor.
09:24:07 7 That's in the legend below, Exhibits 3, 8, 10, 12, 15, 29, 21,
09:24:17 8 18, 20, and 23. There were ten annual reports which were filed
09:24:21 9 under the Shenzhen Stock Exchange rules.

09:24:25 10 Mr. Cao, who is an officer of BNBK at CNBM Group,
09:24:36 11 declared under penalties of whatever perjury is over in China,
09:24:43 12 that the following was accurate and truthful. What the annual
09:24:50 13 reports said under Mr. Cao's signature and declaration thereof
09:24:57 14 is that SASAC, the State-Owned Asset Supervision and
09:25:02 15 Administration Commission of the State Council, owned CNBM
09:25:07 16 Materials Group Corporation 100 percent. Ten times he said
09:25:11 17 that.

09:25:11 18 He gives two times, Your Honor -- this is also a
09:25:22 19 slide that we presented at that hearing. Twice Your Honor has
09:25:28 20 ruled that SASAC owns 100 percent of CNBM Group. One is the
09:25:35 21 *Germano* findings of fact; the other is the class certification
09:25:40 22 findings of fact.

09:25:41 23 After that we have one declaration of Mr. Cao,
09:25:46 24 where he says forget everything that I've said in the annual
09:25:50 25 reports. I guess -- he didn't say he was lying then, but he

09:25:57 1 must have said I am mistaken or I'm exaggerating the truth then
09:26:01 2 or whatever the words that will come out of his mouth. He
09:26:04 3 gives another declaration as says just the opposite.
09:26:09 4 CNBM Group is owned by the People's Republic of China.

09:26:17 5 There is a real dispute there, Your Honor, but it
09:26:20 6 does come down -- there is evidence supporting our position.
09:26:24 7 There was evidence presented at the hearing. We recognize that
09:26:28 8 Your Honor found otherwise, but irrespective of the support,
09:26:41 9 the evidentiary support, it creates a mixed question of law
09:26:45 10 which is supported by fact, and it is this the ultimate
09:26:49 11 question that *Dole Food* presents, which is is there an
09:26:54 12 intermediary in between the foreign sovereign and the defendant
09:27:05 13 such that there is not or that there is indirect ownership.

09:27:11 14 We have proven that there is not direct
09:27:16 15 ownership. That is the controlling question of law which we
09:27:21 16 would like to have certified to the Circuit court so that we
09:27:26 17 can get to bottom of it because we think that Your Honor's
09:27:29 18 ruling, based on one declaration of Mr. Cao, which is
09:27:34 19 controverted by Mr. Cao, is worthy of appellate review.

09:27:40 20 We also presented the opinion of our expert,
09:27:48 21 Curtis Milhaupt, and Professor Milhaupt, who is knowledgeable
09:27:56 22 about state-owned enterprises and Chinese corporate structure
09:28:02 23 has opined, in essence, that things are not what they seem in
09:28:06 24 China. You can't make direct parallels to our experience here
09:28:12 25 in the United States with the corporate structures that exist

09:28:15 1 in China. A lot of that has to do with the Communist Party
09:28:20 2 being involved in all of these entities.

09:28:21 3 So, we think that what I just described provides
09:28:36 4 quite a substantial grounds for difference of opinion. In
09:28:40 5 fact, Your Honor has two opinions that support exactly what
09:28:42 6 we're saying. Now we have one opinion against it. So, you,
09:28:48 7 yourself, Your Honor, have a substantial ground for difference
09:28:51 8 of opinion here.

09:28:52 9 Then, finally, we think --

09:28:54 10 THE COURT: Give me a time, though, Fred. That's the
09:28:57 11 point. I got it. I understand the mixed question of fact.
09:29:03 12 That may have carried the day clearly soon thereafter. What's
09:29:10 13 the reason for the delay for two and a half years?

09:29:15 14 MR. LONGER: So I return to where I was.

09:29:18 15 THE COURT: Yep.

09:29:19 16 MR. LONGER: Section 1292 has no timeline. There is no
09:29:27 17 prohibition. The defendants have cited to no controlling
09:29:31 18 authority to suggest that there must be an immediacy to the
09:29:39 19 request for the 1292(b).

09:29:42 20 THE COURT: There is no statutory restriction about
09:29:45 21 that.

09:29:46 22 MR. LONGER: (Speaking simultaneously) There is no
09:29:47 23 statutory restriction; there is no Circuit restriction. The
09:29:49 24 best they have is the *Aparicio* case. I may be mispronouncing
09:29:53 25 it. It was a Sieracki seaman case, Your Honor. I'm going to

09:29:56 1 take you back a long way to the Longshoreman's Act.

09:29:59 2 In that case, the Fifth Circuit -- that's a
09:30:01 3 Fifth Circuit case -- the Fifth Circuit simply said it was
09:30:08 4 actually okay to a year later recertify -- I'm sorry, to issue
09:30:15 5 a second opinion and then recertify from the second opinion, a
09:30:22 6 year later, and take that one up on appeal, and they said that
09:30:26 7 they had appellate jurisdiction.

