

IN RE: MDL 2047

APRIL 26, 2011

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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-EEF-JCW
) SECTION "L"
) NEW ORLEANS, LOUISIANA
) APRIL 26, 2011
) 9:00 A.M.

THIS DOCUMENT RELATES TO:)
)
ALL CASES)
)

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

OFFICIAL COURT REPORTER: SUSAN A. ZIELIE, RPR, FCRR
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY.
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1 NEW ORLEANS, LOUISIANA; TUESDAY, APRIL 25, 2011

2 9:00 A.M.

3 (COURT CALLED TO ORDER)

4 THE COURT: Good morning, ladies and
5 gentlemen.

6 CASE MANAGER: MDL 3047, in re: Chinese
7 Drywall.

8 THE COURT: Counsel make their appearance
9 for the record.

10 MR. HERMAN: Good morning, Judge Fallon,
11 Russ Herman for plaintiffs.

12 MR. GLICKSTEIN: Your Honor, Mr. Miller had
13 to go, so I'm the poor substitute. Steven Glickstein
14 from Kaye Scholer.

15 THE COURT: Okay. Good substitute. I
16 appreciate you being here.

17 All right, we're here for the monthly status
18 conference in this matter. Let me begin the meeting by
19 announcing that a settlement has been reached between
20 the plaintiffs' committee and a major party to the
21 litigation, namely INEX.

22 There's a motion for preliminary approval
23 which spells out the nature of the settlement.
24 Basically, it encompasses an aggregate cash payment from
25 the primary insurers. They're putting up their policy

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1 limits of some \$8 million.

2 In addition, INEX is assigning to the
3 plaintiffs a claim against their excess insurance
4 company in the amount of the excess insurance which is
5 \$72 million.

6 Basically, the structure proposed is to have
7 two subclasses; one, Louisiana homes; and, two, the
8 non-Louisiana homes. And there, as I say, has been a
9 motion for preliminary approval. I'm going to set that
10 motion for hearing on Friday, a week from now.

11 All of us know that preliminary approval is
12 just that, preliminary approval. I'm not going to be
13 focused on the specifics of it. That comes later at a
14 fairness hearing. Gives everybody an opportunity to
15 focus on amounts and specifics of the settlement. At
16 the preliminary stage, I review the documents, which I
17 just received last night. They're voluminous. I review
18 the documents and test whether or not it appears on its
19 face to be appropriate. To me, they're putting up their
20 entire policy limits, so that may speak for itself.
21 But, in any event, I'll be hearing the motion for
22 preliminary approval at that time.

23 But, in addition, because of the settlement,
24 I'm going to stay the proceedings against INEX and ask
25 that the parties draft a stay order which would include

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1 the class actions as well as the trial. I will have
2 some dates available for other trials if this matter is
3 resolved, as it looks like it is, and I'll fit in some
4 other disputes in those trial dates so that we can go
5 forward with the litigation.

6 There are other discussions and hopefully
7 we'll be able to announce some other resolutions. My
8 preference, of course, is to have everybody in the room
9 and resolve everything at one time; but I recognize that
10 in a case of this sort, we have a thousand defendants,
11 and maybe 20,000 plaintiffs or thereabouts, and a number
12 of states, so it's a little difficult. So we're
13 approaching it piecemeal: If you want to eat an
14 elephant, you do it one bite at a time. So that's what
15 we're doing. And this is a significant bite.

16 I think we got momentum because of Knauf's
17 movement initially in the creation of a pilot program,
18 which quickly extended beyond the pilot stage, and that
19 gave us some momentum to proceed with other aspects of
20 the case. So, I'm happy to announce the INEX
21 settlement, and now I'll hear from the parties if they
22 wish to flesh it out any further in any detail.

23 MR. HERMAN: Your Honor, the agreement
24 reached has been filed of record and posted, and so
25 folks that are interested can refer directly to it.

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1 I just want to thank counsel from
2 Interior/Exterior and the insurers who have entered the
3 settlement who have -- we've had a very spirited
4 negotiation, and they at all times acted professionally,
5 although aggressively, protecting their client's rights.
6 So that's the only remark that I have to make.

