

COURTROOM NEWS from HarrisMartin's COLUMNS-Mold

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Va. Jury Awards Family \$4.75 Million for Illnesses Linked to Mold

LEESBURG, Va. — A Virginia state court jury has awarded \$4.75 million for what a couple claimed were debilitating mold-related illnesses caused by construction defects in their \$900,000 new home. *Meng v. The Drees Co.*, No. 46450 (Vir. Cir. Ct., Loudon Cty.).

The Loudon County (Va.) Circuit Court jury made the award on Dec. 23 after finding The Drees Co., which built the home for plaintiffs Paul and Wendy Meng, guilty of negligence and constructive fraud.

The Mengs complained that they suffer from illnesses attributable to mold, and that the mold resulted from leaks because of improper window installation and Drees' failure to protect construction materials from the weather while the home was being built in 2005.

The couple charged that Drees said all leaks had been addressed when, in fact, they hadn't, and that basement window leaks weren't repaired until 2007. The Mengs also alleged that Drees attempted to repair window leaks with caulking rather than re-install them. The family left the house in April 2007, leaving furniture and personal items behind.

Wendy Meng said she was hospitalized seven times in 2006 and 2007 for migraine headaches. She said she also has suffered from tachycardia, heart palpitations, memory loss, nervous system dysfunction, breathing difficulties and chemical sensitivity.

In addition, the couple said, Paul Meng has been diagnosed with asthma since moving into the house.

Both Mengs were treated by Dr. Ritchie C. Shoemaker of Pocomoke, Md., They, and their daughter, Emma, a co-plaintiff, were also treated for a month by Dr. Allan Lieberman at the Center for Occupational and Environmental Medicine in Charleston, S.C.

At trial, which began on Dec. 15 before Judge Thomas D. Horne, the Mengs sought \$400,000 for remediation costs and additional damages for alleged negligence, actual and constructive fraud and violations of the Virginia Consumer Protection Act.

Experts who testified at trial for the Mengs included Dr. Lieberman; Chin S. Yang, Ph.D., Prestige EnviroMicrobiology Inc. in Voorhees, N.J.; Ronald Wright, PE of RV Buric Construction Consultants; hygienist and construction expert Timothy Duffy, PE CIH of Baltimore; appraiser Jack Cooper of Vienna, Va.; and Davidge Warfield, URI Environmental Inc., Pottstown, Pa.

Defense experts included psychiatrist Dr. Bruce Smoller of Chevy Chase, Md.; Dr. Tee L. Guidotti,

a professor of environmental and occupational health at George Washington University; Rick Cottle PE of Nashville, Tenn.; Jason Blumenberg, Patuxent Environmental Group in Dunkirk, Md.; and Joseph Coco CIH of AMA Analytical Services Inc. in Lanham, Md.

Defendants maintained at trial that any illnesses suffered by the Mengs were unrelated to mold. Dr. Smoller testified that Wendy Meng suffers from depression and undifferentiated somatoform disorder, according to a trial report.

The verdict and amounts awarded were as follows: \$2,276,000 to Wendy Meng on the negligence claim; \$500,000 to Paul Meng for negligence; \$1,474,000 to Wendy and Paul Meng on the constructive fraud claim; and \$500,000 to the couple for violation of the Virginia Consumer Protection Act.

The jury found for The Drees Co. on a negligence claim brought on behalf of the Mengs' daughter and on the Mengs' claims for actual fraud and breach of contract.

A claim for rescission of the construction contract and for attorneys' fees under the Consumer Protection Act are pending before Judge Horne. A hearing is scheduled for Feb. 6.

David H. Wise and James P. Lukes of Waters & Wise in Fairfax, Va., represent the Mengs.

Kurt C. Rommel and Jeffrey S. Poretz of Miles & Stockbridge in McLean, Va., represent The Drees Co.

Documents Are Available

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Verdict Ref# MOL-0901-04

Amended Complaint Ref# MOL-0901-05

Answer Ref# MOL-0901-06

Order re Demurrer Ref# MOL-0901-07

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