09:30:29 8 So timeliness is not at issue. They want to make
09:30:32 9 it an issue. I get it. There is a Seventh Circuit opinion
09:30:36 10 that they are harping on, and there is, I'm sure, other
09:30:41 11 out-of-Fifth-Circuit opinions, but there is no controlling
09:30:49 12 authority that is here.

09:30:50 13 The timeliness of the 1292(b) motion should only
09:30:55 14 be a concern where nothing has changed since the ruling, but
09:31:00 15 much has changed here. We have Your Honor's opinion on the
09:31:04 16 BNBM and CNBM Group. We have new authority coming out of the
09:31:13 17 United States Supreme Court, the *Animal Science* opinion. As
09:31:16 18 Ms. Robertson has explained, we have new documents which
09:31:18 19 confirm the facts that were already of record way back when.

09:31:21 20 So, all of those, the constellation of all of
09:31:28 21 those matters, Your Honor, make this more than timely.
09:31:30 22 Timeliness is not the issue here. It's really a practical
09:31:33 23 question. Your Honor, does it -- is this the type of threshold
09:31:39 24 gateway issue that Your Honor described that belongs up at the
09:31:42 25 Circuit court because, at the end of the day, we're going to

09:31:44 1 have to take an appeal, and CNBM Group should come back in.

09:31:51 2 Why not know now? It's just a practical
09:31:54 3 question. The only answer to that is if you've got the other
09:31:57 4 ones going up, we acknowledge that they are not going to be
09:32:00 5 consolidated, they will be separate appeals, but why not have
09:32:04 6 it all go up at once?

09:32:05 7 Thank you, Your Honor.

09:32:07 8 THE COURT: I got it. Thank you.

09:32:35 9 If anybody is on the phone, please don't discuss
09:32:38 10 the matters on the phone. Just listen to what's being held.

09:32:44 11 MR. STENGEL: James Stengel, S-T-E-N-G-E-L, for
09:32:50 12 CNBM Group.

09:32:51 13 All right. Let's go to the first substantive
09:32:58 14 page. Your Honor, there are four requirements for
09:33:02 15 certification under 1292(b). None of them have been met here.
09:33:08 16 What the PSC argued this morning was useful in clarifying the
09:33:13 17 reality of what's happened.

09:33:15 18 A tactile decision was made to avoid an immediate
09:33:19 19 appeal at the time Your Honor rendered this opinion two and a
09:33:21 20 half years ago. Subsequent events have unfolded, and there has
09:33:27 21 been buyer's remorse about not having sought an appeal.

09:33:30 22 Each of these requirements has to be met, and
09:33:36 23 Your Honor appropriately focused on timeliness because this is
09:33:40 24 two and a half years after the decision. What I think this
09:33:43 25 morning clarified was despite the recitals of Peng, there was

09:33:49 1 no new evidence which is relevant to the issues in this matter.

09:33:55 2 What you saw were exhibits which were put before
09:33:58 3 you in late 2015, early 2016. That was before this court.
09:34:02 4 What they are saying is we don't like the way you came out.
09:34:05 5 You made a mistake. There is no justification and, Mr. Longer
09:34:11 6 is correct, there is no rule which specifies a 10-day period,
09:34:16 7 there is no statute which does that, but as Your Honor is aware
09:34:19 8 there is a substantial body of district court opinion and
09:34:21 9 Circuit court opinion doing something quite reasonable, which
09:34:24 10 is imposing time limits on when a party makes a decision on
09:34:30 11 whether they are going to seek certification.

09:34:31 12 I would contrast the PSC's behavior with that of
09:34:34 13 ours where we made an immediate application to this court where
09:34:39 14 it was appropriate, which, I should note, was vociferously
09:34:44 15 opposed by the PSC, but we recognized what the 1292(b) talks
09:34:49 16 about is immediate appeal. It's hard to square two and a half
09:34:54 17 years with an immediate appeal.

09:34:57 18 The other point I think we all ought to have in
09:35:01 19 mind here is there was an assertion about, well, if you took
09:35:04 20 the BNBM and CNBM personal jurisdiction matters and they are
09:35:09 21 now certified they are before the Circuit, and while we can't
09:35:10 22 argue them together, we might as well get everything up there
09:35:12 23 at once.

09:35:13 24 We're talking about substantially different legal
09:35:15 25 questions. This is a matter of subject matter jurisdiction for

09:35:17 1 the Court because of sovereign immunity. Those are personal
09:35:21 2 jurisdiction arguments as to BNBM and CNBM. It involves
09:35:27 3 application of state law. Now, we can debate as to whether we
09:35:32 4 think that's appropriate or not, but there is no real overlap
09:35:34 5 in terms of what's at issue.

09:35:36 6 What's happened here is two and a half years have
09:35:39 7 passed where CNBM Group is now part of litigation. Now
09:35:44 8 because, I think, of the certification more than anything else,
09:35:48 9 the PSC wants to revisit the issue.

