

## INSURERS FIGHTING CLAIMS OVER CHINESE DRYWALL

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### **Business Insurance**

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While commercial and homeowner insurers are determining how to handle the financial headache they allege some Chinese drywall is causing, claims and costs continue to mount.

Several small private insurance companies have filed pre-emptive declaratory judgment motions in Florida state courts, saying they are not obligated to cover damages caused by the tainted drywall based on exclusions in their policies. While no large commercial insurers have taken similar action so far, it's likely more lawsuits will roll in during the next year.

**“Some insurers are denying claims left and right,” said Barry I. Buchman, a partner at Washington-based law firm Gilbert L.L.P. “They are citing pollution exclusions, business risk exclusions, and construction defects and occurrence as reasons for denying coverage.”**

**Mr. Buchman said the insurers involved primarily are companies with a larger exposure to the situation, but added that “it shows the insurers are taking this seriously and that they are willing to dig their heels in.”**

Towers Perrin, a Stamford, Conn.-based consulting firm, estimates the total economic losses from the tainted drywall could fall between \$15 billion and \$25 billion, costs that rival the 10 most-expensive hurricanes in recorded history, excluding Hurricane Katrina.

Towers Perrin added that, based on past construction defect experience, legal fees could represent 40% to 50% of the total claims cost, which would make a court fight rather costly for insurers. Meanwhile, the National Assn. of Home Builders estimates the cost of repairing homes with the defective drywall will be approximately \$8 billion.

The problem stems from about 500 million pounds of drywall that was imported to the United States between 2004 and 2007 when the housing market peaked and the Southeast was rebuilding after Katrina. The drywall was traced back to Chinese subsidiaries of German manufacturer Knauf Plasterboard Tianjin Co. Ltd. (*BI*, May 11.)

Early environmental studies conducted by health officials in Florida found the gypsum wallboard used in the homes was tainted with strontium sulfide and elemental sulfur that, when exposed to high levels of humidity and heat, produce a gas strong enough to corrode copper wiring, pipes and appliances.

Additionally, homeowners have contacted state health departments complaining of dizziness, nosebleeds, difficulty breathing, and itchy or irritated skin, among other symptoms.

Federal investigators released initial results of its ongoing investigation of Chinese drywall and found no direct link between the chemicals in the drywall and the health problems homeowners reported. While they said they did find higher concentration levels of sulfur and strontium in Chinese drywall than from non-Chinese drywall, they could not determine any direct correlation.

The report, released Oct. 29, is the first of an ongoing series. The U.S. Consumer Product Safety Commission along with Environmental Protection Agency will conduct more tests during the coming months. Next month, the results of a 50-home indoor air quality study will be released as well as engineering analysis of electrical and fire safety associated with corrosion.

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The CPSC has received 1,897 reports from residents with homes built with the contaminated drywall in 30 states, the District of Columbia and Puerto Rico. Nearly 70% of those reports are from Florida homeowners. The office received its first consumer complaint on Dec. 22, 2008.

Mr. Buchanan and Ron Kozlowski, Hong Kong-based Towers Perrin principal and leader of the company's property/casualty insurance consulting practice in Southeast Asia, said how courts define pollution will be a major determining factor as to how insurers react.

**In the past, Mr. Buchman said Florida courts have taken a broader view on the exclusion, which could lead to more litigation bouts.**

Recently, Citizens Property Insurance Corp., a state-backed insurer of last resort in Florida, denied homeowner claims, saying it considered the drywall a pre-existing condition and that such defective materials fall under the pollution exclusion. After media coverage about the denial, Jacksonville, Fla.-based Citizens reversed its decision and said it will renew policies for homes built with the defective drywall.

Torus Specialty Insurance Co. sees the Chinese drywall event and Chinese product importation as an emerging liability.

R. Lincoln Trimble Jr., Jersey City, N.J.-based senior vp of Torus' U.S. excess casualty unit, said it is likely that general liability underwriters will ask a lot more questions when constructing a policy that will leave general contractors little wiggle room in the future, but will provide good coverage.