Chinese Drywall Makers Likely To Ignore Suits

Cain Burdeau, Associated Press Writer

NEW ORLEANS (AP) — Lawyers representing homeowners and homebuilders who used drywall suspected of causing corrosion and possible health risks say they expect Chinese companies that made the wallboard to ignore hundreds of lawsuits filed against them in U.S. courts.

So, who's going to be on the hook for any damages courts might award?

That's the pivotal question for lawyers as they pursue about 300 lawsuits in U.S. District Court in New Orleans that allege a flood of defective Chinese drywall was sent into the United States after a string of hurricanes in 2004 and 2005. The material is known to decay, creating corrosive chemicals and fumes.

Among tactics lawyers are considering are suits against U.S. investment bankers who financed the Chinese companies, and seizing ships that brought the drywall to the United States.

This would not be the first time Chinese companies have ignored U.S. liability suits, said Russ Herman, a lead plaintiffs lawyer in the drywall litigation.

"They've done that with toxic edibles, with toys, with (blood thinner) heparin, milk, you name it," Herman said.

Kerry Miller, lead lawyer for the defendants, agreed. He represents U.S. homebuilders, drywall installers, distributors and Knauf Plasterboard Tianjin Co., the only Chinese company that's recognized the lawsuits so far. The defendants want Chinese manufacturers to respond in court because they, too, are seeking damages from the drywall makers.

Miller said Chinese companies are able to dodge service in U.S. courts.

Last week, U.S. District Judge Eldon Fallon found one Chinese company, Taishan Gypsum Co., in contempt of court for ignoring the suits.

The lawyers said Chinese companies are virtually insulated against liability in U.S. suits because suing them through international court is costly and time-consuming and civil judgments in U.S. courts are not enforced in China.

Jonathan C. Drimmer, a partner with Steptoe & Johnson LLP, a Washington, D.C., law firm that specializes in international litigation, said that historically plaintiffs lawyers have avoided suing foreign manufacturers. Lawyers "won't pursue an action if they don't see a pot of gold at the end of the rainbow," Drimmer said.

"This is not a typical U.S. drug problem case, a U.S. environmental case, this is

different. We're all being forced to think outside the box," Miller said. "It's very difficult to resolve this complex situation when you only have a fraction of the parties in the court."

Herman said plaintiffs' lawyers were up to the challenge. "I think we can bust the dam in this case," he said.

He said making that happen could involve attempts to obtain damage payments by seizing vessels that brought the drywall to the United States if they return to U.S. ports and even going after Wall Street investment banks with a share of ownership in the Chinese companies.

"We've got financial institutions in the United States that have substantial investments in these companies that caused these problems," Herman said. He couldn't say which U.S. financial institutions could be sued for damages.

Miller said lawyers are considering asking courts to seize vessels that delivered the drywall.

"It's an interesting concept and if it can work to get the attention of these other Chinese companies, that's what needs to be done," he said. "Getting the missing parties to the table" was paramount, he said.

But seizing vessels — known as an "in rem" action, which often involves filing a lien against a vessel — and going after shareholders would hardly be easy, said Mark Ross, a Lafayette, La., lawyer who specializes in maritime law and civil litigation.

"My gut reaction is that that could be a bit of a stretch. In rem could be seen as a severe action, seizing a vessel, tying it up for a day," Ross said.

"How do you go about identifying what vessels to seize?" Ross said. "How do you seize a vessel for merely transporting cargo, which they might have been required to take by law."

A ship owner could sue if the seizure were deemed too aggressive, Ross said.

As for going after investors, Ross said that too was far-fetched. "Smart money says that's not going to work. A shareholder? Probably not. I don't know if that exposes them to liability."

Still, Herman remains sanguine.

"You're talking about billions of dollars" at stake, Herman said. "We're going to find some ways to make them responsive."

Source URL (retrieved on *07/28/2014 - 9:17pm*):
http://www.impomag.com/news/2009/09/chinese-drywall-makers-likely-ignore-

suits?qt-most_popular=0