

Bron: Law 360

## Foam Makers Targeted Over Allegedly Toxic Insulation

By **Gavin Broady**

Law360, New York (November 21, 2012, 12:27 PM ET) -- Two Pennsylvania homeowners launched a nationwide class action against NCFI Polyurethanes and McGlaughlin Spray Foam Insulation Inc. on Tuesday, accusing them of selling toxic spray polyurethane foam insulation that can cause property damage and health risks.

The proposed class, led by Daniel and Paula Slemmer, claims the Sealite and InsulStar brands of spray polyurethane foam, or SPF, manufactured by NCFI and installed by McGlaughlin are defective. They claim the foam remains toxic after being installed in homes, and that it poses such risks to homeowners and their residences that the only remedy is complete removal.

“When applied, the resulting polyurethane foam is supposed to become inert and nontoxic,” the Slemmers said. “But SPF remains toxic after installation because either, as designed, it is impossible to become inert and nontoxic even under optimal conditions; or proper installation (and thus nontoxicity) is nearly impossible given the exacting set of installation requirements and inadequate training and installer certification methods,” the suit said.

The Slemmers assert claims of negligence, strict liability, breach of express and implied warranties, unjust enrichment, and violation of various consumer protection acts against both defendants. The plaintiffs seek injunctive relief and medical monitoring as well as actual, compensatory and punitive damages.

The insulation, which NCFI allegedly markets as a safe, nontoxic product, is in fact defectively designed, continuing to emit chemicals under a process after installation known as “off-gassing,” in which dangerous chemicals are released into the air, according to the complaint.

The Slemmers allege it is well known in the home insulation industry that SPF is unstable and prone to failure given the complexity and difficulty of proper installation, which requires not only strict application techniques but also a regular maintenance program.

The U.S. [Environmental Protection Agency](#) has warned consumers of the potential health risks of exposure to SPF chemicals, which include headaches, respiratory issues, neurological issues, and eye, nose and throat irritation. The agency also warns that improperly applied SPF chemical contaminants may migrate to other parts of the structure and cause damage as well as residual odors, according to the complaint.

Among the harmful chemicals SPF allegedly contains are aromatic isocyanite, which the [Occupational Safety and Health Administration](#) classifies as hazardous because repeated exposure can cause respiratory injuries and irritation to the eyes and skin, the suit says.

The foam also contains known carcinogens such as formaldehyde and other volatile organic compounds, as well as a flame retardant known as chlorinated tris that has been banned in children's products, the Slemmers assert.

The plaintiffs contend the defendants' misrepresentation of the safety of SPF constitutes fraudulent concealment, and that therefore any statute of limitations has been tolled.

The suit proposes a manufacturer class comprised of all homeowners nationwide whose homes contained SPF that was manufactured, sold, distributed or supplied by NCFI, as well as a subclass of all nationwide persons who owned or resided in property containing SPF foam that was sold, distributed, supplied, marketed, inspected, imported, exported, brokered, delivered or installed by McGlaughlin.

In addition, the Slemmers are asserting a pair of coinciding subclasses consisting of Pennsylvania residents whose homes contain SPF from NCFI and McGlaughlin.

Representatives for the parties were not immediately available for comment Wednesday.

The Slemmers are represented by Jonathan Shub of [Seeger Weiss LLP](#).

Counsel information for the defendants was not immediately available.

The case is Slemmer et al. v. NCFI Polyurethanes et al., case number [2:12-cv-06542](#), in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Eydie Cubarrubia.