

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED DRYWALL PRODUCTS LIABILITY LITIGATION

.....

: MDL NO. 2047
:
: SECTION: L
:
: JUDGE FALLON
: MAG. JUDGE WILKINSON
:

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #12

The parties have not been able to agree on an appropriate Distributor Profile Form. The Court instructed both sides to submit forms in order for the Court to prepare the appropriate form. The Court received each side's forms, copies of which are attached. The Court will prepare the final version of the Distributor Profile Form.

New Orleans, Louisiana, this 24th day of August, 2009.


ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

Attachments

DEFENDANTS' DRAFT

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

IN RE: CHINESE MANUFACTURED DRYWALL : MDL No. 2047
PRODUCTS LIABILITY LITIGATION : Section L

This Document Relates to : JUDGE FALLON
ALL CASES : MAG. JUDGE WILKINSON

DISTRIBUTOR PROFILE FORM

All Defendant Drywall Distributors must complete and submit this Defendant Distributors' Profile Form. Additionally, each Defendant Drywall Distributor must sign and date Exhibit A to the Defendant Distributors' Profile Form for each property owned, rented or occupied by persons who are named Plaintiffs in suits pending in the MDL. The term "Chinese Drywall or Wallboard" encompasses all wallboard of Chinese origin or manufacture without reference to whether the particular wall board has been found to be defective. If additional knowledge becomes known after completion, this Defendant Distributors' Profile Form must be supplemented. If additional space is needed to answer any questions or complete your responses, additional pages may be attached. The questions contained within this Profile Form are non-objectionable and shall be answered without objection. By answering this Profile Form, you are not waiving the attorney work product and/or attorney client privileges. Similarly, by disclosing the identity of consultants, such consultants may remain non-testifying experts and are subject to all protections afforded by law. Please print legibly or type your responses in English.

I. IDENTIFICATION AND CONTACT INFORMATION

- A. Distributor's Name: _____
- B. Distributor's Address: _____
- C. Website: _____
- D. Headquarters if Foreign: _____
- E. Address of USA Headquarters: _____
- F. Name of supervisor at USA Headquarters: _____
- G. Principal Place of Business in USA: _____
- H. Has Distributor operated under any other names from 2001 to 2009? If so, please list and explain for each different locale.

I. Did Distributor also install Chinese Drywall? If so, describe involvement as installer.

II. COUNSEL INFORMATION OF DEFENDANT DISTRIBUTOR

- A. Name: _____
- B. Address: _____
- C. Phone Number: _____
- D. Fax Number: _____
- E. E-Mail: _____

III. DISTRIBUTOR'S PURCHASE OF CHINESE DRYWALL

For each purchase of Chinese Drywall between 2001 and 2009, please describe all sources from which Distributor purchased Chinese drywall, including manufacturers, exporters, importers, other distributors, sales agents, and/or sales brokers. Attach additional sheets as necessary.

- A. Source: _____
 - 1. Name of Chinese Drywall Manufacturer, if known:

 - 2. Address of Chinese Drywall Manufacturer, if known:

 - 3. Name of Chinese Drywall Product, if known:

 - 4. Dates of purchase(s): _____
 - 5. Total Volume of received Chinese Drywall product:

 - 6. Identify any markings on the Chinese Drywall product (e.g., lot number, batch number, serial number, color markings, UPC codes, etc.):

 - 7. List all trademarks of the product, if known:

8. The name and address of any importer, exporter, purchasing agent, or sales broker involved or referenced in any way with respect to your purchases of Chinese Drywall:

9. If known, prior to your receipt of or taking title to the Chinese Drywall, if any of your Chinese drywall was stored at any time by or for you at any location, identify the following:

Name of entity providing storage: _____

Address of entity providing storage: _____

Dates product was stored:
____/____/____ (Month / Day / Year) to ____/____/____ (Month / Day / Year)

Quantity of product stored: _____

Price paid for storage: _____

Name of contact person at storage facility: _____

Phone number: _____

Email address: _____

List any complaints made or received regarding storage of the product:

IV. DISTRIBUTOR'S ABILITY TO TRACK SHIPMENTS

Please state whether you are able to track the distribution of Chinese drywall? If yes, provide names and/or entities of those to whom you supplied Chinese drywall. If you cannot track the distribution of Chinese drywall, please provide a description of your distribution process, including a description of database accessibility of this information, if any.

