

## **Louisiana Federal Court Finds There Is No First Party Property Coverage for Homeowners' Chinese Drywall Claims**

### ***Property Coverage Update***

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### ***U.S. District Court for the Eastern District of Louisiana***

In *In re Chinese Manufactured Drywall Products Liability Litigation*, 2010 WL 5288032 (E.D. La. Dec. 16, 2010), a federal court in Louisiana overseeing the Chinese drywall multi-district litigation issued an order dismissing homeowner claims against several insurance carriers for first-party insurance coverage resulting from damage caused by defective Chinese drywall. The court addressed whether the homeowners' insurers were responsible for paying for the cost to replace the drywall and repair the homes.

The insurers moved to dismiss the homeowners' claims based on the applicability of the following policy exclusions: (1) latent defect; (2) faulty materials; (3) corrosion; (4) pollution/contamination; and (5) dampness. Applying Louisiana law, the court determined that there was no coverage based on two of these exclusions – the faulty materials and corrosion exclusions. Specifically, the court noted that the broad definition of "faulty materials" mandated application of the exclusion and that it was inconsistent for the homeowners to argue that they suffered loss because of the Chinese drywall but that the drywall was not in any way faulty. The court also held that the corrosion exclusion should be broadly applied because much of the homeowners' damage was caused by corrosion of metal components from the release of sulfur gas from the drywall.

The court refused to apply three of the exclusions – the latent defect, pollution and dampness exclusions. As to the latent defect exclusion, the court noted that it was unable to determine whether the damage caused by the Chinese drywall constituted a latent defect and therefore held that the insurers failed to meet their burden that the exclusion should be applied. Similarly, the court refused to apply the dampness exclusion because there were no allegations to suggest that dampness or

water vapor caused the damage. The court also held the pollution exclusion was inapplicable to the homeowners' claims. In so doing, the court relied on the Louisiana Supreme Court decision in *Doerr v. Mobil Oil Corp.*, 774 So. 2d 119 (La. 2000), which narrowly construed the pollution exclusion to traditional environmental pollution. The insurers argued that the court should instead follow the recent decision in *Travco Ins. Co. v. Ward*, 715 F. Supp. 2d 699 (E.D. Va. 2010), where a Virginia federal judge held that the pollution exclusion applied to bar a homeowner's Chinese drywall claim. The court rejected the insurers' argument and noted that *Travco* was inapplicable because Virginia and Louisiana law differed on the application of the pollution exclusion.

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