

Spray Polyurethane Foam Insulation Products Liability Litigation – Cooling Down or Heating Up?

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As consumers grow more sophisticated and interested in "Green Building" and energy efficiency, building product manufacturers continue to develop technologies and products to meet changing consumer demands. Low-e double pane windows, radiant barriers, and advanced insulation products are common in residential and commercial construction today. Spray polyurethane foam (SPF) insulation, in particular, is popular, in part, because it is designed to decrease moisture intrusion and energy loss and thereby increase overall energy efficiency, which can result in lower utility bills. It is also used sometimes as a sound barrier between walls and between floors in multi-level homes and buildings. There are numerous manufacturers with varying SPF insulation products. In general, SPF insulation is installed by spraying the foam onto substrate surfaces in accordance with manufacturer specifications. The foam expands, fills gaps, and then cures to create a layer of insulation. SPF insulation is commonly installed between framing studs on wood-framed walls instead of traditional batt insulation. It also is commonly installed in attics by spraying it onto the underside of the roof decking, which may eliminate the need for traditional batt or blown insulation on the attic floor, creating a semi-conditioned attic space and insulating the HVAC ducts from excessive attic temperatures. Despite its benefits and popularity, however, SPF insulation is the subject of numerous relatively recent product liability lawsuits. Since early 2012, at least thirteen lawsuits, most of which are class actions, have been filed, including at least two as recently as April 2013. Most of the lawsuits were filed in Florida and Connecticut, but others were filed in Michigan, New Jersey, New York, Pennsylvania, and Wisconsin. The plaintiffs in the lawsuits are homeowners. So far, the defendants named include three different SPF insulation manufacturers, various distributors, installers and general contractors, and one home builder. The plaintiffs generally allege that the SPF insulation is toxic because of its design, or because the manufacturers' exacting installation specifications make it difficult to properly install, and that it off-gasses and causes

headaches, neurological issues, eye, nose, and throat irritations, and respiratory issues. *See, e.g., Markey v. LaPolla Indus., Inc., et al.*, No. 2:12-cv-04622-JS-ETB (Dkt. No. 1, 11, 15) (E.D.N.Y. Sep. 14, 2012); *Slemmer v. NCFI Polyurethanes, et al.*, No. 2:12-cv-06542-JD (Dkt. No. 1, 11, 16) (E.D. Pa. Nov. 20, 2012); *Steinhardt v. Demilec (USA) LLC, et al.*, No. 9:13-cv-80354-DMM (Dkt. No. 1, 12, 17) (S.D. Fla. Apr. 12, 2013). The causes of action are very similar to those alleged in the Chinese drywall litigation, including negligence, negligent supervision, strict liability, breach of warranties, unjust enrichment, violation of consumer protection and unfair trade practices laws, injunctive relief, and medical monitoring. The plaintiffs allege damages for the costs of inspection, the costs to remedy the effects of the SPF, as well as to remove and replace it and other property impacted by it, the loss of use and enjoyment of their homes, including costs and expenses associated with the need for other temporary housing, and damages associated with non-specific personal injuries or increased risk of injuries, including medical monitoring. *See, e.g., Markey* (Dkt. No. 1, 28-29); *Slemmer* (Dkt. No. 1, 27-28); *Steinhardt* (Dkt. No. 1, 29-30). On February 27, 2013, the plaintiff in one of the Florida actions, Lucille Renzi, filed a motion pursuant to the Rules of Procedure on Multi-District Litigation to transfer all of the SPF insulation lawsuits to the Southern District of Florida, where her lawsuit was pending, for coordinated and consolidated pre-trial proceedings. Renzi asserted that seven other "substantially similar putative class action[s] involving the same allegedly tortious manufacture, distribution, marketing, labeling, installation, and inspection of SPF" existed at the time of her motion that "all involve identical conduct on the part of the defendants" and "common questions of law and fact." *See IN RE: Spray Polyurethane Foam Insulation Prods. Liab. Litig.*, MDL No. 2444 (Dkt. No. 1, 2-9, 11). She argued that centralization in the Southern District of Florida will save the plaintiffs and defendants the burden of litigating overlapping lawsuits in multiple jurisdictions across the country, and will be more convenient and conserve resources. *See id.* Defendants filed numerous responses in opposition. One manufacturer argued that the "cases offered for consolidation are essentially identical complaints strategically filed solely to manufacture the appearance that a MDL is necessary" and that the complaints have little in common and instead turn on individualized issues including claims stemming from "different products, purchased and installed at different times, in different geographical locations, by different contractors, each dependent on different and distinct ventilation designs, and allege different injuries." *See id.* (Dkt. 62). The lone builder defendant argued that it is a defendant in only one of the cases, it is the only builder defendant in any of the cases, eleven of the other defendants are defendants in only one of the eight cases, no single defendant is common to all of the cases, and that the cases involve five different types of SPF insulation manufactured by three different defendants and distributed by seven different defendants. *See id.* (Dkt. 66). The briefing period is closed, and a hearing before the Judicial Panel on Multi-District Litigation is set for May 30, 2013. Until then, the cases are likely to move slowly. Regardless of the JPML's decision on centralization, however, these cases will likely involve many of the same legal issues we saw in the Chinese drywall litigation, if perhaps on a different scope, if they survive. Stay tuned. *Originally published in DRI's Building Blocks, The Newsletter of the Product Liability Committee's Building Products SLG (May 24, 2013).* Read the follow up article, "[Spray Polyurethane Foam Insulation Products Liability Litigation – An Update.](#)"

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