7 Arnold?

8 MR. LEVIN: Russ speaks for me, Your Honor.

9 THE COURT: Anything from the defendants
10 INEX?

11 MR. NIZIALEK: No.

12 THE COURT: Let's look at the pleadings to
13 see whether or not you need to amend against the excess
14 to bring them directly before the Court so that we can
15 proceed with dispatch against the excess.

16 MR. LEVIN: Your Honor, we will not have the
17 ability to do that until after the fairness hearing.

18 THE COURT: Okay.

19 MR. LEVIN: Because that's part of the
20 relief.

21 THE COURT: Okay.

22 MR. HERMAN: We will meet with insurer's
23 counsel immediately following the status conference in
24 Your Honor's conference room.

25 THE COURT: Okay, great.

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1 Let's go back then to the proposed agenda.

2 Anything on the pretrial orders, first item?

3 MR. HERMAN: Nothing new on item No. 1.

4 THE COURT: Anything on property

5 inspections?

6 MR. HERMAN: Nothing new on property

7 inspections. Although this may be a place to indicate
8 to Your Honor that between 1,200 and 2,000 of more
9 claimants have sought out the PSE and since the last
10 status conference, and Arnold will be either intervening
11 them in cases or filing new ones.

12 THE COURT: Where are they coming from

13 basically from the standpoint of the states?

14 MR. HERMAN: There's a large number now,
15 larger than we anticipated, from Texas. But primarily
16 from Texas, Florida and Louisiana. The manufacturing
17 defendants are Knauf and Taishan and Taishan's related
18 entities.

19 THE COURT: Okay. And the profile forms,
20 anything there?

21 MR. HERMAN: We have a committee going
22 through both defendant fact sheets and plaintiff profile
23 forms. They'll be meeting for three or four days in the
24 next two weeks. There's nothing new, no amendments to
25 the profile forms.

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1 THE COURT: There was some comment a time or
2 two about the delinquent receipt of profile forms from
3 the plaintiffs. Has that been worked out?

4 MR. HERMAN: Yes, I believe it has, Your
5 Honor. We've worked very diligently with follow-up.

6 MR. PANAYOTOPOULOS: Your Honor, Nick
7 Panayotopoulos on behalf of Banner.

8 CASE MANAGER: He needs to use the mike,
9 Judge.

10 THE COURT: You want to just grab a mike
11 here close to you? You can use that one, just turn it
12 on.

13 MR. PANAYOTOPOULOS: Your Honor, I just
14 wanted to inform the Court that I believe the PSE is
15 working diligently to get us the remaining profile
16 forms. We may have some questions about the home
17 builders profile forms that I'll address with them first
18 and then bring to the Court's attention if necessary.
19 But we're hoping that it's not going to ultimately be an
20 issue.

21 MR. HERMAN: Do you want to state your name
22 so the court reporter can get it?

23 MR. PANAYOTOPOULOS: Nick Panayotopoulos for
24 certain Banner entities.

25 THE COURT: Okay. Anything on the

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1 preservation orders?

2 MR. HERMAN: No, Your Honor.

3 THE COURT: State/federal coordination.

4 MR. HERMAN: Ms. Barrios is here with that
5 report.

6 MS. BARRIOS: Thank you, Mr. Herman.

7 Your Honor, just to touch base on the last
8 issue that you asked Mr. Herman about, the plaintiff
9 profile forms, we started out with well over 200, close
10 to 300 that were alleged to be deficient, and we're down
11 now to 19. So we continue work on that pretty much
12 daily.

13 The state court trial settings at VI really
14 spell out lots of details about the trials, but I'd like
15 to bring to the Court's attention some administrative
16 issues that have been occurring in Virginia. As I think
17 I reported at the last or second to last status meeting,
18 that there was a building code violation held -- I'm
19 sorry -- the permit bureau held that there was a
20 building code violation against Taishan for the lack of
21 ASTM markings on it. Just last week, a state-wide
22 appeal board ruled in favor of Virginia homeowners
23 against a large Virginia builder by the name of Atlantic
24 Homes regarding the scope of remediation. That board
25 held that the Chinese drywall had caused the homes to

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1 develop a corrosive indoor environment, and that all
2 materials had to be able to withstand the corrosive
3 indoor environment, and essentially adopted the Germano
4 and Hernandez scope of remediation.

