



industry line

MANAGING THE HAZARDS OF ENVIRONMENTAL TOXIC TORT LITIGATION

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“Mold” Is Not A “Pollutant” And Coverage Does Not Exist Even Though A Covered Condition Caused the Mold

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Recently, the Michigan Court of Appeals examined the term “pollutant” with regard to insurance coverage relating to mold damage. Plaintiff argued that mold damage was covered under the policy of insurance as a pollutant. *Predeteanu V Auto-Owners Insurance Co.*, date unpublished, No. 267718.

In *Predeteanu*, the water line of a humidifier burst flooding Plaintiff’s basement. The flooding resulted in mold growth and mold damage. Despite the fact that Plaintiff’s policy of insurance excluded coverage for mold, Plaintiff argued that there was coverage because the mold was secondary to the water damage which was a covered claim. While the Court of Appeals agreed that the water damage caused by the water line failure was a covered claim, the Court of Appeals did not agree that there was coverage for the mold damage.

The insurance policy stated:

We do not cover loss to covered property caused directly or indirectly by any of the following; whether or not any other caused or event contributes concurrently or in any sequence to the loss . . . rust, corrosion, or electrolysis, mold, mildew, or wet or dry rot.

Relying on the express language of the policy, the Court of Appeals found that the policy excluded coverage for mold damage, even though the mold was caused by a covered condition: the water from the humidifier line break. The Court stated that this exclusionary clause was “designed to eliminate the argument that before there was mold damage, there was water or dampness that caused the mold.”

SECRET WARDLE NOTES:

Insureds are working hard to classify their mold claims as water damage claims so they can obtain coverage under insurance policies that exclude mold damage. This case supports the conclusion that such arguments will not be accepted by the courts. An insured should therefore review its policy to determine if mold damage is excluded under its policy and if so, consider purchasing additional coverage. An insurer should review its policy to assure that it has a mold exclusion and, if so, that its exclusion is specific enough to fall within the holding of this case.

The case of *Predeteanu v Auto-Owners Insurance Co.* is an unpublished opinion. Therefore, it is not binding on the lower courts, but it is significant as it exemplifies the current trend regarding coverage for mold damages.

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In an effort to circumvent the express language excluding coverage for mold damage, Plaintiff argued that mold can be classified as a “pollutant” that was covered under the insurance policy.

The policy defined “pollutant” as

Any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemical, liquids, gases and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Plaintiff concluded that “mold” fell within the policy’s definition of “pollutant” because it was a “contaminant.” Plaintiff then provided the dictionary definition of “contaminate,” which was: “to soil, stain or infect by contact or association.”

Relying on Plaintiff’s own authority, the Court of Appeals stated that the Random House Webster’s College Dictionary’s (2000) definition of “mold” is: a “growth of minute fungi forming on vegetable or animal matter, commonly as a downy or furry coating, and associated with decay or dampness” or “any fungi that produce such growth; mildew.”

Relying on these definitions, the Court concluded that “mold” is a “growth of fungi” and, therefore, not a “pollutant” as defined within the policy.

The Court further noted that the policy limited its definition of “pollutant” to the terms provided because it did not state “but not limited to.” Therefore, Plaintiff could not expand the policy definition of “pollutant.”

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