09:35:50 10 As Your Honor identified, and it's somewhat
09:35:56 11 disingenuous to say there is no law in this because there are
09:36:00 12 cases in that discuss what's timely under 1292(b), and one year
09:36:03 13 is the absolute outside. There are cases discussing whether
09:36:08 14 three months is too late because of the need to have cases
09:36:12 15 proceed in an orderly fashion before the courts, and obviously
09:36:16 16 it's disruptive to have a lengthy delay before cases are taken
09:36:22 17 up.

09:36:22 18 THE COURT: They say there is no harm doing it. If it
09:36:30 19 comes late, it comes late, but the main thing is justice be
09:36:33 20 done. They say that you're up there now, you might as well
09:36:36 21 have the whole loaf. What's your feeling there?

09:36:43 22 MR. STENGEL: Well, a couple of responses to that,
09:36:43 23 Your Honor. First of all, it's their burden on this motion.
09:36:46 24 They need to show where the justice resides.

09:36:49 25 The other is -- and we need to be careful about

09:36:51 1 this, and Your Honor and I have talked about this in prior
09:36:56 2 appearances -- we are not before the Fifth Circuit, meaning
09:37:00 3 CNBM Group. These are distinct entities and you're talking
09:37:03 4 about taking a different corporation up to Circuit.

09:37:07 5 Different CNBM and BNBM entities are there, but,
09:37:11 6 again, since they are going to proceed on a separate
09:37:14 7 schedule -- I mean, we're on the cusp of getting a briefing
09:37:17 8 schedule as to the personal jurisdiction matters. This matter
09:37:20 9 would, of necessity, since we would have to go to the Circuit,
09:37:23 10 litigate the issue of certification, and only if they were
09:37:25 11 successful at that point proceed, these are not going to be
09:37:29 12 connected in time.

09:37:30 13 Again, I think the justice point is really the --
09:37:34 14 and I won't use the technical phrase of *estoppel*, but the PSC
09:37:39 15 made a decision. They didn't like your outcome on sovereign
09:37:43 16 immunity. They presented evidence, factual matter that
09:37:46 17 Your Honor did not think that was adequate, and it is not for a
09:37:49 18 variety of reasons we can talk about, but now to come back
09:37:51 19 after two and a half years, with all this litigation, with, I
09:37:55 20 think, 1,500 docket entries -- we have been busy. Lots has
09:37:59 21 happened.

09:38:00 22 It's one thing for a party who has been dismissed
09:38:03 23 to bear the risk that at the end of a case there may be a final
09:38:08 24 appeal with a final judgment, and there may be some risk a
09:38:11 25 reversal, but it's quite different to say one party can lie in

09:38:15 1 the weeds, and at their decision bring a party back in to the
09:38:20 2 litigation. That's unfair and it's unjustified as a matter of
09:38:23 3 law.

09:38:23 4 We can talk about justice, but if we look at the
09:38:27 5 requirements of the statute, what we'll see is they come
09:38:30 6 nowhere close to meeting their obligation as movants under
09:38:36 7 1292(b) to seek certification of this court.

09:38:38 8 They don't like what Your Honor decided, and I
09:38:41 9 understand that. I suspect Your Honor understands that, but
09:38:44 10 the fact that they don't like the outcome, they want to take a
09:38:47 11 different view now, doesn't justify reopening the situation in
09:38:52 12 a grossly untimely fashion, particularly when, on the merits,
09:38:56 13 if we were only arguing timeliness, I believe we still prevail.
09:39:02 14 But when you fold in the failure to comply with the other
09:39:05 15 requirements of the statute, this becomes a frolic and detour,
09:39:11 16 and it's really not a matter of justice when they can't support
09:39:14 17 a reason for certification here.

09:39:17 18 THE COURT: Let me ask you this just as a practical
09:39:20 19 matter in these types of cases. When it's over in a sense that
09:39:27 20 one side wins or the other side loses, if the plaintiffs lose,
09:39:34 21 don't they take an appeal at that time? Then this issue is
09:39:38 22 before either the Fifth Circuit or some court two, three, four
09:39:47 23 five years from now, and if they prevail, aren't you then back
09:39:52 24 in it?

09:39:53 25 MR. STENGEL: Well, Your Honor, everything having only

09:39:55 1 been doing this for 40 years I hesitate to tell Your Honor how
09:39:58 2 litigation works, but it seems to me that this is a speculative
09:40:02 3 enterprise. We have come close to resolving this litigation.
09:40:05 4 The odds are substantial there won't be appeals. We just don't
09:40:08 5 know.

09:40:10 6 One of the reasons for the structure of 1292(b)
09:40:12 7 is the idea that you are entitled to some level of intermediate
09:40:19 8 finality during litigation. The statute, as Your Honor is well
09:40:24 9 aware, places fairly high burdens on movants to achieve
09:40:29 10 certification. We think in our case we met those and
09:40:33 11 Your Honor agreed. In this case, again, they fail at every
09:40:38 12 juncture.

