ORDER PREPARED BY THE COURT

WCPP RISK PURCHASING GROUP, INC., Plaintiff, vs. LEXINGTON INSURANCE COMPANY, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, CAMDEN COUNTY DOCKET NO. CAM-L-1025-22 CIVIL ACTION **ORDER**

THIS MATTER having come before the Court on the application of Riker Danzig LLP, counsel for Defendant, Lexington Insurance Company ("Lexington"), for an Order granting Lexington's Motion for Summary Judgment, and Plaintiff, WCPP Risk Purchasing Group, Inc., having cross-moved for Summary Judgment, and the matter having been argued before the Court on November 3, 2023, and for the reasons set forth in the attached Memorandum Decision,

IT IS on this 8th day of November, 2023 **ORDERED** as follows:

1. Defendant's Motion for Summary Judgment is **DENIED**; and

2. Plaintiff's Motion for Summary Judgment is **GRANTED**.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record within seven (7) days of receipt of same by counsel for the moving party.

STEVEN J. POLANSKY, P.J.Cv.

___ Opposed

___ Unopposed

Reasons Set Forth in the attached Memorandum Decision

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

WCPP RISK PURCHASING GROUP, INC.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION / CAMDEN COUNTY
Plaintiff,	:	
v.	:	DOCKET NO. CAM-L-1025-22
	:	
LEXINGTON INSURANCE COMPANY	:	*Civil Action*
	:	**MEMORANDUM DECISION**
	:	
Defendants.	:	

Decided: November 8, 2023

Alan Milstein, Esquire, Jeffrey P. Resnick, Esquire and Lanique A. Roberts, Esquire, Sherman, Silverstein, Kohl, Rose & Podolsky, Counsel for Plaintiff, WCPP Risk Purchasing Group, Inc.

Eric Snowden, Esquire, and Michael J. Rossignol, Riker Danzig, LLP, Counsel for Defendant, Lexington Insurance Company.

STEVEN J. POLANSKY, P.J.Cv.

I. INTRODUCTION

Plaintiff, WCPP Risk Purchasing Group, Inc. ("WCPP") asserts coverage claims under a Commercial General Liability Policy ("Policy") issued by Defendant, Lexington Insurance Company, on behalf of Village of Stoney Run, LLC ("Village of Stoney Run"). Defendant has filed the present motion seeking summary judgment on Plaintiff's complaint. Plaintiff has filed a cross-motion for summary judgment.

II. BACKGROUND

This matter arises out of a civil action captioned Estate of Darlene Pratt v. Village of Stoney Run, pending in the Superior Court of New Jersey, Law Division, Camden County, under docket no.: CAM-L-577-21 (the "Underlying Action"). The Underlying Action alleges negligence, breach of the warranty of habitability, and breach of contract, asserting injury and damage claims against Village of Stoney Run due to toxic fungus/mold infestation in Pratt's apartment. It is asserted that the mold caused the death of Pratt, and damaged her personal property.

Plaintiff asserts coverage claims under the Policy on behalf of Village of Stoney Run. Plaintiff purchased the Policy on behalf of Village of Stoney Run as part of a joint purchasing group.

Plaintiff's Complaint consists of two (2) separate Counts.

1. Count I – Declaratory Judgment/Breach of Contract. Plaintiff alleges that the Policy obligates Defendant to defend and indemnify Plaintiff's members, including Village of Stoney Run, against claims such as the Underlying Action. Further, Plaintiff alleges that Plaintiff has the authority and ability to assert claims for insurance coverage on behalf of Village of Stoney Run to defendant, and has the authority and ability to file a lawsuit on behalf of Village of Stoney Run to compel defendant to provide coverage to Village of Stoney run.
2. Count II – Reasonable Expectations/Plain Language. Plaintiff alleges that to the extent it should be determined that the Policy does not provide the coverages sought, the Policy violates the reasonable expectations doctrine and the plain language rules of the State of New Jersey, and as such, should be deemed to cover Plaintiff for all claims made in the Underlying Action. Plaintiff further alleges that to the extent it should be determined that the policy does not provide the coverage sought, the defendant is subject to regulatory estoppel, equitable estoppel, and other equitable doctrines, and as such, said Policy should be deemed to cover Plaintiff all claims made in the Village of Stoney Run Litigation.

