

Akerman Practice Update

LITIGATION

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Akerman Team Responds to Toxic Chinese Drywall Issues

Akerman has formed a new legal team to address potential liability, construction defect, building code violations and toxic tort issues surrounding the installation of Chinese drywall in new construction in the United States. The team represents developers, home-builders, general contractors, construction companies, building supply distributors, banks and mortgage lenders, and others involved in the construction industry, who may be associated with the use or installation of tainted Chinese drywall in buildings. Several class action lawsuits have already been filed against residential and commercial developers, and contractors and suppliers, alleging that the drywall they installed was defective and is now emitting sulfur gas. The plaintiffs in these lawsuits argue that the tainted drywall is responsible for a whole host of problems in their buildings, including corrosive damage to electrical, plumbing, and air conditioning systems, and other components made of metal or containing wire, as well as adverse health effects.

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What is Chinese Drywall?

Chinese drywall is defective or tainted drywall (also referred to as wallboard or plasterboard) imported from China. Not all drywall manufactured in China is defective and some drywall bearing the brands of U.S. companies has also been found to be tainted. The U.S. drywall may have been first imported from China and then re-labeled with U.S. drywall brand-names.

Although it is not entirely known why Chinese drywall is causing problems in buildings, the most likely explanation is that humidity in the air causes sulfur in the drywall to more rapidly off-gas and migrate into the indoor air. The problem with Chinese drywall was originally thought to be limited to construction in the Southeastern states and California during the increased demand for construction materials between the years 2004 and 2006, but is now thought to be more widespread, with problems identified in many more geographical areas throughout the United States. In addition, Chinese drywall has allegedly been recently found in homes built or remodeled as early as 2001.



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Potential Recall of Chinese Drywall

Most recently, the issue has gotten the attention of two U.S. Senators. Senators Bill Nelson of Florida and Mary Landrieu of Louisiana, filed new legislation aimed at initiating a recall and imposing an immediate ban on “tainted building products from China.” In particular, the senators are calling for a recall of the high-sulfur Chinese drywall. The legislation also asks the U.S. Consumer Product Safety Commission and the Environmental Protection Agency to determine the level of potential hazard and toxicity posed by the drywall. The Akerman Team will be closely tracking this and other related legislation as it develops.

Toxic Tort and Health Concerns

In addition to problems with corrosion and damage to electrical and other components, homeowners have also alleged toxicity and health-related problems from the drywall, leaving an opening for developers and others in the construction industry to be exposed to potential liability for toxic tort. The science is currently developing in this area but the results of current and future research and testing may give potential plaintiffs the ammunition they need to move forward with health-related lawsuits.

One such report already has surfaced from the Florida Department of Health. The report contains preliminary results from testing samples of Chinese drywall. The tests found that the material contained higher sulfuric and organic compounds than an American drywall sample. The Chinese drywall contained traces of strontium sulfide while the American sample did not. The Chinese drywall also contained hydrogen sulfide, carbonyl sulfide, and carbon disulfide, all of which are potentially toxic compounds. Carbon disulfide in particular is also extremely flammable. The report also found that Chinese drywall gave off a sulfur odor when exposed to extreme heat and moisture. It recommends further testing to determine whether organic or sulfur components are to blame for problems associated with the drywall in Florida. At this time, the Department of Health has not indicated that the drywall poses a medical hazard or that the data suggests an imminent or chronic health hazard.

The Akerman Team

The Akerman Team has been mobilized to work with clients in the construction industry who are facing warranty claims, lawsuits, and other legal and business issues stemming from the use or alleged use of tainted drywall. Akerman offers a comprehensive and one-stop resource for the investigation and defense of drywall-related and other construction liability claims. Our multi-disciplinary team consists of attorneys from Akerman’s Construction, Environmental, Toxic Torts and Products Liability Litigation, and Insurance practice groups. Our attorneys have developed relationships with environmental, indoor air quality, and construction scientists and experts who can help diagnose and evaluate specific situations. We can advise concerning potential legal liability, remediation strategies and cost, mitigation strategy, the duty to warn homeowners or end users, and requirements for notices. Our team of experienced litigators can help defend against lawsuits and class actions alleging liability, and can establish a litigation strategy customized to each client.

Akerman is ranked among the top 100 law firms in the U.S. by *The National Law Journal NLJ 250* (2008) in number of lawyers and is one of the largest law firms in Florida. Our team serves clients in the major international business centers in the United States, including Los Angeles, Miami, New York, and Washington, D.C. Akerman is a member of Lex Mundi, the world's leading association of independent law firms with a presence in more than 100 countries.

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