



Chinese Drywall Damages

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By Joseph J. Egan

The Chinese drywall claims, litigation, and impacts continue and will continue for many years. This article summarizes the damages aspects of Chinese drywall in the United States. Much has been written about the various parties involved including the homeowners, developers, contractors, subcontractors, suppliers, manufacturers, and insurance companies in addition to the ongoing disputes and litigation regarding who will pay for the harm caused by the installation of the Chinese drywall. Estimates of the number of homes in the United States containing Chinese drywall have varied from approximately 35,000 to over 100,000. At this point in time some information is known about the amount of damages being claimed, with much more to be learned in the future. Many lawsuits have been filed to date, with only a small number of lawsuits having been decided by the courts.

Summary of Chinese Drywall Damages

Several courts have awarded various damages associated with the Chinese drywall installed in homes. In addition, other sources of information related to the costs of addressing the Chinese drywall issues have been made public. The costs associated with the Chinese drywall issues have varied depending on a number of factors including: the amount of Chinese drywall installed, whether the Chinese drywall is installed throughout a home or limited to a specific room or addition, and the size and location of the home, among others.

Based on two court awards in the multidistrict litigation (“MDL”) in Louisiana for eight plaintiffs in total, the average cost to remove and replace the Chinese drywall, all other drywall, and the other damaged property, such as the electrical system and the copper piping, is estimated to be approximately \$83 per square foot of the home. The cost estimates ranged from approximately \$12 per square foot for one room in a basement of a home to \$107 per square foot for an entire home. In addition to the removal and replacement of the drywall and other damaged material, additional claims for damages include inspection, repair and replacement of other personal property (e.g. appliances, computers, etc.), and temporary living expenses. These additional claims have averaged 13% of removal and replacement costs. The courts have also awarded damages for some

of the plaintiffs for loss of income, loss of use and enjoyment, and diminution in property value, among others. The total damage awards have ranged from approximately \$90,000 for a home where only 8 sheets of Chinese drywall were installed in one room in the basement to a \$2.5 million jury award in Florida for a home with five bedrooms and five bathrooms. Excluding the jury award in Florida, the average total damages awarded to the eight plaintiffs in the multidistrict litigation in Louisiana was approximately \$340,000 per home.

Chinese Drywall Damages Claimed

There has been a myriad of damages alleged and claimed by plaintiffs who have homes where Chinese drywall has been installed. The Consumer Product Safety Commission reports that since early 2009 it has been contacted by more than 3,300 residents of 37 states about possible chemical emissions from imported drywall that was used when their homes were built or remodeled. Most calls were from persons in Florida, Louisiana, Mississippi, and Virginia. Homeowners have claimed the damages and harm caused by the installation of the Chinese drywall to include the following:

- **Inspection costs**—costs to hire a firm(s) to inspect for Chinese drywall and potential resulting damage.
- **Removal and replacement of drywall**—costs to remove and replace not only the Chinese drywall but also other drywall in the home. In many instances, homes were built with drywall imported from China along with domestic drywall. Once installed, it is difficult, time consuming, and costly to identify and remove just the Chinese drywall. As such, all drywall in a home or affected rooms is often removed.
- **Repair and replacement of other damaged property**—it is believed the gases released by the Chinese drywall causes corrosion of certain metals including copper, copper alloys, and silver. Some of the corroded items in a home include copper electrical wiring, electrical outlets, appliances, air conditioning equipment, computers, plumbing fixtures, and other items. Also, items that were removed or damaged while doing the remediation are also claimed. In addition the gases emitted by the Chinese drywall are odorous and difficult to remove from carpets, clothing, mattresses, and other items found in a home. Homeowners have claimed the cost to either clean or replace these items.
- **Moving and alternative living costs**—oftentimes the homeowners move and leave their home while investigation and remediation efforts are conducted. In addition to moving costs, additional temporary rental costs are incurred above and beyond the home mortgage costs.
- **Loss of use and enjoyment of property**—some homeowners have claimed the value for the loss of use and enjoyment of their home while they live in temporary space.

- **Loss of value of home due to stigma damages**—some homeowners have claimed the value of their home is diminished due to the stigma that may be associated with a home built using Chinese drywall.
- **Health costs**—homeowners have claimed to become ill due to the gases released by the Chinese drywall and have sought medical costs and future medical monitoring.
- **Loss of income**—homeowners have sought lost income related to the time spent away from work while handling the issues surrounding the inspection and remediation of the Chinese drywall.
- **Other impacts**—homeowners have claimed other damages including increased financing costs resulting from an inability to refinance their home due to the Chinese drywall costs, potential loss of the home because of an inability to pay both a mortgage and the costs of temporary living expenses after moving out of their home, and other damages.

