

# Risk Management – CPLIC Claims Handling Guidelines

---

## **Chinese Drywall: An Independent Adjuster's Perspective**

What hasn't been said or written about the "so-called" Chinese Drywall fiasco. Some call it the "Not-So-Great Wall of China."

People ask me why I don't read fiction. I respond that "real life is all the fiction I need." You might be the most experienced adjuster around but ten years ago you probably wouldn't have imagined the number of buildings repaired or built after a decade worth of hurricanes with drywall that would chemically destabilize the structure and it's inhabitants. Sounds like science fiction to me.

So I had the opportunity to make brief inquiry of an expert in the field of drywall. He's been hanging it since he was 16 years old, built a reputation and a substantial empire over a 55 year period. I said what do you make of all these claims? He said "you mean the stinky board? Well, you know not all Chinese drywall is stinky board. Some of the Chinese companies still use gypsum. It's just the ones that make their drywall from the sludge from the coal plants or whatever, that's where the stinky board comes from. And certain Chinese companies make both so you have to figure which batch it came from and we never paid much attention to that. You don't smell it when you're installing it but they say it corrodes pipes over time and some people claim it makes them sick."

Believe it or not I was enlightened. The general contractor who hired the drywall sub-contractor who hired the independent migrant labor crew who picked up the drywall or had it delivered on site and then installed it wasn't always sure where the drywall came from. Nevertheless, an investigator/adjuster has to understand the essence of the claim in order to establish damages, if any, and properly investigate ultimate responsibility. Actually, it's a much bigger problem that will have to be resolved in the courts or by intervention by Uncle Sam himself.

The first hurdle any first party insured has is coverage. If the board is just odiferous but hasn't caused any damage, do they have a claim? And if it has caused damage, is this a covered cause of loss. My first thought is no. Most building or dwelling policies are going to have exclusions for "construction defect" and "pollution."

Apparently, even Florida Insurance Commissioner Kevin McCarty, not exactly a great fan of the industry, admits that in his opinion, insurers are not responsible. "This is not a covered claim. This is not a covered peril," he said. "We need to come up with a plan for a funding source to take care of this."

Some estimate that over 100,000 homes may have been impacted and reparations could exceed \$10 billion. McCarty thinks that the federal government will have to come up with a funding solution. Maybe McCarty is thinking of something like a "Cash for Clunkers" program. Only they would call it the "My Clunker House Stinks – Give Me Cash Program."

However a liability claim is another matter. Once a property owner establishes damages they will have a cause of action against the builder who will then pass it off to the list of subs and finally the distributor and manufacturer. But even those contractor liability policies will have exclusionary language addressing defective workmanship and, depending on the jurisdiction, that language could stand or fall. But coverage notwithstanding, all parties are still exposed.

Now, establishing damages is another matter altogether. U.S. authorities concede that indoor air studies on buildings with the suspect drywall have detected concentrations of irritants, strontium and sulfur. But it is unclear whether these compounds are capable of causing or exacerbating the various symptoms alleged. Further, scientists aren't convinced that such conditions can bring about the corrosion seen in some properties.

No one would dispute that the suspect drywall is emitting sulfuric gases that mimic the smell of rotten eggs. But studies sponsored by Knauf Plasterboard, Ltd of China have concluded that "the level of

sulfuric emissions found within certain buildings is no greater than that found in the air outside homes or in soil, marshes, or the ocean.” So they’re not about to make any concessions as to cause and damages.

That doesn’t stop the filing of suits that generally allege the sulfuric emissions caused damage and corrosion to home structural and mechanical systems such as HVAC coils, copper tubing, plumbing and other metal fixtures, and electrical wiring. Additionally, the emissions allegedly cause health concerns such as allergic reactions, respiratory problems, sinus problems, throat and eye irritation, and even nosebleeds.

The principal manufacturers identified in lawsuits are as follows:

**KNAUF GIPS KG - Germany, KNAUF PLASTERBOARD (WUHU) CO., LTD. - China, KNAUF PLASTERBOARD (TIANJIN) CO., LTD. - China, KNAUF PLASTERBOARD (DONGGUAN) CO., LTD. - China, TAISHAN GYPSUM CO., LTD. -China, ROTHCHILT INTERNATIONAL, LTD. - China.**

The distributors who’ve been included in the suits are as follows:

**L&W SUPPLY CORPORATION D/B/A SEACOAST SUPPLY - Delaware, USG CORPORATION – Delaware, BANNER SUPPLY COMPANY - Florida, INTERIOR & EXTERIOR BUILDING SUPPLY, L.P. - Louisiana, RIGHTWAY DRYWALL - Georgia, LA SUPREMA TRADING, INC./LA SUPREMA ENTERPRISES, INC. – Florida, BLACK BEAR GYPSUM SUPPLY, INC. - Florida.**

This list will continue to grow. The causes of action alleged will involve various doctrines including Negligence, Strict Liability, Implied Warranties, Violation of Unfair Trade Practices, all complicated by Multi-Jurisdictional Litigation.

As an adjuster/investigator working to establish liability you’ve got to document a paper trail of who contracted, who sub-contracted, who installed, who sold or distributed, and who manufactured the drywall. If you’re lucky your drywall samples will be stamped but you’ll have to uncover the invoice and delivery paperwork for a specific building site and perhaps for specific bundle of board.

As to damages, add a gas mask or a nose clip (a clothes pin will do) to your usual briefcase trappings when you go to write the estimate.

**Peter J. Crosa, AIC, RPA**