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# WSHB White Paper: Chinese Drywall Litigation

*A new type of litigation involving the residential construction industry has emerged in Florida and may soon spread throughout the Country: Claims for construction defects, breach of contract and personal injuries arising from the use of Chinese drywall in recently built homes. This report examines the background of these claims and assesses the potential scope of the problem.*

## I. Chinese Drywall in the United States

Chinese drywall was first introduced to the United States in 2000 or early 2001. The use of this material increased markedly between 2004 and 2006 as the result of a shortage of domestically produced drywall. Nearly 60 percent of Chinese drywall imported during this time frame came in through Florida ports. Miami was the largest port of entry, with more than 100 million pounds of Chinese drywall unloaded, followed by Port Everglades with at least 80 million pounds and Tampa with at least 50 million. Other major ports involved in the import of this material include Long Beach and Oakland, California, Seattle and Tacoma, Washington and Vancouver, British Columbia. Shipping records show that at least 550 million pounds of Chinese drywall has been offloaded at United States ports since 2006; that is enough to build 60,000 average sized homes.

One major Chinese producer of drywall used in the United States is Knauf Tianjin Plasterboard Co. Ltd. ("Knauf Tianjin"), which is currently involved in a number of lawsuits in Florida. Taishan Gypsum is another Chinese drywall manufacturer which has been sued. America's Watchdog, a private, for profit entity that acts as a consultant to law firms in class-action suits claims to have located Chinese drywall in California, Arizona, Ohio, Texas, Louisiana, Nevada, North Carolina, South Carolina, Georgia, Mississippi, and Virginia. In the Western region, this group says it has discovered Chinese drywall in homes built between 2003 and 2007 throughout Arizona and California, in areas including Phoenix, Tucson, Riverside County, Fresno, Stockton, the Sacramento metro area and extreme northern California.

## II. Problems with Chinese Drywall

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. Knauf Tianjin said it hired experts in 2006 to investigate complaints and found no health concerns related to the odor or emissions. United States Senator Bill Nelson, D-Fla., sent



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letters to the Environmental Protection Agency (EPA) 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.

Ervin Gonzales, an attorney who filed one of the lawsuits in Florida, claims that impurities in the Chinese drywall react during period of high humidity, releasing sulfur. High-humidity in the Gulf region could be a contributing cause of the problems allegedly occurring with this material. 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 Knauf Tianjin's drywall was made with waste material from scrubbers on coal-fired plants, called "fly ash," which can emit sulfur compounds into the air.

### III. Claims

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." Claims against the home builders will likely allege breach of contract and breach of the express and implied warranties of habitability.

Lennar Homes has filed its own lawsuit against Knauf Tianjin and Taishan Gypsum alleging that the defendants sold defective gypsum drywall that was installed in homes built by Lennar, causing substantial monetary damages to the company. Lennar has relocated homeowners while replacing defective drywall and has hired Environ International to conduct extensive emissions testing on dozens of homes in Florida. Lennar has also filed suit against 12 different installers of the drywall for breach of contract and related warranty claims. Lennar alleges that it hired independent contractors to install drywall in its homes and that it was unaware that Chinese drywall was being used.

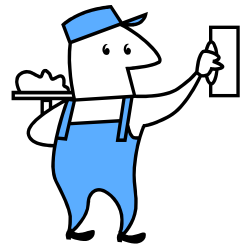
### IV. Trends

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

Issues regarding Chinese drywall are just beginning to emerge. We expect to see an increase in lawsuits in the very near future, filed in jurisdictions across the Country. It is recommended that home 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.



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