
First Chinese Drywall Rulings Noxious for Insurers

BY LIAM BURKE & DAN CRISP

The first substantive rulings in the ubiquitous Chinese-made drywall litigation indicate a growing headache for property insurers. In the Eastern District of Louisiana – where federal cases involving Chinese-made drywall have been consolidated – the court awarded seven Virginia families a total of \$2.6 million in damages against a Chinese drywall manufacturer. The award was based on, among other things, the cost of repair, damages for lost use and enjoyment of the home, and alternate living expenses that the families will incur while their homes are being repaired. Significantly, the court held that the seven homes at issue represented a cross section of all homes affected by Chinese-made drywall. The thorough 108-page opinion is likely to provide plaintiffs with a roadmap for future lawsuits. A second decision (by the same judge) followed suit, reaching similar conclusions and awarding plaintiffs \$164,049.64, plus attorneys’ fees and costs.

Meanwhile, a Louisiana state court judge granted the plaintiff homeowners’ motion to strike three policy exclusions that were asserted as affirmative defenses to coverage by the defendant insurer. Addressing each exclusion in turn, the court first ruled that the “Pollution or Contamination” exclusion did not apply, as the damage did not affect the “environment” and the various gases released by the drywall did not qualify as a “pollutant.” Next, the court found the “Gradual or Sudden Loss” exclusion inapplicable, reasoning that the plaintiffs’ losses related to drywall “off-gassing,” not gradual deterioration. The court also addressed the “Faulty, Inadequate or Defective Planning” exclusion, finding the exclusion inapplicable because the defect does not render the drywall incapable of performing its purpose.

These decisions signal a potentially long and expensive road for property insurers, as more than 3,700 claims reportedly have been asserted across 37 states relating to the use of Chinese-made drywall.

Consumer Product Safety Commission Recommends Removal of All Chinese Drywall

BY LIAM BURKE

The U.S. Consumer Product Safety Commission (CPSC) and the Department of Housing and Urban Development (HUD) recently recommended that consumers whose homes were built using certain Chinese-made drywall have their homes gutted as a safety precaution. This recommendation coincides with a recent court decision in which the court found that the scientific, economic, and practical concerns involved dictated that affected homeowners remove all the drywall in their homes. Additionally, due to the corrosive effect the Chinese drywall has on wire, smoke detectors, and other home safety equipment, it also was recommended that homeowners inspect and/or replace these items.

The problematic drywall emits hydrogen sulfide at rates reported to be 100 times greater than normal drywall. Hydrogen sulfide causes corrosion of metals, foul smells, and is an irritant to humans. Homeowners have even reported jewelry corrosion. It is believed that more than 20,000 homes nationwide may have been built using Chinese drywall, as a result of supply shortages arising from massive rebuilding after Hurricanes Katrina and Rita and the housing boom in the mid-2000’s.

The CPSC and HUD’s announcement is further bad news for property insurers already beleaguered by the mass of litigation that has arisen from the problematic drywall.



A fresh coat of paint won't help this drywall