

LEGAL

Chinese Drywall Issues

HEADED TO COURT

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Shortages in building materials at the height of the residential housing boom and rebuilding efforts in the wake of Hurricane Katrina resulted in material suppliers seeking goods imported from distant shores. More specifically, recent investigations have concluded that drywall products were imported to Florida from China for a brief period for use in residential builds.

Why were "investigations" necessary to uncover this fact? Numerous investigations have been launched as a result of allegations that imported drywall is defective and can adversely affect homes and occupants. As the investigations heat up and an increasing number of state and federal agencies get involved there are several important facts

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that have emerged and several key issues to keep your eye on as the investigations (and the lawsuits) unfold.

It is not disputed that drywall was imported from China and that Knauf Plasterboard Tianjin Co. Ltd. and several other companies manufactured drywall in China. It is also undisputed that "Chinese drywall" was, in fact, used in some residential construction here in the United States.



As early as 2006, Knauf investigated complaints of odors emanating from the drywall and even commissioned the Center for Toxicology and Environmental Health, LLC, a company affiliated with the University of Arkansas and based in Little Rock, Arkansas to test and report on the drywall. The tests concluded that the drywall contained "low levels" of "certain naturally-occurring, sulfur-containing compounds" believed to be the result of the "natural gypsum" found in China and used to manufacture the drywall.

At issue is the impact, if any, the drywall has on persons and property. These issues are now the subject of litigation and seem destined for determination in state and federal courts.

In 2009, state and federal agencies fully engaged the investigation. The Florida Department of Health (FDOH) regularly posts information it collects on Chinese drywall on its website, <http://www.doh.state.fl.us/Environment/community/indoor-air/drywall.html>. According to the site, FDOH has not determined whether exposure to Chinese drywall poses any health hazard and "has not identified data suggesting an imminent or chronic health hazard," but is continuing to investigate.

On the federal level, the Consumer Product Safety Commission (CPSC) is

actively working with the Environmental Protection Agency (EPA) and the Center for Disease Control (CDC) in an ongoing investigation. The CPSC is requesting information from homebuilders regarding transactions and/or projects that could have resulted in the delivery, transfer, or installation of drywall manufactured in China. The CPSC also posts information on its website, www.cpsc.gov along with reports updating the status of its investigation.

Caught in the cross-fire are homebuilders, contractors, and subcontractors who built homes that may or may not contain Chinese drywall. Unfortunately, that determination may be headed for the courts as well and could result in costly litigation. Many builders will find themselves the initial point of contact to answer questions and complaints from homeowners and should respond carefully and with as much helpful information as possible.

Avoiding litigation may not be possible, but inviting litigation certainly is and those invitations can be easily sealed when a question or complaint is not met with a thoughtful and adequate response at the initial point of contact. Builders should monitor the investigation as it evolves and be prepared to respond to questions regarding Chinese drywall. ▀