V. INSURANCE

A. Identify all policies of insurance, including all CGL, Product Liability, Builder's Risk, D&O and Excess insurance policies relating to claims.¹

1. For each policy, identify the following:

Insurer: _____

Dates policy in effect:

____/____/____ (Month / Day / Year) to ____/____/____ (Month / Day / Year)

Policy Number: _____

Type of Policy: _____

Insurance Agent _____

Policy Coverage Limits _____

CERTIFICATION

I declare under penalty of perjury under the laws of the United States of America and pursuant to 28 U.S.C. § 1746 that all information provided in this Defendant Manufacturers' Profile Form is true and correct to the best of my knowledge, and that I have supplied all of the documents requested in this declaration, to the extent that such documents are in my possession, custody or control.

Date

Entity
By: _____
Its: _____

¹ Listing policies does not purport to represent coverage status.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED DRYWALL PRODUCTS LIABILITY LITIGATION : MDL No. 2047
: Section L
:
This Document Relates to : JUDGE FALLON
ALL CASES : MAG. JUDGE WILKINSON

EXHIBIT A
DEFENDANT DISTRIBUTOR PROPERTY SPECIFIC DISCLOSURE FORM

Each Defendant Drywall Distributor must complete and sign a separate Exhibit A for each individual named Plaintiff with an action pending in the MDL Federal Court proceeding. The term “Chinese Drywall or Wallboard” encompasses all wallboard of Chinese origin or manufacturer without reference to whether the particular wallboard has been found to be defective. If additional knowledge becomes known after completion, this Defendant Distributors’ Profile Form must be supplemented. If additional space is needed to answer any questions or complete your responses, additional pages may be attached. In addition, if any attachments or documents are provided in response to any question, please identify the specific question within this Defendant Distributors’ Profile Form that relates to the specific attachment or document. The questions contained within this Profile Form are non-objectionable and shall be answered without objection. By answering this Profile Form, you are not waiving the attorney work product and/or attorney client privileges. Similarly, by disclosing the identity of consultants, such consultants may remain non-testifying experts and are subject to all protections afforded by law. Please print legibly or type your responses in English.

I. **INFORMATION ON NAMED PLAINTIFF PROPERTY OWNER, RENTER OR OCCUPANT (to be provided by Plaintiff, after which Defendant Distributor will have fifteen (15) days to return this form)**

- A. Name _____
- B. Address of Affected Property: _____
- C. MDL Case Docket No. _____

II. **INFORMATION ON SPECIFIC PROPERTIES**

- A. For each property identified in Section I above, answer the following:
1. Do you have any contracts or agreements concerning Chinese Drywall contained in the Property? Yes ____ No ____
 2. Did you issue any warranties for any Chinese drywall which may have been supplied?
Yes ____ No ____ Don’t know _____

3. Have you performed any inspection(s), testing or analysis of the Plaintiff's property?

Yes _____ No _____

If yes, provide the following information:

Who performed the inspection, testing or analysis?

When was the inspection, testing or analysis?

Did the inspection, testing or analysis confirm the presence of Chinese Drywall in this property?

Yes _____ No _____

As a result of the inspection, were you able to make a determination of the amount and/or percentage of Chinese drywall contained in the subject property?

Yes _____ No _____

If yes, what amount or percentage of Chinese Drywall was found? _____

4. Are you able to determine any of the following information for the subject property:

a. Manufacturer(s) of the Chinese Drywall _____

b. Importer/Distributor into the US

c. Builder/Developer

d. Installer/Contractor

5. Have any samples of Chinese drywall been taken from the Plaintiff's property?

Yes _____ No _____

If yes, provide the following information:

Name and address of entity that has possession of the samples:

6. Have any written statements been taken in connection with Plaintiff's property or claim?

Yes _____ No _____

If yes, provide the following information:

Who provided the statement?

