



Louisiana Update Chinese Drywall: Federal Trial Opens — And Closes

The first Federal class-action trial in the Chinese drywall debacle opened Monday, February 22, in the New Orleans courtroom of Judge Eldon Fallon, with testimony from Virginia homeowners whose houses are damaged by the defective material. Missing, however, was the defendant, [Taishan Gypsum Co., Ltd.](#), a firm owned by the government of the People's Republic of China. Taishan had failed to appear in court to answer the complaint in 2009, and Judge Fallon has already issued a default judgment against Taishan. The current proceeding, therefore, is focused on determining the damage award.

Also dropping out before the formal trial began was another Chinese manufacturer, Knauf Tianjin, a subsidiary of German-based building materials conglomerate [Knauf Gips KG](#). Knauf Tianjin, which faces its own class action lawsuit before Judge Fallon, had planned to appear in Taishan's defense and to offer expert testimony in favor of a limited repair strategy. Knauf intended to argue that partial drywall replacement, or even simply an air-filtration retrofit for air conditioning systems, could be chosen as a remediation method for the drywall problems. Homeowner plaintiffs in the case are pushing for full removal and replacement of all of an affected home's defective drywall, as well as other systems such as copper air conditioning and wiring components.

But on Friday, Judge Fallon excluded Knauf's witnesses after holding what is known as a "Daubert" hearing to determine whether Knauf's expert testimony would be admissible under Federal rules of evidence. According to Federal court rules stemming from a 1993 Supreme Court decision in the case of [Daubert v. Merrell Dow Pharmaceuticals](#), expert testimony in Federal cases must reflect generally accepted scientific theories or conclusions, not simply the individual opinion of the expert. Experts, in other words, must testify accurately as to the general state of knowledge in their field, rather than present their own personal views. Judges are required to be "gatekeepers" and decide before trial begins whether the evidence will be allowed in court. In the case of the Chinese drywall remediation question, Judge Fallon ruled that "the air-filtration theory 'was not there yet' in terms of having ample supporting proof to justify its inclusion in the proceedings," reports the Sarasota Herald-Tribune ("[Company out of drywall trial](#)").

With their expert testimony barred from the proceeding, Knauf's attorneys surprised observers by withdrawing from the case altogether on Friday, February 19. Accordingly, that day's testimony consisted mainly of evidence in support of the full gut-and-replace remediation strategy, reports the Sarasota Herald-Tribune ("[Drywall testimony: Best cure is gutting homes](#)," by Aaron Kessler).

In a new twist, witnesses told the court that all of a home's wiring, not just the exposed portions where insulation has been stripped, would have to be replaced. According to the Herald-Tribune, Beazer Homes vice-president Ray Phillips testified that Beazer has discovered that the corrosive gases from the drywall can penetrate wiring insulation and corrode insulated wires. "As a result, Beazer's protocol now calls for removing all wiring, junction boxes and other parts of the electrical system," reports the Herald-Tribune.

Beazer's cost to remediate homes it has gutted has ranged from \$46 per square foot to \$53 per square foot, Phillips told the judge. But he said that private homeowners who lacked Beazer's buying power would probably have to pay more: "He estimated that what costs Beazer \$50 per square foot would likely cost a homeowner upwards of \$72 (or \$144,000 for a 2,000-square-foot home)," reports the Herald-Tribune. As for the partial-replacement proposal Knauf had intended to present, which involved using an X-ray device to identify just the contaminated sheets and leaving other sheets in place, Phillips described the suggestion as "ludicrous."



With the Friday maneuverings out of the way, testimony in the full trial began — and ended — on Monday, the Herald-Tribune reported ("[Trial testimony lays out tolls of toxic drywall](#)," by Aaron Kessler). Judge Fallon had originally scheduled a five-day trial, but Knauf's withdrawal meant that there would be no cross-examinations and no presentation of defense testimony. So after hearing from plaintiff's witnesses, Fallon closed the proceeding.

Homeowners offered emotional testimony about their personal costs in purchasing a home whose value was virtually erased by the faulty drywall. Homeowner Jerry Baldwin choked up as he described postponing his retirement because of the financial loss, the Herald-Tribune reported. "Another Williamsburg homeowner, Cathy Leach, began to sob softly moments after entering the witness box and was unable to continue. Her husband took her place," the Herald-Tribune reported. But the bulk of the day's testimony was technical in nature. Dean A. Rutila, from environmental consulting firm Simpson Gumpertz & Heger, for example, testified at length about damage to wiring and switches in the affected houses. The damage, he said, "is unacceptable from the perspective of life safety and the building code," and "requires the replacement of all drywall, electrical equipment and all copper and silver components in the houses."

Judge Fallon is expected to deliver a decision on damages in the case in late March. [Official updates](#) on the case are posted at the official website of the United States District Court for the Eastern District of Louisiana.