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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED * Docket No.: 09-MD-2047
DRYWALL PRODUCTS * Section L
LIABILITY LITIGATION * April 6, 2017
* New Orleans, Louisiana
This Document Relates To All Cases *
* * * * *

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

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PROCEEDINGS

(April 6, 2017)

(COURT CALLED TO ORDER)

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

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

THE COURT: Will liaison counsel make their appearance for the record, please.

MR. HERMAN: May it please the Court, good morning, Judge Fallon. Russ Herman for the PSC.

MR. ROSENBERG: Good morning, Judge Fallon. Harry Rosenberg as liaison counsel for CNBM, BNBM and Taishan.

THE COURT: Okay.

MR. MILLER: Good morning, Your Honor. Kerry Miller, liaison counsel for Knauf and the defense steering committee.

THE COURT: Okay. We have the agenda for the monthly meeting in this particular case, and then we have two motions following it. We'll just go through the agenda first.

The remediation program, anything on that?

MR. HERMAN: Your Honor, BrownGreer reported earlier, and Kerry Miller may have a comment, and Mr. Balhoff is also here.

1 **MR. MILLER:** Kerry Miller again for Knauf, Your
2 Honor. On the remediation program, as reported at the last
3 several conferences, as in-chambers, it's really at the bitter
4 end. There are only a couple of homes left dealing with a
5 couple of warranty issues with the ombudsman, but looking to be
6 done in the very near term.

7 **THE COURT:** How many homes have been remediated so
8 far from Knauf?

9 **MR. MILLER:** Well, the actual remediation program,
10 Your Honor, I think that number's been around 2800. On top of
11 that, we have the already-remediated homes, that's been another
12 fair number, and then you have a big group of condos. So all
13 told, between Knauf and the homeowner, over 4,000.

14 **THE COURT:** Yeah, over 4,000 homes. So we're getting
15 to the end of the road from that standpoint. I really would
16 like to tie this up and get that over.

17 **MR. MILLER:** Yeah. When you look at that number of
18 over 4,000, so we'd be 99 percent done.

19 **THE COURT:** Yes.

20 **MR. MILLER:** So we've just got to -- it's like 10
21 left. So it's a very small number.

22 **THE COURT:** Okay. Anything from you, Dan?

23 **MR. BALHOFF:** Your Honor, Dan Balhoff, special
24 master. I have, as I've been doing for the past couple of
25 years, been coordinating with both Knauf and claimants and,

1 where appropriate Moss, concerning any issues that may come up
2 in conducting binding mediations. Currently, I have about ten
3 properties that are in various stages of binding mediation,
4 whether it's briefing or possibly the hearing's already been
5 done, but everything's proceeding forthwith.

6 **THE COURT:** Yes. Just for the record, what we did
7 with this particular case is that with at least the Knauf
8 drywall, we tried several cases, and from those cases, we were
9 able to come up with a protocol for remediating the homes, what
10 needed to be done. It was really factually based and evidence
11 supported, and with that, Knauf agreed to resolve the cases
12 with that protocol.

13 It looked like there was about maybe \$1 billion
14 or thereabouts that was consumed with that, but the homeowners
15 got their homes repaired or replaced or fixed up according to
16 that protocol. As I say, about 4,000 or over 4,000 have been
17 resolved. We're now in just a handful of the remaining ones.

18 Those particular matters, sometimes what happens
19 is the homeowner needs some help in getting the various
20 contractors doing the work, and they sometimes have problems
21 with it. So we had a protocol if they did have problems to
22 make the necessary complaints, and the special master handled
23 those, and any appeals were to me, and they were resolved.

24 We also had an ombudsman, who was an expert
25 craftsman and contractor, who the individual homeowners could

1 go to and discuss with him what was necessary, and that
2 resolved a lot of problems too. So it's been a big program,
3 but I think by and large it's been very successful.

4 I appreciate your work, Dan.

5 **MR. BALHOFF:** Thank you.

6 **THE COURT:** Okay. How about Taishan, Harry,
7 anything?

8 **MR. ROSENBERG:** Your Honor, there's nothing for
9 today's status conference.

10 **THE COURT:** I have a number of motions before me. I
11 was trying to get them done this time, but I had a couple of
12 matters that took some of my time. But I'll get back on them
13 and hopefully resolve them by next time.

14 **MR. ROSENBERG:** Yes, Your Honor. I know the Court
15 was busy with a number of other matters particularly this week,
16 and there were two motions that are rescheduled for the May
17 16th conference.