5 And I'd like to thank everyone for giving us
6 more state court cases. We've substantially increased
7 them, and I have them on a CD for Your Honor.

8 THE COURT: Where are they coming from,
9 which states?

10 MS. BARRIOS: Just as Mr. Herman said,
11 they've come from all around the Gulf states. That's
12 where we get most of them.

13 THE COURT: I know I've touched base with
14 most of state court judges, if not all of them, to keep
15 them advised of what's happening. I know that several
16 of them are on the phone here today, and I appreciate
17 working with them and the opportunity to work with them.

18 MS. BARRIOS: And on the CD, Your Honor, I
19 have all the contact information for any new judges that
20 you may need to contact.

21 THE COURT: Thank you very much. And I'll
22 do so.

23 Any motions in the MDL, No. VII?

24 MR. HERMAN: Your Honor, there's nothing new
25 under item No. VII.

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1 Under discovery issues at page 9, Knauf
2 depositions, a number of them have been set in New York.
3 We're attempting to set depositions in Germany of Knauf
4 of 30(b)(6) deponents.

5 There is a deposition that's been set for
6 Guardian Builder Products Distributors, will take place
7 tomorrow in South Carolina.

8 The PSE's trial team and discovery team has
9 worked diligently with INEX to take class rep
10 depositions, et cetera, which are now to be stayed.

11 And Leonard just handed me a note saying
12 that the Guardian deposition in South Carolina has now
13 been postponed. That was the deposition scheduled for
14 tomorrow.

15 THE COURT: What about the depositions in
16 China? The last time we talked about that, that they
17 were scheduled.

18 MR. HERMAN: We had an excellent dep
19 preparation team, Chris Seeger and Pat Montoya and
20 others were in Hong Kong. Chris led the depositions.
21 We encountered some difficulties, I'm not going to go
22 into them in depth, but to say that the Plaintiff's
23 Steering Committee is going to file motions before Your
24 Honor. Documents were not produced as directed. There
25 was interference, a lot of coaching during the

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1 depositions by Taishan attorneys. The witness for the
2 30(b)(6) deposition had no knowledge of fact sheets and
3 profile forms that were filed, and had very little
4 knowledge of anything. And we're going to bring certain
5 motions that we may ask that Taishan be ordered to bring
6 their representatives here to this court in the future.
7 We may ask that costs be taxed.

8 We understand that there were other
9 participants, interrogators at those depositions, who
10 will either file separate motions or join the PSE in the
11 motions to be filed.

12 THE COURT: Let me hear from Taishan
13 counsel, from your standpoint, your input.

14 MR. SPANO: Thank you, Your Honor. Frank
15 Spano for Taishan Gypsum and its subsidiary TTP.

16 We believe that our clients adequately
17 complied with their obligations under Rule 30(b)(6).
18 Specifically, three members of senior management
19 traveled from mainland China to Hong Kong, were
20 available for six days of depositions. The examining
21 attorneys chose to depose them for only five days.

22 Over those five days, there was ample
23 opportunity to ask all matter of questions on the
24 designated topics and personal jurisdiction, and the
25 witnesses adequately answered those questions to the

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1 extent that they were asked.

2 As far as document discovery, there were a
3 few pages that were produced on the first day of the
4 deposition, and they were explained, and this did not
5 impede the depositions in any significant way.

6 We believe that, if there are particular
7 follow-up issues that the examining attorneys have
8 concerns about, we should have a meet and confer process
9 and have a reasonable time to resolve those through
10 interrogatories or some other means before there is
11 motion practice.

12 And, if there is to be motion practice,
13 because there is such a voluminous record of
14 jurisdictional discovery, I think we would need to have
15 those motions on a briefing schedule, perhaps have the
16 motions heard after the next conference in May.

17 THE COURT: Okay. First, I agree with your
18 concept about a meet and confer, I think that's the way
19 to go about it. If the plaintiffs need any material, I
20 think they ought to meet with you and tell you what they
21 need, and hopefully it can be resolved at that level.

