



Louisiana Legislative Update – October 2009

During the Louisiana Regular Legislative Session this past spring, 2009, SB 257, authored and sponsored by Senator Julie Quinn (also Chair of the Senate Judiciary A Committee) was of the most concern to LAT, homebuilders and building material suppliers and distributors in Louisiana.

This dangerous tort bill called the "Safe Housing for Louisiana Act", was supported by trial lawyers, and related to the toxic Chinese drywall issue. However the bill encompassed ALL products used in residential construction, and named ALL distributors, sellers and contractors liable for damages and suffering to homeowners as a result of substandard construction materials.

With the help of many Louisiana members and several other lobbying groups, SB 257 died in Senate Revenue and Fiscal Affairs Committee.

However, this legislation is likely to reappear in the 2010 Regular Session of the Legislature. *The Times-Picayune-New Orleans* reported in September 2009 that foreign companies might be out of reach in damage suits.

In 1996, the Louisiana Legislature passed one of the nation's most aggressive tort reform acts to fulfill a campaign promise of then-newly elected Gov. Mike Foster to improve Louisiana's business climate.

However the tainted drywall from China, imported after Katrina, has affected an estimated 4,000 to 7,000 Louisiana households as it is corroding people's homes and making them sick.

Trial lawyers want to bring back the ability to sue anyone they can tie into the building supply industry as a way to "help" those affected. Because so many people are in a jam, the Louisiana Recovery Authority set aside \$5 million to help homeowners recoup their losses from Chinese drywall. The national litigation over Chinese drywall, which has been consolidated in federal court in New Orleans before Judge Eldon Fallon, is expected to make the litigation over Hurricane Katrina insurance claims look like child's play.

Residential insurers have so far been denying claims based on policy exclusions for pollution or "latent defects" in materials, forcing homeowners to pursue builders through the Louisiana New Home Warranty Act, or to file suit against suppliers who handled the wallboard. The most challenging factor of all is that the parties of ultimate responsibility, the Chinese manufacturers, may be beyond the reach of U.S. law, a circumstance some say is made worse by Louisiana's tort reform.

Under the old rules of litigation in Louisiana, even if a company only played a small role in harming the consumer, it could be held responsible for 100 percent of the damages, according to Alan Childress, a Tulane Law School professor. That means all the aggrieved homeowner would have had to do was sue the party that installed their Chinese drywall. That party, in turn, would have sued companies further up the chain.

While proponents of the 1996 tort reform said the old system was unfair, those working with consumers on Chinese drywall issues today say that that system would have had the advantage of getting consumers the money they need to rebuild, while leaving the companies above them to settle with each other. They further say it adds an incentive for companies to make sure they are selling safe products.

Under the post-1996 system, companies only have to pay the portion of fault assigned to them.

So if a court determines that manufacturers are responsible for 80 percent of the Chinese drywall problem, while the American companies that handled the product upon import are responsible for 20 percent, homeowners only stand a chance to collect 20 percent of their losses.

Chinese drywall victims from states such as Florida, where tort reform measures were less aggressive, could recover more of their losses.

When Quinn tried to amend the 1996 law last spring to give consumers more recourse over Chinese drywall, she ran into opposition from the state's business community, which viewed efforts to help drywall victims as an undoing of Foster's changes.

The biggest question in the litigation is whether foreign manufacturers can be forced to participate in the litigation -- and forced to pay if they are found responsible.

A proposal is pending in Congress that would require foreign companies to participate in litigation if they sell products in the United States. But the best hope for Louisianians may be that state law allows for victims to take "direct action" against the insurers of the companies that harmed them, a tactic that worked when New Orleans attorneys collected from insurers when the Chinese-owned Brightfield ship slammed Riverwalk in 1997.

For anybody who bought a new home only to find that it was built with Chinese drywall, such as many people in St. Tammany and Tangipahoa parishes, pursuing the Louisiana New Home Warranty Act may be their best option. But the law sets out strict time lines that may have already expired, and attorneys caution that the law requires that homeowners send certified letters to builders with their complaints before taking other action -- hurdles that may knock people out from collecting.

LAT is holding a special legislative briefing dinner December 9 in New Orleans.

All LAT Louisiana members have been invited to attend

Space is limited! Call LAT before November 20 to reserve your seat.