18 **THE COURT:** Okay.

19 **MR. HERMAN:** May it please the Court, Judge Fallon,
20 in connection with those motions, Your Honor directed meet and
21 confers on the confidentiality issue. On March 27th, there was
22 a face-to-face meet and confer with BNBM in New Orleans,
23 approximately six hours. On March 28th, there was a meet and
24 confer with CNBM, face-to-face, in New Orleans, followed by a
25 face-to-face meet and confer with Taishan, and the two together

1 were approximately six hours.

2 As Your Honor indicated, there are several
3 matters set. One has to do with confidentiality. Another has
4 to do with enforcement of the sanction. You've already heard
5 the motion to decertify. And there's another one set for
6 hearing on May 16th.

7 With regard to the meet and confer, we greatly
8 appreciate Taishan's cooperation in that process. We were able
9 to resolve matters of confidentiality, a large number of them.
10 Unfortunately, without -- BNBM and CNBM's counsel were well
11 prepared. The meet and confers were conducted with cordiality.
12 There's a great deal of similarity among the positions of BNBM
13 and CNBM, and we could have read four times *Through the Looking*
14 *Glass* in the time it took to discuss that.

15 We appreciate the opportunity we were afforded
16 to have these meet and confers. That's the only issue that I
17 have with regard to those.

18 **THE COURT:** Okay.

19 **MR. HERMAN:** Venture Supply, there are no issues.

20 With regard to the attorney fee issue,
21 Mr. Balhoff was here yesterday. He set evidentiary hearings,
22 which he'll report on.

23 **THE COURT:** Is Dan still here?

24 **MR. BALHOFF:** Yes, Your Honor.

25 **THE COURT:** Dan, do you want to give me just a brief

1 report on the attorneys' fees? Where are we there?

2 After the litigants are taken care of, then I
3 have to focus on the attorneys' fees. Since the litigants, at
4 least from the Knauf standpoint, have 99 percent of them taken
5 care of, it's now appropriate to focus on any attorneys' fees
6 that may be due.

7 We have some method for dealing with that. I
8 have an attorney fee committee formed. They took depositions
9 and made some recommendations to me. I posted those on the
10 Internet. There were some objections to that, so I appointed
11 Mr. Balhoff to deal with the objections, and he's been
12 vigorously working on that particular matter.

13 **MR. BALHOFF:** Your Honor, just to restate the process
14 slightly. What I believe the Court envisions through its
15 pretrial orders is, first, a step in which the attorneys' fee
16 fund is divided between individually retained counsel and
17 common benefit. After that is complete, the common benefit is
18 allocated. We are involved in the first step, and we have been
19 for some months now.

20 The first thing I did toward the end of last
21 year was I set forth a procedure after taking input from the
22 various counsel for producing some written discovery. The
23 Court, in its appointment of me, said that I was to conduct
24 limited discovery. In conducting the limited discovery, and
25 looking at the jurisprudence, and receiving input from counsel,

1 I did allow some written discovery, written production of
2 documents.

3 After that, I've allowed a few depositions,
4 which were taken of both Mr. Garrett, who served as the CPA for
5 this matter, and also for three members of either the fee
6 committee or the firms that were on the fee committee. Those
7 depositions took place in December and late January. Since
8 then I allowed counsel to reurge requests for discovery.

9 I recently informed counsel that I intended to
10 deny any further discovery and instead go forward with an
11 evidentiary hearing on May 31st and June 1st. I issued that
12 formal ruling yesterday concerning denying the written
13 discovery, and it is my understanding that there probably will
14 be an appeal or an objection to the Court to ask the Court to
15 revisit my ruling, and that's where we are now.

16 **THE COURT:** Okay. As we've mentioned, just for the
17 record, in this case, the good aspect, from the standpoint of
18 the litigants, is that not only did Knauf agree to remediate
19 their homes, but they also agreed to pay the claimants'
20 attorneys' fees. Usually, as we know, attorneys' fees, at
21 least from the plaintiff's standpoint, are on a contingent
22 basis and, therefore, whatever the plaintiff recovers, then a
23 percentage of that goes to the attorneys.

24 In this particular case, that wasn't the case.
25 Knauf has put up a certain amount of money for the attorneys,

1 all of the attorneys. The attorneys consist of two groups.
2 One is what I call contract attorneys; that is to say, the
3 attorneys that the individual claimant hired to handle their
4 case. That's one aspect of it. The other aspect is that the
5 Court has appointed a plaintiffs' committee.