09:40:39 13 THE COURT: Now, the issues are, to some extent,
09:40:47 14 different in an MDL than in a one-off case. I take the point
09:40:52 15 well with the timeliness in a one-off case. My concern about
09:40:59 16 this from the standpoint of an MDL is that it just keeps it
09:41:02 17 alive forever because they have a continuing opportunity to
09:41:09 18 appeal. You may win the case and then five years down the road
09:41:17 19 win the case, and then they take the appeal and you're back in
09:41:20 20 it again.

09:41:20 21 It seems to me that somewhere along the line if
09:41:23 22 you can find some finality before. This case is 23,000 people,
09:41:31 23 plaintiffs, a thousand defendants. To keep it alive for 15,
09:41:41 24 20 years, it's not good for the litigants; it's not good for
09:41:46 25 the system. I'm trying to grapple with that issue.

09:41:51 1 MR. STENGEL: Well, Your Honor, the problem with
09:41:52 2 that -- and I come from New York where, in our state system,
09:41:55 3 everything is immediately appealable and it's a nightmare.

09:41:59 4 THE COURT: Right. We have that too.

09:42:02 5 MR. STENGEL: I'm not suggesting the federal courts do
09:42:04 6 that, but the federal courts have made a decision that, by and
09:42:07 7 large, they are not interlocutory appeals, and the system works
09:42:12 8 that way. That's why 1292(b), excuse me, Your Honor is a
09:42:16 9 restrictive provision.

09:42:19 10 You could envision an alternative universe where
09:42:22 11 like, in the New York Supreme Court, everything is appealed.

09:42:24 12 THE COURT: We have that in Louisiana.

09:42:28 13 MR. STENGEL: I would suggest, Your Honor -- and
09:42:30 14 Your Honor has spent more time in MDLs than I have certainly,
09:42:33 15 but it would be a nightmarish outcome if everything were
09:42:37 16 immediately appealable in matters of this complexity. So there
09:42:41 17 is a reason why the hurdle that 1292(b) imposes is a very high
09:42:45 18 one.

09:42:45 19 THE COURT: I agree. Both of these issues, your
09:42:50 20 issues -- that's the reason I 1292'd those because, to me, it's
09:42:54 21 a key issue. It's a seminal issue. Jurisdiction is
09:42:59 22 significant. This is also jurisdiction. That's an area that
09:43:05 23 I'm grappling with is just whether we deal with it differently
09:43:09 24 in an MDL as opposed to a one-off case.

09:43:12 25 MR. STENGEL: Well, Your Honor, I don't think there is

09:43:14 1 a reason to deal with it differently because the proof provided
09:43:18 2 by the PSC in 2015 and 2016 was found by this court by
09:43:25 3 Your Honor to be wanting on the issues presented.

09:43:28 4 The rational for them coming back now, and I
09:43:32 5 think there was clarity provided in Mr. Longer's argument, that
09:43:36 6 this really isn't a matter of new evidence which goes to the
09:43:39 7 points which are critical to your decision. They are saying
09:43:42 8 here is what we gave you in early 2016 and, boy, did you get it
09:43:47 9 wrong. That's not what 1292(b) is all about.

09:43:52 10 Now, the explanation they provide is we have new
09:43:55 11 evidence. Well, I think we can take that off the table because
09:43:58 12 there is no new evidence relevant to the issue they are raising
09:44:01 13 here today.

09:44:02 14 The other issue is a citation to the
09:44:06 15 Supreme Court's case In *Animal Products*.

09:44:09 16 THE COURT: I see that.

09:44:10 17 MR. STENGEL: This is a completely different case. I
09:44:12 18 will say, and I've raised this with Your Honor before, I think
09:44:15 19 we do need to be careful. We're not going to revive the
09:44:20 20 Chinese Exclusion Act in this courtroom. That's not what the
09:44:23 21 Supreme Court said.

09:44:24 22 They didn't cast doubt about the Chinese
09:44:27 23 government's statements, but as Your Honor knows that was a
09:44:29 24 very different situation where the Chinese government had
09:44:31 25 literally come in and said that this is our rule as to pricing

09:44:34 1 of vitamin C.

09:44:36 2 The Second Circuit had said that's game, set, and
09:44:39 3 match. If the Chinese government says that or if any
09:44:40 4 government says it we're finished.

09:44:41 5 The Supreme Court said, no, it's certainly
09:44:43 6 probative, but you're not bound by the statement of a
09:44:46 7 governmental entity. In any event, since it's not relevant to
09:44:50 8 your decision here, it's not a justification for their delay.

09:44:54 9 We've covered the issue of the fact that these
09:45:00 10 appeals are not going to be together, so we're not talking
09:45:03 11 about any particular savings, any utility.

09:45:05 12 The issue of controlling question of law is very
09:45:11 13 important because that's really what's at issue here, and you
09:45:14 14 heard, I think, with some clarity the objection is they don't
09:45:17 15 like the way you assessed the application of facts to law here.
09:45:22 16 They think, boy, you should have relied on the
09:45:27 17 Shenzhen Exchange documents and ignored Mr. Cao's declaration.