22 I'm a little concerned about the issues
23 raised during the depositions, and I'm going to have to
24 figure out a way of having the Court's presence at the
25 depositions if there continues to be a problem. My last

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1 resort would be to go to the deposition site, but I'll
2 do that if that's necessary. And then we'll take
3 depositions in front of the Court.

4 MR. SPANO: If I could just make one comment
5 about that?

6 THE COURT: Yeah.

7 MR. SPANO: Your Honor was available
8 throughout that time, and made it clear you were
9 available. And, apparently, no one at the depositions
10 at the time thought any of the problems were serious
11 enough for anyone to contact the Court.

12 THE COURT: I did mention the last time that
13 I would give you a phone number so that I could be
14 reached if necessary. But sometimes the Court's
15 presence is helpful.

16 MR. HERMAN: May it please the Court, we
17 believe that this matter is serious enough, I'd like,
18 with Your Honor's permission, Chris Seeger to speak
19 about the deposition itself.

20 MR. SEEGER: Judge, I can keep this really
21 brief, because I think you have a flavor for what
22 happened.

23 The problem was that we had an interpreter,
24 the defendants brought an interpreter, a Czech
25 interpreter, and the defendants had -- he was a very

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1 nice guy, but they had an attorney who fluently spoke
2 the language. So, when you look at the record, there's
3 going to be the interpreter interpreting, the Czech
4 interpreter objecting, and the attorneys objecting. It
5 felt like a free-for-all at times. I'm not going to say
6 that there is -- it was by design. Maybe people really
7 get hysterical in situations like that. But I think
8 guidance the Court and the presence by the Court or an
9 appointee of the Court is a very good idea and will move
10 these depositions to completion.

11 From the meet and confer, I'm going to tell
12 you, at a minimum, we're going to be requesting the
13 Court's presence, as well as the continuation of these
14 depositions. They're not completed.

15 THE COURT: Let's take it a step at a time.
16 Meet and confer, see what you can get from that
17 standpoint, and then I'll deal with any motions that
18 come along.

19 MR. PANAYOTOPOULOS: Nick Panayotopoulos for
20 certain Banner entities. We were at those depositions.
21 My client was not allowed a sixth day. We never had a
22 chance to ask them a question, and the deposition was
23 cut off at an arbitrary time. And, in light of a number
24 of defendants asking for just a few minutes of
25 questions, opposing counsel cut them off. So we never

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1 had an opportunity to ask certain of the witnesses
2 questions.

3 In addition, the witnesses simply refused to
4 answer yes or no questions. And it was one of the worst
5 depositions experiences I've ever had. The witness
6 would simply just go on and state the exact same
7 recitation that they'd been saying all along and just
8 refuse to answer the question. So even asking any
9 questions would have been futile because of the stance
10 that these witnesses took. And so we've never had an
11 opportunity to question them.

12 We'll get into it with the briefs, I guess,
13 but we had attempts at meet-and-confer at the
14 depositions, and they all failed because the witnesses
15 just simply refused to deal what the rules required them
16 to do.

17 And, finally, to say that we had access to
18 the Court, that, because of the time difference, we just
19 did not want to bother. We made a conscious choice not
20 to call the Court at 2 or 3 o'clock in the morning
21 because -- for obvious reasons. But that's why I
22 believe the Court's involvement is going to be necessary
23 for the next time we need to continue those.

24 Thank you, Your Honor.

25 MR. HERMAN: Your Honor, one more issue.

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1 Evidently, learned counsel opposite in China doesn't
2 understand that there are no speaking objections under
3 the federal rules. And we believe -- Arnold and I both
4 reviewed every deposition. I can truthfully say, in 45
5 years of practice, I've never been a party to a motion
6 for sanctions, but I believe this matter is so serious
7 that -- we will definitely meet and confer with opposing
8 counsel. But something has to be done.

9 We spent -- and I say we, collectively --
10 spent a great deal of time and money bringing these
11 depositions to China, and we were not treated with the
12 courtesy that the federal judges require.