6 In a matter of this sort, we had 1400 lawyers in
7 this case. I can't have 1400 lawyers dealing with the case.
8 It just makes it impossible to do. So I appoint committees to
9 handle the case. The plaintiffs' committee has been handling
10 the case, has been trying the case, has been discovering the
11 case. So now I have to decide how much of that fee goes to the
12 plaintiffs' committee and how much goes to the contract
13 lawyers.

14 After I'm finished with that, then I'll focus on
15 how much each individual in the plaintiffs' committee is
16 entitled to. I do that by having the reports of the
17 plaintiffs' steering committee, by having the reports of the
18 special master, and also the reports of a CPA, who I appoint
19 immediately as the case begins. The individuals who do common
20 benefit work have to report contemporaneously to that CPA how
21 much time they put on it and what work they did for that
22 particular time. I'm not interested in just a blank figure but
23 what they did for that period of time.

24 Those hours are scrubbed, so to speak. We have
25 a paralegal who looks at them to make sure that they're valid.

1 If they're not, then they're returned to the lawyer for another
2 review so that they can take another shot at it. But the hours
3 are legitimately done and looked at, and I look at them every
4 month.

5 So I've had the benefit of watching this case
6 unfold throughout the period. With all that information, I'm
7 able to make some rational decision on how much each side gets
8 and how to distribute it.

9 Okay. Thank you, Dan.

10 **MR. BALHOFF:** Thank you, Your Honor.

11 **THE COURT:** All right. We have two matters set for
12 hearing. We're going to get into that at this point.

13 Anybody on the phone for those individuals?
14 Anybody? Okay.

15 **MR. ROSENBERG:** Judge, I think one of the attorneys
16 for one of the matters set for after this preliminary
17 conference is actually in the courtroom.

18 **THE COURT:** Okay. Let's go with that, then.

19 Anything else, Russ, on this?

20 **MR. HERMAN:** Just one thing very quickly, Your Honor.

21 **THE COURT:** Yes.

22 **MR. HERMAN:** Your Honor has indicated that many cases
23 may be sent from Your Honor's court out to the particular
24 venues of other courts, and the PSC's work in the case will
25 continue because we've got to fashion a trial package.

1 The matters that are set for May 16th, I
2 certainly don't want to bring forward at this time, but I think
3 it would be helpful to Your Honor if before the next status
4 conference, all of the various parties that engaged in meet and
5 confers actually submit a report to the Court of where we are
6 on confidentiality so that the hearing on confidentiality won't
7 last an extraordinary long time.

8 **THE COURT:** All right. Chris, are you involved with
9 these confidentiality issues?

10 **MS. EIKHOFF:** Yes.

11 **THE COURT:** Okay. Well, get with Russ and just tell
12 me what's still left. You all are talking about it.

13 **MR. HERMAN:** I don't think we're going to have a
14 problem with Taishan at all, but with BNBM and CNBM, there are
15 a large volume of documents. They prepared well. They sent
16 lawyers to New Orleans who were prepared well. It's just a
17 question, I think, of alerting the Court.

18 **THE COURT:** Yes. If they're things that resolve,
19 fine; if they're not, then I'll know what it is. So let's get
20 together, and then give me that, Harry. If it's resolved, I
21 don't need to deal with it; if it isn't, then I'll deal with
22 it.

23 * * * * *

24 * * * * *

25 **THE COURT:** All right. Let's go into the motions set

1 for hearing. Just by way of background, this involves the
2 drywall -- Chinese drywall, as we call it -- manufactured by
3 Taishan or the Taishan interests. This drywall was purchased
4 from a salvage sale. It was apparently damaged in a cargo
5 container or something of that sort. It was purchased by
6 Pensacola Stevedores at some sort of salvage sale, or they came
7 into it in that way.

8 They then sold it to a Florida company, AHC, and
9 AHC distributed the material through Ace Hardware.

10 Ace Hardware and AHC are Alabama companies. Two owners of
11 property in Mississippi purchased that drywall. Apparently,
12 they went to Alabama, or it's not clear whether they went to
13 Alabama or went to Mississippi Ace Hardware. But in any event,
14 they got it from Ace, and they put it in their homes, and then
15 it was defective, so they had to take remedial action.