WCPP is a risk purchasing group for primarily habitation and commercial real property locations. As a risk purchasing group, WCPP allows the owners and managers of commercial properties to purchase insurance through its group. The Bleznak Organization is a member of the WCPP risk purchasing group, which purchased insurance for the Bleznak Organization companies, including the Village of Stoney Run. In May 2018, WCPP purchased a general liability policy with Lexington Insurance Company for its members under Policy No. 13135940 for the period May 2018 through May 2019 policy year.

The Underlying Action was initiated by Brian Pratt and Dawn Pratt ("Underlying Plaintiffs"), the co-administrators of the Estate of Darlene Pratt ("Decedent") against the Village of Stoney Run, an apartment complex owned by a Bleznak Organization. As part of the action, Underlying Plaintiffs assert claims of negligence, breach of warranty, and breach of contract arising out of allegations that Plaintiff failed to properly maintain and repair Decedent's apartment at the Village of Stoney Run, resulting in dangerous living conditions, including mold.

Specifically, the complaint alleges that "as a result of a long-standing condition of severe water infiltration throughout the [sic] Darlene Pratt's apartment, various microorganisms including, but not limited to, *Aspergillus/Penicillium, Stachybotrys and Hyphal Fragments* permeated her apartment, causing severe and permanent health consequences, including death". Paragraph 7 alleges that defendant allowed the property to fall into disrepair and failed to address the severe growth of toxic mold and harmful organisms, resulting in fatal but avoidable injuries to plaintiff's decedent. Paragraph 12 further alleges that as a result of exposure to toxic mold, personal property was damaged or destroyed. There is no dispute that the various microorganisms fall within the definition of mold, fungus and other microorganisms contained in the insurance policy.

WCPP Risk Purchasing Group, Inc. (WCPP) is identified on the first page of the declarations as the named insured. The Broad Form Named Insured Endorsement also includes within the definition of named insured any other person or organization named as a named insured on the declarations as well as "any subsidiary, associated, affiliated or allied company or

corporation (including subsidiaries thereof) of which any insured named as the named insured on the declaration's page has more than 50% ownership interest in or exercises management or financial control over at the inception date of this policy, provided such subsidiary, associated, affiliated or allied company or corporation and their operations have been declared to us, in writing, prior to the inception date of this policy". Pursuant to this endorsement, the first named insured, WCPP, is appointed the irrevocable agent for all named insureds including for the purpose of receipt of any notices and the return of any premium.

The Lexington policy contains a schedule of all named insureds. There is no dispute among the parties as confirmed at oral argument that "Bleznak Org" is identified as a named insured.[1] The endorsement is reported by both counsel to include the Village of Stoney Run location which is the subject of the underlying litigation as an insured location.

Defendant asserts relying upon documents not provided in discovery that Bleznak Associates and/or Bleznak Organization is not the actual owner of the property. They point in Exhibit H to a deed transfer from Bleznak Associates to Village of Stoney Run, LLC on December 11, 1998 for nominal consideration. Both entities are located at the same address. They further point to another deed transfer from Village of Stoney Run, LLC to Stoney RA, LLC on May 22, 2013, also for a nominal consideration. That entity likewise is located at the same address as the other entities. The deed transfer from Village of Stoney Run, LLC to Stoney RA, LLC is signed on behalf of Village of Stoney Run, LLC by Alan D. Bleznak, sole member.

Suit in the underlying action was filed February 25, 2021. An answer to the complaint was filed August 24, 2021. At some point, the complaint was forwarded to Lexington Insurance Company.[2] AIG Claims, Inc. issued a disclaimer of coverage on November 17, 2021 on behalf of AIG Property Casualty, Inc.[3] That policy of insurance disclaimed coverage based upon the fungus/mold exclusion contained in the insurance policy. That disclaimer further indicated that Lexington had no obligation prior to the self-insured retention of $250,000 having been satisfied. No other basis for the disclaimer was provided in the letter and no objection was made with respect to the identity of the insured versus the identity of the named defendant in the underlying litigation.

Lexington moves for summary judgment seeking a declaration that WCPP lacks standing to bring this action, and for dismissal of the claims against Lexington, with prejudice. Lexington asserts that the Lexington Policy does not provide coverage for Stoney Run and that there is no coverage for the underlying claims in any event due to application of the fungus/mold exclusion, and/or that any claim for coverage is not ripe as the self-insured retention has not been exhausted.

