

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: CHINESE-MANUFACTURED  
DRYWALL PRODUCTS LIABILITY

Docket No. 09-MD-2047  
New Orleans, Louisiana  
Friday, November 18, 2016

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

APPEARANCES:

FOR THE PLAINTIFF:

HERMAN, HERMAN & KATZ  
BY: RUSS HERMAN, ESQ.  
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New Orleans, LA 70130

LEVIN, FISHBEIN, SEDRAN & BERMAN  
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FOR THE KNAUF DEFENDANTS:

BAKER DONELSON  
BY: KERRY J. MILER, ESQ.  
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FOR THE TAISHAN DEFENDANTS:

PHELPS DUNBAR  
BY: HARRY ROSENBERG, ESQ.  
365 Canal St., Suite 2000  
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Also Present:

Jake Woody, BrownGreer  
Daniel J. Balhoff, Special Master

Official Court Reporter:

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P R O C E E D I N G S

(FRIDAY, NOVEMBER 18, 2016)

(STATUS CONFERENCE PROCEEDINGS)

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5 (OPEN COURT.)

6 THE COURT: Be seated, please. Good morning, ladies and  
7 gentlemen. Let's call the case.

8 THE DEPUTY CLERK: MDL-2047, *in re: Chinese Drywall*  
9 *Products Liability Litigation.*

10 THE COURT: Counsel make their appearance for the record,  
11 please.

12 MR. HERMAN: Good morning, Judge Fallon, Russ Herman for  
13 the Plaintiff Legal Committee.

14 MR. ROSENBERG: Good morning, your Honor. Harry  
15 Rosenberg as liaison counsel for CNBM, BNBM, and Taishan.

16 MR. MILLER: Good morning, Judge, Kerry Miller for Knauf  
17 and the Defense Steering Committee.

18 THE COURT: We're here today for our monthly status  
19 conference. I've had the opportunity to meet with lead and liaison  
20 counsel a moment ago to discuss the agenda with them. I'll take it  
21 in the order that they presented. Russ.

22 MR. HERMAN: May it please the Court, there are no issues  
23 in I - IX of the agenda, the usual agenda. When we get to item  
24 No. 10, it says attorney's fees. Mr. Balhoff is here as Special  
25 Master to report to the Court.

09:11:28 1 THE COURT: All right.

09:11:30 2 MR. BALHOFF: Your Honor, Dan Balhoff, Special Master.  
09:11:37 3 With respect to the attorney's fee issue, since the last status  
09:11:42 4 conference I've had a number of discussions with counsel for both  
09:11:46 5 parties, including a lengthy telephone status conference last  
09:11:52 6 Friday. We have entered CMO-1 as amended, as well as CMO-2. I've  
09:12:01 7 entered a ruling.

09:12:02 8 It is my understanding -- well, let me put it this way.  
09:12:06 9 There is a deadline of I believe noon today for people to file  
09:12:11 10 requests for review to the Court of the most recent CMO and the  
09:12:16 11 most recent ruling. And it is my understanding that request for  
09:12:22 12 review may be filed.

09:12:24 13 If, in fact, requests for review are filed, it is my  
09:12:28 14 understanding that the Fee Committee wants to file a response. And  
09:12:36 15 I will inform the Court's law clerk as soon as I know what an  
09:12:41 16 appropriate deadline for that would be.

09:12:43 17 THE COURT: Okay. All right. Fine. Arnold, do you have  
09:12:49 18 anything?

09:12:49 19 MR. LEVIN: Excuse me, your Honor, Arnold Levin. We  
09:12:52 20 would like to respond because of the Thanksgiving holiday by the  
09:12:55 21 Tuesday after Thanksgiving.

09:12:56 22 THE COURT: That's fine. By way of background, let me  
09:12:59 23 just say that this case is a little unusual in that the settlement  
09:13:03 24 agreement worked out with Knauf included not only a total, complete  
09:13:10 25 remediation of the buildings involved and other damages, but it

09:13:17 1 also included payment of attorney's fees. So the attorney's fees  
09:13:22 2 that are available, the pot that is available must first be divided  
09:13:28 3 between the contract lawyers and the common benefit lawyers.

09:13:34 4 In order to do that, what I have done is to, as I usually  
09:13:40 5 do in these cases, appoint immediately a CPA. That CPA has been on  
09:13:47 6 board from Day 1 of this litigation. And I also put out orders  
09:13:53 7 saying that anybody doing any common benefit work has to report  
09:13:57 8 periodically on a monthly basis contemporaneously with the work,  
09:14:06 9 the work they've done, the time they've put in, and the nature of  
09:14:08 10 the work.