16 They filed suit against their distributors and
17 Ace Hardware and AHC. They also made a claim in this
18 proceeding, the MDL proceeding. The question is whether they
19 should be permitted to proceed either in state court in
20 Mississippi or federal court in Mississippi against some of the
21 defendants and proceed against other defendants here in this
22 litigation in the MDL.

23 So I stayed the cases in Mississippi pending a
24 resolution of their claims here. It seemed to me at that point
25 that they were in two forums, and it's not good for them to be

1 in two forums, but it's also not appropriate for the defendants
2 to have to defend themselves in two forums. But they've made a
3 motion now to lift that stay and allow them to proceed.

4 Anybody who wants to argue from the standpoint
5 of those entities who wish to proceed? Anybody in the
6 courtroom?

7 **MR. MULLINS:** I'm here, Your Honor, on behalf of the
8 Collins and Herrington plaintiffs.

9 **THE COURT:** Why don't you come forward and let me
10 hear from you all.

11 Anybody on the phone representing those
12 individuals? Okay.

13 **MR. MULLINS:** Good morning.

14 **THE COURT:** Good morning.

15 **MR. MULLINS:** May I proceed, Your Honor?

16 **THE COURT:** Sure.

17 **MR. MULLINS:** Essentially, the Collins and Herrington
18 case, as you recited, they were -- they were filed with another
19 case in Alabama. The Alabama case was not removable because
20 there was no diversity. These cases were, so they were removed
21 and they were sent back here from where they originally were.

22 What we're seeking to do is to have the cases
23 disentangled from the MDL because they've opted out of the
24 settlement agreement, even though there was some confusion
25 because of paperwork issues on that.

1 But what's happened is once the case got back to
2 here, Ace Hardware third-partied Taishan into that case and, of
3 course, we cross-claimed that because we thought they were
4 already dismissed from the other cases, and the PSC has pointed
5 out that they were not.

6 So what we'd like to do is is we needed to make
7 sure that all -- they're dismissed from all the cases in the
8 MDL against Taishan, or whatever we need to do, but just to get
9 these cases moving along. These people have small children.
10 They've been in these houses for years. They've been
11 self-remediated. They've written the Court numerous times.

12 **THE COURT:** Yes. I don't have any problem in trying
13 to get the cases moving. The problem I have is that, and from
14 your standpoint too, you want to be conscious of it, is that
15 sometimes if you dismiss a claim, you dismiss them with
16 prejudice, and that means that you can't go after them ever.

17 So you've got to think about whether or not you
18 want to dismiss a particular defendant. Because if you dismiss
19 that defendant, you might jeopardize a third-party claim and,
20 therefore, create a problem with your initial claim. I'm not
21 saying you are.

22 It's just that it gets a little problematic, and
23 you have to analyze it, as well as the defendants. But from
24 the defendants' standpoint, they ought not be in two
25 proceedings at the same time, and you ought not to either.

1 **MR. MULLINS:** And if we need to dismiss the cases in
2 the MDL and just have -- since they're already in the
3 individual cases because they've been third-partied and
4 cross-claimed, that's fine.

5 We, quite frankly, initially thought that was
6 already done, but looking back at the record, it doesn't look
7 like it. They were dismissed from one of the actions, but were
8 not dismissed from all the other actions. That's been
9 Taishan's complaint, is they're being sued twice.

10 **THE COURT:** Anything from your standpoint?

11 **MR. COLLIER:** Good morning, Your Honor. Danny
12 Collier for Ace Home Center. We would just repeat that Your
13 Honor's order from a year and a half ago was proper, and that
14 is, you recognized that Ace Home Center didn't have any
15 business having to fight the plaintiffs in Mississippi and
16 Taishan here in court. Now they're asking for, basically,
17 three forums. Today's the first I heard about the plaintiffs
18 wanting to dismiss their class action against Taishan. That's
19 the first I've heard of that today.

20 Until today, I've heard the plaintiffs pursuing
21 Taishan in the class action, one; keeping -- severing my claim
22 against Taishan, but keeping me here, two; and then sending me
23 with the plaintiffs back to Mississippi, that's three. Three
24 actions, and it's a waste.

25 **THE COURT:** Yes. Not only that, I guess

1 theoretically what I'm concerned about is that if he dismisses
2 Taishan, then does your third-party claim fall? I don't know
3 whether it does or not, but that may jeopardize you in that
4 situation.

