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New Jersey Appellate Division Enforces Mold Exclusion Containing “Including but Not Limited To” Language

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WCPP Risk Purchasing Group, Inc. v. Lexington Insurance Co., 2025 N.J. Super. LEXIS 1059 (App. Div. June 13, 2025)

June 13, 2025, the New Jersey Appellate Division held that a broad mold exclusion applied to bar coverage for an underlying bodily injury suit. The claimant was the estate of an apartment lessee who allegedly died from lung injury due to exposure to mold in her unit. The policy contained an exclusion applicable to “bodily injury or property damage or any other loss, cost or expense, including but not limited to losses, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly in whole or in part” by mold. The trial court held that the exclusion was ambiguous, in part on the basis of the intervening clause “including but not limited to” and the fact that the insured argued that the exposure was due, at least in part, remediation efforts. The Appellate Division reversed, finding the exclusion to be clear and unambiguous. In so doing, the court held that the intervening clause expands the exclusion to include both tort claims and clean-up costs. The court also relied upon the “anti-sequential” and “anti-concurrent” language in the exclusion, holding that such language “defeats the notion that another cause of injury other than fungus/mold may have also contributed to the insured’s loss thereby including the loss within the scope of coverage.” The insured also argued that the insured’s remediation efforts contributed to the loss such that the exclusion did not apply, but the court was unpersuaded, holding that “a death caused directly or indirectly by mold, regardless of any other contributing or concurrent cause, is excluded from coverage.”