

[Sometimes Good Deeds Go Punished in Construction](#)



As all of us are aware in the construction world, aside from [green building](#), some of the biggest headlines are reserved for [Chinese drywall claims](#). While contractors that got caught using this inferior product may want to do the right thing and fix issues for homeowners, they need to be careful.

Recently, the U. S. District Court for the [Eastern District of Virginia](#) weighed in on the issue of an insurers duty to defend a home builder that voluntarily institutes a remediation plan to fix drywall issues. In [Builders Mutual Ins. Co. v. Dragas Mgmt Corp.](#), the Court faced the question of what duty an insurance company has to pay for expenses that are incurred by a builder that voluntarily remediates building issues.

In [Dragas](#), prior to any suit being filed by a homeowner, the contractor decided that it would seek out information from the owners of homes that it had constructed regarding health and other issues caused by its use of Chinese drywall and then seek to cure those issues. The contractor then sent correspondence outlining its plan to the insurance carrier from which it received no objection. Later, the contractor made a claim for its anticipated costs in fixing these issues. The insurance carrier denied the claim.

The Virginia Court ruled in the insurer's favor. In doing so, the court determined that, based on the policies in question, the insurance company had no duty to pay for anticipated costs without a claim or evidence that the contractor had a legal obligation to pay, in the form of lawsuits, judgments, administrative obligations or even threatened lawsuits. In short, because the contractor decided to act in a good hearted manner and try and head off issues before they arose, it was not entitled to reimbursement from the insurance.

The moral of this story, aside from read your insurance contracts and make sure you, as a construction professional, understand them, is to be careful in assuming that what you feel to be your moral obligation will be seen by the courts to also be a legal obligation. Before acting (even with the best of intentions) you should consult an [attorney](#) and make sure that you will be covered in the event that your actions are challenged or your right to coverage is not totally clear.

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.