

Big Trouble with CHINESE DRYWALL

A Personal Journey

By Allison Grant, Esq.

Last year, my husband and I learned we have Chinese drywall in our nearly new condominium. Our journey probably sounds familiar to many of you. We had no idea why our condominium had an indescribable foul odor; why our two year old air conditioner broke; why the thermostat broke; why lights were constantly blowing out; why the faucets and drains were tarnished; and on and on.

We contacted the builder, who inspected our unit multiple times, but found nothing amiss; despite the fact the builder had already removed Chinese drywall in other units in our complex. When my tenants started reporting health problems, we frantically called the builder again, who, with the consummate poker face, looked at us like we were crazy. He pretended not to smell anything at all. We were so frustrated.

We were determined to solve this mystery – after all, my husband and I are both attorneys. Attorneys or not, we were running in circles until mid-November 2008, when someone whispered the words “You have Chinese Drywall.” It was almost a relief – finally, we knew what was wrong, but what did it mean?

We spent days researching on the Internet. Finally, we found a gentleman on an online bulletin board. He, too, had Chinese drywall. We shared stories and commiserated, but there were so many unanswered questions. Alas, the floodgates opened. Installers started speaking out – for years they had complained that drywall imported from China felt and looked different, tended to crumble and had a strange smell. Some drywall workers were even getting sick. Memos had apparently circulated within the industry warning of the perils of Chinese drywall. At least one builder had Chinese drywall tested in late 2006. Some builders refused to use Chinese drywall, but others continued using it, mixing it in with good drywall. When union workers began refusing to install Chinese drywall, some builders turned to independent contractors. Nothing was going to stop the building boom!

Surprised by the utter lack of information on the web (in fact, the phrase “Chinese drywall” was nowhere to be found in November 2008), I created a website - www.chinesedrywall.com. My goal was to educate people, but I also hoped others would come forward and help me get answers. And they did. Homeowners, contractors, installers, realtors and air conditioning technicians, each with a different perspective and unique knowledge, shared their stories.

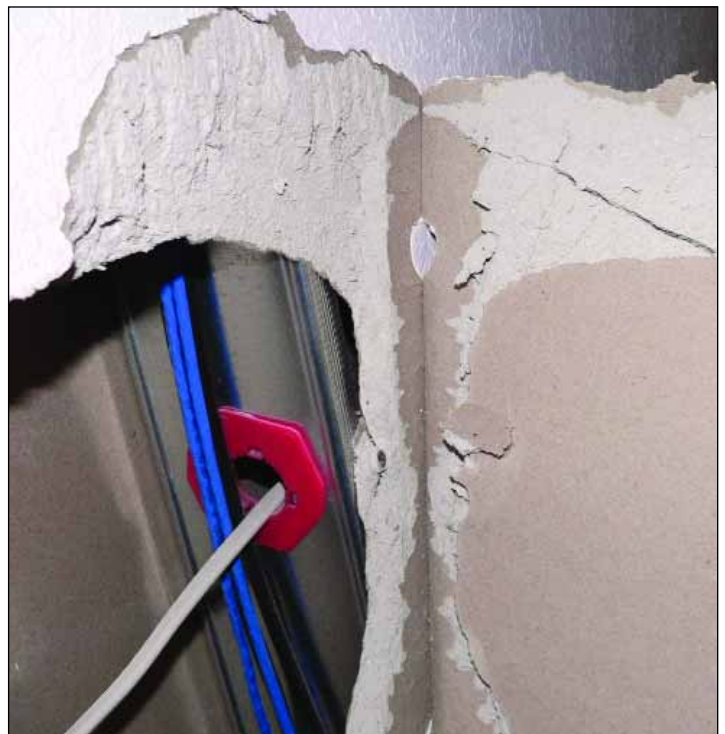
One of the first things I posted on my website was a letter from Knauf, which manufactured millions of sheets of tainted drywall. In response to complaints from a U.S. builder, Knauf acknowledged its drywall smelled unusual because it is made from “natural gypsum,” but denied there was any health risk. I also posted laboratory results from the Center for Toxicology and Environmental Health (CTEH), who performed air quality testing in 5 homes in Miami and Fort Lauderdale. CTEH concluded Knauf’s drywall “released low levels of certain naturally-occurring sulfur containing compounds,” however, the “concentrations of the detected chemicals in air were not present at levels that present a public health concern.” It was later discovered some of the homes tested were missing doors and the windows were open during testing,

