

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED * 09-MD-2047
DRYWALL PRODUCTS *
LIABILITY LITIGATION * Section L
 *
Relates to: All Cases * June 27, 2017
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STATUS CONFERENCE BEFORE THE
HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

Appearances:

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computer-aided transcription software.

1 PROCEEDINGS

2 (June 27, 2017)

3 **THE COURT:** Be seated, please. Good morning, ladies
4 and gentlemen.

5 Call the case.

6 **THE DEPUTY CLERK:** MDL 2047, *In Re: Chinese-*
7 *Manufactured Drywall Products Liability Litigation.*

8 **THE COURT:** Liaison counsel make their appearance for
9 the record, please.

10 **MR. HERMAN:** Good morning, Your Honor. May it please
11 the Court. Russ Herman for plaintiffs.

12 **MR. MILLER:** Good morning, Russ.

13 **MR. HERMAN:** Good morning, Kerry. How are you?

14 **MR. MILLER:** I'm fine.

15 Good morning, Judge Fallon. Kerry Miller for
16 the defense steering committee and the Knauf defendants.

17 **MR. ROSENBERG:** Good morning, Your Honor. Harry
18 Rosenberg as liaison counsel for CNBM, BNBM, and Taishan.

19 **THE COURT:** We are here today for our monthly status
20 conference. I have had a moment to meet with lead and liaison
21 counsel to discuss the agenda with them. We don't have much on
22 the agenda today.

23 I mainly focus them on some kind of endgame in
24 this particular case. As you know, with the Knauf entities we
25 have been distributing funds throughout a period of time now.

09:04

1 With the Taishan group, there has been no resolution, so I'm
2 focusing on methods of dealing with that.

3 As I mentioned to them, attorneys are problem
4 solvers. At this level we have the best problem solvers in the
5 country to focus on it, so we have to figure out what to do
6 with this particular litigation.

7 One way is to try some or all of the cases.
8 It's a little more difficult because some of the omnibus
9 complaints have several thousand cases in the omnibus complaint
10 and they are mixed. Virginia, Florida, Louisiana, and other
11 states are mixed into that, so we are going to have to kind of
12 figure out each group and we will deal with groups.

13 My thinking for the jury trials, if we can do
14 flights, we can eventually do two or three in the morning, two
15 or three in the afternoon with the same jury, maybe a four-day
16 jury trial, and let the jury focus on eight or ten cases and
17 deal with those.

18 Another way is perhaps some form of ADR, either
19 one individual looking at each case or three individuals
20 handling some kind of mediation or some form of alternate
21 dispute resolution (ADR) to resolve them. There's other ways
22 perhaps of grouping them and trying to resolve them in groups,
23 but we have to resolve these cases.

24 The cases that are directly filed here will have
25 to stay here, but they will be applying the locus law; that is

09:06

1 to say, the cases from Florida that were directly filed here
2 will be applying Florida law. In some states you have punitive
3 damages, other states you have redhibition damages and
4 remediation and so forth. So we are going to have to figure a
5 way of grouping them and then resolving each of those groups in
6 some form or fashion.

7 We have about finished the Knauf cases. We will
8 have some reports on that. I'm focusing on really trying to
9 figure out an endgame for this particular case.

10 Let's take it in the order that you have given
11 to me from the agenda. Pretrial orders, anything?

12 **MR. HERMAN:** May it please the Court. Good morning,
13 Judge Fallon. Russ Herman for the PSC.

14 This is Joint Report No. 91. Nothing new under
15 Item I, pretrial orders.

16 Nothing new on the state/federal coordination.
17 We met with Dawn Barrios yesterday, and there's nothing new on
18 that.

19 Omnibus class action complaints, we filed an
20 intervention on June 15 for some 200 properties which is
21 pending. That's intervention in Omnibus XX.

22 Then with regard to Item IV, plaintiffs' motions
23 to establish a fee and expense fund, nothing new.

24 Under the Knauf remediation program, Mr. Miller
25 is here. After Mr. Miller speaks, I do want to make a short

09:08

1 statement about the remediation program.

2 **MR. ROSENBERG:** Your Honor, can I just talk with
3 Mr. Herman a minute?

4 Thank you, Your Honor.

5 **MR. MILLER:** Kerry Miller again. On the Knauf
6 remediation program, Your Honor, Moss has three homes under
7 construction. Those are the last three homes to be remediated.

8 While I'm up here, I will just give you a
9 summary of what's left for Knauf before we are out of this MDL.
10 In addition to remediations, we had reimbursements of homes
11 that were already remediated. The last disputed batch has been
12 turned over to Mr. Balhoff as the special master. There may be
13 a dispute regarding his jurisdiction coming from the other
14 side, but Mr. Balhoff and Knauf want to get that issue resolved
15 as quickly as possible. I don't know if that will come up to
16 you jurisdictionally or on appeal.

17 At any rate, the last remaining ARHs are in
18 Mr. Balhoff's hands right now. That would relate, the same
19 thing, to the BrownGreer GBI payments. Those two issues are
20 interrelated. So resolution of one will drive the resolution
21 of the other.

