

Chinese Drywall Litigation & Insurance Coverage Update

Wednesday, November 11, 2009, The Ritz-Carlton, New Orleans



CONFERENCE CHAIRS:

Michael Ryan, Esq., Krupnick Campbell Malone Buser Slama Hancock Liberman & McKee, P.A., Fort Lauderdale
 Hilarie Bass, Esq., Greenberg Traurig, LLP, Miami

7:30	<p>Continental Breakfast and Morning Registration Sponsored by Building Health Sciences, Inc. - A Division of NMAS</p>	12:00	<p>The Crowded Defense Table</p> <ul style="list-style-type: none"> • Who is brought into the fray, who usually gets out, and how to coordinate among the defendants left standing • How to build up a cogent defense story and case roadmap • Assessing case strength and when to consider settlement • Possible indemnity claims for defendants and how to pursue them • Ways to minimize costs and time spent, to help the client in these hard economic times <p>Kay Baxter, Esq., Swetman Baxter Massenburg, LLC, New Orleans Leigh Ann Schell, Esq., Kuchler Polk Schell Weiner & Richeson, LLC, New Orleans</p>
7:50	<p>Introduction and Opening Remarks</p>	12:45	<p>Networking Luncheon Location: Algiers</p>
8:00	<p>Latest on Class Actions and the MDL</p> <ul style="list-style-type: none"> • How cases are being phased and tried in the MDL • The first set of bellwether cases in the MDL - the case details, current status and where we will be in 2010 • Where are cases being filed-directly with the MDL or transferring in? • Big discovery issues and the results of coordinated inspections from the MDL • Where have class actions been filed, against whom and what is the status of the pending cases? • Do you want to be part of or defending against a class action in state court? • The benefits of being in federal court or part of the MDL <p>Allan Kanner, Esq., Kanner & Whiteley, L.L.C., New Orleans Hilarie Bass, Esq., Greenberg Traurig, LLP, Miami</p>	1:45	<p>Creating Efficiency, Control & Return on Investment in Cases Daniel Gold, Esq., Litigation Services Specialist - U.S. Legal Markets, LexisNexis®, Charlotte, NC</p>
8:45	<p>Toxicity and Health Damages: Proving Causation</p> <ul style="list-style-type: none"> • Toxicity and the distinction between regulatory risk assessment and toxicologic causation analysis • What needs to be proven or disproven on toxicity: studies and reports needed, threshold numbers and the data that will make or break your case • Determining if there are additive or synergistic effects from the potential toxicants • The CPSC-the kinds of studies they are doing, what will they reveal or have revealed and next steps • New inspection protocols, confounding factors and possible alternative causes • Courses of treatment for health injuries, injury diagnosis, the standard of care and living during treatment • Relocation recommendation decisions and costs of care <p>Richard Parent, PhD, DABT, FATS, RAC, ERT, President, Consultox, Limited, Damariscotta, ME Hung Cheung, MD, MPH, FACOEM, President, Dr. Cheung/OEM Advisor, LLC, Baltimore</p>	2:00	<p>CDW, the Numbers and its Impact on All Parties</p> <ul style="list-style-type: none"> • Assessing the potential costs nationwide, potential claims and settlements • What public agencies are seeing on the front lines, how they are handling the onslaught of cases, and what this means to your case • The builder's perspective-motivated to help but drowning in an economic downturn • The homeowner-the practical side of dealing with CDW in your home <p>Katherine Ann Cahill, Global Managing Director, Product Risk Services, Marsh USA, Inc., New York Paul Hinton, Vice President, NERA Economic Consulting, New York Bruce Hallock, PSP, CFCC, Vice President-Construction Consulting Practice, Marsh USA, Inc., Sunrise, FL</p>
9:45	<p>Morning Break sponsored by Marsh</p>	2:45	<p>Important Coverage Considerations for Chinese Drywall Claims</p> <ul style="list-style-type: none"> • When multiple claims are made, do the deductibles and SIRs eat up the whole loss? • Are the fumes harmful enough to trigger the pollution exclusion and how to deal with jurisdictions not requiring "harmful fumes" for trigger • Do the "your work" or "your product" exclusions take away the central cost of replacing the drywall? • Other important exclusions: ongoing operations; damage to impaired property or property not physically damaged; and recall of products, work or impaired property <p>Michael Packer, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Fort Lauderdale Robert Horkovich, Esq., Anderson Kill & Olick, P.C., New York</p>
10:00	<p>Home and Property: What Happens When CDW Hits</p> <ul style="list-style-type: none"> • Product identification: required tests and lessons learned • Why we are not seeing the same effects in commercial buildings and other residential area builds? • Property damage: appliances and electrical damage, potential fire hazards, and cross-contamination issues • How much does remediation cost, avoiding unnecessary costs, and determining the proper project scope • Phosphogypsum • Risk reduction: how to prevent future liability • The real estate valuation implications of CDW (both pre and post-remediation)? • How should appraisals be conducted in the MDL and after the bellwethers? <p>Russell Nassof, Esq., Principal, TRC, Phoenix Mark Rigler, PhD, Senior Consultant, MAS, LLC, Suwanee, GA John Kilpatrick, PhD, MRICS, Chief Executive Officer, Greenfield Advisors, Seattle</p>	3:45	<p>Afternoon Break</p>
11:00	<p>Claims Processing-Special Considerations for the Various Parties</p> <ul style="list-style-type: none"> • Notice & which policies to place on • Allocation of coverage among policies <p>Special considerations under homeowner policies</p> <ul style="list-style-type: none"> • "No Action" policy conditions • "Voluntary Payment" prohibitions in policies • Policy coverage for mitigation efforts • The extent to which an additional insured gets the full coverage available to subcontractor's policy <p>Matthew Jacobs, Esq., Jenner & Block LLP, Washington, DC Carol Kreiling, Esq., Assistant Vice President-Claims & Liability, Swiss Reinsurance America Corporation, Overland Park, KS Owen Shean, Esq., Akerman Senterfitt, Vienna, VA</p>	4:00	<p>Service Obstacles, Alternative Case Structures and Judgments Involving Chinese Defendants</p> <ul style="list-style-type: none"> • Service difficulties and mitigating costs in state court: service of process and "informal" service-when is it an option? • Potential leverage points against Chinese defendants • Enforcing judgments in China and enforcing judgments against Chinese companies in the US and elsewhere • Pursuing discovery in China <p>Daniel Harris, Esq., Harris & Moure, PLLC, Seattle</p>
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