



METHFESSEL & WERBEL
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The Leading Insurance and Claims Attorneys

E - A L E R T

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E-ALERT: TOXIC MOLD CLAIMS/"CONCURRENT CAUSATION" EXCLUSIONS

As we reported several months ago, our office, on behalf of several insurance carriers, has engaged in a concerted effort to obtain a judicial declaration of the viability of the "concurrent causation" lead-in preamble which frames the mold exclusion contained in most MSO-based policies. Not surprisingly, most of our motions to determine this issue summarily have met with judicial resistance. Trial judges are generally hesitant to resolve such issues of first impression prior to costly, protracted and – in our opinion – unnecessary discovery.

We are pleased to report that Joel Werbel and Eric Harrison, in a declaratory judgment action filed by our complex litigation team in Mercer County, recently obtained a ruling that the MSO "lead-in preamble" operates to bar a claim for mold-related damage, regardless of cause.

The lead-in language in question provided that:

We do not provide insurance under Section I for any sort of damage or loss directly or indirectly, wholly or partially, aggravated by, consisting of, or resulting from the following – even if loss otherwise covered contributes to such concurrently or in any sequence.

The exclusions that followed, of course, included "mold".

Judge Sabatino entered judgment in favor of the insurer, holding that the lead-in language was valid and enforceable and combined with the express exclusion of claims for mold damage to bar the insured's remediation claim. While the ruling is tempered by the insured's failure to oppose our motion, the court did analyze the policy language to find it valid and our client's interpretation reasonable.

Until the Appellate Division has provided guidance on this issue we will be unable to state definitively whether the concurrent/sequential causation preamble operates to bar first party mold claims in New Jersey. However, the conclusion of at least one trial court that a denial was appropriate will lend good faith support to the denial of first party mold claims against policies containing a mold exclusion preceded by lead-in language similar to the MSO-based policy quoted above.

We will continue to keep our friends and clients informed of significant developments as the body of insurance coverage law expands to confront mold claims. As always, we encourage you to contact us with any questions or concerns you may have regarding the processing of any claims involving allegations of mold damage.