thus severely calling into question the accuracy of those results. Incredulously, those results are still relied upon by insurance companies to deny coverage for damages caused by Chinese drywall. That prompted my filing of the first lawsuit against a homeowner’s insurer.

On December 20, 2008, the *Fort Myers News-Press* published what I understand is the first newspaper article on Chinese drywall. Since that day, thousands of articles have been written on this topic. Indeed, there are so many articles we are all on information overload. Yet there remain far more questions than answers, including:

Why is Chinese drywall tainted? There are no definitive answers, although there are several theories, including: the drywall contains waste product from coal-fired power plants; the drywall was kept on barges at sea for months; the drywall contains bacteria which is degrading iron and sulfur compounds to produce sulfurous odors; and the drywall was treated with insecticide before it entered the United States.

Is Chinese drywall dangerous to my health? According to the Florida Department of Health, this “is undetermined at this time. DOH has not



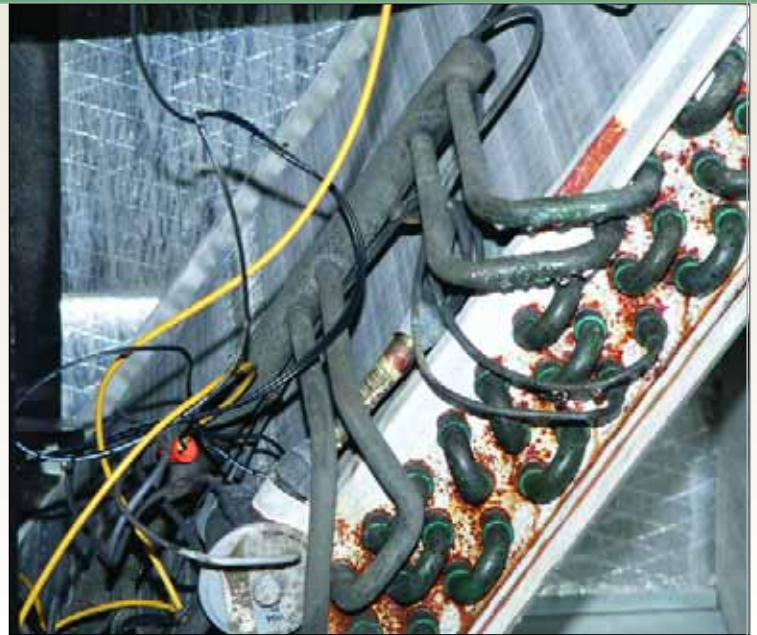
identified data suggesting an imminent or chronic health hazard at this time.” Nonetheless, ask any homeowner who has been exposed to Chinese drywall and you will hear the same complaints - coughing, irritated eyes, sneezing, sinus problems, sore throats, difficulty breathing, runny noses, bloody noses, fatigue, headaches, dizziness and nausea. Recently, there is anecdotal evidence of more serious symptoms, including urinary tract and bladder infections in females. Every day, people tell me they are concerned for their family’s health. Most do not know what to do if they cannot afford to leave their homes. There is no easy answer, but clearly your health comes first. Ask your lender for a forbearance agreement, which will delay mortgage payments for a period of time so you can afford to temporarily relocate.

