

Client Advisory

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CHINESE DRYWALL ADVISORY NO. 6

To our Friends and Clients:

We continue to monitor developments concerning the Chinese drywall crisis as this problem affects Florida residential and commercial property owners, insurers, and the construction industry as a whole. The landscape of this crisis continues to change as the results of scientific and medical studies are released, litigation continues, and interested parties such as property owners, insurers and the Federal government react to a myriad of emerging issues.

Scientific Studies

On November 23, 2009, the United States Consumer Product Safety Commission (the “CPSC”) released the results of a major indoor air study of 51 homes along with initial reports from two separate studies concerning corrosion in homes containing Chinese drywall. Not surprisingly, these studies demonstrate a strong association between homes containing problem drywall with increased levels of hydrogen sulfide gas and corrosion of metals.

Environmental Health & Engineering (“Environmental Health”), an internationally known environmental testing firm, performed the indoor air study by comparing 41 “complaint” homes located in 5 states with 10 control homes built around the same time and located in the same area as the “complaint” homes. The indoor air study indicated that hydrogen sulfide gas, a known irritant when present at sufficiently high levels, is being created in homes built with Chinese drywall. Although the concentration of hydrogen sulfide gas was not measured at such a high level, Environmental Health also noted the presence of elevated formaldehyde readings in both the “complaint” and control homes, which is typical for new homes with cabinets and carpeting containing formaldehyde. Environmental Health opined that the synergistic effect of hydrogen sulfide gas, formaldehyde and other compounds could cause irritant effects in homes containing Chinese drywall.

Environmental Health also exposed copper and silver test strips in the homes finding that the test strips located in the “complaint” homes showed significantly higher rates of corrosion. Visual inspection and evaluation of ground wire corrosion also revealed the presence of statistically significant greater ground wire corrosion in “complaint” homes. As mentioned above, initial reports from two separate studies concerning corrosion in homes containing

Chinese drywall were also recently released. These studies revealed the presence of copper and silver sulfide corrosion on samples of metal taken from the homes. At this time, the long-term effects on health are still under investigation with respect to both the presence of certain compounds in the air and increased corrosion of metals within affected homes.

Legislation

On November 17, 2009, Representative Charlie Melancon of Louisiana introduced legislation to aid Louisiana homeowners with defective Chinese drywall in their homes. The *Drywall Victims Insurance Protection Act* would prevent insurance companies from cancelling or failing to renew homeowners' policies as the result of Chinese drywall in the home. The bill would also prevent insurers from changing rates or altering the type or amount of coverage based on problems stemming from Chinese drywall. The bill defines Chinese drywall as drywall that either originated in or was imported from China from 2004 to 2007, or contains abnormal levels of strontium or sulfur.

Although the aforementioned bill in its present form is narrowly tailored to aid Louisiana homeowners with defective drywall in their homes, it is possible that the bill could be expanded in scope to other states or similar legislation could be introduced with a particular focus on the State of Florida. As an estimated 35,000 Florida homes may contain allegedly defective Chinese drywall, and the state is believed to have about two-thirds (67%) of all Chinese drywall claims nationally, the State of Florida is an apt candidate for such legislation.

Litigation

On December 9, 2009, a national class-action lawsuit was filed against Knauf Plasterboard Tianjin ("Knauf"), a Chinese drywall manufacturer, in the United States District Court for the Eastern District of Louisiana, which is located in New Orleans. Over 2,100 people met the December 2, 2009 deadline and filed documentation with proof of Knauf drywall in order to join the class-action lawsuit. Sean Payton, the head coach of the New Orleans Saints, is the lead plaintiff in the case. Lead counsel for the Plaintiffs state that an additional 600 people missed the cut-off date to be included in the federal suit, but states that separate complaints on their behalf will be filed.

The Judicial Panel on Multidistrict Litigation ("MDL") recently rejected efforts to transfer two separate claims involving insurance coverage and damage caused by North American-manufactured drywall to the Federal Chinese drywall MDL in New Orleans. The Judicial Panel determined that the cases, *Swidler, et al. v. Georgia-Pacific Gypsum, et al.*, No. 09-181 (M.D. Fla.) and *General Fidelity Ins. Co. v. Foster, et al.*, No. 09-80743 (S.D. Fla.) raised distinctly

different factual and legal questions than those in the MDL and involved uniquely different parties than those named in the Chinese cases.

Swidler is a class action initiated in Florida by homeowners alleging damage to their residences by defective drywall manufactured in Canada rather than in China. Since the drywall at issue in *Swidler* is not from China and not manufactured or distributed by the same entities as those named in the MDL, much of the discovery involved in the case would be inapplicable. *General Fidelity* is an insurance coverage action brought against Northstar Holdings, Inc., a general contractor that installed Chinese drywall in a South Florida development. In the *General Fidelity* declaratory judgment action, it is alleged that the standard Florida pollution exclusion endorsement excludes “bodily injury” or “property damage” caused in whole or in part by the Chinese drywall, as well as any loss, cost or expense arising out of the removal and replacement of the drywall. Since the *General Fidelity* action seeks a determination of an insurer’s rights and obligations under a commercial general liability policy, it is vastly different from the core allegations at issue in the MDL, namely, individuals who seek relief related to property damage or personal injuries arising from drywall manufactured in China and installed in their homes. Suffice to say, the federal court’s decision in the *General Fidelity* action is expected to have far-reaching consequences.

*For additional information or to discuss any of these issues,
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