WCPP files a cross-motion for summary judgment, seeking a declaration that the Policy issued by Lexington provides coverage to the Village of Stoney Run in the Underlying Action.

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[1] The actual exhibit attached as Exhibit D to the moving papers is illegible due to the small size of the print.

[2] The court notes that the policy of insurance with WCPP includes a $250,000 self-insured retention which requires WCPP to initially undertake defense of the claim.

[3] Lexington Insurance Company is a member of the AIG Group.

III. ANALYSIS

Under Rule 4:46-2, summary judgment is appropriate when the pleadings, depositions and other documents or affidavits establish no genuine issue as to any material fact that the moving party is entitled to judgment as a matter of law. A genuine issue of material fact exists when the competent evidentiary materials presented, when viewed in a light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Insurance Company, 142 N.J. 520, 540 (1995).

There are several issues before the Court: (1) whether WCPP has standing to bring this suit against Lexington; (2) whether the Village of Stoney Run is insured under the Policy; (3) whether the mold exclusion under the policy applies.

I. WCPP has standing to bring this suit on behalf of the Village of Stoney Run.

Defendant Lexington alleges that WCPP does not have standing to bring this case against Lexington on behalf of the Village of Stoney Run. Defendant argues that while WCPP worked to procure the Lexington Policy for its members, WCPP does not have standing because WCPP is not a defendant in the Underlying Action, faces no liability in the Underlying Action, and is not the real party in interest regarding any potential insurance coverage under the Lexington Policy for the Underlying Action. It is further argued that if the Village of Stoney Run is an insured entitled to coverage under the Policy, the Village of Stoney Run must pursue the claim, not WCPP.

WCPP argues that because WCPP is a risk purchasing group of which the Village of Stoney Run is a member, WCPP has standing to bring this suit. Plaintiff asserts that Defendant fails to show that WCPP as a risk purchasing group lacks standing against Lexington. Further, the cases cited by Defendant involve the question of standing to bring suit on behalf of a third party claimant, which is unrelated to a risk-purchasing group attempting to enforce coverage for its member. See Jersey Shore Med. Ctr.-Fitkin Hosp. v. Estate of Baum, 84 N.J. 137, 144 (1980). Plaintiff states that it has not found any authority asserting that risk purchasing groups are not permitted to bring suit on behalf of one of its member organizations.

A risk purchasing group ("RPG"), unlike a risk retention group ("RRG"), is not an insurance company, and its members do not underwrite their own coverage. 15 U.S.C.S. § 3901. It is an organization composed of a group of individuals that are exposed to similar liability risks and the purpose is to purchase available liability insurance on a group basis. Id.

Here, WCPP has brought the suit against Defendant Lexington on behalf of Village of Stoney Run, a member of the risk purchasing group. As Plaintiff correctly points out, neither party has cited authority suggesting that risk purchasing groups do not have standing to bring cases on behalf of their members. Per the Court's own research, there does not appear to be authority supporting Defendant's position that risk purchasing groups lack standing to bring suits on behalf of their members. Additionally, per the insurance policy, the First Named Insured in

the Declarations names WCPP Risk Purchasing Group, INC. as insured and the agent of all named insureds.

A plaintiff must have "a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision." Tully v. Mirz, 457 N.J. Super. 114, 123 (App. Div. 2018) (quoting In re Camden Cty., 170 N.J. 439, 449 (2002)). Plaintiff asserts "[a]s the policy in the Declaratory Judgment Action was purchased on a group basis due to their similar liability risk, WCPP and its members have a substantial likelihood of harm if the Court determines that there is no coverage for the claims against the Village of Stoney Run."

Here, WCPP has authority as the agent of Village of Stoney Run. The Broad Form Named Insured Endorsement under Form LX8163(05/07) specifically provides that the first named insured [WCPP] is the appointed and irrevocable agent for all named insureds. Therefore, the court finds that WCPP has actual authority to bring this action on behalf of all member named insureds. Additionally, it is WCPP as the risk purchasing group which provides a defense to member entities until the self-insured retention is satisfied. It therefore has its own financial stake in the litigation. The disclaimer of coverage makes this matter ripe for determination by the court. For these reasons, the court finds WCPP does having standing to bring the current action.