CERTIFICATION

I declare under penalty of perjury under the laws of the United States of America and pursuant to 28 U.S.C. § 1746 that all information provided in this Defendant Manufacturers' Profile Form is true and correct to the best of my knowledge, and that I have supplied all of the documents requested in this declaration, to the extent that such documents are in my possession, custody or control.

Date

Entity

By: _____

Its: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED DRYWALL : MDL No. 2047
PRODUCTS LIABILITY LITIGATION : Section L
:

This Document Relates to : JUDGE FALLON
ALL CASES : MAG. JUDGE WILKINSON

DISTRIBUTOR PROFILE FORM

All Defendant Drywall Distributors must complete and submit this Defendant Distributors' Profile Form. Additionally, each Defendant Drywall Distributor must sign and date Exhibit A to the Defendant Distributors' Profile Form for each property owned, rented or occupied by persons who are named Plaintiffs in suits pending in the MDL. If additional knowledge becomes known after completion, this Defendant Distributors' Profile Form must be supplemented. If additional space is needed to answer any questions or complete your responses, additional pages may be attached. In addition, if any attachments or documents are provided in response to any question, please identify the specific question within this Defendant Distributors' Profile Form that relates to the specific attachment or document. Please print legibly or type your responses in English.

I. IDENTIFICATION AND CONTACT INFORMATION

- A. Distributor's Name: _____
- B. Distributor's Address: _____

- C. Phone number: _____
- D. Email address: _____
- E. Web site: _____
- F. Headquarters if Foreign: _____
- G. Address of USA Headquarters: _____
- H. Name of supervisor at USA Headquarters: _____
- I. Principal Place of Business in USA:

- J. Has Distributor operated under any other names from 2001 to 2009? If so, please list and explain for each different locale.

K. Did Distributor also install Chinese Drywall? If so, describe involvement as installer.

II. COUNSEL INFORMATION OF DEFENDANT DISTRIBUTOR

- A. Name: _____
- B. Address: _____
- C. Phone Number: _____
- D. Fax Number: _____
- E. E-Mail: _____

III. DISTRIBUTOR'S PURCHASE OF CHINESE DRYWALL

For each purchase of Chinese Drywall between 2001 and 2009, please describe all sources from which Distributor purchased Chinese drywall, including manufacturers, exporters, importers, other distributors, sales agents, and/or sales brokers. Attach additional sheets as necessary.

- A. Source: _____
 - 1. Name of Chinese Drywall Manufacturer:

 - 2. Address of Chinese Drywall Manufacturer:

 - 3. Name of Drywall Product: _____
 - 4. Dates of purchase(s): _____
 - 5. Volume of received Chinese Drywall product: _____
 - 6. Identify any markings on the Chinese Drywall product (e.g., lot number, batch number, serial number, color markings, UPC codes, etc.):

 - 7. List all trademarks of the product: _____

8. The name and address of any importer, exporter, purchasing agent, or sales broker involved or referenced in any way with respect to your purchases of Chinese Drywall:

9. Are you aware of the identity of any other entity in the supply chain for the Chinese Drywall?

Yes _____ No _____

If so, whom? _____

10. Prior to your receipt of or taking title to the Chinese Drywall, if any of your Chinese drywall was stored at any time by or for you at any location, identify the following:

Name of entity providing storage: _____

Address of entity providing storage: _____

Dates product was stored:

____/____/____ (Month / Day / Year) to ____/____/____ (Month / Day / Year)

Quantity of product stored: _____

Price paid for storage: _____

Name of contact person at storage facility: _____

Phone number: _____

Email address: _____

List any complaints made or received regarding storage of the product:

IV. DEFENDANT'S DISTRIBUTION AND/OR SALES OF CHINESE DRYWALL

For each sale, transfer, or distribution of Chinese Drywall between 2001 and 2009, please describe all customers to which Defendant distributed, transferred, or sold Chinese drywall, including purchase agents, brokers, builders, contractors, drywall installers, and retailers. Attach additional sheets as necessary.