09:45:31 18 The problem for that is that's typical argument
09:45:32 19 in isolation because I think what we presented at the time,
09:45:34 20 what Your Honor reacted to was its reasonably clear as a matter
09:45:38 21 of Chinese law that the PRC, I mean these are called
09:45:42 22 *state-owned enterprises* for a reason. They use SASAC because
09:45:46 23 somebody has to administer the companies owned by the
09:45:49 24 government, and there is really no contrary evidence of that.
09:45:52 25 I think it's broadly accepted. There may have been some

09:45:54 1 imprecision in disclosure documents but, you know, nothing that
09:45:58 2 brings us, you know, to a different result.

09:46:01 3 Two points I make. One I hesitate to make but I
09:46:04 4 think I really have to. This issue of SASAC ownership, and we
09:46:12 5 heard an eminent counsel only an hour ago talk about the fact
09:46:16 6 that you couldn't raise new matters in reply, so there is a
09:46:19 7 substantial question of waiver here.

09:46:20 8 But beyond that, and I would like spend just a
09:46:23 9 moment on *Dole Foods* because it's not applicable in this
09:46:26 10 situation because what's being read out is the ownership can be
09:46:31 11 either directly by the state or by a political subdivision. We
09:46:35 12 think worst case, if you looked at SASAC rationally, it's a
09:46:39 13 political subdivision of the PRC, you come to the same result
09:46:43 14 one way or the other. *Dole Foods* doesn't run contrary to that.

09:46:47 15 If we were going to be an equivalent role to
09:46:52 16 *Dole Foods*, what we would be doing is we would have come in and
09:46:54 17 said, Taishan, BNB, the whole corporate chain is immune
09:46:58 18 because they are all owned ultimately and controlled by
09:47:01 19 CNBM Group and, by extension, the PRC.

09:47:04 20 That wasn't the argument we made. We were
09:47:06 21 reasoned in our request that sovereign immunity apply. We read
09:47:11 22 the statute. We read the cases and said, we think this is
09:47:15 23 clearly applicable to CNBM Group, but we can't stretch it
09:47:21 24 further down, but that issue of ownership is really a red
09:47:25 25 herring in this context.

09:47:26 1 So, with that, Your Honor, unless you have
09:47:29 2 questions....

09:47:30 3 THE COURT: No. I'm fine.

09:47:32 4 MR. STENGEL: Thank you very much.

09:47:32 5 THE COURT: Thank you very much. I appreciate, Jim.

09:47:34 6 Any rebuttal? Fred?

09:47:38 7 MR. LONGER: There is no buyer's remorse here,
09:47:40 8 Your Honor. As Mr. Stengel mentioned, we have been busy. A
09:47:45 9 lot has happened since Your Honor's ruling. In fact,
09:47:48 10 Your Honor's ruling setup an avenue, if you will, where we
09:47:54 11 began settlement discussions. Those settlement discussions
09:47:59 12 fail. Then Your Honor ruled on the BNB/CNB motions to
09:48:08 13 dismiss, and then Your Honor certified that for an immediate
09:48:14 14 appeal. The straggler was the FSIA ruling, which was not the
09:48:20 15 straggler, was the seminal opinion. We're saying let's bring
09:48:24 16 that back, have it all go up.

09:48:26 17 Now is the time. If not now, when? What they
09:48:30 18 are saying, and I heard Your Honor saying this, you're going
09:48:33 19 to -- we have been delaying and delaying and delaying. It's
09:48:37 20 not we. The defendants' strategy from the moment their counsel
09:48:44 21 went over to China to meet with their clients is we will delay
09:48:49 22 these proceedings ad infinitum. We are almost a decade into
09:48:57 23 this litigation, and they still want to delay the appeal of a
09:49:05 24 fundamental jurisdictional question. Is this defendant
09:49:08 25 properly in the United States federal system or not? They want

09:49:12 1 to keep delaying that.

09:49:14 2 The reality is that a 54(b) judgment could be
09:49:19 3 entered, Your Honor, and we'll just go up on a direct appeal.
09:49:23 4 So why not have it now, certify the matter, and as a practical
09:49:30 5 matter, the Fifth Circuit will resolve all of these questions,
09:49:34 6 and the delay can be avoided?

09:49:39 7 THE COURT: What do you gain by it, Fred, if you're got
09:49:44 8 jurisdiction over the other part of the alphabet but not the
09:49:47 9 group?

09:49:50 10 MR. LONGER: We have all of the direction and control
09:49:52 11 that originated at the very top. All of the documents that we
09:49:59 12 have presented, as Ms. Robertson was talking about, all of
09:50:04 13 those documents are more than relevant. They are absolutely
09:50:07 14 relevant.