II. The Village of Stoney Run is insured under the Lexington Policy.

Defendant Lexington asserts that Village of Stoney Run is not a Named Insured or an additional insured under the Lexington Policy. Defendant Lexington argues the Village of Stoney Run is not listed or described as an insured anywhere in the Policy and that there are multiple additional insured endorsements attached to the Policy, none of which name the Village of Stoney Run. The Schedule of Named Insureds, which modifies the Policy, references "Village of Stoney Run" but lists those as locations that are owned by Named Insured Bleznak. Defendant argues that the Village of Stoney Run is not the owner of the locations, as Bleznak Associates (a different entity than Bleznak) transferred ownership of the premises to The Village of Stoney Run in 1998 and that entity transferred ownership to Stoney RA LLC in 2013, which was five years before the Lexington Policy was issued. Stoney RA LLC is not a defendant in the Underlying Action and it does not appear on the schedule of named insureds on file.

Plaintiff WCPP opposes the motion, citing to Schedule 30 of the Policy which provides that the Named Insureds are listed in the schedule that is on file with Lexington Insurance Company. The Bleznak Organization is listed as a named insured on the schedule and the Village of Stoney Run is listed as the name insured's covered property. Plaintiff argues that pursuant to New Jersey law, an insurance policy generally should be interpreted according to its plain and ordinary meaning. Progressive Cas. Ins. Co. v. Hurley, 166 N.J. 260, 272-73 (2001). As the schedule lists Village of Stoney Run as a named insured's covered property, the Plaintiff asserts that the coverage extends to the Village of Stoney Run due to the plain and ordinary language of the Policy being interpreted in favor of the insured.

Under New Jersey law, policies of insurance are generally interpreted in favor of the insured and against the insurer. Salem Group v. Oliver, 128 N.J. 1 (1992). This in part is based upon the public policy of interpreting the insurance policy against the drafter. Werner Industries,

Inc. v. First State Insurance Company, 112 N.J. 30 (1988). All ambiguities and uncertainties in the insurance policy are resolved in favor of the insured and against the insurer. Sparks v. St. Paul Insurance Company, 100 N.J. 325 (1985); Killeen Trucking, Inc. v. Great American Surplus Lines Insurance Company, 211 N.J. Super. 712 (App. Div. 1986).

The court must enforce the clear and unambiguous terms of the policy of insurance. Erdo v. Torcon Construction Company, 275 N.J. Super. 117 (App. Div. 1994). The test for determining whether an ambiguity exists is whether the phrasing of the policy of insurance is sufficiently confusing such that the average policy-holder cannot make out the boundaries of coverage. Nunn v. Franklin Mutual Insurance Company, 274 N.J. Super. 543, 548 – 549 (App. Div. 1994); Ryan v. State Health Benefits Commission, 260 N.J. Super. 359 (App. Div. 1992).

Words utilized in the insurance policy are interpreted in accordance with their plain and ordinary meaning. Voorhees v. Preferred Mutual Insurance Company, 128 N.J. 165 (1992); Daus v. Marble, 270 N.J. Super. 241 (App. Div. 1994). Where the terms of an insurance policy are susceptible to two interpretations, the court will liberally construe the contract in favor of the insured and against the insurer. Meier v. New Jersey Life Insurance Co., 101 N.J. 597 (1986). A disagreement between the insurer and the insured concerning interpretation of the language of an insurance policy does not alone create an ambiguity. Aviation Charters, Inc. v. Avemco Insurance Co., 335 N.J. Super. 591, 594 (App. Div. 2000), affirmed as modified 170 N.J. 76 (2000). A policy of insurance is ambiguous only where reasonably intelligent persons would differ regarding its meaning. Id. The court places the obligation on the insurance carrier to draft clear and unambiguous contracts. Meier v. New Jersey Life Insurance Company, 101 N.J. 597 (1986). Where the policy language will support two interpretations, only one of which will support a finding of coverage, the court will choose the interpretation favoring the insured and find that coverage exists. Meeker Sharkey Associates, Inc. v. National Union Fire Insurance Company of Pittsburgh, 208 N.J. Super. 354 (App. Div. 1986).

