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## Mount Pocono Motel Inc. v. Tuscarora Wayne Ins. Co., PICS Case No. 15-0555 (C.P. Monroe Jan. 13, 2015) Williamson, J. (8 pages).

COURTS OF COMMON PLEAS

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INSURANCE LAW

**Coverage • Policy Exclusions • Mold**

Mount Pocono Motel Inc. v. Tuscarora Wayne Ins. Co., PICS Case No. 15-0555 (C.P. Monroe Jan. 13, 2015) Williamson, J. (8 pages).

Because the language in the commercial insurance policy issued to plaintiffs clearly and unambiguously excluded coverage for bodily injury and property damage caused by exposure to fungi and bacteria, including mold, defendant had no duty to defend plaintiffs in the underlying tort action filed by a renter who claimed to have been injured by mold in the room he rented. Defendant's motion for summary judgment granted.

Plaintiff Mount Pocono Motel was a domestic corporation in the business of operating a motel and renting rooms to its customers. Plaintiff Mobashar Zafar owned the real property comprising the MPM. Luis Noriega began renting Room 129 in 2004 and occupied it continuously until April 11, 2009.

In September 2010, Noriega filed a complaint against MPM and Zafar alleging that he sustained injuries and damages due to the presence of mold in Room 129. Specifically, he alleged that shortly after moving in, he began to suffer flu-like symptoms and chest and breathing problems. In March 2008, he discovered mold in the crawl space behind his room that was permeating the walls of the room, which had been painted to hide the mold. He claimed to have had air quality tests performed in 2008 and 2009 that showed high mold content and that he informed MPM and Zafar of the mold but they failed to investigate or remediate the problem. He claimed that he was forced to leave and secure alternative housing.

Defendant Tuscarora Wayne Insurance issued a commercial line policy which provided general liability coverage to plaintiffs' property from July 1, 2008 to July 1, 2009. It declined coverage for Noriega's claim, contending that the "fungi or bacteria" exclusion in the policy barred coverage for his claims.

MPM and Zafar filed this action to determine if Tuscarora had a duty to defend and, if necessary, to indemnify defendants under the policy. Tuscarora moved for summary judgment.

The court noted that the Pennsylvania Supreme Court had instructed that the primary goal in interpreting an insurance policy was to ascertain the parties' intentions as manifested by the policy's terms. When the policy language was clear and unambiguous, a court had to give effect to that language. In a declaratory action to determine coverage, the court must determine the question of coverage.

The court then held that Tuscarora was entitled to summary judgment with respect to the fungi or bacteria exclusion in the policy. It found that the exclusion language, which specifically excluded coverage for bodily injury or property damage that would which not have occurred but for inhalation or ingestion of, contact with or exposure to fungi or bacteria was clear and

unambiguous, as was the definition of "fungi" as including mold.

Thus, the court found that the language clearly expressed Tuscarora's intent to exclude coverage for bodily injury or property damage as the result of fungi or bacteria in the covered property. It therefore granted summary judgment in favor of Tuscarora, finding that it had no duty to defend MPM or Zafar in the underlying action.

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