

Sulfide Gases From Chinese Drywall Deemed Pollution for Which There Is No Coverage

Insurance Law Update

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The court in *Nationwide Mutual Ins. Co. v. Overlook, LLC*, ___ F. Supp.2d ___, 2011 WL 1988396 (E.D. Va. May 13, 2011) ruled that a pollution exclusion barred coverage for a lawsuit arising from a developer's installation of defective Chinese drywall at a townhouse complex.

At issue were 26 insurance policies written by various Nationwide entities, including property, liability, and excess liability policies. Nationwide, which had been providing a defense to the developer subject to a reservation of rights, filed an action for a declaratory judgment that it had no duty to defend or indemnify the developer because the pollution exclusions in each of the policies barred coverage for losses associated with defective Chinese drywall.

The district court entered summary judgment for Nationwide, finding that the sulfide gases allegedly released by the defective drywall constituted a pollutant under the terms of the pollution exclusions. Applying the "eight corners rule," the court found that the complaint in the underlying action pleaded damages that implicated the pollution exclusion, as the claims expressly alleged the discharge, dispersal, seepage, migration, release and escape of pollutants. The court rejected the developer's argument that the pollution exclusions were "meant to exclude coverage for damage caused by traditional environmental pollution, not damage allegedly caused by drywall used in the construction of a home." In doing so, the court refused to employ the "reasonableness" analysis urged by the developer to hold that a "reasonable" interpretation of the pollution exclusion would limit its application to traditional pollution.

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