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## Product Liability

### Court says Chinese manufacturers are to blame, but will they pay?

**A** recent federal verdict in the first of the major defective Chinese-manufactured drywall cases has caused both joy and deep concern throughout the development and construction industry.

In that case, U.S. District Judge Eldon Fallon in New Orleans issued his opinion April 8, finding in favor of the plaintiff homeowners and awarding in excess of \$2.6 million in damages against Taishan Gypsum. Fallon apportioned damages to seven Virginia families and a New Orleans homeowner whose post-Katrina residence was badly damaged by Chinese drywall.



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In his 108-page opinion, Fallon found that Chinese-manufactured drywall has a “significantly higher concentration of strontium and significantly more detectable levels of elemental sulfur” than drywall manufactured in the U.S. He further wrote that the “level of corrosive sulfur gases emitted by Chinese drywall ... exceeded the safe level established by recognized standards.”

What does this verdict really mean? Most importantly, it assigned blame to the manufacturer as the ultimate cause of the excess sulfide content in the defective drywall. However, whether the verdicts turn out to be a pyrrhic victory depends on the ability to collect from the Chinese manufacturer, the German parent company or its insurers, and whether there is sufficient insurance limits to provide coverage for this and future verdicts.

The latter question is key in recovering costs and fees due to damage resulting from and replacement of the use of defective drywall. A significant positive step in that regard was announced last week. Knauf Plasterboard Tianjin, one of the defendants in the class action litigation, reached a settlement with builder Beazer Homes USA. The amount and terms of the settlement were not announced. The percentage of all defective drywall exported by Knauf nor which builders installed the company’s product are not known. The current estimate based on bills of lading is 550 million pounds of Chinese drywall was imported from 2004 to 2007. This amount of drywall is enough to finish about 60,000 typical houses. And it’s not just in houses — a significant number of multi-family and condominium projects also were completed during this same time.

The known issues arising from the drywall are primarily due to the large quantity of sulfur compounds including elemental sulfur, strontium sulfide, hydrogen sulfide, carbonyl sulfide and

carbon disulfide. The recent verdicts support concern that problems arise from the mining and manufacturing processes rather than post-arrival treatment or handling. The current thinking is that exposure of these compounds to humidity and heat are contributing to the release of sulfides.

Despite the presence of strong odors, sulfide gases are difficult to detect and measure. While odors and corrosion are clear giveaways, the only way to absolutely know which sheets are defective is for sample testing through electron microscopy at about \$10,000 per test. As a practical matter, visible evidence of corrosion is one of the better clues.

The issues go beyond current property owners and their builders. Buyers of distressed properties now have another serious property investigation concern that will further impact real estate prices. Distressed developers and property owners have an added issue in trying to move properties; lenders may be more concerned about taking back tainted property. Rental properties, both commercial and residential, will see claims due to health issues, property damage and lease terminations.

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