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Client Alert

A Tale of Two (Moldy) Houses

This year the firm has recovered more than \$1,000,000 in two moldy home cases. Plews Shadley Racher & Braun LLP's mold litigation practice has expanded substantially, as these cases reflect.

This past holiday season came early for an Indiana family whose dream home turned into a nightmare. A water intrusion problem led to a pervasive mold infestation. The family, called the Smiths here for privacy purposes, bought farm and residential property north of a suburban Indianapolis town and in 1998 had a custom home constructed. The Smiths chose a method of construction that used prefabricated house components. The prefabricated components arrived at the building site by truck and were assembled at the building site by a crew under the supervision of a construction manager.

What should have been a relatively uneventful assembly turned sour. The inexperienced and inadequately supervised set crew committed numerous errors. Components of the house that had been included in the package of shipped components were omitted from the assembled house. Interruptions in the building process allowed house components to become thoroughly wetted. These wetted components became warped when they ultimately dried. The portion of the roof draining to the chimney area (the cricket) was constructed in a manner that caused water running off the roof during storms to flow against and to run up vertical chimney surfaces. This design flaw promoted extensive and repeated water flow into the exterior wall in the chimney area. The brick veneer was installed without the one-inch gap between the brick and the outside of the exterior wall required by the applicable building code. Grout had been allowed to fill the gap and in

some places abutted the exterior wall. The brick veneer also lacked weep holes. Settling and warping had broken window seals causing drafts, and caused uneven floors and wall cracks. Water leakage was evident around certain windows of the house. The Smiths sued the company that made the prefabricated house components and the construction manager.

A more sinister problem surfaced during the winter and spring of 2000- 2001. An intense storm renewed the water intrusion problems that the Smiths believed had been fixed by repairs. A contractor attempting to address the water intrusion problem exposed the interior of a wall in the vicinity of the chimney. Pervasive mold growth and rotted wood were evident. Subsequent indoor air quality testing by two different air quality companies revealed high airborne concentrations of mold species that included *Stachybotrys*, a black mold frequently found on building materials, such as wallboard, particle board and oriented strand board, that have sustained serious water damage. At this juncture, the Smiths connected health symptoms that they first noticed during their first winter in their new house with the newly identified mold problem. All four members of the Smith family had experienced symptoms that included sinus congestion and drainage, headaches, body aches, fatigue and breathing difficulties. The symptoms were more intense during the winter months when the windows of the house were closed. The Smiths were advised by their treating physician, an allergist and immunologist in Cincinnati, Ohio, to leave their home as soon as possible. The Smiths



bought a 28-foot recreational vehicle and parked it near their mold-infested house. The Smiths and their two teenaged daughters moved into the recreational vehicle. While cooped up in these unimaginably small quarters, the family's adverse health effects, fortunately, subsided.

Plews Shadley Racher & Braun LLP agreed to represent the Smiths. As a result of the discovery of the mold problems, the set crew and masonry company that installed the brick veneer were added to the lawsuit. Discovery proceeded in earnest with each of the defendants pointing fingers at each other, at the Smiths, and at other companies that had helped to build or had tried to fix the house. Various motions for summary judgment were filed. With expert discovery imminent, the parties attended a court-ordered mediation in August 2002.

The Smiths reached settlements with the company that made the pre-fabricated components of the house, the construction manager and the masonry company that installed the brick veneer at the mediation. After further discovery the Smiths reached settlements with the two remaining defendants at separate mediations in December 2002. Each of the construction defendants' insurers contributed to the settlements paid.

The settlement proceeds have allowed the Smiths to construct a new house located on the same property. The prior structure has been demolished. After living for a year and a half in their 28-foot travel trailer, the Smith family of four will soon be moving back into more spacious quarters.

The Smiths' case illuminates several points. First, monetary compensation can and should be recovered by the owners of a new house that becomes uninhabitable due to an infestation of mold.

Second, multidefendant construction cases lend themselves to finger pointing that can prolong litigation. Mediation can be especially helpful to end the posturing.

Third, insurance coverage both for homeowners, from their first-party policies, and for construction companies, from their third-party policies, is available. Litigation may be necessary, however, to secure the proceeds of insurance.

Another case that Plews Shadley Racher & Braun LLP successfully resolved involved bodily injuries from a mold infestation in the home of a single professional woman, called Ms. Jones here for privacy purposes. Ms. Jones moved to a university town in Indiana to accept a staff position. Ms. Jones took the advice of her home inspector upon purchase of a home and hired a local firm to add cellulose insulation to the walls and crawl space. The installer of the insulation brushed aside her repeated questions regarding the safety of the process, assuring her that the chemical treatment of the cellulose insulation (essentially shredded used newsprint) absolutely prevented any mold growth, despite the fact that the method of insulation was to wet the newsprint and blow it into the wall spaces and crawl space of her newly-purchased home.

The installer's assurances were based on the equally adamant assurances of the manufacturer, one of the largest manufacturers of cellulose insulation in the country, stating that its insulation is appropriate to install wet in crawl spaces and that the chemicals added a "fungicidal" effect. In fact, the chemicals were added as a fire retardant and, in the opinion of the industrial hygienist who investigated Ms. Jones' house, and who consulted with Plews Shadley Racher & Braun LLP, have no significant effect on mold growth at all.



Unfortunately for Ms. Jones, elementary biology prevailed over corporate hype and commercially motivated wishful thinking, and not long after the installation of the wet-blown cellulose insulation in her home, she began to experience very significant physical and psychological symptoms. Unfortunately, in 1996, most healthcare providers were far less aware of the problems of mold exposure than today, and by the time she was finally diagnosed and began to take remedial and prophylactic precautions, she had sustained serious long-lasting and perhaps lifelong damage.

Luckily for Ms. Jones, one of the top industrial hygiene professors in the country teaches at her university, and she was able to get the benefit of testing done by several of his graduate students. She was then faced with a common problem of those with serious symptoms involving mold exposure; securing appropriate medical diagnosis and care. She finally found health practitioners able to provide appropriate treatment and her health, while not yet at the peak level she enjoyed before her mold exposure, is improving steadily.

Meanwhile, Ms. Jones filed suit against the insulation manufacturer. Plews Shadley Racher & Braun LLP assumed primary responsibility for the case in December 2002. During the summer of 2003, the insurer for the manufacturer hired new counsel and discovery began in earnest. Depositions of the president of the insulation manufacturer indicated that the testing of the product was unscientific and non-rigorous, and the matter was concluded satisfactorily to Ms. Jones soon thereafter. The conclusion of the case has Ms. Jones improving daily in overall health and well-being and looking for a new job with renewed energy.

Homeowners' instincts and concerns about the safety or efficacy of a process or product ought not to be casually overridden, even by assurances of a manufacturer or service provider. If you have a mold concern, act on it.