Can my home be remediated? Some builders are already in the process of remediating homes. Unfortunately, there is no consensus regarding a remediation protocol. Some builders are refusing to spell out what they intend to remediate. Even more troubling is that some builders are requiring homeowners to sign releases before the builder even begins work. I strongly advise against signing a release without seeking legal advice. You could be waiving important rights, including the right to recover if you have personal injuries. If your builder is remediating your home, you may want to consider preserving and possibly testing your drywall if you have suffered health effects.

Who is liable for the damages to my property and for my personal injuries? Everyone in the supply chain, including the builder is potentially liable, although there are collection issues. Many builders are insolvent (some have filed for bankruptcy) and it may be difficult to enforce judgments against foreign companies.

By now most everyone in South Florida has heard WCI, which developed much of Parkland, filed for Chapter 11 bankruptcy in August. Although the bankruptcy claims bar date has passed, there still may be legal avenues available to you, but time is of the essence. I strongly recommend you contact a bankruptcy attorney. [*See sidebar*]

Regardless of who built your home, your recovery will likely hinge on insurance coverage. Insurers will likely deny claims under commercial general liability policies, although most agree there should be coverage for resulting property damage, contents and for personal injury claims. Unfortunately, the aggregate limits of the insurance policies will undoubtedly be insufficient to pay all claims.



While insurers are also denying claims filed by homeowners, do not dismiss the possibility of coverage. Pollution exclusions in homeowner’s policies are generally less complex than commercial policies and may not be as narrowly construed. Accordingly, homeowners with Chinese drywall would be wise to formally file a claim with their insurer, whether or not their builder agrees to remediate or litigation has already been filed.

What have we learned in the last five months? Not much. Attorneys are coming out of the woodwork faster than the sulfur is off-gassing from the drywall. Numerous class action lawsuits have been filed, however, we do not know whether any of the classes will be certified. With each day that passes, more questions arise: Will FEMA provide assistance, such as temporary housing? Will there be a bailout? Will there be a product recall? Is U.S. drywall also defective? One thing is clear – this is a national catastrophe that could not have come at a worse time and we must continue to work together to get through this crisis.

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The WCI Communities Bankruptcy and Chinese Drywall: You Still Have Rights

By David Lloyd Merrill, Esq.

It has been widely circulated that people who have been victimized by the Chinese drywall debacle and whose homes were built by WCI Communities are out of luck with no chance for recourse. I’d ask those who were saying such things to stop as it is not only inaccurate, but can hurt people and their families very badly. Here’s the real skinny.

WCI Communities filed a bankruptcy in August of last year. Shortly thereafter, their lawyers filed a motion to shorten the time you had to let the court know you were owed anything. That time expired in early February. Prior to then, the way creditors let the court and the debtor know what they are owed was simply by filing a proof of claim, which is a document that states, together with whatever support for the claim the creditor has, how much a creditor is owed, for what and how the creditor believes their debt should be classified in general terms, such as whether the debt is secured by anything. Now what? February is gone and you’re out of luck right? Not so fast.

Bankruptcy courts are courts of equity – not courts of law. This means they are very interested in what is “fair”, which is a good thing for

everyone who recently discovered Chinese drywall in their home. The bankruptcy court in Delaware, where the WCI Communities bankruptcy is located, has a procedure for asking the court to consider a claim filed after February as “on-time” so long as certain conditions are met. Most of those conditions are legal standards, but at least one of them requires you act with sufficient speed to raise the fact that you have a claim with the court. Not doing so with what the law calls “due diligence” can – and likely will – result in your claim being deemed not timely filed – so if you are going to act, act quickly!

The bottom line? Find someone who knows what they are doing and get your claims filed with a request it be deemed “timely filed”, and do it right away or you run the risk of really being left without any help from WCI to fix your Chinese drywall problem.

David Lloyd Merrill, Esq., a partner at Shapiro, Blasi, Wasserman & Gora, handles commercial and complex individual bankruptcy matters throughout the Southeastern United States.