

Chinese Drywall becomes a new legal problem for builders across the country

Claims for construction defects, breach of contract, and personal injuries arising from the use of Chinese drywall in recently built structures are the newest type of litigation involving the construction industry.

Chinese drywall was first introduced to the United States in 2000. The use of this material increased markedly between 2004 and 2006 after the hurricanes spread through Florida and New Orleans and there became a shortage of drywall produced in the United States.

Chinese drywall allegedly emits sulfur-based gases with a "rotten egg" odor. Plaintiffs claim that these gases corrode air-conditioner coils, computer wiring and metal picture frames. The Florida Department of Health says tests show that the emissions levels from the drywall pose no immediate health hazard. Similarly, Lennar Corp., the nation's second largest builder by volume, tested air quality in at least 50 homes built with Chinese drywall and found no health threats. United States Senator Bill Nelson, a democrat from Florida, sent letters to the Environmental Protection Agency and the Consumer Product Safety Commission (CPSC) asking these federal agencies to investigate whether the drywall is toxic. Currently the CPSC does not have any product safety standards regulating drywall or gypsum-based building products.

One lawsuit claims that impurities in the Chinese drywall react during periods of high humidity, releasing sulfur. Some experts hypothesize that exposure to humidity on the drywall's trip across the ocean from China could be a problem. There are also allegations that some drywall was made with waste material from scrubbers on coal-fired plants, called "fly ash," which can emit sulfur compounds into the air.

There are at least four current suits in Florida involving Chinese drywall. One class action lawsuit in Florida alleges that 10 million square feet, about 200,000 sheets, of Chinese drywall was used in Florida homes. The lawsuit charges that the defendants negligently manufactured and sold defective drywall, which was unreasonably dangerous in normal use because it corroded air-conditioner coils and electrical components. This lawsuit also claims that the emissions cause residents of homes where the drywall was installed to suffer from coughing and irritation of the sinuses, eyes and throat. Lawyers for the class action suit say that home builders are not going to be "let off the hook."

This may be just the beginning of lawsuits against Chinese drywall manufacturers and the builders that used this material. Some believe the issue could be larger than the wave of mold lawsuits that started early this decade. While builders may have some recourse against the subcontractors who installed the material and the Chinese drywall manufacturers, builders could be left without insurance coverage to defend the lawsuits. Insurance carriers may cite pollution exclusions in their policies as the basis to deny coverage to their insureds for Chinese drywall-related issues.

Issues regarding Chinese drywall are just beginning to emerge. It is recommended that builders that may have used Chinese drywall compile documents such as subcontracts, purchase agreements, insurance policies, warranties and builders risk policies in order to ascertain the extent of the potential problem and possible mechanisms of risk transfer.