Here, Lexington policy no. 13135940 was purchased by WCPP Risk Purchasing Group, Inc. The First Named Insured in the Declarations identifies WCPP Risk Purchasing Group, Inc. as the insured. Endorsement #30 modifies the insurance provided by the policy and states: "This policy provides coverage for the first Named Insured in the Declarations and the following additional Named Insures: Per schedule on file with Lexington Insurance company." Per Schedule 30, "BLEZNAK ORG" is listed as Master Client Name (Owner) with "Village of Stoney Run I" and "Village of Stoney Run II" as the location names. This shows a clear intent to insure the location of the loss.

Defendant does not dispute that Stoney RA, LLC or Village of Stoney Run are Bleznak Organization entities. Plaintiff responded in interrogatories that the Village of Stoney Run falls under the umbrella of the Bleznak Organization entities and defendant has made no assertion that the Stoney RA, LCC does not also fall under this umbrella.

Additionally, Lexington has accepted the paid premium for the policy that insures the Village of Stoney Run. While Lexington can argue different defenses as to why the Village of Stoney Run may not technically be an insured, Lexington has received and accepted payments for the property's insurance. Thus, it would be unfair to hold that the Village of Stoney Run is

not insured by the policy while Lexington retains payment for this coverage. Further, it was the intent of Lexington to provide insurance coverage for this very location at issue.

The precision by which plaintiff in an underlying case names the defendant should not preclude a finding of coverage. Here, documentation provided reflects that Lexington provided coverage for the location where it is asserted plaintiff's decedent and her property were injured or damaged. This is exactly the risk for which Lexington undertook to protect plaintiff. Documentation attached as part of defendant's own motion reflects transfers for nominal consideration between various entities for the property known as Village of Stoney Run. Even the amended complaint in the underlying case does not designate the type of entity in the caption which operates Village of Stoney Run. For all of these reasons, the court finds that the Lexington policy provides coverage for the named defendant in the underlying litigation for the claims asserted in the underlying litigation.

III. The Policy's mold exclusion does not preclude coverage.

Lexington asserts that the policy of insurance contains a mold exclusion which precludes coverage for the claims in the underlying suit. The original policy form LX9641 (02/11) contains a fungus/mold exclusion in subpart q. That exclusion is deleted and replaced by Endorsement 29 on Form LX8731 (08/11) which contains the following fungus/mold exclusion:

> **Fungus/Mold**
>
> **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:
>
> 1. Any **fungus(i)**, **molds(s)**, mildew or yeast; or
> 2. Any **spore(s)** or toxins created or produced by or emanating from such **fungus(i)**, **mold(s)**, mildew or yeast; or
> 3. Any substance, vapor, gas, or other emission or organic or inorganic body substance produced by or arising out of any **fungus(i)**, **mold(s)**, mildew or yeast; or
> 4. Any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbors, nurtures or acts as a medium for any **fungus(i)**, **mold(s)**, mildew, yeast or **spore(s)** or toxins emanating therefrom;
>
> regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that **bodily injury** or **property damage**, loss, cost or expense.
>
> This exclusion does not apply to any **fungi** on or contained in a product intended for human consumption served or sold by you.

For the purpose of this exclusion, the following definitions are added to the policy:

> **Fungus(i)** includes, but is not limited to, any of the plants or organisms belonging to the major group fungi, lacking chlorophyll, and including molds, rusts, mildews, smuts, and mushrooms.
>
> **Mold(s)** includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce molds.
>
> **Spore(s)** means any dormant or reproductive body produced by or arising or emanating out of any fungus(i), mold(s), mildew, plants, organisms or microorganisms.

The Complaint in the Underlying Action asserts in relevant part:

> 3. As a result of a long-standing condition of severe water infiltration throughout Darlene Pratt's apartment, various microorganisms including, but not limited to *Aspergillus/Penicillium, Stachybotrys and Hyphal Fragments* permeated her apartment, causing severe and permanent health consequences, including death.
>
> * * *
>
> 8. In addition to the fatal injuries Darlene Pratt suffered, her personal items and belongings were severely damaged and/or destroyed as a result of their exposure to the toxic mold, including furniture, clothing, and other contents within their apartment.
>
> * * *
>
> 27. In March, 2019, Plaintiffs performed air testing in the apartment revealing alarming levels of toxic mold (See March 8, 2019 Report from AEML, Inc. Microbiology Laboratories, attached hereto as Exhibit B).
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> 28. The March 8, 2019 report showed toxic levels of Aspergillus/Penicillium, Stachybotrys and Hyphal Fragments.
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> 29. These levels of toxic mold placed Darlene Pratt at serious risk of injury and death.