09:14:09 11 That report of the CPA gets screened by attorneys who  
09:14:14 12 look at that material that's retained by the CPA to see whether or  
09:14:24 13 not it's at least consistent with practice. I say, generally, I  
09:14:30 14 would be concerned and they would be concerned if somebody put in  
09:14:35 15 20 hours taking a deposition. That usually is not done, so they  
09:14:40 16 would kick that back and it would be reworked by the party who  
09:14:44 17 submitted it.

09:14:44 18 In any event, the CPA does that. I meet with the CPA on  
09:14:49 19 a monthly basis to review those records that the CPA has compiled  
09:14:54 20 and has received from the parties. And then I question and keep in  
09:15:02 21 touch with what's being done and who is doing it. At this stage of  
09:15:06 22 the litigation now the Fee Committee, Fee Allocation Committee has  
09:15:14 23 made certain recommendations as to the split, then I put that out  
09:15:21 24 for everybody to look at. And if there's objections to it, then I  
09:15:25 25 appoint a Special Master to meet with the objectors and put some

09:15:30 1 structure and some discovery that may result; and then the Special  
09:15:41 2 Master presides over the discovery, listens to the discovery,  
09:15:46 3 depositions are taken, documents are submitted, and then the  
09:15:49 4 Special Master will report to me as to what the Special Master  
09:15:52 5 feels the split ought to be.

09:15:55 6 So I have the insider's view, the outsider view of the  
09:15:59 7 Special Master, detailed reports from the CPA, and then I look over  
09:16:04 8 it and I will eventually make the decision as to how that split  
09:16:09 9 should be and how it should be paid out. That's what we're doing  
09:16:14 10 now, we're in the middle of that process.

09:16:17 11 Okay. Next item, Russ.

09:16:20 12 MR. HERMAN: Your Honor, may it please the Court, I've  
09:16:23 13 talked with Jake Woody regarding BrownGreer. He has no report to  
09:16:30 14 make, but he may want to address the Court.

09:16:33 15 THE COURT: Jake, you're about finished with your aspect  
09:16:37 16 of the case?

09:16:38 17 MR. WOODY: Yes, sir, we are about finished. The only  
09:16:41 18 item that I wanted to mention was that we do have a number of  
09:16:44 19 people who have not claimed their payments or who have received a  
09:16:47 20 check and haven't cashed and the check may be void at this point.  
09:16:50 21 If anybody has a check that needs to be reissued, they can contact  
09:16:54 22 us and we can take care of that.

09:16:55 23 And at some point in the near future we will be sending a  
09:16:58 24 list out of people who have, are eligible for payment but have not  
09:17:02 25 yet returned the necessary documents.

09:17:04 1 THE COURT: Would you get with the liaison counsel for  
09:17:08 2 the plaintiffs, give them a list of who have not cashed their  
09:17:12 3 checks and the attorneys for those individuals, and maybe they can  
09:17:15 4 be of assistance to you to contact the attorneys and make sure that  
09:17:18 5 that's done.

09:17:19 6 MR. WOODY: Yes, sir.

09:17:20 7 MR. HERMAN: May it please the Court, we would be happy  
09:17:24 8 to do that. The only thing I would request is that if any of those  
09:17:29 9 folks are pro se, we would be given Court approval to make those  
09:17:33 10 contacts.

09:17:34 11 THE COURT: Yes, you have it. Okay. I'll grant that.

09:17:39 12 MR. HERMAN: Thank you, your Honor.

09:17:41 13 On matters set for hearing, I, frankly -- I wouldn't  
09:17:48 14 recognize Mr. Doyle if he's here. He had a motion on the calendar  
09:17:52 15 today which we understood --

09:17:54 16 THE COURT: Mr. Doyle has called several times and  
09:17:56 17 indicated that he is going to withdraw that motion, that pleading,  
09:18:01 18 so I assume that that's his position.

09:18:04 19 MR. HERMAN: The other matter, your Honor, I believe that  
09:18:07 20 Knauf, Mr. Kerry Miller here, or Mr. Dysart, will address their  
09:18:14 21 motion.

09:18:15 22 THE COURT: Okay. Danny.

09:18:16 23 MR. DYSART: Good morning, your Honor, Danny Dysart on  
09:18:19 24 behalf of the Knauf defendants. We had filed this motion to  
09:18:21 25 extinguish back before the last status conference. Following that

09:18:25 1 you issued an order for any objections be filed before  
09:18:29 2 November 9th. Between that time we received several specific  
09:18:32 3 objections and one response from the PSC. All of the specific  
09:18:36 4 objections have either been -- have been resolved. Those claims  
09:18:39 5 have either been added to the list or plaintiff's counsel was in  
09:18:42 6 agreement that they should be on the list.

