

## 4 Tips For Avoiding Product Defects In Post-Storm Rebuilding

By **Emily Field**

*Law360 (May 21, 2018, 2:25 PM EDT)* -- As areas devastated by the hurricanes of 2017 begin the rebuilding process, here are tips to avoid getting caught up in a situation like the tainted Chinese drywall fiasco that followed Hurricanes Rita and Katrina in 2005.

The defective drywall was imported from China and installed in thousands of homes, filling the need for construction materials in the wake of the hurricanes and sparking a prolonged multidistrict litigation that started in 2009. As property owners affected by Hurricanes Harvey, Irma and Maria rebuild, here are four tips to minimize the risk of getting caught in a similar product problem and how to handle problems if they arise.

### **Try to Stick With Known Products**

After natural disasters like hurricanes, there are likely to be localized shortages of building supplies and people may cast a wider net to find what they need to rebuild, Faegre Baker Daniels partner James Hartnett said.

This can make it harder to assess the quality of building materials.

“It’s inherently riskier to order materials from an unknown foreign supplier than to order them from Georgia Pacific or U.S. Gypsum,” Hartnett said.

In the case of the Chinese drywall, there was a defect that wasn’t apparent prior to construction, Hartnett said. This defect caused strange smells and health problems like respiratory issues, irritated eyes and nosebleeds. It also seemed to meddle with the normal functioning of household appliances like refrigerators and microwaves, as the harmful odors emitted from the drywall corroded the metal in those products.

“One thing that can be done about these products is that they can be tested before they’re actually installed,” Hartnett said.

Mock-ups can be built with different products to make sure the products perform correctly, Hartnett suggested, so that latent defects can be detected before they become widespread problems. But this might not be practical in natural disaster scenarios where many houses have to be rebuilt quickly, Hartnett said.

“When you’re faced with material shortages, the best thing you can do is rely on reputable suppliers and reputable brand names as much as possible,” Hartnett said.

### **Communicate, Communicate, Communicate**

One of the keys to the construction process is having effective communication with the contractor and the teams of professionals involved in the project, Bowman and Brooke LLP partner C.J. Schoenwetter said.

“You have to start that communications process early and then continue with it throughout the process,” Schoenwetter said. “That means hiring the right people, having them at the job site, meeting with the folks that are working there and holding weekly meetings.”

At these meetings, the foreman should be asking questions about how the project is going, such as whether people are falling behind or if there are any emerging issues, Schoenwetter said.

Through this process, small problems can be spotted before they turn into bigger ones.

These weekly meetings can also prove useful if a problem escalates to the point of litigation, Schoenwetter said. A log of communications about an issue cuts down on time spent on discovery, the most expensive part of litigation, and strengthens a complaint, Schoenwetter said.

“These weekly meetings, asking questions, listening to the answers, and sending out emails to follow up and then saving those emails, it’s wonderful,” Schoenwetter said. “It’s also wonderful because if you’re asking those questions and no one responds, that’s pretty good evidence too that you’ve done your job.”

### **Hire the Right People**

Because property owners — whether commercial or residential — are unlikely to know how to spot potentially iffy building supplies, it’s paramount that they vet who they hire to do the work, Bradley Arant Boult Cummings LLP partner Jon Paul Hoelscher said.

“People who are reputable are not going to take shortcuts,” Hoelscher said.

Since bad supplies can cause headaches for contractors, they usually have quality controls in place to catch potential problems, said Ian Faria, also a Bradley Arant partner.

“If they perceive any type of issue, they try to address it right then and there,” Faria said.

A natural disaster can cause labor shortages as well as supply shortages, and often out-of-staters come to a devastated area to pick up the extra work, attorneys said.

But hiring locally adds another layer of protection, according to Schoenwetter.

“I like to know the people that I’m going to be in business with because I think when it’s time to make difficult choices, would-be litigants like to be nameless, faceless, protected by relative anonymity, and perhaps not able to be located for service,” Schoenwetter said.

## **Make Sure the Right Parties Have the Right Insurance**

In case something does go wrong, the contract for the project should stipulate that whoever is bearing the risk is properly insured, Schoenwetter said.

“That means having the correct type of insurance, in the right amount and then you need to make sure they have an insurance company that isn’t going to go bankrupt any time soon,” Schoenwetter said.

“There are ratings for insurance companies and you want to specify in your contract that they have an insurance contract with a company with a high enough rating.”

Property owners should be named insureds under the general contractor’s policy and the general contractor and the owner also should be named insureds under the subcontractor’s policy.

“By being a named insured on the other’s policy, it help prevents the insurance carriers from coming back on a subrogation claim,” Schoenwetter said.

--Editing by Kelly Duncan and Sarah Golin.

---

All Content © 2003-2018, Portfolio Media, Inc.