13 MR. SPANO: Your Honor, if I may briefly
14 respond. There were certainly rough spots during the
15 depositions, and the primary source of delay resulted
16 from the PSE's poor choice of an interpreter. We had a
17 brief opportunity to interview this interpreter prior to
18 the depositions, and at least on paper she seemed
19 acceptable. On the first day of the deposition, it
20 became very apparent that she was not up to the task.
21 She had difficulty translating the mainland Chinese
22 words and idioms. And, she stated this repeatedly
23 herself, that she lacked confidence in her translations.
24 And we suggested to the PSE that they replace her and
25 use the other interpreter we had available. They chose

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1 not to do that, which is their prerogative. But there
2 were delays with the depositions because of the
3 interpreter's problem. She would have to engage in
4 dialog with the witness and with the Czech interpreter
5 to try to get it straight. And those discussions took
6 time, but they were necessary to make the record as
7 accurate as possible.

8 As far as speaking objections, they were few
9 and far between. I've reviewed all the transcripts;
10 and, over five days, there were three instructions not
11 to answer for questions that were wholly beyond the
12 designated topics and didn't have anything to do with
13 personal jurisdiction.

14 As far as the time element, these were
15 jurisdictional depositions in which everyone there had
16 the same or similar interests to get out these
17 jurisdictional facts. Just because there were 20
18 attorneys in the room is not a basis to unduly lengthen
19 the depositions. And the cases and the rules are clear
20 that, where there are multiple attorneys with similar
21 interests questioning on a topic, they need to manage
22 their time among themselves. And they spent a lot of
23 time on complex, argumentative and nonfactual questions
24 that, A, confounded the interpreter even further, and
25 did not lend themselves to yes or no answers, and the

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1 witnesses chose to explain themselves and they chose to
2 explain the facts.

3 So I think the right way to go here is for
4 the examining attorneys to identify the legitimate
5 factual issues they want to follow-up on, be they
6 documentary or testimonial, and let's address those in
7 an intelligent way.

8 The notion that anything by Taishan's
9 witnesses or attorneys was anything remotely
10 sanctionable is completely unfounded.

11 THE COURT: Okay. All right. It takes
12 cooperation on both sides, so I hope I receive
13 cooperation from both sides on the requests for material
14 and the delivery of material. If not, then I'm going to
15 have to look over whether or not we go back to China and
16 do it again.

17 Freedom of Information, anything on that?

18 MR. HERMAN: May it please the Court,
19 nothing at this time.

20 THE COURT: How about the trial settings in
21 federal court? The INEX trial that is on July the 20th,
22 I've stayed that.

23 MR. HERMAN: Your Honor, that trial I
24 believe Your Honor indicated would be stayed, as well as
25 discovery.

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1 THE COURT: Right, that's what I said. I've
2 stayed that and all discovery arising therefrom. So
3 we've got some dates available, we ought to be thinking
4 about what we can fill in on those dates.

5 Filings in the MDL.

6 MR. HERMAN: Your Honor, there's nothing
7 about filings.

8 THE COURT: Anything on notices of
9 appearance or default judgments, next item?

10 MR. HERMAN: I do have, on the next issue,
11 XIII, a report to read into the record regarding
12 insurance.

13 THE COURT: All right, No. XIII, insurance
14 issues.

15 MR. HERMAN: Liaison counsel have met on
16 numerous occasions regarding pending CGL motions as
17 provided in the Court's March 3, 2011 order. There were
18 originally 63 CGL motions filed. The parties have
19 agreed that 17 of these motions will not be heard as
20 they are the type of motions approved for hearing in the
21 order. Of the remaining motions, 22 relate to a legal
22 issue, whether insurers can be sued in an MDL for
23 certain out-of-state claims that will be bucketed for
24 hearing into a single argument.

25 The remaining 24 motions consist of the

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1 following. Ten motions related to personal
2 jurisdiction. Nine motions alleging no policy was
3 issued or the policy is no longer in effect. Three
4 motions related to the first filed issue. One motion
5 related to the no case of controversy issue. One motion
6 related to lack of subject matter jurisdictions.

7 The parties are reviewing these motions
8 together and believe that as many as half of these
9 motions may be resolved by stipulation or agreement.