Defendant argues that that there is no coverage as exposure to fungus/mold was the cause of the claimed damages and injuries. Defendant argues that fungus/mold exclusions are routinely enforced in New Jersey and cites to Simonetti v. Selective Ins. Co., 372 N.J. Super. 421 (App. Div. 2004), where the court held that a mold exclusion in the policy excluded coverage for "bodily injury" or "property damage" caused by mold.

Plaintiff argues that while the exclusion excludes coverage caused by mold or fungus, the exclusion does not state that it excludes coverage for the mold itself being a result of another cause. Plaintiff asserts the court held that "[i]f Selective had intended to exclude not only losses cause by mold, but also the mold itself, it could have easily expressed that intention." Id. at 429. Plaintiff further argues that Defendant confuses its obligation to provide a defense when mold is a covered cause of loss as opposed to when mold is the result of a covered cause of loss. Even if the Court finds that the Policy excludes coverage when mold is the cause of the loss, Plaintiff claims that the duty to defend still exists when the damage alleged is mold resulting from a

covered cause of loss, such as a failure to maintain and repair that results in bodily injury or property damage.

Plaintiff further asserts that the mold exclusion in Endorsement 29 only excludes coverage for fungus or mold where the claim is 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. Plaintiff's argument is that this language is part and parcel of the exclusion. The question then for the court is whether plaintiff's interpretation is also a reasonable interpretation of the policy language.

Typical policies of insurance excluding coverage for mold with respect to any claim for bodily injury or property damage as a result of mold and also excluding coverage for losses caused by the clean-up, removal, remediation and the like of mold contain exclusions that clearly and unambiguously explain that the exclusion applies to both types of claims. See e.g. Owners Ins. Co. v. GTR, Inc., 461 F.Supp. 3d 1190, 1192 (M.D. AL 2020); Acuity v. Reed & Associates of Tennessee, LLC, 124 F.Supp. 3d 787, 793-794 (W.D. TN 2015); Swenson v. State Farm Fire & Casualty Co., 891 F.Supp. 2d 1101, 1104 (D.S.D. 2012). Such policies separate the exclusion into two parts.

The court finds guidance in cases addressing the earth movement exclusion interpreting whether those policy exclusions include both natural and unnatural causes of earth movement or only exclude natural causes. In Ariston Airline & Catering Supply Co. v. Forbes, 211 N.J. Super. 472 (Law Div. 1986), the policy excluded losses caused by earth movement "including but not limited to earthquake, landslide, mud flow, earth sinking, earth rising or shifting". The court held that the words earth movement must be interpreted based upon the language which followed, which language referenced natural phenomenon. Accord Murray v. State Farm Fire & Casualty Co., 203 W.Va. 477, 509 S.E.2d 1 (1998); Cox v. State Farm Fire & Casualty Co., 217 Ga. App. 796, 459 S.E.2d 446 (1995); Pioneer Tower Owners Association v. State Farm Fire & Casualty Co., 12 N.Y.3d 302, 908 N.E.2d 875 (2009).

Consistent with the New Jersey decision in the Ariston Airline case, the manner in which Lexington phrased the mold exclusion creates ambiguity and requires that the exclusion be interpreted based upon its context with the language of "cost or expenses related to or arising from or associated with clean-up, remediation, containment, removal or abatement". The claims in this case do not arise from such activities, but rather arise from water leaks which resulted in the conditions about which plaintiff's decedent in the underlying complaint bases the cause of action.

The court concludes that the interpretation of the mold exclusion by plaintiff is equally reasonable to that interpretation of the defendant. Under these circumstances, it is the interpretation most favorable to the insured which controls. Accordingly, the court concludes that coverage exists for the exposure to mold as a result of water leakage. Defendant's motion for summary judgment will be denied and plaintiff's motion for summary judgment will be granted.

IV. CONCLUSION

For the reasons set forth above, defendant's motion for summary judgment is denied and plaintiff's cross-motion for summary judgment is granted.