

[Alabama Federal Judge Dismisses Insurer's Chinese Drywall Coverage Dispute](#)

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Body

A federal judge in Alabama on Nov. 17 granted motions to dismiss an insurance coverage dispute regarding underlying Chinese drywall claims because the amount in controversy did not exceed the federal requirement of \$75,000 (SUA Insurance Co. v. Classic Home Builders LLC, et al., No. 10-0388, S.D. Ala.; [2010 U.S. Dist. LEXIS 122406](#)).

(Order available 03-101123-007R)

Robert and Wanda White sued Classic Home Builders LLC, alleging that it constructed their home using defective drywall, resulting in various damages.

They alleged that Classic Home incorporated defective Chinese drywall, which emits hydrogen sulfides that cause physical problems and corrode metal materials, into their house.

The Whites asserted claims for negligence, unjust enrichment, implied warranty of fitness for a particular purpose, implied warranty of merchantability, express warranty, deceptive and unfair trade practices, breach of contract, fraudulent misrepresentation and fraudulent concealment.

Classic Home tendered the claim to SUA Insurance Co., but the insurer denied coverage.

SUA then sued Classic and the Whites, seeking a declaration that it owes Classic Home no defense or indemnity obligation arising out of the underlying action. The insured and the Whites filed separate motions to dismiss, arguing that SUA has not established that the amount in controversy exceeds \$75,000.

Amount In Controversy

SUA argued that the Whites demand that Classic Home replace or repair their home and that the contract sales price from Classic Home to the Whites was \$146,000. However, U.S. Chief Judge William H. Steele of the Southern

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District of Alabama disagreed, finding that the Whites do not demand that their home be literally replaced from the foundation up.

"As the full ad damnum clause - of which the quoted phrase is but a small fraction - makes clear, what they seek is replacement of the defective drywall and repair or replacement of specific components that have been damaged by escaping hydrogen sulfides," he said. "Whatever the scope of the problem, the Whites demand far less than full replacement of the entire house, and SUA cannot establish jurisdiction based on a measure of damages the Whites do not seek."

The judge then explained that the insurer offered no basis for him to conclude that if the Whites are successful, they are more likely to be awarded the cost to fully replace their home than the cost to repair or replace discrete components of the home. He also found that SUA did not establish that the replacement cost for heating, venting and air conditioning systems, refrigerators, microwaves, faucets, utensils, copper tubing and plumbing, electrical wiring and components, electronics and computers, personal property, furnishings, appliances, and other metal surfaces and household items is so great that the expense of replacement is likely to exceed \$75,000.

Other Components

He also held that SUA did not show the amount of damages for the costs the Whites seek for the inspection and testing of their home.

"That is, even though the affected components probably represent a relatively small fraction of the cost of building the house, SUA invites the Court to assume that replacing them will cost many times more than they did originally," Judge Steele said. "What SUA invokes is not common sense but very nearly its exact opposite. While replacing the affected components obviously will cost something, SUA provides only impermissible speculation that the cost will be even a sizable fraction of \$75,000."

He then said, "SUA also lists, then ignores, the state complaint's demand for equitable relief from Classic in the form of disgorging its profit on the installation of the drywall and/or restitution. The complaint demands 'restitution to the Plaintiffs for the injuries or damages as set forth herein.' Restitution is therefore redundant with the complaint's claimed legal damages and thus cannot be awarded in addition to those damages."

Jason R. Watkins of Ball, Ball, Matthews & Novak in Mobile represents Classic Home. David F. Daniell and Jonathon R. Law of Daniell, Upton, Perry & Morris in Daphne, Ala., represent the Whites. Christina M. Bolin of Alford, Clausen & McDonald in Mobile and Richard M. Kuntz of Bollinger Ruberry & Garvey in Chicago represent SUA.

(Additional documents available: Classic Home's motion to dismiss 03-101123-013B

The Whites' motion to dismiss 03-101123-014B)

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