10 The parties will continue to meet on the
11 remaining motions to determine what discovery if any is
12 needed and to provide the Court with a proposed schedule
13 for moving forward to resolve these motions.

14 Ms. Barrasso is liaison counsel.

15 MS. BARRASSO: And we concur, Judge, that's
16 the status of the present discussions. And we,
17 hopefully in the next week or two, will come to you with
18 a better schedule.

19 MR. HERMAN: This is a joint presentation,
20 I'll give what I've just read to Your Honor's law clerk.

21 THE COURT: And let's get to me in two weeks
22 so we know what the status is.

23 MS. BARRIOS: We will, Judge. Thank you.

24 THE COURT: Thank you.

25 Anything on the next item, service of

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1 pleadings electronically?

2 MR. HERMAN: Nothing new, Your Honor.

3 THE COURT: Master complaint, anything on
4 master class action complaints?

5 MR. LEVIN: No sir.

6 THE COURT: Omnibus class action, same
7 thing?

8 MR. LEVIN: Yes, sir. Yes, sir, no, sir.

9 THE COURT: Anything about the special
10 master?

11 MR. HERMAN: Nothing on that, Your Honor.

12 THE COURT: Anything on jurisdictional
13 with --

14 MR. HERMAN: We're moving forward with Knauf
15 depositions that have been set. A number of them have
16 dates in New York. We believe that tentative dates for
17 some depositions in Germany, and we expect to have
18 concurrence on those dates, and those depositions will
19 move forward over the next eight to ten weeks.

20 THE COURT: Anything on mediation?

21 MR. HERMAN: The mediations, Your Honor, go
22 forward. There is not currently a mediation set,
23 although we have been noticed by some defendants that
24 they would like to go to mediation on some insurance
25 issues.

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1 THE COURT: All right. Hopefully, we'll
2 have some break-throughs now that the Knauf pilot
3 program is in full swing and the INEX matter has been
4 resolved. Hopefully, we can move forward on the other
5 aspects of the case.

6 What is the Pretrial Order, 1H? Anything on
7 that?

8 (No Response.)

9 THE COURT: Class certification, anything on
10 that Class Certification?

11 MR. LEVIN: Your Honor, the INEX class
12 certification is going to be stayed in the event that
13 preliminary approval is given. And it's been stayed
14 pending Your Honor's dealing with preliminary approval,
15 next Friday, I believe, at 9 a.m. in this courtroom.

16 August 27th and 28th are the dates. There
17 will basically be a paper record. And we're moving now
18 into Virginia and we will be moving to certify class
19 against the supplier there, Venture. And that should be
20 filed within a week. And, hopefully, when the INEX
21 dates open up, we'll be able to target Venture and bring
22 Taishan in that way.

23 THE COURT: Okay, good.

24 Pilot Program, anything, Greg?

25 MR. HERMAN: Greg Wallace for Knauf has a

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1 report to make.

2 MR. WALLACE: Thank you, Your Honor. We now
3 have 49 homes that have either completed remediation or
4 are in actual remediation. Behind those are another
5 100. And we anticipate in the next few weeks turning
6 over 60 to 70 homes to the program contractor Moss.

7 I'd summarize where we are, is that we've
8 set up an assembly line that I think, while it's not
9 been without some hiccups, it seems to be functioning.
10 The product seems to be well received by the consumer,
11 the homeowner. And I think it's the challenge for us
12 and the task ahead of us is to increase the output of
13 this assembly line.

14 THE COURT: I've been monitoring it, and I
15 think matters are going well on that. And I appreciate
16 the work that you and your group have done on it. I
17 like that type of approach, frankly, with cases of this
18 sort. And I'd like, when it gets in a little different
19 format, maybe we can take a look at it and see what we
20 can learn from it for future litigation. I like the
21 idea of being able to expose the parties to some pilot
22 program so that they can get their feet wet, so to
23 speak, both sides, and look at it to see whether or not
24 it works. And then, if it does work, to expand the
25 pilot program to other areas. And then, hopefully,

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1 after you get some experience with on-the-ground work to
2 see whether or not the parties can come together and
3 monetize that matter and ultimately resolve it. And I
4 think that that, in a litigation of this sort, is the
5 way to go. It's hard sometimes to get the parties to
6 focus on the whole thing without them having some
7 experience, and this gives them the experience to make
8 some recommendations to their respective parties. And
9 so hopefully this will pan out well.

