



Insurers' motions for dismissal in Chinese drywall litigation denied

NEW ORLEANS—The federal judge presiding over the ongoing multidistrict litigation over allegedly defective Chinese drywall dealt eight insurers a blow Wednesday when he denied their motions for dismissal.

Judge Eldon E. Fallon of the U.S. District Court for the Eastern District of Louisiana denied motions from the insurers to dismiss certain cases within the multidistrict litigation for failure to join indispensable parties to the lawsuits, specifically, subcontractors.

The insurers argued that the subcontractors who procured the insurance policies for the plaintiffs should be a party to the pending lawsuits within the MDL, according to court documents.

The insurers involved are American Guarantee & Liability Insurance Co.; Amerisure Mutual Insurance Co.; Chartis Specialty Insurance Co.; FCCI Commercial Insurance Co.; Landmark American Insurance Co.; Mid-Continent Casualty Co.; National Union Fire Insurance Co. of Pittsburgh, Pa.; and NGM Insurance Co.

“The insurers argue that under applicable law, in a contract dispute, such as the present, all parties to the contract are required parties, and thus the subcontractors are required parties,” Judge Fallon wrote in his order. “The insurers claim that if the court retains the present cases without the subcontractors, they face the risk of duplicative and/or inconsistent rulings in other courts where the subcontractors and insurers are parties, as well as incurring extra costs to defend these actions...Finally, according to the insurers, dismissal is further warranted since there are already similar cases pending Florida and there, all parties, including the subcontractors, can be joined in the litigation.”

A call to the attorney acting as the head of the joint defense committee was not immediately returned.

One of the cases involved in the MDL was filed by the trustee for Bonita Springs, Fla.-based homebuilder [WCI Communities L.L.C.](#), which formed the WCI Drywall Trust in 2009 after homebuilder WCI Communities and its subsidiaries entered bankruptcy to assume liability for claims alleging property damage or bodily injury from exposure to drywall made in China that was installed in homes built by WCI.

Other companies involved in the MDL are Centerline Homes Construction Inc. and its subsidiaries and Northstar Holdings Inc. and its subsidiaries. Both homebuilders are involved in claims similar to WCI's.

The plaintiffs contended that the subcontractors involved in these cases are not required parties and that the court can continue with the litigation in their absence, according to court documents.

Further, they contend that the “MDL is the most efficient forum for resolution of the claims since all claims can be resolved at one time, in one forum,” Judge Fallon wrote.

Robert M. Horkovich of New York-based Anderson Kill & Olick P.C. and lead counsel to Robert C. Pate, the trustee for the WCI Chinese Drywall Trust, said the insurance companies involved in the MDL have been “arguing that their piecemeal litigation in actions throughout the country should proceed in lieu of the centralized action in the MDL.”

Further, he said the insurers were trying to get the cases dismissed from the MDL because of Louisiana’s [unfavorable stance on the pollution exclusion](#).

“(Judge Fallon’s) ruling is bad for the insurance companies because it’s likely that the court will apply Louisiana’s pollution exclusion, which applies to the long-term industrial environmental contamination meaning,” Horkovich said. “The insurance companies had set up this defense to the claims to block the lawsuit by WCI and the class actions involved in the MDL because they’re not happy with the site, and now that defense has been rejected.”