A. Customer:

1. Name of Chinese Drywall Manufacturer: _____

2. Address of Chinese Drywall Manufacturer:

3. Name of Drywall Product: _____
4. Dates of sale, transfer, or distribution: _____
5. Volume of Chinese Drywall sold, transferred or distributed: _____
6. Identify any markings on the Chinese Drywall product (e.g., lot number, batch number, serial number, color markings, UPC codes, etc.):

7. Identify any inventory control numbers, sku numbers, shipment identification numbers used by Defendant to track specific Chinese Drywall sales, transfers, or distributions:

8. Are you aware of the identity of any other entity in the distribution chain for the Chinese Drywall?
Yes _____ No _____
If so, whom? _____
9. Prior to your sale, transfer, or distribution of Chinese Drywall, if any of your Chinese drywall was stored at any time by or for you at any location, identify the following:
Name of entity providing storage: _____
Address of entity providing storage: _____

Dates product was stored:
____/____/____ (Month / Day / Year) to ____/____/____ (Month / Day / Year)
Quantity of product stored: _____
Price paid for storage: _____
Name of contact person at storage facility: _____
Phone number: _____
Email address: _____
List any complaints made or received regarding storage of the product:

V. QUALITY CONTROL

1. Has any testing or analysis been performed by you or on your behalf, at any time, to determine whether Chinese drywall purchased by Defendant was within product specifications: Yes _____
No _____

2. Identify what ASTM (or other) standards you used in determining the quality and characteristics of the drywall products you used:

VI. DISTRIBUTOR'S ABILITY TO TRACK SHIPMENTS

Please briefly describe Distributor's ability to track and document shipments into and out of its locations and to particular addresses, including a description of database accessibility of this information, if any.

VII. DISTRIBUTOR'S WARRANTIES/TERMS AND CONDITIONS/PRODUCT INFORMATION

1. For all Chinese Drywall purchased by Defendant for sale or importation to the United States from 2001 to 2009, please indicate whether:
 - a. Express warranties were provided by the manufacturer, exporter, importer, purchasing agent, or broker; Yes ____ No ____
 - b. Product specifications were provided by the manufacturer, exporter, importer, purchasing agent or broker; Yes ____ No ____
 - c. Product information and/or instructions for storage or use were provided by the manufacturer, exporter, importer, purchasing agent, or broker. Yes ____ No ____
2. For all Chinese Drywall sold, transferred, or sold by Defendant in, or for use in, the United States from 2001 to 2009, please indicate whether:
 - a. Express warranties were provided to any builder, retailer, purchase agent, broker, contractor, or drywall installer; Yes ____ No ____
 - b. Product specifications were provided to any builder, retailer, purchase agent, broker, contractor, or drywall installer; Yes ____ No ____
 - c. Product information and/or instructions for storage and use were provided to any builder, retailer, purchase agent, broker, contractor, or drywall installer; Yes ____ No ____

VIII. INSURANCE

- A. Identify all policies of insurance, including all CGL, Product Liability, Builder's Risk, D&O and Excess insurance policies relating to claims.

1. For each policy, identify the following:

Insurer: _____

Dates policy in effect:

____/____/____ (Month / Day / Year) to ____/____/____ (Month / Day / Year)

Policy Number: _____

Type of Policy: _____

Insurance Agent _____

Policy Coverage Limits _____

Produce a copy of the Declaration page, exclusions and policy of insurance.

B. Identify all claims you have made on any insurance policies relating to your sale, transfer, distribution or shipment of products identified herein.

