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And The Defense Wins

Partner [David G. Brock](#) and an associate of **Jaeckle Fleischmann & Mugel, LLP** in Buffalo, recently represented State Farm Fire and Casualty Company in the U.S. District Court for the Western District of New York, where the court issued a precedent-setting ruling in regard to insurance coverage for a homeowner's mold claim. The ruling applies New York law to deny insurance coverage for losses allegedly attributable to property damage from mold, irrespective of whether the policy contains an express exclusion for such claims. See *Catalano v. State Farm Insurance Casualty Co.* (W.D.N.Y. No. 04-CV-0452A, Jan. 30, 2007).

There were two prior decisions to date in New York's state courts addressing the issue of whether an insurance policy covers losses allegedly attributable to mold. In *Siegel v. The Chubb Corp.*, 33 A.D.3d 565 (1st Dept. 2006), the court applied an express mold exclusion to disclaim coverage for losses due to allegedly high levels of mold toxins in the home. Similarly, in *Hritz v. Saco*, 18 A.D.3d 377, 795 N.Y.S.2d 236 (1st Dept. 2005), the same court applied Connecticut law, and denied coverage for losses allegedly attributable to mold pursuant to a mold exclusion.

In *Siegel and Hritz*, the court based its holdings on express policy exclusions. In the recent State Farm case, *Catalano*, the federal court took a more fundamental approach and held that no coverage existed where the mold was caused by a failure to properly maintain the premises, rather than by a fortuitous event.

In *Catalano*, the plaintiff was insured under a standard homeowner's policy, which expressly provided that coverage did not exist for any "defects, weaknesses, inadequacies, faults or unsoundness in: maintenance." The insured claimed he was forced to vacate his home due to extensive mold contamination and filed a claim for losses caused by the contamination. State Farm denied coverage on the grounds that the mold contamination did not result in accidental direct physical loss, but was the result of improper maintenance.

Ruling in favor of the insurer, the court relied on the finding that "the mold contamination was not caused by a fortuitous event" and did not rely upon the express mold exclusion in the policy. The court determined that the loss "was the result of 'long term moisture problems;' 'long-standing moisture migration;' and a 'long-standing ventilation problem' caused by inadequate maintenance." According to the court, even in the absence of an express mold exclusion, no



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coverage exists where it is shown that the mold was attributable to maintenance problems, rather than the result of a loss that would otherwise be covered, such as, according to the court, "a burst water pipe or wind-driven rain."

While the long-term implications of this decision are uncertain, the few courts in New York that have been confronted with losses caused by mold have clearly sided with the insurer, whether in upholding an express mold exclusion, as in *Siegel and Hritz*, or in denying coverage where the mold was caused by the failure to adequately maintain the premises.

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