

# Chinese Drywall

## Summary

**CAS Spring Meeting  
by Rachel Boles**

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TOWERS WATSON 

# Actuarial Issues

- Property Damage vs. Bodily Injury
  - Property damage is much more evident at this stage and has been awarded to plaintiffs
  - Bodily injury has the potential for large settlements, but may be harder to prove
- Occurrence
  - May be dependent on court decisions
  - Will be crucial to the various parties involved, particularly homebuilders, insurers and reinsurers
- Payment Pattern
  - How quickly will these claims pay out?
  - The claim reporting pattern seems to be rather rapid, but lawsuits could take many years to conclude
  - Even after the first set of claims are decided, it may take a long time for the subsequent litigation to conclude, as homebuilders and insurers seek recoveries from other parties

## Actuarial Issues (cont'd)

- Number of Policies Triggered
  - Policy wording and jurisdiction could impact the number of policies that are triggered
  - Continuous trigger could allow multiply policies to be stacked
- General Liability Policies vs. Homeowners' Policies
  - Who is likely to pay for the claims? Do homeowners' insurers need to be worried?
  - Typically homeowners' policies would exclude defective construction, but the judge in Finger v. Audubon denied access to the defective construction exclusion
- Re-Opened Claims
  - With high remediation standards being set by Judge Fallon, claims may re-open
- Legal Costs
  - Historically legal costs on construction defect claims have been approximately 50% of the total cost of the claim
  - Will Chinese drywall follow the same pattern?

## Actuarial Issues (cont'd)

- Potential for Recoveries
  - Homebuilders may seek recoveries from drywall installers and suppliers
- Wrap-up Policies
  - Could reduce legal fees, but also remove the potential for recoveries from drywall installers
  - Typically the drywall supplier would not be included in a wrap-up policy
- Pricing
  - What exposure do you have on current or future policies?
  - Is Chinese drywall excluded in policies sold in the future?
- U.S. Drywall
  - There have been allegations that drywall produced in the U.S. has the same defects as Chinese drywall
  - This may spur more claims, whether legitimate or not

## If you perform actuarial work for a homebuilder...

- Determine the magnitude of exposures.
  - How many homes did you build in Louisiana and Florida between 2004 and 2007?
- Review the GL policies
  - How many policies may be triggered?
  - What exclusions may be applicable?
  - How will per occurrence and aggregate SIRs come into play?
  - Are there any wrap-up policies in the affected jurisdictions?
- Have claims been reported to the excess insurer?

## If you work for an insurer/reinsurer...

- Look at your policy language
  - Compare your exclusions to recent court decisions
- Gauge your exposure
  - Search for policies written to homebuilders, drywall installers or drywall suppliers. Particularly those in Louisiana and Florida
  - Keep track of existing claims
- Consider policy limits
  - Is there potential for aggregate deductibles/limits to be fulfilled?