

# Attorneys expect thousands of drywall lawsuits

By MICHAEL NEWSOM

It's believed enough Chinese drywall to build 100,000 houses was shipped to the United States as the Coast was rebuilding from Hurricane Katrina, and South Mississippi attorneys and others expect thousands of lawsuits over those products to emerge in the coming months. Attorneys said the process to collect damages and tear out the old drywall and replace it may be difficult for South Mississippians, particularly those who already had heavy damage to their homes during Katrina. Many just recently moved back into their homes after protracted battles with insurance companies over their Katrina damage. The news that they may have to make major repairs again has been hard to swallow, said James R. Reeves Jr., a Biloxi attorney representing about 90 Mississippi homeowners in the lawsuits.

"I have had people literally break down and cry when they realize they have it," Reeves said. Attorneys worry homes for sale may one day all have to be certified to be free of the Chinese plasterboard. Reeves said possible health problems related to the products are also not fully understood. Insurance experts say homeowner policies likely don't cover faulty materials. Reeves, of Lumpkin & Reeves, is on the team of lawyers from New York, Louisiana, Florida and North Carolina firms handling the early bundle of "bellwether" drywall cases, which will begin to be heard in federal court in New Orleans early next year. Early steps in the legal process could yield shipping and other records from the companies that will give a better indication of where the drywall went. Drywall manufacturers could also take the stand, Reeves said.

The problems reported thus far have been in homes that were built between late 2005 and early 2007 during the post-Katrina building boom. The company attorneys most identify with the issue, Knauf Plasterboard Tianjin Co., Ltd., has said it is one of the few companies that actually labeled its products according to law, but many other drywall brands were being imported from China at the same time, they said.

## **Uptick expected**

The first lawsuit in Mississippi over the drywall was filed in March, just after stories from Florida made national news. Attorney Steve W. Mullins, who is also working on some of the cases, and Reeves, who works for a different firm, said there were about 300 cases in the state and they expect more.

Mullins said an estimated 1 billion pounds of suspected tainted drywall made it to the U.S. Experts said that amount could build as many as 100,000 homes. A shipment of about 13,500 tons came into the Port of Pascagoula in 2006 and stayed there until August 2007, but where it went is unclear. Port officials told the Sun Herald they noticed no problems even though it was there during the summer months. Humidity is believed to trigger the ill effects.

Large loads were also brought to New Orleans, where lawyers believe many South Mississippians may have found their supplies after Hurricane Katrina.

“We suspect that based on the gross tonnage that was reported and the chain of distribution, that it is going to be thousands of cases just in Mississippi, primarily in Southern Mississippi,” Reeves said.

Mullins said many South Mississippians may be waiting to see if there will be a federal program to help them before they take action.

### **Banks, others affected**

Hancock Bank CEO John Hairston said recently a couple of different homeowners came in and said they lost their jobs and couldn’t afford their mortgages. They turned their homes over to the bank, which had the houses inspected by a local company, Covington Civil & Environmental, which found what is suspected to be tainted Chinese drywall in both cases. Hairston said he expects an uptick in such reports as the situation develops.

“Our folks expect cases to escalate in number as home-owners find problems or builders notify them of installed problem drywall,” Hairston said. “We think the problem will grow over the next several years and have hired Covington to help us with the two properties in which we know we have problems.”

Until those products are removed, a home is likely to be very hard to resell, which could pose a challenge for real estate agents and homeowners as more cases come to light. =0 A

“If you say ‘Chinese drywall,’ everything comes unglued in a deal,” Hairston said.

Hairston, who had his home’s Katrina damaged fixed, said he’s going to get his walls inspected.

“I don’t think I have a problem,” Hairston said. “I want to make sure.”

Tony Damiano, a senior consultant with Covington Civil & Environmental, has started doing drywall inspections. He’s seen about 20 homes with the Chinese drywall, including the two homes he checked for Hancock Bank, he said.

Southeast Mississippi Homebuilders Association President Randy Bosarge, a local contractor, said none of the members in his group has told him they handled any of the suspected drywall. He said builders probably had no way of knowing it was tainted because the problems associated with it typically didn’t show up for months after installation.

“I feel like it’s the manufacturer’s responsibility,” Bosarge said.

The Consumer Product Safety Commission, which handles product-safety recalls and other issues, is investigating and hopes to release findings later this month. According to its Web site, as of Sept. 17 the CPSC has received about 1,311 reports about tainted Chinese drywall from residents in 26 states and the District of Columbia. They say only 18 of those reports came from Mississippi, about 1.4 percent of the total. The most cases reported to the CPSC have been in Florida, Louisiana<sup>20</sup>and Virginia.

### **No easy fix**

There are a few factors working against those with the drywall, lawyers said. Reeves said as many as 16 companies making the drywall are owned by the Chinese government. Reeves said the legal team is unaware of a legal judgment ever being enforced against that government.

Reeves said most Mississippians may be a little more fortunate, though, because it appears about 90 percent of the suspected drywall here was made in Chinese factories by KPT, a subsidiary of the German-based company Knauf International GmbH, which is not owned by a government and has assets. The company doubts it has so many cases in Mississippi, saying in a statement “the court has over 37 unique markings of Chinese drywall found in

affected homes. Other Chinese manufacturers imported substantial amounts of board into New Orleans.”

Attorneys may also try to name the financiers, shippers and other businesses involved with the Chinese drywall in the lawsuits.

Homeowner insurance policies aren't likely to cover any damage related to defective Chinese drywall, said Robert Hartwig, president of the Insurance Information Institute. Policy exclusions for defective products, faulty workmanship, pollution and others would apply, he said.

The company that made the drywall should be responsible for damage if the product is defective, he said.

“Insurers don't manufacture anything that goes into a home,” Hartwig said. “We provide insurance coverage for certain things that can happen to a home as a result of certain covered perils. We don't cover defective workmanship or materials and never have.”

Reeves said his clients have started filing claims, and he believes it's not clear what responsibility lies with insurers.

“We are generally making demands on homeowners policies for coverage,” Reeves said.

“Some are pending, some are under investigation by the insurance companies who are determining whether they will cover them or not and some have sent back letters saying they are not going to cover it. There is not a lot of precedent on this type of litigation in homeowners policies in Mississippi. It's really unclear whether homeowners policies will have to pay or not.”

Reeves said people who suspect they have the troubled drywall should act quickly.

“If you haven't had problems already, it's going to be a problem,” Reeves said. “It's not going to get any better.”