5 **MR. COLLIER:** And that would certainly seem
6 inequitable for his unilateral action to prejudice my client to
7 that extent. That can't be right.

8 **THE COURT:** Yeah, that doesn't seem right to me
9 either, but I just don't know. If he doesn't have a claim, and
10 he says, I don't have a claim against Taishan, the question is
11 whether you have a claim against Taishan. You know, I don't
12 think he can jeopardize you, but at least that's going to be
13 another issue that's presented in the case.

14 **MR. MULLINS:** Taishan has briefed the issue that
15 you're talking about. Our claim is -- the basis for our claim
16 under Mississippi law, which is binding on this case, under
17 *Klaxon* is significantly different from their third-party claim.
18 So that actually gives them better standing for us to have a
19 claim. If we don't have a claim against them, then that's the
20 best argument for Your Honor. This wasn't ruled on whether
21 they had the ability to do that or not.

22 **THE COURT:** What's your position if he dismisses the
23 claims here in the class action and only proceeds against you
24 in Mississippi?

25 **MR. COLLIER:** What is our position if the plaintiff

1 dismisses their class action claims against Taishan and you
2 send everybody back to Mississippi?

3 **THE COURT:** Yes.

4 **MR. COLLIER:** I can't hardly complain about that,
5 Your Honor. As long as we're all together in one place, I'm
6 not complaining.

7 **THE COURT:** Yes. How's your co-counsel see it? He's
8 looking at you strangely.

9 **MR. WATTS:** Your Honor, I'm here for Pate Stevedore
10 and Pensacola Stevedore. We have a pending motion to dismiss
11 for lack of personal jurisdiction.

12 **THE COURT:** Yes.

13 **MR. WATTS:** But in the event that it is found that
14 there is personal jurisdiction over my clients, then we would
15 be asserting third-party claims as well against Taishan. So
16 we're in the same position potentially as Ace Home Center.

17 **THE COURT:** You see the problem is that once they
18 assert third-party claims against Taishan, then Taishan is in
19 Mississippi and Taishan is here.

20 **MR. MULLINS:** Taishan is in Alabama right now.

21 **THE COURT:** Yes.

22 **MR. MULLINS:** They did the same thing in the Alabama
23 case and never came here. They still have claims against
24 Taishan; we do too. They're sitting there in Alabama. So, I
25 mean, I can't help the fact that they brought in Taishan to

1 this action here and in Alabama.

2 **MR. WATTS:** The other thing, Your Honor, that hasn't
3 been -- well, it's not before Your Honor this morning, but Ace
4 Home Center has filed a motion to dismiss all these claims on
5 the basis that the plaintiffs are proceeding in the Global
6 settlement. They've been eligible -- they've been found
7 eligible on their claims. They've made claims there. They
8 cannot pursue claims there and against us.

9 So we're saying that these claims need to be
10 dismissed actually. Ace Home Center has filed a motion. The
11 PSC has also joined in an opposition to this motion. So that's
12 where we are.

13 **MR. COLLIER:** I appreciate co-counsel reminding me of
14 that. It's not pending today. I have filed a motion to
15 dismiss or alternately for summary judgment based upon
16 preclusion. Because over the last few weeks, I've discovered
17 that our plaintiffs, while we thought they had opted out of the
18 class action involving Ace Home Center and others, it looks
19 like they were in. They had their hands in that cookie jar as
20 well.

21 **THE COURT:** Yes.

22 **MR. COLLIER:** So that's new information to us and we
23 move to dismiss.

24 **THE COURT:** Okay. All right. What about the
25 plaintiffs' committee? Lenny, do you have any comments?

1 **MR. DAVIS:** Your Honor, Leonard Davis. We filed a
2 response to the plaintiffs' motion for severance and suggestion
3 of remand. It's at Rec Doc 20711. Quite frankly, we did that
4 to give facts to the Court more than anything. We laid out the
5 various steps that have been taken in the matters, including
6 filings in the Global settlement that were attempted to be
7 made, albeit the plaintiff never did complete their W-9
8 submission in those.

9 But we've gone for years and years through this
10 process, and there have been steps taken by the plaintiff
11 towards resolution in settlement. There are also class reps,
12 and there are a number of issues there. So we have opposed the
13 plaintiffs, and that's where we are. I really stand on the
14 facts that we laid out in our brief.

15 **THE COURT:** All right. How about Taishan? Christy,
16 do you have any comments?

