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## Supreme Court of Virginia Relies On Dictionary To Deny Insurance Coverage For Chinese Drywall

This update is not legal advice and reflects only some new decisions which may be of interest to the Virginia construction industry and does not cover all changes and legislative action. Additional information on any of the new laws may be obtained by contacting [Chandra Lantz](mailto:clantz@hf-law.com) at [clantz@hf-law.com](mailto:clantz@hf-law.com) or 804.771.9586.

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### CHINESE DRYWALL SOLUTION IS EXCLUDED BY HOMEOWNER'S INSURANCE POLICY

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*Travco Insurance Co. v. Ward*, Record No. 120347 (November 1, 2012)

The Supreme Court of Virginia ruled Friday that a homeowner's insurance policy does not cover damages caused by "Chinese Drywall." This type of drywall, imported from China in large quantities several years ago, releases sulfuric vapors that are alleged to cause health problems and property damage sufficient to render homes uninhabitable. Because the Supreme Court's decision was prompted by certified questions of law posed by the Fourth Circuit Court of Appeals, the issues narrowly involved interpretation of exclusions in the homeowner's insurance policy retracting coverage for loss caused by:

- (a) "mechanical breakdown, latent defect, inherent vice, or any quality in property that causes it to damage itself";
- (b) "faulty, inadequate, or defective materials";
- (c) "rust or other corrosion"; or
- (d) "pollutants," where pollutant is defined as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste."

The Court found that not just one – but all four – of the exclusions applied to exclude coverage. In doing so, the Court used a familiar tool for the application of insurance policies: the dictionary. In response to the homeowner's arguments that the exclusions were ambiguous and the insurer should not be allowed to rely on them to avoid coverage, the Court turned to the dictionary meaning of many of the terms used.

In rendering its opinion, the Court visited many terms familiar in construction disputes. A "latent defect," the Court concluded, is one that is "hidden or concealed, and not visible or apparent." "Faulty," "defective" and "inadequate" were given their plain meanings from the Webster's and Oxford dictionaries. "Corrosion" was found to mean not just the result, but the process too. Finally, the Court reasoned, the term "pollution" included off-gassing, even if the release of sulfuric gases is not a traditional hotbed of contamination.

The full text of the Court's opinion can be found on its website at this link: [TravCo Insurance v. Ward](#).