10 Stipulation concerning service of process.

11 MR. HERMAN: Nothing new, Your Honor.

12 THE COURT: What about the home builders
13 fees and costs? I think I had issued an order on that.

14 MS. WIMBERLY: Your Honor, we've had one
15 motion. Dorothy Wimberly for the Home Builders. We
16 have had one motion which asks the Court to amend that,
17 and we're going to be discussing that motion with the
18 filer, and we'll report back to the Court at the next
19 hearing.

20 But I can report that the great majority of
21 the builders and their insurers have made payments. We
22 made payment arrangements with some of the builders,
23 some have asked for extensions. And I can report that I
24 would say about 75 percent of the builders have very
25 timely complied, and we appreciate that.

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1 And we would remind any other builders who
2 have not yet complied that they need to do so. We will
3 be providing the Court with a report as to those
4 builders who have completely ignored the order.

5 THE COURT: Okay. Get me that report and
6 I'll deal with it. I think this is an opportunity for
7 the builders to take advantage of this method of dealing
8 with this issue.

9 And, if you have any questions at all, talk
10 to Ms. Wimberly, she can answer them for you.

11 Pretrial Order No. 10.

12 MR. HERMAN: Yes, Your Honor, nothing new on
13 that.

14 Item 30 at page 31, plaintiff's motion,
15 nothing new on that.

16 31, I'd note that Mr. Miller is not here,
17 but Knauf has filed a motion for leave to file under
18 seal to enforce the settlement agreement. The Court has
19 scheduled it for May 11, 2011 as the hearing date. And
20 the PSE intends to join in and support Knauf's motion.

21 THE COURT: Okay. While we're talking about
22 motions, Knauf's motion is a question of destroying some
23 material that Knauf has in its warehouse.

24 I think the motion is reasonable. It's a
25 question of whether or not the plaintiffs need any

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1 additional information. I think the parties ought to be
2 meeting and conferring.

3 One way of doing it is to have an agreement
4 reached as to what's there; and then, if what's there is
5 not necessary, then it ought to be destroyed. There's
6 no sense in paying money to store things that nobody
7 needs because someone's concerned that they might need
8 it somewhere in the future but they can't put their
9 finger on it and they don't know whether or not they're
10 going to do it. I'm not going to be doing that.

11 So the parties, whether it's Knauf or
12 anybody else, if you've got a warehouse problem, let's
13 look at it. And I'll give the plaintiffs an
14 opportunity, a small window, to look at the material.
15 If they can't do it within that window, then if they
16 want to continue to store the material, they're going to
17 have to pay for it. So we'll shift it to the
18 plaintiffs' warehouses and let them deal with it if that
19 becomes an issue.

20 But, before I get into it, I'd like the
21 parties to meet and view this matter.

22 Anything else that we need to talk about?

23 MR. HERMAN: Yes, Your Honor. I just want
24 to indicate that David Connor, attorney for L&W, is
25 present, and I'll be speaking with him immediately

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1 following the status conference.

2 And a representative of Interior/Exterior
3 Insureds will meet with Mr. Levin in your conference
4 room.

5 THE COURT: All right. And the next meeting
6 is on May 26th. And, thereafter, we have a June and
7 July meeting.

8 CASE MANAGER: June 14th and July 14th.

9 THE COURT: June 14th and July 14th. And,
10 as usual, I'll meet with the lead and liaison counsel at
11 8:30 on those dates. And, the other, I'll start the
12 meeting at 9 o'clock.

13 Anything from anybody that wishes to speak?

14 All right. Thank you very much. Court
15 stands at recess.

16 (9:55 a.m., Proceedings in Recess.)

17

18

CERTIFICATE

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21

22 I, Susan A. Zielie, Official Court Reporter, do
hereby certify that the foregoing transcript is correct.

23

24

/S/ SUSAN A. ZIELIE, RPR, FCRR

25

Susan A. Zielie, RPR, FCRR