22 Finally, I think the only opt-out case we have
23 left before you, given the attorney general's dismissal, is a
24 class action from the Northern District of Alabama by the name
25 of *Bennett*. So we will be looking to turn to that in the

09:10

1 coming months.

2 **THE COURT:** Do you see that being handled here or do
3 you see that being referred back?

4 **MR. MILLER:** I think there are pretrial issues,
5 Your Honor, that can be handled by you, the transferee judge,
6 that will certainly narrow the issues in that case.

7 **THE COURT:** Okay. What I'll try to do is I will get
8 with you all and the other side, and we will figure out what
9 needs to be done here and what needs to be done when I send it
10 back.

11 You bring up Moss. As I mentioned in our
12 smaller meeting, I think Moss has done a good job here. I
13 think we have learned from the process that it's helpful to
14 have one group with national ties to be able to take advantage
15 of the economy of scale and things of that sort. They have
16 gotten very good at these remediation programs, and I have seen
17 them pick up steam over the period. They have done a good job,
18 at least from my seat in the bus, in any event.

19 **MR. MILLER:** I appreciate that. I will make sure and
20 pass that on. I think Phil Adams from Moss, who used to attend
21 all these, does listen. I think he is probably listening in,
22 and he would be appreciative too.

23 One quick observation I have on that, being
24 involved in this settlement with Moss and in some other
25 settlements. I think one of the key factors, as you pointed

09:12

1 out, was sort of the lack of bureaucracy. You actually had a
2 contractor who dealt with the PSC and the ombudsman, and they
3 really limited sort of the hierarchy of the chain of command.
4 So when people had issues or questions, they could quickly get
5 to the people with the answers instead of sort of being put off
6 like you would in a more bureaucratic arrangement.

7 **THE COURT:** To get to them, we interviewed six or
8 seven contractors --

9 **MR. MILLER:** Right.

10 **THE COURT:** -- and got bids from each of them on
11 various properties, and they came through. I think it worked
12 out well.

13 As you all know, we had to have an ombudsman
14 help us with matters that came up, but I think he worked well
15 with Moss, and Moss worked well with him too. We got rid of
16 most of those.

17 **MR. MILLER:** I think so. I would just like to
18 mention, too, that Moss did coordinate a lot with BrownGreer
19 because BrownGreer was essential in processing the paperwork.
20 They also did a good job to get the paperwork processed because
21 that was necessary to get the remediation working.

22 **THE COURT:** Yes, I agree. Thank you.

23 **MR. HERMAN:** Your Honor, I just have one comment.

24 In December 2012 this matter was resolved
25 essentially by settlement with regard to Knauf and others.

09:13

1 More than 2,847 work authorizations have been issued by Moss.
2 That doesn't include the other two options. Moss really has
3 done an exceptional job, and the coordination as among
4 BrownGreer, Moss, and the ombudsman has really been the key to
5 having a working relationship among professionals that works.
6 The instances where there have been differences have been
7 resolved pretty quickly.

8 The PSC, having reviewed all of the ombudsman's
9 billings with particularity, will submit a chart to the Court
10 at the next status conference showing the activities of the
11 ombudsman as to dates, properties; and in instances where they
12 met with attorneys, they will also be listed as meetings, phone
13 calls, or emails.

14 At this juncture there have been between 8,000
15 and 9,000 communications which involve the ombudsman. Given
16 the activity of BrownGreer along with Moss, this is as far as
17 we know -- since Your Honor has appointed an ombudsman in
18 property issues of this magnitude, it's hoped that because this
19 has worked so well that others will follow Your Honor in terms
20 of the ombudsman.

21 With regard to the remainder, there's nothing on
22 Item VII under Taishan, BNBM, and CNBM defendants.

23 Your Honor has indicated that we are to meet on
24 July 6 with reference to an endgame. Your Honor, in accord
25 with the pretrial status conference report, which will be filed

09:16

1 of record, has set matters without oral argument for July 7.
2 Your Honor will be considering those issues and whether
3 Your Honor would require oral argument on any of those.

4 Mr. Balhoff, Item X, has reported to
5 Your Honor -- it's at page 20 of the status report. He has
6 reported to Your Honor the progress with regard to that issue.

7 With regard to Items XI, XII, and XIII, there's
8 nothing new.

9 The next status conference, Your Honor, is set
10 for August 3. I believe Your Honor is considering
11 September 8 --

12 **THE COURT:** It's September 8 at 9:00.

13 **MR. HERMAN:** -- at 9:00. Is it August 3 at 2:00?

14 **THE COURT:** No, 9:00. August 3 is at 9:00.

15 **MR. HERMAN:** That's all that we have to report today.

16 **THE COURT:** Harry, do you have anything?

17 **MR. ROSENBERG:** No, Your Honor. Mr. Herman covered
18 most of the topics. Thank you, Judge.

19 **THE COURT:** Anything from anybody? Okay, folks.
20 I'll see you next time. Court will stand in recess.

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

22 (Proceedings adjourned.)

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CERTIFICATE

I, Toni Doyle Tusa, CCR, FCRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of proceedings in the above-entitled matter.

s/ Toni Doyle Tusa
Toni Doyle Tusa, CCR, FCRR
Official Court Reporter