1. For each claim please provide the following:

Date: ____/____/____ (Month / Day / Year)

Insurer: _____

Description of claim: _____

Insurer's response to claim: _____

If in litigation:

Caption of Case: _____

Name and address of attorneys involved: _____

Insurance carriers involved: _____

CERTIFICATION

I declare under penalty of perjury under the laws of the United States of America and pursuant to 28 U.S.C. § 1746 that all information provided in this Distributor Profile Form is true and correct to the best of my knowledge, and that I have supplied all of the documents requested in this declaration, to the extent that such documents are in my possession, custody or control.

Signature

Print Name

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE MANUFACTURED DRYWALL PRODUCTS LIABILITY LITIGATION : MDL No. 2047
: Section L
:
This Document Relates to : JUDGE FALLON
ALL CASES : MAG. JUDGE WILKINSON

EXHIBIT A
DEFENDANT DISTRIBUTOR PROPERTY SPECIFIC DISCLOSURE FORM

Each Defendant Drywall Distributor must complete and sign a separate Exhibit A for any individual named Plaintiff with an action pending in Federal Court. If additional knowledge becomes known after completion, this Defendant Distributors' Profile Form must be supplemented. If additional space is needed to answer any questions or complete your responses, additional pages may be attached. In addition, if any attachments or documents are provided in response to any question, please identify the specific question within this Defendant Distributors' Profile Form that relates to the specific attachment or document. Please print legibly or type your responses in English.

I. **INFORMATION ON PLAINTIFF PROPERTY OWNER, RENTER OR OCCUPANT (to be provided by Plaintiff)**

- A. Name _____
- B. Address of Affected Property: _____
- C. Case Docket No. _____

II. **INFORMATION ON SPECIFIC PROPERTIES**

- A. For each property identified in Section III above, answer the following:
1. Do you have any contracts or agreements concerning Drywall contained in the Property? Yes ____ No ____
 2. Did you issue any warranties for the product installed in the property?
Yes ____ No ____ Don't know _____

3. Have you had any correspondence or other communication concerning Drywall or any construction or remediation at the property? Yes _____ No _____

If yes, provide the following information:

Who was the correspondence or communications by, between or among?

4. Have you performed any inspection(s), testing or analysis of the property?

Yes _____ No _____

If yes, provide the following information:

Who performed the inspection, testing or analysis?

When was the inspection, testing or analysis performed?

Did the testing confirm the presence of Chinese Drywall in this property?

Yes _____ No _____

Were you able to determine any of the following information for the subject property:

a. Manufacturer(s) of the Chinese Drywall

b. Importer/Distributor into the US

c. Builder/Developer

d. Installer/Contractor

As a result of the inspection, were you able to make a determination of the amount and/or percentage of Chinese drywall contained in the subject property?

Yes _____ No _____

If yes, what amount or percentage of Chinese Drywall was found?

5. Has any sampling of drywall been performed of the property?

Yes _____ No _____

If yes, provide the following information:

Name and address of entity that performed the sampling:

6. Have any statements been taken in connection with property or claim?

Yes _____ No _____

If yes, provide the following information:

Who provided the statement?

7. Have any communications or correspondence regarding the property taken place with any drywall contractor / installer, builder, distributor in the USA, importer to the USA, exporter from China or manufacturers of drywall?

Yes _____ No _____

If yes, provide the following information:

Who was the correspondence or communication by, between or among?

8. Have you had any communication concerning the subject property regarding the presence of Chinese Drywall with any foreign or domestic governmental agency or representative? Yes _____ No _____

If yes, provide the following information:

Who was the communication by, between or among?

9. Have you received a request from anyone to repair the subject property?

Yes _____ No _____

If so, from whom did you receive the request?

CERTIFICATION

I declare under penalty of perjury under the laws of the United States of America and pursuant to 28 U.S.C. § 1746 that all information provided in this Exhibit A to the Distributor Profile Form is true and correct to the best of my knowledge, and that I have supplied all of the documents requested in this declaration, to the extent that such documents are in my possession, custody or control.

Signature

Print Name

Date