

Chinese Drywall Default Ruling Shows Need to Hold Foreign Manufacturers Accountable in U.S. Justice System

Legislation is a Necessity to Level Playing Field, Improve Product Safety

Washington, DC – Today, U.S. District Court Judge Eldon Fallon held Taishan Gypsum, a Chinese manufacturer of drywall, in default for failing to respond to a putative class action brought by builders that used the Chinese company's drywall in homes.

The ruling came during a hearing on the multidistrict litigation taking place in New Orleans, LA, where dozens of lawsuits against foreign manufacturers, building suppliers, and homebuilders have been consolidated. The trial is set to begin in January 2010, with monthly meetings taking place on pre-trial orders.

The Mitchell Co., an Alabama and Florida home builder, had filed a motion asking the court to rule against Taishan Gypsum, because the company had not responded to the lawsuit after the builder was finally able to serve the company in China this summer.

"Taishan Gypsum profited from a product they sold here in the U.S. that has now proven to be defective, costing millions of dollars in damage, decreased property values, and countless health problems. The ruling today shows the company has turned their back, hoping U.S. consumers, homebuilders, and insurance companies will pick up their tab," said American Association for Justice President Anthony Tarricone.

"It is critical we pass the *Foreign Manufacturers Legal Accountability Act of 2009*, so foreign manufacturers are held to the same standards and justice system as U.S. manufacturers," added Tarricone.

Chinese drywall has been plaguing homeowners throughout the country because of the sulfuric gases the drywall emits that corrodes copper wires in the homes, causing appliances to stop working. The drywall also causes serious respiratory difficulties, including severe headaches, nosebleeds, and burning in the lining of the lungs. It has also been linked to poor memory and fatigue and difficulties with coordination, balance, and endurance.

It is estimated as much as 500 million pounds of Chinese drywall has been imported into the U.S., with Taishan Gypsum responsible for more than 10 million pounds. According to news reports, in summer 2007, three Taishan shipments entered Port Everglades, FL totaling 3 million pounds, and in 2006 and 2007, ships carrying the company's drywall docked at least two dozen times in New York ports, carrying at least 4.5 million pounds of the material. Taishan Gypsum Co is owned by a state-owned entity that is controlled by the Chinese government.

Foreign manufacturers today are able to skirt U.S. laws because of the multiple obstacles in place to hold foreign manufacturers accountable in the U.S. civil justice system.

The *Foreign Manufacturers Legal Accountability Act of 2009* (S. 1606), introduced this summer by Senators Sheldon Whitehouse (D-RI), Jeff Sessions (R-AL), and Assistant Senate Majority

Leader Dick Durbin (D-IL), will making it easier to hold foreign manufacturers accountable in the U.S. court system by doing several things:

- Requires manufacturers to have an “agent” located in at least one state where the company does business that would accept service of process for any civil and regulatory claims.
- Companies would consent to state and federal jurisdiction, holding foreign manufacturers accountable to those judicial standards.

Currently, bringing a case against a foreign manufacturer requires servicing the company in their country, according to their rules of service. This often requires translating the papers into the language of the native country and tracking down the companies’ foreign address, adding time and expense to the legal process.

The legislation covers products regulated by the Consumer Product Safety Commission (CPSC), such as children’s toys; the Food and Drug Administration (FDA), including prescription drugs and medical devices; and the Environmental Protection Agency (EPA), like pesticides.

“Foreign manufacturers need to be held accountable and responsible when their products prove defective,” said Tarricone. “The *Foreign Manufacturers Legal Accountability Act of 2009* levels the playing-field, benefiting both U.S. consumers and businesses.”

Yesterday, the CPSC said the agency’s long-awaited test results will be pushed to late October, and the indoor air testing conducted in 50 homes will not be released until November. The agency has not yet issued a recall on the product, citing difficulties because the product remains in so many homes.

According to news reports, in a private meeting that took place yesterday between members of Congress, the CPSC, and other agencies investigating the matter, members expressed outrage at the pace of the drywall investigation, and discussed possible legislative actions, including a possible nationwide remediation program as an alternative to a recall.