

## **Injuries and Damages Sustained From Chinese Drywall Are Within CGL Policy's Pollution Exclusion**

### ***Insurance Law Update***

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In a case that could have significant importance for insurers facing Chinese drywall claims in Florida and elsewhere, Judge Michael Moore of the U.S. District Court for the Southern District of Florida found that a total pollution exclusion in a commercial general liability (CGL) policy bars coverage for claims associated with Chinese drywall.

In *General Fidelity Ins. Co. v. Katherine L. Foster, et.al.*, Case No. 09-80743-CIV-MOORE (S.D.Fla. March 24, 2011), General Fidelity filed suit against Katherine Foster and her home builder, Northstar Holdings, Inc., seeking a judicial declaration that Chinese drywall-related claims are not covered. General Fidelity filed its lawsuit after Foster sued Northstar alleging that Chinese drywall installed in her Boynton Beach, Fla., home was defective, and had resulted in bodily injury to her and property damage to the home. The underlying action by Foster was filed in federal court in Florida, but consolidated with the multidistrict litigation (MDL) proceedings in the U.S. District Court for the Eastern District of Louisiana and assigned to Judge Fallon. The MDL is where all federal court homeowner claims seeking damages as the result of exposure to Chinese drywall have been consolidated.

General Fidelity asserted that it owed no duty to defend or indemnify Northstar because the compounds and sulfide gases allegedly released from the defective drywall qualify as "pollutants" as that term is defined in the policy's total pollution exclusion. Foster argued, among other things, that the naturally occurring elements strontium and sulfur are not pollutants. The court, entering a summary judgment order, held for the insurer.

The policy defined pollutants as "any solid, liquid, gaseous, thermal acoustic, electric, magnetic, or electromagnetic irritant or contaminant," but did not define the terms "irritant" or "contaminant."

Judge Moore resorted to the plain, dictionary meanings of those terms, and held that the presence of excessive amounts of sulfur and strontium "obviously irritates and contaminates." The court found nothing ambiguous about the pollution exclusion, and noted that the Florida Supreme Court has held that these kinds of exclusions when stated unambiguously are not limited to environmental and industrial pollution.

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