Coughlin Midlige & Garland LLP

Alert

CMG Client Prevails in Mold Coverage Trial

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After years of litigation and a week-long bench trial in Essex County Superior Court, Coughlin Midlige & Garland LLP ("CMG") attorneys Gabe Darwick and James Layman obtained a declaration of no coverage under three umbrella liability insurance policies issued by CMG's client (the "Umbrella Insurer") to a condominium association. This marks Gabe's fourth consecutive trial victory and second in just four months.

The lawsuit arose from a 2010 action filed against the condominium association by one of its residents, who alleged that toxic mold in his condo unit caused continuous bodily injury and property damage between 1991 and 2008. The resident, the association, and some of the association's other insurers settled the underlying action in 2019. As part of the settlement, the resident received a $2 million consent judgment and an assignment to pursue the association's rights under the umbrella policies issued to it by the Umbrella Insurer.

CMG, on behalf of the Umbrella Insurer, commenced an affirmative declaratory judgment action seeking a declaration of no coverage. The resident counterclaim for a declaration that the Umbrella Insurer was liable to satisfy the consent judgment, plus interest and attorney's fees. Each of the policies was occurrence-based, only providing coverage for bodily injury or property damage occurring during their respective one-year policy periods. The policies also contained a "Mold Exclusion", barring coverage for damages "[c]aused directly or indirectly by the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any…[f]ungi, or bacteria." The Mold Exclusion was subject to a "Consumption Exception", stating that it did not apply to "any fungi and bacteria that are, are on, or are contained in, an edible good or edible product intended for human or animal consumption."

The Umbrella Insurer disclaimed coverage for two reasons. First, the resident alleged in the underlying action that his injuries were caused by in the inhalation of airborne toxic mold, meaning that they fell squarely within the Mold Exclusion. Second, under New Jersey law, an insurer does not owe coverage for bodily injury or property damage which manifested before the inception of its policy. In the declaratory judgment action, the Court awarded partial summary judgment to the Umbrella Insurer, holding that the Mold Exclusion barred coverage unless the Consumption Exception

applied, which was a factual issue. The Court also held that there were issues of fact as to whether the resident's injuries manifested prior to the Umbrella Insurer's first policy.

During the trial, the parties dueled over the proper interpretation of the Consumption Exception and whether there was medical evidence sufficient to show that the resident was injured by eating mold-contaminated food. They also focused on whether the resident's injuries had manifested before the policy period and whether those injuries needed to be attributed to mold exposure before coverage could terminate.

In a thorough written opinion accessible below, the Court held that the resident failed to prove that mold grew on his food or that he was injured through the consumption of that food. Accordingly, the Consumption Exception did not apply to restore the coverage barred by the Mold Exclusion. The Court further held that the policies did not provide coverage because they incepted after the initial manifestation of the resident's bodily injury and property damage.

VERDICT