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## Construction Law

### Alert

# Chinese Drywall Litigation in Mid-Atlantic States

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Claims related to Chinese drywall are not confined to Florida. Lawsuits surrounding Chinese drywall are being filed in North Carolina and Virginia.

Press reports indicate that North Carolina ports have received approximately 18 million pounds of potentially defective Chinese drywall since 2006 and that over 2,000 homes may have been constructed in North Carolina using the suspect drywall.

Before 2005, Chinese drywall imports to the United States were negligible. However, beginning around 2006, a combination of the U.S. housing construction boom and post-Hurricane Katrina reconstruction, drywall was being imported to the U.S. in large quantities. Two companies named as manufacturers of the allegedly defective Chinese drywall are Taian Taishan and Knauf Tianjin.

Allegations of problems with Chinese drywall began surfacing after new homeowners com-



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plained of a rotten egg smell and corrosion of copper pipes and wiring, and HVAC systems and coils. Homeowners complained that a sulfur based gas emitted from the drywall manufactured in China damaged their appliances and fixtures, as well as jewelry and other personal property. Following homeowner complaints, the Center for Disease Control (CDC), the Environmental Protection Agency (EPA), and state health departments began studying the health consequences of the effects. No immediate health threats have been established. The long term effects of the chemicals on the structural integrity of the homes are unknown.

### North Carolina Litigation

Several builders who operate in North Carolina have been linked in the press to the use of Chinese drywall. These builders include:

- Lennar Homes with communities in greater Raleigh and Charlotte;
- Ryland Homes with communities in greater Charlotte;

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- Standard Pacific Homes with communities in greater Raleigh and Charlotte; and
- Stafford Custom Homes with homes in greater Raleigh, Carthage, Southern Pines, Aberdeen, and Lillington.

To date, at least two actions have been filed in North Carolina related to Chinese drywall. The first law suit was filed on April 6th in Wake County against Stafford Custom Homes. The case arises from a new home constructed in Holly Springs, North Carolina. The homeowners pursue claims of breach of contract, breach of express and implied warranties, negligence, negligent misrepresentation, and unfair and deceptive trade practices against the builder. The complaint alleges Stafford made a conscious decision to purchase substandard drywall. Counsel for the plaintiffs have stated the manufacturer of the drywall is unknown, only that the drywall was stamped 'Made in China.' The case is captioned *Flannigan v. Stafford Custom Homes, Inc.*, Wake County Superior Court, File No. 09CV006759.

A second suit was filed on May 15th in federal court in the Eastern District of North Carolina. The complaint is a class action that seeks relief from the drywall manufacturer (Taishan Gypsum Co. Ltd), the US supplier (Venture Supply, Inc.) and the installation contractor (The Porter Blaine Corp.). The homeowners pursue claims of negligence, negligence *per se*, breach of express and implied warranties, private nuisance, unjust enrichment, violations of the North Carolina Consumer Protection Act, and seek equitable and injunctive relief and medical monitoring. The plaintiff's attorneys have suggested the case be transferred to the Southern District of Florida, the venue of other Chinese drywall class actions. The case is captioned *Hinkley v. Taishan Gypsum Co. Ltd*, United States District Court for the Eastern District of North Carolina Northern Division, 2:09-cv-00025-FL.

A third suit filed in Florida involves a North Carolina party. Lennar Homes has filed suit in Miami-Dade County Circuit Court against 23 different companies that made, supplied or

installed Chinese drywall in their new home construction. One of the companies is the Independent Builders Supply Association of Smithfield, North Carolina who allegedly provided defective drywall to Lennar Homes. The case is captioned *Lennar Homes (LLC) vs. Knauf Gips KG et al*, The Eleventh Judicial Circuit Miami-Dade County, Florida, 2009-7901-CA-01.

### Virginia Litigation

In addition, at least two actions have been filed in Virginia related to Chinese drywall. The first lawsuit was filed on April 23rd by Builders Mutual Insurance Company in the United States District Court for the Eastern District of Virginia, Norfolk Division. This action arose from claims made under a commercial general liability policy issued by Builders Mutual to Dragas Management Corporation. Dragas made a claim and demand for coverage to Builders Mutual related to alleged property damage arising from Chinese drywall in residences constructed by Dragas. Dragas has already begun the process of negotiating and resolving property damage claims in connection with Chinese drywall and made claims against Builders Mutual alleging that the commercial general liability policy issued by Builders Mutual should provide coverage for claims arising out of the use of Chinese drywall in Dragas-built homes. The case is captioned *Builders Mutual Insurance Company v Dragas Management Corporation, Firemen's Insurance Company of Washington, D.C., and The Hanover Insurance Company*, USDC, EDVA, Norfolk Division 09 CV 185.

A second suit was filed on May 1st in Federal Court in the Eastern District of Virginia, Norfolk Division. The Complaint is a class action that states similar claims to the North Carolina class action filed against the same drywall manufacturer (Taishan Gypsum Co. Ltd), the U.S. supplier (Venture Supply, Inc.) and the installation contractor (The Porter-Blaine Corp. The case is captioned *Germano v Taishan Gypsum Co. Ltd.*, United States District Court for the Eastern District of Virginia, Norfolk Division, 09-CV-202.

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As a result of Chinese drywall claims and the class action litigation in Norfolk, Virginia, contractors in Norfolk are no longer allowed to use Chinese drywall when constructing or renovating buildings in the city. The Norfolk City Council voted unanimously to require contractors to certify that they are not using drywall made in China when performing construction services in Norfolk. Building permits will be denied for any contractor that refuses to certify that they are not using Chinese drywall.

Given the shipment of large quantities of Chinese drywall into North Carolina and Virginia, many other suits are expected. In addition to homeowners filing suits to recover for personal injuries and property damages, there will likely be litigation to sort out whether there is insurance coverage available to assist homeowners, builders, and subcontractors with claims arising out of Chinese drywall.

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