TRAUB LIEBERMAN

NEWS & EVENTS

February 19, 2020

Florida – Florida Court Holds Efficient Proximate Cause Doctrine Inapplicable To Mold Exclusion

BY: Lauren S. Curtis

In *United Specialty Ins. Co v. Annette Davis and Alliance Reconstruction, LLC*, Case No. 18-62451, the U.S. District Court in Southern District of Florida held that the efficient proximate cause doctrine does not apply to the "arising out of" standard in a policy exclusion.

The coverage action involved an underlying lawsuit in which Annette Davis sued Alliance Reconstruction alleging damage from mold exposure due to Alliance's failure to adequately dry out her condo unit after a water intrusion incident. Alliance was insured under a commercial general liability policy issued by United Specialty which covered Alliance's operations as a general contractor. The policy contained a "Mold, Fungi, Virus, Bacteria, Air Quality, Contaminants, Minerals or other Harmful Materials Exclusion" (the Mold Exclusion) which excluded coverage for any injury "arising out of, caused by, or contributed to in any way by" mold, including "all such claims or causes of action, including allegations that any insured caused or contributed to conditions that encouraged the growth." United Specialty agreed to defend Alliance under a reservation of rights and filed a coverage action seeking a ruling of no coverage based on the Mold Exclusion.

In the coverage action, Davis argued that Florida's efficient proximate cause doctrine (EPC doctrine) overrode the Mold Exclusion. Specifically, Davis argued that because Alliance's negligence (a covered peril) led to the mold growth (an uncovered peril), the policy should cover her damages. Davis further argued that the policy did not include sufficient language to counteract the EPC doctrine. Finally, Davis argued that application of the Mold Exclusion would render coverage under the policy illusory given that Alliance's business as a general contractor included mold remediation work.

The court ruled in favor of United Specialty on all three issues. The court first concluded that the EPC doctrine did not apply to the Mold Exclusion in the first instance. The Mold Exclusion, by its plain language, applies to any injury "arising out of, caused by, or contributed to in any way" by mold. The court held that this language "does not require a determination of cause." Next, the court held that even if the EPC doctrine could be read into the Mold Exclusion, the additional qualifying language in the exclusion – i.e., "including allegations that the insured caused or contributed to the conditions that encouraged the growth" - sufficiently counteracted application of the doctrine. Finally, the court held that application of the Mold Exclusion did not render the coverage illusory because the policy covered Alliance for a number of things other than mold. Accordingly, the court held that United Specialty did not have a duty to defend Alliance in the underlying lawsuit.

The opinion can be found at 2002 WL 1445484.

© Traub Lieberman Straus & Shrewsberry LLP