17 **MS. EIKHOFF:** Christy Eikhoff on behalf of Taishan.

18 Your Honor, in July -- it was July of 2015 when
19 Taishan was third-partied into this case. In our first filing,
20 we filed a motion to dismiss or in the alternative to stay
21 because we recognized immediately that this was a problem of
22 these parallel tracks and the plaintiffs really trying to
23 travel in multiple lanes at the same time. And here we are
24 going on two years later and they're still doing it.

25 Now, I appreciate that Mr. Mullins is saying,

1 "Well, we'll just drop the class claims." But in the last
2 filing that we got, he said, "Well, I've already dropped the
3 class claims," but the class claims hadn't been dropped. So we
4 need certainty and clarity on their position because it's been,
5 you know, pretty nebulous.

6 In terms of what Taishan would want to see
7 happen to these cases, we'd like our motion to dismiss to be
8 decided upon. And then we think in the alternative that this
9 second action should be stayed pending resolution of the class
10 action that they're participating in.

11 If they formally and properly withdraw from the
12 class action, then we are in a different situation. We know
13 that we, Taishan, are going to get pulled into the case no
14 matter where it is. So we'll still be in a position of being a
15 defendant in multiple cases. But if they properly opt out of
16 the class action, then, you know, I think we'll have to cross
17 that bridge.

18 **THE COURT:** All right. Well, it's all theoretical at
19 this point. You're still in it, so you're going to have to
20 decide whether or not you want to opt out of it or dismiss --

21 **MR. MULLINS:** I'll submit the proper paperwork to the
22 PSC -- they can tell me whatever they want me to do -- to get
23 us out of the class action. My clients have been very specific
24 with me, and I've got it in writing before this hearing, they
25 want out of the class action.

1 **THE COURT:** All right. Well, let's do this then, if
2 that's your situation, let's do that within a week. Then call
3 my attention to the fact that you've done it, and then I'll
4 look at it from that standpoint, that you're no longer in it.

5 **MR. DAVIS:** We will look at whatever's sent. I'm
6 just concerned about how far down the road we are, especially
7 if plaintiffs have submitted into the Global settlement and
8 things like that. But we'll look at whatever it is and we will
9 reply.

10 **THE COURT:** Okay.

11 **MR. MULLINS:** I've already provided an affidavit that
12 explains the situation.

13 **THE COURT:** Okay. Let me take a look at it at that
14 point.

15 Anything else? Harry, you got anything?

16 **MR. ROSENBERG:** Your Honor, just as a matter of
17 public disclosure, the next status conference beyond
18 May 16th would be June 27th, as I understand it.

19 **THE COURT:** Yes, June 27th.

20 Val, do you have something?

21 **MR. EXNICIOS:** Yes, just one second, if Your Honor
22 please.

23 **THE COURT:** Yes.

24 **MR. EXNICIOS:** Good morning, Your Honor. Val
25 Exnicios, co-liaison counsel on behalf of the objectors. I

1 just wanted to note to Your Honor, you made a reference earlier
2 in your comments relative to the value of the settlement. I
3 think you said somewhere right around \$1 billion. I just
4 wanted to point out to Your Honor --

5 **THE COURT:** \$1 billion.

6 **MR. EXNICIOS:** \$1 billion, right.

7 In your prior orders, Your Honor, the value of
8 the settlement is a critical factor both in the determination
9 of common benefit fees and also it's the denominator in the
10 formula that you promulgated relative to primary counsels'
11 fees.

12 We have a serious contention, if you will,
13 considering the fact that the BrownGreer actual number is
14 somewhere in the \$650 million-dollar range. So I simply wanted
15 to point that out to Your Honor --

16 **THE COURT:** Sure.

17 **MR. EXNICIOS:** -- that that's an item in dispute, and
18 just for the record wanted to do that.

19 **THE COURT:** Okay. No, I appreciate you doing that.

20 **MR. EXNICIOS:** Thank you, Your Honor.

21 **THE COURT:** Thank you very much.

22 Okay. Anything further?

23 **MR. ROSENBERG:** Nothing, Your Honor.

24 **THE COURT:** Okay. See you all next time then. Court
25 will stand in recess.

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(WHEREUPON, the proceedings were concluded.)

CERTIFICATE

I, Jodi Simcox, RMR, FCRR, Official Court Reporter for the 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/Jodi Simcox, RMR, FCRR
Jodi Simcox, RMR, FCRR
Official Court Reporter