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Mealey's Litigation Report: Mold

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SECTION: Volume 10, Issue #2

HEADLINE: No Coverage For Personal Injury Claims Caused By Asbestos Or Mold, Judge Says

DATELINE: NASHVILLE, Tenn. -

BODY:

An insurer owes no coverage to an insured for underlying personal injury claims caused by exposure to asbestos and mold because the policies at issue include exclusions for fungi or bacteria and asbestos, which clearly preclude coverage, a Tennessee federal judge said Dec. 30 (Pennsylvania National Mutual Casualty Insurance Co. v. HVAC Inc., et al., No. 08-303, E.D. Tenn.; 2010 U.S. Dist. LEXIS 121022).

(Opinion available 03-100113-001Z)

Pennsylvania National Mutual Casualty Insurance Co. (Penn National) issued two insurance policies to HVAC Inc., including a commercial general liability policy and an umbrella CGL policy.

Penn National sued HVAC in the U.S. District Court for the Eastern District of Tennessee, seeking a declaration as to whether it owes coverage for an underlying suit arising out of HVAC's work of removing mold and asbestos from an elementary school. The underlying suit alleges tort personal injury claims caused by mold and asbestos exposure.

Reservation Of Rights

Penn National is currently defending HVAC pursuant to a reservation of rights. Penn National filed a motion for summary judgment, asserting that the CGL policy includes a "fungi or bacteria exclusion" and an "asbestos exclusion," both of which preclude coverage.

Judge Harry S. Mattice Jr. granted Penn National's motion, determining that the exclusions clearly preclude coverage.

"The Court finds that these provisions are explicit, unambiguous, and clearly exclude from the policies any coverage for bodily injury, personal injury or property damage resulting from exposure to mold or asbestos. The CGL Policy and Umbrella Policy contain the same language excluding all coverage for bodily injury, personal injury or property damage related to fungi or other bacteria, and the definition of fungi explicitly includes mold. The asbestos exclusions differ between the two policies, but the language is clear in both policies that there is no coverage for alleged bodily injury, personal injury or property damage due to asbestos exposure," the judge said.

No Genuine Issues

Based on the allegations in the underlying complaint and the policy language, the judge said there are no genuine issues of material fact in this case.

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"After reviewing the record, the Court finds that there is no genuine issue of material fact as to whether the CGL Policy and Umbrella Policy provide coverage for bodily injury or personal injury resulting from exposure to mold and asbestos, and there is no genuine issue of material fact as to whether these policies obligate Penn National to defend HVAC in the underlying state court action," the judge concluded.

David A. Draper and Katrina J. Atchley of **Lewis, King, Krieg & Waldrop** in Knoxville, Tenn., represent Penn National. James W. Elliott Jr. of Elliott Lawson & Minor in Bristol, Va., represents HVAC.

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