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## Mold Personal Injury Case Settles 'On the Courthouse Steps'

OSKALOOSA, Kan. — The case termed “the first toxic mold case to go to trial in Kansas” by the plaintiff attorney settled the week before trial for \$350,000 in personal injury damages. Jerome George, et al. v. Bryant–Ratliff Construction Company, Inc., et al., No. 00CV04924 (Kan. Dist. Ct., Johnson Cty.).

The personal injury claims filed against four subcontractors who worked on a mold–contaminated house settled Sept. 5, a week before the scheduled trial date. The plaintiffs, Jerome and Lori George, had previously settled the construction defect claims with the home builder for \$398,000, making a total known settlement of \$748,000, although this amount does not include a third confidential settlement with another defendant.

Plaintiffs’ attorney Daniel D. Owen of Shughart, Thomson & Kilroy, P.C. in Kansas City, Mo., credits the last minute settlement with the court’s denial of a defendant’s motion in limine requesting that the plaintiffs not be allowed to introduce certain evidence regarding the sole defense expert, Ronald E. Gots, M.D., Ph.D., principle of the International Center for Toxicology and Medicine in Rockville, Md., and also president of National Medical Advisory Service, which provides expert witnesses to attorneys defending corporations in product liability lawsuits.

“The defendants designated Dr. Gots as their only expert,” Owen explained. “He never examined the Georges, just reviewed their medical records. In the weeks before the trial date, one of the defendants filed a motion in limine to preclude the introduction of a ‘Dateline NBC’ interview with Dr. Gots that shows he has a history of not being totally objective in how he reviews medical records. I think the court’s denial of that motion was a major factor in getting the defendants to more than triple their settlement offer right before the trial,” Owen speculated.

Owen stated that he is extremely pleased with the outcome of the settlement, in part because the Georges are pleased, but also because this case established that personal injury damages in mold cases are collectable in the Kansas City area.

“I would have loved to have tried the case in court,” Owen observed, “but when that kind of [settlement] money is offered, the plaintiffs thought it in their best interests to take a sure thing.”

#### Defendant's Motion In Limine

According to the motion in limine filed by defendant subcontractor Art's Furnace Company d/b/a AFC Heating and Cooling, the plaintiffs should not introduce evidence regarding Dr. Gots' previous position with Medical Claims Review Services (MCRS) because his work there reviewing patient records for insurance clients revolved around injuries resulting from automobile accidents, not mold. AFC also contended that a “Dateline NBC” interview of Dr. Gots conducted over a year ago might be used by the plaintiffs to improperly impeach the expert on a collateral issue, i.e., automobile accident injuries.

AFC wrote in the motion the plaintiffs might attempt to connect Dr. Gots with the insurance industry, allowing the jury to draw negative inferences that would be unduly prejudicial to AFC and prevent Gots' testimony from being accorded sufficient weight.

The court did not agree with AFC's arguments and denied the motion.

#### Brief Case History

According to the complaint filed in the Johnson County District Court, in October 1997, Jerome and Lori George moved into a new home built by Bryant–Ratliff Construction Company, Inc., Butler Brothers Roofing, Inc., and Joe Angell an individual d/b/a J.W. Angell Masonry were subcontractors hired by Bryant–Ratliff to work on the flashing and stone work around the first floor bay window in the front den of the home. AFC designed, manufactured and installed the bay window hood. Prairie Framing, L.L.C., was hired by Bryant–Ratliff to frame the house, including the roof of the entry way.

Shortly after the birth of their second child in July 1998, the Georges discovered extensive mold growth in the walls of the home, specifically in the nursery immediately above the bay window, and in the first floor den near the bay window. Over the course of that year until May 1999, the Georges worked with Bryant–Ratliff and the various subcontractors to have the mold remediated and the underlying roof and window leaks repaired.

After they evacuated the home May 15, 1999, the Georges filed suit against the builder and subcontractors for construction defects, negligence, breach of contract and personal injuries allegedly related to the months of exposure to *Stachybotrys* and other types of mold within the house.

For more information on this case, please see “Motions for Summary Judgment Denied in Mold Personal Injury Case” in the September 2002 issue of COLUMNS–Mold and

“September Trial Scheduled for First ‘Toxic Mold’ Case in Kansas” in the July 2002 issue of COLUMNS–Mold.

The plaintiffs were represented by P. John Brady, Daniel D. Owen and Brett W. Roubal of Shughart, Thomson & Kilroy, P.C. in Kansas City, Mo.

Bryant–Ratliff Construction, Inc. was represented by Mark E. Kelly and Ward Brown of Withers, Brant, Igoe & Mullennix, P.C. in Liberty, Mo.

Art’s Furniture Company, d/b/a AFC Heating and Cooling, was represented by David R. Buchanan of Brown & James, P.C. in Kansas City, Mo.

Butler Brothers Roofing, Inc. was represented by Scott C. Long and Michael Shunk of McCormick, Adam & Long, P.A. in Overland Park, Kan.

Joe Angell, d/b/a/ J.W. Angell Masonry, was represented by Gary A. Schafersman and Brian T. Goldstein of Wallace, Saunders, Austin, Brown and Enochs, Chartered in Overland Park, Kan.

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AFC’s Motion In Limine Ref# MOL–0211–10  
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