

Chinese Drywall Plot Thickens~

Hard information remains elusive on the causes of the off-gassing problem associated with imported Chinese drywall. But the story is far from over, and it continues to attract national attention. In one recent report, CNN tells the story of a family whose doctor has instructed them to move out of their nearly new, million-dollar dream home because of continual respiratory complaints (["Get out of house with Chinese drywall, doctor tells family,"](#) by Rich Phillips). The health issue adds a whole extra layer of potential liability onto what appears to be a clearly established pattern of damage to wiring and air conditioning coils.

There's also a troubling claim, so far unconfirmed, that the problem may extend to drywall made in the United States. A new class-action lawsuit names Georgia-Pacific and 84 Lumber as defendants, and points to drywall made in the U.S. with synthetic gypsum (which contains calcium sulfate derived from power plant stack scrubbers, rather than mined from underground mineral deposits). According to the suit, G-P's synthetic gypsum drywall has excessive levels of sulfate, and can off-gas and cause the same problems that have been linked with Chinese-made imported drywall. So synthetic gypsum, previously touted as an earth-friendly recycled product, may now have to cope with a stigma because of this newly alleged defect. Hanley Wood's EcoHome covers that story (["Florida Lawsuit Claims GP, 84 Sold Dangerous Drywall,"](#) by Craig Webb).

And in another mysterious development, at least one Florida homeowner is alleging that domestically-produced drywall — this time, a National Gypsum product — is causing similar damage even though, according to one expert, samples of the drywall do not release sulfur compounds in laboratory testing. Sarasota's Herald-Tribune covers that story (["Another drywall mystery inside the walls?"](#) by Aaron Kessler).

In an [advisory brief](#) for builders facing legal action, attorneys Stephen Henning and Patrick Schoenburg, of the California law firm Wood Smith Henning and Berman LLP, urged defendants to mount an active, detailed defense of any tort claim. Health-related claims, in particular, should be challenged case by case at the level of the evidence, argued the attorneys:

"Whatever procedures are put into place, defendants cannot allow their right to demand individualized proof of exposure, causation and injury to be taken away, even if plaintiffs are not alleging serious injuries. Allowing this to occur plays into the hands of plaintiffs' attorneys, who want to take the easiest, cheapest route to obtaining a settlement. Every plaintiff has a unique health history and vulnerability to injury. The duration, level and circumstances of each plaintiffs' alleged exposure is particular to that individual. It is each plaintiff's burden to produce evidence on each of these points. If the cost to obtain such proof exceeds the potential recovery, the claims will end. However, if defendants allow claims to be made and settled easily, on a mass basis, the claims will certainly continue."

Louisiana attorney Scott Wolfe's Chinese Drywall Blog took a closer look at one vulnerability for defendants in Chinese drywall lawsuits: the "pollution exclusion" that

insurance companies may rely on to avoid covering builders for liability in off-gassing situations. A Texas court recently ruled in favor of the insurance company in a case involving carbon monoxide where coverage was denied, reports Wolfe. But Wolfe says the issue could play out in various ways depending on the state, and also depending on the facts of the case. Read more in "[Pollution Exclusion at Center of 5th Circuit Decision this Week](#)," by Scott Wolfe.

Meanwhile, the drywall problem is attracting increased attention at the national level. Senators from Florida and Louisiana have called for a nationwide recall of Chinese drywall, reports the Palm Beach Post ("[Sens. Nelson, Landrieu call for recall, temporary ban on Chinese drywall imports](#)," by Allison Ross). And the U.S. House of Representatives voted to order a Federal probe of the impact of the Chinese drywall problem on foreclosures and on homeowners' insurance coverage ("[House to probe drywall fallout](#)," by Gary Taylor).

Louisiana Senator Landrieu has also requested hearings by the Senate Commerce Committee, according to the New Orleans Times-Picayune ("[Landrieu calls for Senate hearing on Chinese drywall](#)," by Kate Moran). And Chinese drywall may have been a factor in a shake-up at the U.S. Consumer Products Safety Commission: President Obama has announced plans to increase the Commission's size from three members to five, and to replace current chairwoman Nancy Nord. The Sarasota Herald-Tribune covers that story here ("[Obama aims to oust chief of consumer safety over drywall](#)," by Aaron Kessler).

And if the drywall problems themselves aren't enough trouble for Floridians, homeowners run the risk of being burned twice — once by the drywall itself, and once by fraudulent offers to "fix" the problem. The Florida Attorney General's office has warned about scam artists offering bogus solutions to the drywall problem, costing thousands of dollars, that won't actually help. The Miami Herald has this report on the scam problem ("[Consumers warned of drywall repair scams](#)," by Nervi Shah and Patrick Danner).