09:50:08 15 They show that this was a deliberate act on the
09:50:15 16 defendants' part, all the way to the corporate parent, which is
09:50:22 17 CNBM Group. CNBM Group should have -- be heard here in the
09:50:27 18 court. It should not avoid jurisdiction when there is an
09:50:30 19 intermediary owner, the SASAC, in between it and the PRC, and
09:50:39 20 we think that that is a fundamental question which needs to be
09:50:44 21 resolved at the Circuit.

09:50:46 22 THE COURT: Okay. I got it. I understand.

09:50:48 23 MR. STENGEL: Your Honor, there is something I have to
09:50:50 24 respond to, which there is this process of conflating what's at
09:50:54 25 issue in terms of control. The record in this court is devoid

09:50:58 1 of any indication that CNBM Group had any contact, awareness,
09:51:03 2 or involvement in the sale of allegedly defective drywall in
09:51:08 3 the United States, full stop.

09:51:10 4 There may be issues which we think the PSC
09:51:14 5 misinterprets as to the conduct of the litigation years later.
09:51:19 6 When we start talking about the tort exception or the , those
09:51:27 7 would require affirmative proof by the PSC to meet the burden
09:51:30 8 that there was involvement by group in the sale of drywall.
09:51:34 9 After 10 years, there is no evidence in this record.

09:51:36 10 Thank you, Your Honor.

09:51:37 11 THE COURT: Okay. I got it. Okay. I'll take that
09:51:41 12 under advisement.

09:51:42 13 Let's to go the next issue.

09:51:44 14 MR. LONGER: Thank you, Your Honor.

09:51:45 15 THE COURT: Thanks, Fred.

16 ^ MOTION 2

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18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF LOUISIANA

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21 IN RE: CHINESE-MANUFACTURED
22 DRYWALL PRODUCTS
23 LIABILITY LITIGATION

23

CIVIL DOCKET NO. 09-MD-2047 "L"
NEW ORLEANS, LOUISIANA
THURSDAY, SEPTEMBER 27, 2018

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THIS DOCUMENT RELATES TO

1 REF: 11-1395 and 11-1673

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TRANSCRIPT OF STATUS CONFERENCE 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

THURSDAY, SEPTEMBER 27, 2018

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

(COURT CALLED TO ORDER)

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09:02:40 2
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09:51:48 7 THE COURT: The motion to stay, plaintiffs' motion to
09:51:50 8 stay. These class actions were filed in this court. There is
09:52:04 9 also the same class action filed in Virginia, and the same
09:52:08 10 class action filed in Florida. The Court has now sent the
09:52:12 11 Florida cases back.

09:52:13 12 The question is what do we do with those Florida
09:52:22 13 cases that appear in this court? Do we stay those actions and
09:52:26 14 allow Florida to go on or do we dismiss those actions so that
09:52:31 15 Florida can go on?

09:52:34 16 MS. SCHWAB: Good morning, Your Honor. Emma Schwab for
09:52:37 17 plaintiffs.

09:52:40 18 May it please the Court, plaintiffs are here
09:52:43 19 today on a motion to stay the Florida claims that are included
09:52:47 20 in the Louisiana Amorin complaint before this court because
09:52:52 21 these claims are proceeding in Florida. We have also filed a
09:52:54 22 motion to stay the nonFlorida claims in the Southern District
09:52:59 23 of Florida in front of Judge Cooke. That motion is pending.

09:53:02 24 While CNBM and BNBM argue for dismissal without
09:53:07 25 prejudice, Taishan is silent. Taishan's motion is silent as to

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09:53:13 1 whether they are requesting dismissal with or without
09:53:16 2 prejudice.

09:53:16 3 Regardless of whether it is with or without,
09:53:19 4 dismissal is not proper.

09:53:20 5 THE COURT: What are you concerned about?

09:53:22 6 MS. SCHWAB: These complaints were filed as protective
09:53:26 7 measures for jurisdictional defenses, statute of limitation
09:53:32 8 defenses, and we would like to keep the balance at play here.

09:53:35 9 We think that these -- that other states would
09:53:41 10 have to independently prove jurisdiction without the
09:53:47 11 significant port such as Florida, Louisiana, and Virginia. We
09:53:54 12 think that the protective measures of keeping the claims in the
09:53:58 13 MDL, not asking Your Honor to deal with them substantively but
09:54:03 14 just keeping them here, would help and would alleviate any
09:54:10 15 issues down the road.

09:54:11 16 THE COURT: In which way? Meaning since I've ruled on
09:54:15 17 jurisdiction here, that they did business in Florida,
09:54:24 18 jurisdictionally, since I found that, that if I dismiss them
09:54:31 19 here, you'll be adversely affected in some way in Florida?

09:54:40 20 MS. SCHWAB: Yes, Your Honor. That's precisely what
09:54:42 21 we're arguing.

09:54:43 22 Defendants have challenged jurisdiction every
09:54:45 23 step of the way. If history is any indication, they will stop
09:54:48 24 at nothing, and they will continue to challenge jurisdiction.

