

LEGAL ALERT

Chinese Drywall

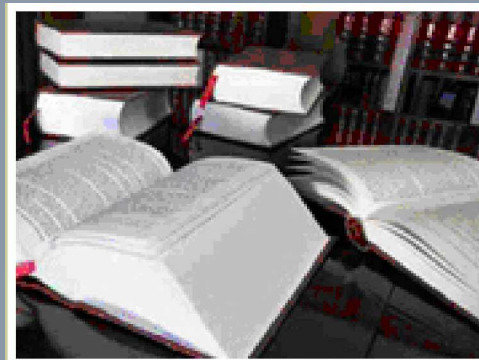
No Coverage Under Homeowners Policy

In the first case of its kind, Judge Doumar of the United States District Court for the Eastern District of Virginia rejected a claim that coverage was afforded under a homeowners policy for losses associated with Chinese drywall. *TRAVCO v. Ward*, ___ F. Supp. 2d ___, 2010 WL 2222255 (E.D. Va. 2010). Judge Doumar's opinion is relatively extensive and detailed. The extent to which it will influence other courts remains to be seen but it will at least provide counsel for insurers with a useful framework for opposing first-party claims for coverage based on damage caused by Chinese drywall.

The insured had made a claim for various types of damage that he alleged were caused by the off-gassing of sulfuric gas from Chinese drywall. In particular, the insured sought coverage for (1) the cost of removing and replacing the drywall; (2) damage to air-conditioning equipment due to corrosion; (3) damage to the garage door resulting from corrosion; (4) damage to a flat screen television; and (4) any other damage caused by the drywall or caused by the discharge of gas, including damage to wiring and copper components of the home.

The court first found that the residence had suffered a "direct physical loss" and that the cost of removing and replacing the drywall fell within the initial coverage provisions in the policy. The court went on, however, to determine that the insurer had sustained its burden of establishing that a number of limitations and exclusions were applicable. The policy stated that latent defects were not a peril insured against. The court held that the cost of removing and replacing the drywall was due to a latent defect and, therefore, outside the coverage the policy. The policy also contained an exclusion for loss caused by faulty or defective materials used in construction. The court held that this exclusion was applicable. Because the claims for damage to the garage door and the air-conditioning system

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were based on corrosion, the held that coverage for those losses was excluded by a clause stating that the insurer did not provide coverage for loss caused by rust or other corrosion. The court further found that the corrosion exclusion applied to additional losses claimed by the insured for damage to the structural, mechanical and plumbing components. As the final basis for its rejection of the insured's claim, the court cited the pollution exclusion and held that the gases released by the drywall clearly constituted irritants and contaminates that were discharged or dispersed into the home.

Although holding out little hope that the insured would be able to make out a claim for covered damage, the court partially denied the insurer's motion for summary on the grounds that the insured might be able to establish a covered "ensuing loss" in the future.

Counsel for the homeowner filed a notice of appeal to the Fourth Circuit on June 24, 2010.