

Virginia Court Dismisses Wiley Rein & Fielding Insurer Client in Mold Insurance Coverage Disputes

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Washington, DC—On October 25, 2004, Wiley Rein & Fielding client Zurich American Insurance Company ("Zurich") prevailed in seeking dismissal with prejudice of two complaints filed in the Virginia Circuit Court for Fairfax County. The court agreed with the arguments presented by WRF that the plaintiff, Archstone-Smith Operating Trust ("Archstone"), had not adequately pled a case or controversy as to Zurich.

Zurich issued a general liability insurance policy to Archstone, which owns and operates numerous apartment buildings throughout the United States. Archstone sought coverage under multiple insurance policies for mold-related class-action and individual claims brought by residents of South Florida apartments owned by Archstone. Archstone named Zurich and thirteen other insurers in two declaratory judgment actions.

WRF argued that Archstone failed to state a case or controversy against Zurich. The court agreed and dismissed Zurich from the actions with prejudice. In so ruling, the court concluded that "Archstone has not alleged that it has submitted a claim for coverage against Zurich's policy," or that "Zurich's policy covers the old claims that are at the center of this litigation." The complaints "merely contend[ed] that another [insurer] has maintained lack of coverage or reduced coverage on account of the applicability of Zurich's policy." Finally, the court recognized that Archstone included "no prayer for relief against Zurich" in its motions for judgment. On this basis, the court granted Zurich's motions to end its involvement in the cases.

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The case is *Archstone-Smith Operating Trust, et al. v. Travelers Indemnity Co. of America, et al.*, Nos. 220831, 225097 (Va. Cir. Ct., Fairfax Cty. Oct. 25, 2004).

WRF's Insurance Practice handles coverage dispute resolution, bad faith and market conduct litigation, insurance fraud issues, litigation management & claims counseling and reinsurance.