

**In re: Chinese Manufactured Drywall Products Liability Litigation**  
**MDL No. 2047 Section: L, U. S. District Court for Eastern District of Louisiana**

Opinion by Judge Fallon  
Decided: April 8, 2010

Class Action – Case initially filed by Virginia homeowner plaintiffs in Eastern District of Virginia on May 1, 2009, against Taishan Gypsum Co. Ltd.; Tobin Trading, Inc.; Venture Supply, Inc.; Harbor Walk Development, LLC; and The Porter-Blaine Corp. Transferred to Eastern District of Louisiana on October 13, 2009, and subsequently converted to national class action.

Claims Asserted – The Second Amended Complaint includes claims against the manufacturer for negligence, negligence per se, breach of express and/or implied warranties, private nuisance, unjust enrichment, state Consumer Protection Acts, and for equitable injunctive relief and medical monitoring.

Default Judgment – Plaintiffs moved for Default Judgment and the Court granted a preliminary default against Taishan on November 1, 2009. Court entered scheduling Order on November 25, 2009, which permitted interested parties to intervene. The seven Virginia homeowners affected by Court’s recent ruling intervened; namely, the Morgans (Williamsburg), Mckellars (Newport News), Orlandos (Williamsburg), Heischobers, Michauxs (Newport News), Baldwins (Williamsburg), and Leaches (Williamsburg).

Evidentiary Hearing to Determine Damages on Default – This was held without a jury on February 19, 2010, through February 22.

Decision: Court’s Findings of Fact and Conclusions of Law

1. How drywall installed in Intervenors’ homes? Drywall manufactured by Taishan. Arrived in United States in February 2006 through purchase of Venture Supply. Porter-Blaine, a related company, purchased drywall from Venture Supply, and installed the drywall in the homes of Intervenor Plaintiffs
2. Scientific Findings on Chinese Drywall Which Distinguish it from Regular Drywall – The Chinese drywall has significantly higher average concentration of strontium and significantly more detectable levels of elemental sulfur. The drywall releases sulfur gases, which are irritating to human body, and are corrosive to metals, particularly copper and silver.
3. Plaintiff Intervenor Homes Exposed to Corrosive Environment – The level of corrosive sulfur gases emitted by Chinese drywall in homes exceeds the safe level established by recognized standards, peer reviewed literature, and expert opinions and the corrosive environment has had impact on exposed property.

4. Scope of Remediation – The evidence supports conclusion that the appropriate remediation for the Plaintiff Intervenor homes includes the removal of all drywall, electrical wiring, the entire HVAC system, and many other items such as appliances, carpet, cabinetry, trim work, and flooring.
  - a. Court supports removal of all drywall in mixed-drywall home as efficient and cost-effective.
  - b. Removal of all wiring and copper pipes when drywall is out of home.
  - c. HVAC units need to be removed because they contain both copper and silver components. Outside compressors will have to be evaluated on case by case basis.
  - d. Ductwork will need to be replaced because particulate matter from defective drywall is in the ductwork. National builders such as Lennar have been taking this approach.
  - e. Cheaper to replace carpet rather than attempt storage and re-installation.
  - f. Hardwood or vinyl flooring must be replaced. Tile flooring may need to be replaced.
  - g. Cabinets, countertops, trim, crown molding, baseboard and bathroom fixtures will need to be replaced. It more likely will be more cost-effective to do so.
  - h. Insulation most likely will need to be replaced for same reasons.
  - i. Homes will need to be cleaned with a HEPA vacuum, wet-wiped, or power washed, and allowed to air out for 15 to 30 days following remediation.
  - j. Court says this scope of remediation is consistent with that followed by national builders. Alternative suggested remedies (e.g., selective removal, cleaning wires), in view of Court, will not make plaintiff whole, and will not provide safety and marketability to homeowner.
  - k. CPSC remediation is consistent generally with that recommended by the Court. Only difference is that CPSC allows leaving non-problematic drywall in place.
  - l. Remediation process likely will take 4 to 6 months for each home. Each family is entitled to alternative living expenses during that time.
5. Property Devaluation – Court concludes that, at this point, it is more speculative than actual that properties have suffered devaluation because of having defective drywall. If repairs are made properly, there may be no diminution.

#### **Damages Suffered by Plaintiff Intervenor**

6. Law Applicable to Plaintiff Recovery of Damages - Court finds that Plaintiffs' interests in their real properties have been injured by defendant Taishan's negligence in producing a defective product, and that they are entitled to recover damages proximately caused by same. Court holds that Virginia law applies.
  - a. Under Virginia law, measure of damages for negligence action is "the amount necessary to compensate the injured party for the damage proximately caused by the tortious conduct."

- b. Plaintiffs can recover the cost of repair and the loss in value of their property after the repairs are completed.
- c. Can recover damage to their personal property caused by the defective drywall, e.g., microwaves, refrigerators, and computers.
- d. Can recover damages to compensate other losses caused by drywall, including alternative living costs, costs associated with foreclosures and/or bankruptcy, additional amounts owed due to mortgage deferral, bankruptcy or inability to refinance, and loss of income.
- e. Can recover for loss of use and enjoyment of property.

7. Specific Findings on Damages Related to Individual Homeowners

- a. Morgans – Damages of \$381,613.29, plus an award of \$100,000 for loss of use and enjoyment of home, for total award of \$481,613.29.
- b. Baldwins – Damages of \$341,699.11, plus an award of \$100,000 for loss of use and enjoyment of home, for total award of \$441,699.11.
- c. Leaches – Damages of \$59,676.86, plus an award of \$30,000 for loss of use and enjoyment of home, for total award of \$89,676.86. This situation involved localized use of defective drywall in single room (a finished basement) added to home after initial construction was completed.
- d. Orlandos – Damages of \$307,905.44, plus an award of \$100,000 for loss of use and enjoyment of home, for total award of \$407,905.44.
- e. Michauxs – Damages of \$255,607.80, plus an award of \$100,000 for loss of use and enjoyment of home, for total award of \$355,607.80.
- f. McKellars – Damages of \$251,741.22, plus an award of \$100,000 for loss of use and enjoyment of home, for total award of \$351,741.22.
- g. Heischober – Damages of \$380,886.27, plus an award of \$100,000 for loss of use and enjoyment of home, for total award of \$480,886.27.