

Supreme Court stays out of Blackfeet moldy homes

HUD off the hook; sick tribal members left without remedy

By Rob Capriccioso

Story Published: May 26, 2009

Story Updated: May 22, 2009

WASHINGTON – The U.S. Supreme Court said May 18 that it would not hear a case involving federal trust responsibility for mold-infested homes on the Blackfeet Indian Reservation.

Tribal petitioners in the Marceau v. Blackfeet Housing case were asking the high court to review decisions made by the Ninth Circuit Court of Appeals from August.

Part of the decision found that the appeals court had erred in previously saying the Blackfeet Nation had waived tribal immunity involving its role in building faulty homes for families on the reservation.

The court originally ruled in March 2008 that by entering into an ordinance with the U.S. Department of Housing and Urban Development to establish a housing authority, the Blackfeet Tribe could be sued.

Most importantly to the Supreme Court filing, the court also said that HUD itself was not responsible for the shoddy building and materials that led to mold-infested homes on the reservation.

Some tribal legal advocates found the initial ruling perplexing, considering that it was HUD that unilaterally created the rules and financing mechanisms for how the tribe built the homes in the late-1970s, according to Blackfeet documentation.

Two previous Ninth Circuit rulings outside the case also held that courts in the circuit should not rule on a tribal housing authority's immunity until the tribal court has done so, which did not happen in this instance.

Tribal officials nationwide were concerned by the initial appellate decision, since the court seemed to be treading on tribal sovereign immunity, while concurrently helping the federal government avoid living up to its trust responsibilities toward tribal citizens.

In its August decision, the appeals court reversed its previous ruling, saying it had been wrong to waive tribal immunity, and that the Blackfeet Tribe's tribal court must have the

first opportunity to address all issues within its jurisdiction.

That decision, while favorable for the tribe, did nothing to alleviate the pain and suffering of the tribal residents, many of them poverty-stricken, who live in the problematic Blackfeet homes. It also did not uphold federal trust responsibility in the case.

Approximately 150 Blackfeet families live in homes built on the Blackfeet Nation under guidelines established and approved by HUD. The residences were built using chrome copper arsenate wood, now banned for residential use by the Environmental Protection Agency due in part to its propensity to grow black mold, especially in moist areas.

Environmental health researchers have found that the occupants of the homes experience an array of health problems, ranging from chronic headaches to much more serious ailments, including asthma, pulmonary hemorrhaging, chronic coughing and cancer.

It was with these health concerns in mind that the tribal petitioners went to the Supreme Court in November with the hope that HUD would finally be held responsible for a situation that has been wrongfully hurting tribal members for decades.

After learning of the Supreme Court's denial – for which the justices gave no rationale – Thomas Towe, a lawyer for the ailing plaintiffs, said that HUD has a mandate from Congress to uphold trust responsibility for American Indians.

He noted that starting with the U.S. Housing Act of 1937, Congress gave the federal government the mandate to provide safe, sanitary and decent housing for every American family, including Indians.

“The Supreme Court should have taken this case on,” Towe said. “I am very disappointed.”

Towe added that a recent Supreme Court decision involving the Navajo Nation and mineral leasing contained legal facts that he felt paralleled some of those of the housing case.

“Why [the Supreme Court] would take that one on and not this one is a good question,” Towe said, adding he believed the court could have helped provide clarification to federal courts in what he believes is a murky area of the law.

Towe also said the high court missed an “important opportunity” to begin remedying the health problems of the plaintiffs.

But the legal fight is far from over, Towe said, indicating that the plaintiffs will likely pursue another strategy against HUD involving administrative procedures, and, if necessary, a legal fight in tribal court against the tribe's housing authority.

The administrative procedures route will open up entirely new obstacles and bureaucratic hoops to jump through, Towe noted. Plus, suing the tribe isn't necessarily the most popular option, since the tribe isn't generally believed to be in a great financial position – especially compared to HUD.

Towe said it would be possible that new circumstances involving the case may see it again petitioned before the high court.

Lawyers for the tribe's housing authority have long argued that HUD should be held responsible.

When asked to comment on the Supreme Court's decision, Stephen Doherty, a lawyer for the tribe, said that "Blackfeet housing is interested in partnering with anybody in order to improve housing across the board on the reservation."

Donna White, a spokesperson with HUD, said the agency would not be offering comment at this time.

Source: <http://www.indiancountrytoday.com/national/northeast/45849492.html>