

# Parties to Chinese Drywall Litigation Reach Global Settlement

Breakthrough Agreement Provides Assistance to Thousands of American Homeowners

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**Knauf Plasterboard Tianjin (KPT); Plaintiffs' Steering Committee →**

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NEW ORLEANS, Dec. 15, 2011 /PRNewswire/ -- Judge Eldon E. Fallon, United States District Court Judge for the United States District Court, Eastern District of Louisiana, presiding over MDL 2047 *In re: Chinese-Manufactured Drywall Products Liability Litigation*, advises that the Plaintiffs' Steering Committee (PSC) and Knauf Plasterboard Tianjin (KPT) today jointly announced a landmark global class action settlement that will help thousands of American homeowners affected by problems with KPT Chinese drywall. This settlement effectively signals an end to the ongoing litigation and class-action lawsuits against KPT and certain of its affiliated companies.

The agreement creates two funds from which plaintiffs may recover: the Remediation Fund and the Other Loss Fund. The Remediation Fund, which is uncapped, will pay costs of the three types of relief the class members can choose from: (i) remediation by Moss & Associates, the contractor for the remediation program established by the parties in October 2010; (ii) self-remediation by a

qualified contractor of the homeowner's choosing; and (iii) a cash out option, in which the homeowner can elect to receive a cash payment. The Other Loss Fund, which is capped, will reimburse for certain provable economic loss and provide a review process for individuals who believe they have bodily injury claims. In addition, attorneys' fees and costs will be paid.

Arnold Levin, Plaintiffs' Lead Counsel, stated "We are delighted that thousands of homeowners will have an opportunity to have these Chinese drywall complaints addressed. They will now be able to repair their property, receive compensation and move forward after suffering the effects of Chinese drywall."

Russ Herman, Plaintiffs' Liaison Counsel, assisted by his partner, Leonard Davis, both of Herman, Herman, Katz & Cotlar, LLP in New Orleans, as well as Levin, assisted by his partner, Fred Longer, both of Levin, Fishbein, Sedran & Berman in Philadelphia, were involved in negotiating the agreement on behalf of the Plaintiffs' Steering Committee. The court appointed Plaintiffs' Steering Committee who participated in the litigation and approved the resolution included: Dawn M. Barrios, Daniel K. Bryson, Ben Gordon, Daniel E. Becnel, Jr., Ervin Amado Gonzalez, Robert C. Josefsberg, Hugh P. Lambert, Gerald E. Meunier, Arnold Levin, Jerrold Seth Parker, James Robert Reeves, Christopher Seeger, Richard J. Serpe, Bruce William Steckler and Scott Weinstein.

Kerry J. Miller, Defendants' Liaison Counsel, of Frilot, LLC in New Orleans and Gregory Wallance and Steven Glickstein of Kaye Scholer LLP in New York, represented KPT.

"We have always believed that the drywall problem was best solved through a collaborative effort involving all parties rather than a courtroom," said Miller.

"From the outset, KPT has been committed to developing a comprehensive and efficient approach to resolve the problematic and complex issues arising from Chinese drywall. This global settlement is the culmination of those efforts," added Wallance and Glickstein.

All the attorneys, on behalf of the PSC and KPT, express gratitude for the "extraordinary and tireless efforts of Multi-District Litigation (MDL) Court Judge Eldon E. Fallon in making this settlement possible."

"This result is a product of the American legal system. After the trial of the *Hernandez* case and the Pilot Program, a model was created based upon the decisions rendered by Judge Fallon and experience in actually repairing homes that culminated in this settlement which took 18 months to resolve," according to Herman.

The terms of the agreement were driven by the interests of consumers, offering flexible resolutions to a complex problem in an unparalleled timeframe. It is not uncommon for comparable litigation to drag on for ten years or more which not only clogs the court system but also defers assistance to the homeowners in need. This resolution reflects the parties' desire to take a complex piece of litigation and make a resolution that enables homeowners to repair their properties and move on with their lives.

"Despite various studies which have thus far been unable to support permanent injury, plaintiffs who claim injury will be able to attempt to prove a claim and, if successful, to recover from the settlement fund," Levin stated.

Professor Stephen Saltzburg, a law professor at George Washington University Law School, and an

expert in mass tort settlements, reviewed the settlement terms, stating that "the settlement is a very creative solution to a very complex problem." He added, "The plaintiffs received complete remediation – all costs covered – with no reduction in plaintiffs' recovery for attorneys' fees or costs. It is unlikely that plaintiffs will do better in separate litigation. It is, in short, a settlement that appears fair, comprehensive and just."

Under the settlement agreement, KPT will continue to retain and supervise Moss & Associates, which is in the process of remediating more than 1,300 homes with KPT drywall, for class members electing that remediation option. All of the remediated homes will be inspected by environmental engineers, who will certify to homeowners that their homes are free of problem drywall odors and contamination. Remediation is carried out without cost to the homeowner.

The settlement ultimately is subject to final approval by Judge Fallon, pending a fairness hearing that will be scheduled in 2012.

### **Settlement Highlights**

- Settlement is intended to cover all plaintiffs in the drywall litigations in both federal and state court whose homes or businesses have KPT drywall. Approximately 5200 plaintiffs have specifically alleged that their homes contain KPT drywall; of these, approximately 2700 have submitted in some form evidence of the presence of KPT drywall.
- These plaintiffs include homeowners, commercial owners and tenants, as well as multi-unit properties and prior owners of foreclosed properties or those who have engaged in short sales due to the presence of KPT drywall.
- The Remediation Fund has three options:
  - Program Contractor Remediation Option. The Program Remediation Option provides the class member with the convenience of having Moss & Associates, who has been approved by the PSC and the Knauf Defendants, remediate the class member's property. For more information on the drywall remediation program, please visit:  
<http://www.mosscm.com/drywall/>
  - Self-Remediation Option. The Self-Remediation Option provides the class member with the choice to select his or her own qualified contractor to remediate the property
  - Cash-Out Option. The Cash-Out Option provides a cash payment with no obligation to remediate the property but the amount of cash will be less than the amount that would be expended under the two remediation options and the homeowner must take steps to assure, among other things, notice to subsequent purchasers of the presence of KPT drywall.
- Scope of remediation: all affected drywall, and with limited exceptions, unaffected drywall, will be removed from the home, and replaced with domestic drywall; the electrical wiring, smoke alarms, fire alarms, and other safety systems will be replaced; and the parties have agreed on a protocol for replacement of built-in appliances, such as refrigerators and microwaves.

- **Moving and storage Expenses:** Under the two remediation options, homeowners will receive a stipend to cover the costs of moving and storage, during the remediation, and to pay for damaged personal appliances, such as computers and flat screen televisions.
- **Other Loss Fund:** The Other Loss Fund will reimburse class members for provable economic loss, short sales, and foreclosures caused by KPT Drywall. The Fund also will provide a mechanism for resolving disputed personal injury claims.
- **Ombudsmen:** The Plaintiff Steering Committee will appoint two construction experts to answer questions of claimants regarding construction, remediation, coordination, and communication with remediation contractor Moss & Associates or Moss-selected sub-contractors on various issues.
- **KPT will pay attorney's fees and costs in addition to the relief afforded to plaintiffs under the Remediation Fund and Other Loss Fund.**

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