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Louisiana Bad Faith Mold Case Settles for \$984,000

CHALMETTE, La. — A case involving allegations that a homeowner's insurance company botched a mold claim, causing property damage and personal injuries, settled for \$984,000 five days before the matter was scheduled to go to trial. Cynthia Lynne Parden, et al. v. CNA Insurance Company, et al., No. 94,746, Division "C" (La. Civ. Dist. Ct., 34th Jud. Dist., St. Bernard Parish).

The case settled Sept. 25 and the Receipt, Release & Indemnity Agreement was signed Oct. 22 awarding \$859,000 to the homeowner Cindy Parden and her husband Rodney LeBlanc and \$75,000 for each of their three children. The plaintiffs also retained their \$600,000 home.

According to Madro Bandaries of Amato & Creely, A.P.L.C., in Gretna, La., the case was a contentious one, with the plaintiffs twice filing Rule for Contempt and Sanctions. The defendants unsuccessfully appealed the court's contempt rulings to the Louisiana 4th Circuit Court and the Louisiana Supreme Court.

In analyzing the outcome of the case, Bandaries speculated that the defendants miscalculated, failed to conduct an adequate investigation, and were ultimately unwilling to take the matter before a jury. Attorney for the defense Doris T. Bobadilla of Galloway, Johnson, Tompkins, Burr & Smith of New Orleans, would not comment on the case.

According to sources at the court house, on Nov. 27, the defendants filed a writ for subpoena duces tecum and various motions, including a motion to inspect the premises. Bandaries confirmed that the defendants are attempting to enter Cindy Parden's house and remove evidence to use in a separate action seeking liability against the contractor who built the home using synthetic stucco (EIFS) as the external cladding. A hearing in that action is set for late January 2003.

Case History

The plaintiffs state in their second amended petition that on June 16, 2001, they noticed mold growth in several areas of their home, including on the ceiling of two of the childrens' bedrooms, the ceiling of the dining room, in a child's closet, and in a bathroom.

The insurance provider, CNA Insurance Company, of which Stone Insurance Company was an agent, sent a representative of the claims adjusting agency, Encompass Insurance Company, to inspect the claim. However, the plaintiffs allege that the adjuster advised them that the only damage to the home was a water leak from previous roof damage, and "dismissed" the complaint concerning mold.

Based on the adjuster's report, the insurance closed the claim, finding that costs to repair the water leak would not exceed the policy deductible. However, the plaintiffs contend that the mold continued to spread throughout the house and made it uninhabitable.

Parden and LeBlanc hired a consulting company, EnviroCare Inc., of Covington, La., to test their home. EnviroCare gathered samples from four locations in the home and sent the samples for analysis to P&K Microbiology Services, Inc., in Cherry Hill, N.J.

According to P&K's report, "massive spores" were found in the samples taken from the master bedroom vent and the hallway supply vent, while fewer were found in the samples taken from the closet and bathroom. All the samples "suggest[ed] fungal growth" within the house. Genera of mold found in EnviroCare's samples include Cladosporium, Stachybotrys and Penicillium.

The plaintiffs assert that the defendants were grossly negligent for failing to detect the water leaks that led to the mold growth and for failing to properly remediate the mold and adjust the claim. They also assert that the defendants should have provided alternate housing during the period of repair.

Damages asserted by the plaintiffs include personal injuries and mental anguish suffered due to mold exposure, medical expenses, loss of income, additional living expenses, replacement value of their home, replacement value of the contents of the home and attorney fees.

Personal injuries suffered by the family, as described in the settlement agreement, include allergic conditions, respiratory problems, urinary infections, fatigue, anemia and ear infections.

The medical expert named by the plaintiffs was Michael R. Gray, M.D., M.P.H., of Progressive Health Care Group in Benson, Ariz. The plaintiffs' scientific expert was David D. Straus, Ph.D., of Texas Tech University Health Sciences Center in Lubbock, Texas. Neither were deposed by the defendants, according to Bandaries.

Contempt and Sanctions

The plaintiffs filed two memos for contempt and sanctions, both of which were granted by the court. The first was filed April 17 for the defendants' alleged failure to produce certain documents to be reviewed "in-camera" prior to deposition. Other reasons for the sanctions listed in the plaintiffs' memo are the defendants' failure to produce a knowledgeable witness, production of incomplete documents, and intentional refusal to turn over certain documents. Finally, the plaintiffs allege that the defendants refused to allow the production of a "joint environmental inspection."

In the second contempt memo filed by the plaintiffs, they contended that CNA Insurance had, from the onset of the claims process, "treated the plaintiffs with a borage of incompetency, misleading information and outright bad faith actions." This memo describes the claims process as a mass of confusion, with the plaintiffs being assigned three separate claim's officers in two separate departments and different parts of the country who did not communicate amongst themselves.

In both instances, the trial court held the defendants in contempt and ordered them to pay sanctions. The defendants appealed to the 4th Circuit, which upheld the trial court's rulings.

The plaintiffs were represented by Robert G. Creely, Nicole Loup Hackett of Amato & Creely, A.P.L.C., in Gretna, La. They were assisted by Jana Smith Creely of Jana Smith Creely, L.L.C., in Metairie, La., and Michael F. Escudier of Chalmette, La.

Continental Insurance Company and CNA Insurance Company were represented by Doris T. Bobadilla of Galloway, Johnson, Tompkins, Burr & Smith of New Orleans.

Stone Insurance, Inc., was represented by Earl F. Sundmaker, III, of Chaffe, McCall, Phillips, Toler & Sarpy, L.L.C., of New Orleans.

Documents Are Available Call (800) 496-4319 or

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Receipt, Release & Indemnity Agreement Ref# MOL-0301-08

Second Rule for Contempt and Sanctions with Supporting Memo Ref# MOL-0301-13

First Rule for Contempt and Sanctions with Supporting Memo Ref# MOL-0301-12

Second Amended Petition Ref# MOL-0301-10

First Amended Petition Ref# MOL-0301-11

Original Petition Ref# MOL-0301-09

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