Chinese Drywall Damages Awarded by Courts

Several courts to date have awarded damages to homeowners related to Chinese drywall. Lawsuits filed in federal courts have been consolidated in the U.S. District Court in New Orleans under Judge Eldon Fallon as part of a multidistrict litigation. To date, there have been two separate rulings on damages in this multidistrict litigation. In the first ruling the judge awarded damages for a single Louisiana homeowner against a Chinese drywall manufacturer. The judge awarded the following damages:

Damage Description	Amount Awarded
Removal & Replacement	\$139,623
Personal Property	\$ 5,357
Temporary Living	\$ 19,069
Total	\$164,049

For this house the cost for just the removal and replacement of the Chinese drywall and other damaged systems was approximately \$83 per square foot. The damages for personal property and temporary living added approximately 17% to the removal and replacement costs. The plaintiff had sought damages for lost wages but the judge determined they were not recoverable in this case. In addition, the parties stipulated to no damages for loss of use and enjoyment, mental anguish, inconvenience, or any other form of non-pecuniary loss.

In the second ruling, the same judge awarded a total of approximately \$2.6 million of damages for seven Virginia homeowners against a different Chinese drywall manufacturer. The judge awarded the following damages in total for the seven homeowners:

Damage Description	Total Amount Awarded	Average Per Home
Removal & Replacement	\$1,559,574	\$222,796
Personal Property	\$ 34,109	\$ 4,873
Temporary Living	\$ 157,547	\$ 22,507
Economic Loss (mortgage deferral, loss of income, etc.)	\$ 191,794	\$ 27,399
Loss of Use and Enjoyment	\$ 630,000	\$ 90,000
Total	\$2,573,024	\$367,575

In this matter, the judge awarded, on average for the seven homes, approximately \$81 per square foot for removal and replacement costs. The damages to personal property and temporary living costs added, on average, approximately 12% to the removal and replacement costs. In this matter, the judge also awarded damages for economic loss, which included an inability to refinance a home mortgage, mortgage deferral costs and lost income due to missed work resulting from the remediation work. In addition, the judge awarded damages for loss of use and enjoyment of each of the seven homes. The plaintiffs sought damages for diminution in property value of their homes but the judge ruled against the claim.

In each of these rulings, the judge used estimates for the removal and remediation costs for the homes. Actual costs to remove and replace the drywall and other systems were not available since most of the work had not been performed by the time of trial.

In a lawsuit not part of the multidistrict litigation in Louisiana, a Florida jury awarded a homeowner \$2.46 million in a lawsuit filed against a Miami-based building supply company. This was the first Chinese drywall matter to be heard by a jury. The homeowner had sought approximately \$4.4 million in damages including \$705,000 for repair and remediation of a five-bedroom home, temporary living expenses, and damages to personal property; \$200,000 for diminution in property value of the home; and nearly \$100,000 per month from the time the family moved into the house until the repairs are expected to be completed.

Other Sources of Chinese Drywall Damages

Several home builders have reported information related to the costs to remedy the Chinese drywall issues. For example, Lennar Homes, a national home builder reported 2010 in its second quarter 10Q filed with the SEC that it has identified 810 homes it built in Florida containing defective Chinese drywall resulting in damage to the homes. It has accrued \$80.7 million of reserves related to these homes confirmed to contain defective Chinese drywall, plus an estimate for homes not inspected yet. The reserve is approximately \$100,000 per home. Lennar Homes also reported having received \$40 million for covered damages under its insurance policies.

Potential Damages Issues Related To Insurance Coverage

To date there have been numerous lawsuits by homeowners, homebuilders, suppliers, and others against their respective insurance companies seeking coverage for the Chinese drywall problems. Whether or not the various types of insurance policies (e.g. first party property or third party liability) will or will not be liable for the claimed damages are being contested. Some courts have ruled on the issue of coverage. For example, in one lawsuit in Virginia, a federal judge ruled in June 2010 against coverage for Chinese drywall under a homeowner's policy. In a separate matter in Louisiana, a judge ruled in March 2010 against an insurance company attempting to use certain policy exclusions to deny coverage to homeowners.

There are many issues and questions to be evaluated and decided upon before insurance coverage will be determined. Some of these issues and questions include: when did the loss occur (i.e. which policy is triggered), is the loss due to inherent vice or latent defect, is the loss caused by a pollutant, is the loss due to corrosion, and is it one or multiple occurrences, among others. As described above, the court awards have been a mixture of both estimated and actual costs for the various types of damages. To the extent a determination is made that there is coverage under an insurance policy, one issue to be addressed will be determining which costs are covered by the insurance policy. For example, if the determination is made that there is insurance coverage, but the coverage excludes the removal and replacement of the Chinese drywall, then an analysis will be required to determine what costs should be removed from the claim. The amounts awarded to date for removal and replacement have not been segregated between Chinese drywall and domestic drywall and other components, such as electrical wiring. This will likely require expert analysis to parse out the costs not covered by any ruling on insurance coverage.

In the end, if insurance coverage is affirmed by the courts, the parsing of costs covered and not covered will be a likely next step as part of the process. Based on my 25 years experience as an economic damages expert, the costs claimed by the homeowners will likely not be captured or estimated along the same lines of what may or may not be covered by an insurance policy. As such, an ex-post analysis will be required.

About the Author:

Joseph Egan is a Principal of Davis & Hosfield Consulting. He has over 25 years experience and has testified as an economics damages expert around the country. Mr. Egan is a registered Professional Engineer and has a MBA with a specialization in finance from the University of Chicago. He has testified on economic damages in insurance and construction disputes. He has taught economic principles and approaches to lawyers and has authored a number of articles. He can be reached at 312-506-1531 or jegan@dhllc.com.