09:18:44 7 So we filed a reply memorandum on Wednesday of this week  
09:18:48 8 which submitted a revised proposed order which included all of  
09:18:55 9 those specific claims that have been added to the list.

09:18:57 10 At this time we would move to have that motion granted,  
09:18:59 11 and what it would do is actually define the universe of remediation  
09:19:05 12 claims and ARH claims left to either be resolved, mediated, or  
09:19:09 13 extinguished. It is not to extinguish any ongoing Knauf settlement  
09:19:16 14 obligations to claimants that are already in the program and are  
09:19:19 15 currently in the remediation or currently in negotiation with  
09:19:22 16 Knauf.

09:19:22 17 THE COURT: Okay. Anything from the PSC on that?

09:19:25 18 MR. HERMAN: May it please the Court, your Honor, we  
09:19:29 19 understand the motion. Nevertheless, we continue to get  
09:19:37 20 information from individuals about recent alleged discoveries of  
09:19:44 21 Chinese Drywall. I say alleged because we don't necessarily get  
09:19:48 22 the inspection reports, we only get in most cases a notice. We  
09:19:53 23 think at this point it's premature. Certainly Knauf is entitled to  
09:20:01 24 closure, we don't doubt that.

09:20:04 25 But your Honor scheduled a December status conference and

09:20:10 1 I believe a January status conference, and we would ask that that  
09:20:16 2 motion be continued to the January status conference and give us an  
09:20:23 3 opportunity to further relate to these individual claimants, or in  
09:20:31 4 some cases attorneys for claimants, and confer with Mr. Dysart and  
09:20:36 5 Mr. Miller in the meantime.

09:20:39 6 THE COURT: Okay. I understand the issue. We've been  
09:20:43 7 doing this now for almost ten years, five years at least, and  
09:20:48 8 anybody who has a claim should have come into the claim. What I'll  
09:20:52 9 do is I am going to grant the order, but I will not grant it until  
09:20:58 10 December the 21st. So I'll approve it on December 21st. In the  
09:21:07 11 meantime, contact anybody, give them an opportunity to object to it  
09:21:14 12 prior to that. Hearing no objections, then I'll sign the order on  
09:21:18 13 December 21st. Okay. Thank you.

09:21:22 14 Anything else on this?

09:21:25 15 MR. HERMAN: May it please the Court -- Harry?

09:21:27 16 MR. ROSENBERG: No, go ahead.

09:21:29 17 MR. HERMAN: I was just going to indicate that your Honor  
09:21:31 18 has already established December 21st as a status conference and  
09:21:38 19 January 23rd at two o'clock.

09:21:40 20 THE COURT: December 21st will be at 8:30, we'll start  
09:21:44 21 the meeting at nine o'clock. And January 23rd, I'll meet with  
09:21:49 22 liaison and lead counsel at 1:30 and we'll start the meeting at  
09:21:53 23 two o'clock on the 23rd.

09:21:56 24 Okay. All right folks. Thank you very much. Happy  
09:21:59 25 Thanksgiving to all of you. The Court will stand in recess.



09:22:03 1 THE DEPUTY CLERK: All rise.

09:22:05 2 THE COURT: Let me say before I do leave that discussions  
09:22:10 3 or they're still proceeding regarding various aspects of the case,  
09:22:15 4 but that I am going to be issuing an order now to lift the stay  
09:22:20 5 order on the pleadings. I've stayed everything but it's now time  
09:22:25 6 for me to begin the process again. So I am going to lift the  
09:22:31 7 order.

09:22:31 8 MR. HERMAN: Your Honor, may it please the Court, I have  
09:22:35 9 one inquiry as to that. I apologize. The stay is lifted, the PSC  
09:22:44 10 can then proceed with both the sanctions and contempt issues that  
09:22:48 11 are pending?

09:22:49 12 THE COURT: Yes. Anything that can be filed can be  
09:22:51 13 filed.

09:22:51 14 MR. HERMAN: Thank you, your Honor.

09:22:52 15 THE COURT: Harry, do you have a question?

09:22:54 16 MR. ROSENBERG: Your Honor, just one other housekeeping  
09:22:56 17 matter which is that we confirmed with your Honor that the Court  
09:22:59 18 would allow the defendants an opportunity to supplement briefing  
09:23:02 19 regarding damages, and then of course allow the PSC to do the same.

09:23:06 20 THE COURT: Right, right. Let's do that.

09:23:09 21 MR. ROSENBERG: Thank you, Judge.

09:23:10 22 THE COURT: The Court will stand in recess.

09:23:12 23 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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REPORTER'S CERTIFICATE

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

          /s/ Karen A. Ibos            
Karen A. Ibos, CCR, RPR, CRR, RMR  
Official Court Reporter