

## Legal, Insurance and Other Strategic Considerations

# CHINESE DRYWALL

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The explosion of legal claims related to Chinese drywall over the past few months has left many domestic companies in the home construction industry, including suppliers, developers, contractors, and subcontractors, facing potentially enormous losses. According to news reports, the costs associated with removing and replacing the drywall in each affected house, and addressing any associated damage within the house, could be as high as one-third of each home's value. Some estimates indicate that there could be as many as hundreds of thousands of affected homes nationwide. Moreover, some homeowners are claiming injury from exposure to drywall fumes, or that they are at increased risk of injury.

Although these domestic companies typically purchased and installed the

drywall lawsuits have, in turn, begun suing other companies in the "supply chain" for indemnity and contribution. And some homeowners recently filed the first class action relating to domestically produced drywall. Even if companies named in drywall lawsuits ultimately are successful in avoiding liability, these companies may incur significant litigation costs to defend the lawsuits.

If it is not approached with a prudent, comprehensive strategy, the legal morass arising from Chinese-made drywall raises the specter of the issues that have plagued asbestos litigation. In asbestos, courts became backlogged with litigation, including claims between companies, and many companies that were innocent of any wrongdoing nonetheless incurred enormous defense costs and suffered large adverse verdicts because they were, in some way, connected to the installation of the product. This dynamic often disadvantaged both truly injured plaintiffs, who often had to wait long periods for relief, and companies, many of which went bankrupt under the pressure of the asbestos lawsuits.

There is an opportunity now to implement a better approach to drywall claims, one that uses insurance and other mechanisms to minimize the costs of the problem to domestic companies in the home construction industry. Although specifics are beyond the scope of this article, the proposed approach has three principal components: (1) using coordinated alternative dispute resolution mechanisms to evaluate and quantify homeowner claims; (2) compiling and accessing all available coverage under domestic companies' general liability insurance policies; and (3) seeking

governmental assistance in obtaining response from the truly responsible parties, namely the manufacturers in China and their parent company in Germany. Whatever differences may divide companies involved in the drywall morass, all companies have a common interest in pursuing these and other cost-minimization techniques.

Insurance companies, in particular, are aware of the critical role that they will play in addressing the drywall problem, and therefore are already taking measures to limit their exposure under their policies. In the past two months, for example, insurers for two different developers have filed preemptive lawsuits seeking rulings that their policies do not cover drywall-related losses.

As a Florida newspaper recently reported, "It may not be the sexiest of topics, but the intricacies of insurance policies may prove to be paramount in deciding who winds up footing the bill for the tainted drywall ..." ▀

**"There is an opportunity now to implement a better approach to drywall claims."**

drywall without knowledge of its harmful properties, homeowners now are seeking to hold the companies liable for the costs of remediating the problem. According to recent news reports, at least 150 drywall-related lawsuits, encompassing at least 15,000 plaintiffs, already have been filed in Florida, and lawsuits now have spread to other states as well. There also are numerous federal court lawsuits, including several class actions, that have been filed around the country; these cases now are set for consolidation in a federal court in Louisiana. Further, companies facing



**Barry Buchman of DicksteinShapiro in Washington, DC and Rocco Cafaro of Hill Ward Henderson in Tampa will speak to the legal issues related to Chinese Drywall on Thursday, July 30, 2009 at 8 am during the SEBC/Green Building Show in Orlando. Details at [www.sebcshow.com](http://www.sebcshow.com).**