

**STATEMENT OF ROBERT D. GARY, PRIVATE ATTORNEY,
REPRESENTING VICTIMS OF CONTAMINATED DRYWALL, SUBMITTED
TO THE UNITED STATES SENATE SUBCOMMITTEE ON CONSUMER
PROTECTION, PRODUCT SAFETY AND INSURANCE**

Mr. Chairman and Members of the Subcommittee: My name is Robert Gary. I am an attorney with Gary, Naegele & Theado, LLC and, along with colleagues from other firms, have been representing the victims of contaminated drywall since February of 2009. I attended the hearings held before this subcommittee on May 21, 2009 and was invited by a staff member of the committee to submit a comment and questions related to the issue of whether the well documented problems associated with Chinese drywall may extend to drywall manufactured in the United States.

During the course of the testimony on May 21, there were frequent comparisons to imported Chinese drywall which has been linked to the corrosion of copper in homes and health concerns to presumably safe "American drywall." In fact, the term "American drywall" encompasses three distinct forms of drywall which may not all be equally safe for use in home construction. Whether a particular wall board product is mined dry wall or recycled American drywall made from fly ash or scrap, can usually be easily determined. The manufacturers brand name and information, *i.e.* "Gold Bond," will indicate whether the particular dry wall is synthetic (fly ash) or recycled (scrap dry wall).

I. MINED CALCIUM SULFATE DRYWALL

Most drywall in the United States is manufactured from mined calcium sulfate which is a naturally occurring benign mineral found in deposit in ancient seabeds. The mined gypsum is made into a paste and sandwiched between layers of paper. Drywall made from mined calcium sulfate is pure white and odorless while the Chinese drywall which is the subject of these hearings has a grey color and omits a distinct sulfur odor.

II. SYNTHETIC DRYWALL

Dry wall manufactured with recycled fly ash is commonly referred to as synthetic dry wall. Synthetic drywall has been reported to account for over 20% of the American drywall market. Synthetic gypsum is a mix of calcium sulfate and fly ash which is a by-product from coal power plant exhaust gases. The solid waste fly ash comes from a process of scrubbing smokestack emissions. The TVA, Duke Energy, Tampa Electric and scores of other coal fired power plants across the country provide enormous quantities of fly ash for the manufacture of synthetic drywall. Some American drywall companies have built facilities devoted to the recycling of fly ash from our country's coal fired powered electricity facilities and an industry exists just for the purpose of selling waste fly ash to American drywall producers to create synthetic drywall.

Recycled fly ash for the production of synthetic dry wall has been presumed not to be a problem in America because our environmental regulations mandate that our nation's coal powered utilities must scrub the sulfur dioxide from their gases. Theoretically it is only processed fly ash with the sulfur dioxide removed which is used

in the production of synthetic dry wall. It is a subject of speculation that a possible source of the problems with imported Chinese drywall is that it was manufactured with fly ash that may not have been properly scrubbed and as a result might contain unacceptably high levels of sulfur dioxide. Upon closer inspection it may very well be determined that our domestic drywall manufactured with fly ash also has unacceptable levels of sulfur dioxide. Without an understanding at what concentrations sulfur dioxide presents a threat, the potential scope of this problem is extremely difficult to even estimate.

III. RECYCLED SCRAP GYPSUM

It is estimated that gypsum scrap from new construction constitutes at least 12% of all the waste from new construction in North America. As a result of the generation of this huge volume of waste drywall a new industry has been created in which scrap drywall is collected and recycled for use in the manufacture of new drywall. Within recent years, recycling companies have developed working relationships with the manufacturers of American drywall to provide manufacturers more efficient access to scrap drywall for use in the manufacture of new product.

Containers are placed at building sites and waste transfer stations and processed for resale to United States gypsum manufacturers. In addition to the collection at construction sites an additional source of scrap drywall is dry wall which is removed from landfills. In the manufacture of drywall using recycled scrap drywall the ratio is generally 15 to 25% recycled material which is combined with mined gypsum. As with synthetic drywall using fly ash, recycled scrap drywall has an ever increasing share of the American drywall market.

IV. POTENTIAL PROBLEMS WITH DRY WALL MANUFACTURED WITH FLY ASH AND/OR SCRAP DRY WALL

It is beginning to emerge in limited numbers that some homes that have been constructed with American manufactured dry wall which used either recycled fly ash or scrap dry wall are exhibiting the very same problems as have been reported with Chinese dry wall. These homes which have been identified as having been constructed with American dry wall are experiencing the failure of their appliances, blackening of exposed copper and respiratory complaints. To date one lawsuit has been filed alleging that fly ash is the source of the problem for American dry wall. The submitted testimony of Brenda Brincku (Alba, FL) is illustrative of the problems that some homeowners with American recycled dry wall are experiencing. The small number of such reported complaints may mean the problem is an isolated one or that, as with Chinese dry wall, it took time for the scope of the problem to percolate to the surface.

The potential problem with fly ash is that it comes from a variety of sources and vast quantities are used. It is possible that, as in China, in some instances high sulfur content dry wall is being used to manufacture synthetic dry wall.

There is also the very real possibility that the recycled scrap dry wall harvested from containers and or landfills may contain discarded toxic Chinese dry wall. Well before the problem with Chinese dry wall was identified scrap dry wall was being

reprocessed and recycled into new product by American companies. In addition, there is possible cross contamination from a variety of materials from dry wall removed from land fills.

In view of the tragedy created by the unanticipated and unexpected crisis created by the toxic effects of Chinese drywall prudence dictates that potential questions surrounding recycled dry wall manufactured in this country be addressed and answered even if the result only serves the purpose to provides reassurance that the potentially dangerous side effects of recycled American drywall is an isolated problem.

QUESTIONS PERTAINING TO THE SAFETY OF RECYCLED AMERICAN DRY WALL

- 1 Are there any purity standards for the fly ash used in synthetic dry wall?
- 2 At what levels will the sulfur content of fly ash produce toxic gasses when exposed to high humidity?
- 3 Is any imported fly ash used in the production of domestic dry wall?
- 4 Should the domestic recycled dry wall be required to specify if it is manufactured with fly ash or scrap dry wall?
- 5 Should manufacturers of synthetic and recycled dry wall be required to provide information as to the ratios of fly ash or scrap to mined dry wall?
- 6 Have the government agencies which are comparing the characteristics of American to Chinese drywall distinguished mined drywall from recycled dry wall?
- 7 If the answer to 6 is yes, has synthetic dry wall manufactured with fly ash been distinguished from dry wall manufactured using scrap dry wall?
- 8 How can it be determined if scrap Chinese dry wall has contaminated American manufactured dry wall through the recycling process?
- 9 Are there any standards for the reclaiming of scrap dry wall from landfills?
- 10 Are there any standards for the reclaiming of dry wall from collection sites?
- 11 Are their any uniform requirements as to the ratio of recycled scrap dry wall to mined dry wall in recycled dry wall?
- 12 Are there any requirements as to the ratio of fly ash to mined calcium sulfite in synthetic dry wall?

Obviously these proposed questions do little more than raise the question if in fact there is the potential for a repeat of the Chinese dry wall debacle with our own domestic recycled product. It is beyond debate that given the specter of even a handful of homes with American recycled dry wall evidencing the same problems as Chinese dry wall it is the best interests of the American home owner to be both aggressive and proactive.

Thank you for the opportunity to present my concerns and questions to the committee.