09:54:50 25 We think that without having the cases here with

09:54:53 1 some kind of connexity to the MDL and some kind of connection
09:54:59 2 to the significant ports, that it will prejudice plaintiffs,
09:55:04 3 while a stay of the Florida cases on the MDL docket will have
09:55:09 4 no impact whatever on defendants.

09:55:13 5 THE COURT: All right.

09:55:15 6 MS. SCHWAB: So, Your Honor, as I was saying, that
09:55:18 7 defendants have challenged jurisdiction every step of the way.
09:55:21 8 That is no question. Defendants will never concede
09:55:28 9 jurisdiction. I think that we can all agree on that, which is
09:55:32 10 all the more reason why the cases should be stayed.

09:55:35 11 Defendants continually blame the plaintiffs for
09:55:38 12 the procedural mess, which is the three Amarin complaints, but
09:55:43 13 it was their repeated misrepresentations and devious conduct
09:55:49 14 which put us in the situation and provoked the need to file the
09:55:51 15 protective actions in the first place.

09:55:53 16 If the Florida cases are dismissed, this court
09:55:55 17 will likely apply the same ruling for other cases that are
09:55:59 18 remanded in the future, and all nonFlorida, nonLouisiana, and
09:56:04 19 nonVirginia claims would essentially have to prove jurisdiction
09:56:10 20 independently of those significant ports once those Amarin
09:56:14 21 complaints are remanded out of the MDL.

09:56:16 22 This would defeat the entire purpose of filing
09:56:18 23 the protective actions to proactively address potential
09:56:24 24 venue-specific personal jurisdiction and statute-of-limitation
09:56:27 25 defenses.

09:56:29 1 A stay will have -- and I was saying earlier, a
09:56:31 2 stay will have the identical impact on defendants as a
09:56:34 3 dismissal, so it cannot be argued that they would suffer any
09:56:37 4 prejudice if the Florida Amarin claims are stayed, but a
09:56:42 5 dismissal would negligently impact the rights of the Florida
09:56:45 6 claimants without any corresponding benefit to this court and
09:56:48 7 the plaintiffs.

09:56:49 8 A stay will not require defendants to engage in
09:56:53 9 any discovery or motion practice in this court regarding these
09:56:56 10 plaintiffs. The Florida claims will substantively be removed
09:57:00 11 from the Court's management docket.

09:57:02 12 The Amarin complaints were filed as a protective
09:57:05 13 action, and plaintiffs simply want to keep the balance in play.
09:57:08 14 So, we respectfully request this court to exercise its
09:57:13 15 jurisdiction and stay the Florida Amarin claims and any other
09:57:18 16 prospective claims that are remanded out of the MDL while those
09:57:23 17 claims run their course in other jurisdictions.

09:57:29 18 THE COURT: What's the disadvantage of staying it? Why
09:57:37 19 not stay it? How are you hurt that way?

09:57:42 20 MS. EIKHOFF: It is clear that you can stay or you can
09:57:45 21 dismiss. Fifth Circuit law is absolutely clear on that, so it
09:57:49 22 is well within the Court's discretion to make this decision.

09:57:53 23 THE COURT: What do you get out of dismissal that you
09:57:55 24 don't have out of stay?

09:57:57 25 MS. EIKHOFF: That eliminates the risk of inconsistent

09:58:01 1 outcomes. It also cleans up these cases and provides more
09:58:06 2 simplicity and more clarity as to where these cases are being
09:58:12 3 adjudicated.

09:58:12 4 We're talking about only the Florida claims here.
09:58:14 5 Those are before Judge Cooke. They are identical to the claims
09:58:19 6 that are sitting here in this court that the PSC is asking to
09:58:22 7 stay.

09:58:23 8 It is entirely unclear to us what the PSC means
09:58:32 9 when they say they want to keep them alive as a protective
09:58:36 10 measure, and I believe that Ms. Schwab just said *to keep the*
09:58:40 11 *balance in play*. I don't know what that means.

09:58:43 12 THE COURT: I think what she's saying is that there is
09:58:49 13 an argument that it's the law of case. If I decided
09:58:51 14 jurisdiction, they can argue that Judge Cooke doesn't have to
09:58:55 15 deal with jurisdiction because the law of the case is that I've
09:58:59 16 already decided the jurisdiction.

09:59:01 17 MS. EIKHOFF: But that's true, Your Honor, we're not
09:59:03 18 talking about the cases in front of Judge Cooke. We're not
09:59:07 19 asking you to dismiss Judge Cook's cases. We're asking you to
09:59:12 20 dismiss from the entirely identical duplicative Louisiana
09:59:18 21 action the cases that Judge Cooke is actively adjudicating with
09:59:25 22 jurisdiction that Taishan is not contesting.

09:59:31 23 So we don't understand why they want to keep
09:59:34 24 these alive, to hold them on ice as, a quote, protective
09:59:40 25 measure. We can only speculate that they want to keep them

09:59:43 1 alive so that they can revive them at some point down the road
09:59:48 2 if they don't like what Judge Cooke does.

09:59:53 3 Many federal courts, Your Honor, have said that's
09:59:57 4 improper. You don't keep duplicative claims on ice in another
10:00:01 5 court to hedge your bets or to keep the balance in play while
10:00:07 6 another federal court is actively adjudicating them with
10:00:09 7 jurisdiction.

10:00:10 8 Now, what I want to remind the Court that this is
10:00:13 9 oral argument on the PSC's motion to stay, which is document
10:00:16 10 Number 21639, but there are competing motions here, Your Honor,
10:00:23 11 because Taishan did move to dismiss is the same claims, and
10:00:26 12 that's Document Number 21729.

10:00:29 13 Your Honor, we hear it every month. We see it in
10:00:33 14 every brief. They accuse us of delay, delay, delay, but here,
10:00:38 15 we're trying to reach resolution, finality, simplicity, clean
10:00:46 16 up these dockets. Judge Cooke has got the Florida claims. We
10:00:50 17 are going forward on a discovery schedule and a full scheduling
10:00:56 18 order that will get these cases to trial within the year.

10:01:01 19 So what we're trying to do is trying to avoid the
10:01:04 20 delay of having lingering identical claims hanging out for some
10:01:10 21 mysterious protective purposes, and that's why we believe it's
10:01:15 22 appropriate to dismiss these claims, and I must make clear,
10:01:19 23 without prejudice.

10:01:21 24 Your Honor, the PSC's brief said that the
10:01:25 25 defendants are seeking to dismiss with prejudice. That is not

10:01:29 1 reflected in anything that we've filed, and that is, in fact,
10:01:32 2 not what we are doing.

10:01:35 3 THE COURT: Okay. I got it. I understand.

10:01:38 4 Any rebuttal.

10:01:43 5 MS. SCHWAB: Yes, Your Honor, very briefly.

10:01:48 6 Ms. Eikhoff mentioned that she was or that
10:01:52 7 Taishan was worried about inconsistent outcomes, and that's the
10:01:55 8 reason why the cases should be dismissed rather than stay. As
10:01:58 9 I stated earlier, we are not seeking -- we are not asking this
10:02:02 10 court to revisit this case at a later date or in the future,
10:02:07 11 and that is not what our intention is.

10:02:10 12 They also -- Ms. Eikhoff also mentioned that
10:02:15 13 Taishan is not contesting jurisdiction, which I believe that
10:02:19 14 is -- that we disagree with as, just whenever Bristol-Myers
10:02:26 15 came out, they were very quick to file another challenge to
10:02:30 16 Your Honor's jurisdictional rulings.

10:02:33 17 She also mentioned that they are trying to avoid
10:02:37 18 delay and clean up the docket, but, yet, they are trying to
10:02:41 19 unravel and start from scratch in the Florida proceedings.

10:02:44 20 So, I believe that in order to keep this all in
10:02:50 21 line and to keep the balance at play that these cases should be
10:02:53 22 stayed as opposed to dismissed.

10:02:55 23 THE COURT: Okay. Thank you. I got it.

10:02:58 24 One thing that I'm trying to do for you folks,
10:03:02 25 both sides, I'm sending these cases back, but I'm sending them

10:03:09 1 back in waves so that I can keep involved in the case if you
10:03:23 2 need me for some reason, and that's comes into my thinking,
10:03:28 3 too.

10:03:29 4 I've been with the case, been with you all now
10:03:34 5 for about a decade, and while I'm happy to send them out, I do
10:03:41 6 want to be available for you if you need me. I'm trying to
10:03:44 7 figure out how I can do that for you and at the same time not
10:03:49 8 have a lot of duplicity in the cases, and that's kind of a
10:03:55 9 challenge in these types of cases.

10:04:01 10 Frankly, it's a discussion point that a lot of my
10:04:06 11 colleagues have. The opportunity to get rid of a case, get rid
10:04:11 12 of the case immediately, and I can understand that. I feel if
10:04:18 13 I could be of help to you all or be of service, I want to be
10:04:23 14 able to do that, and I'm trying to figure out how to do that
10:04:26 15 without having a problem.

10:04:28 16 I understand both sides of it. I'll take them
10:04:30 17 under advisement, and I'll be coming out with a ruling shortly.
10:04:34 18 Thank you very much.

10:04:34 19 VOICES: Thank you, Your Honor.

10:04:36 20 MR. HERMAN: Thank you, Your Honor.

10:04:36 21 May it please the Court, may Mr. Davis and I see
10:04:39 22 you about a matter that has -- nothing to with drywall? I've
10:04:43 23 discussed it with Harry.

10:04:44 24 THE COURT: Harry, do you have any issue there?

10:04:46 25 MR. ROSENBERG: I've discussed that matter with

10:04:48 1 Mr. Herman and Mr. Davis, and we do not have an objection.

10:04:54 2 THE COURT: Okay. It's another case, as I understand.

10:04:57 3 I've got a couple of these.

4 (WHEREUPON, at 10:04 a.m., the proceedings were
5 concluded.)

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REPORTER'S CERTIFICATE

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

20

21

s/Cathy Pepper

22

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