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March 09, 2005

Jury Finds "Toxic Mold" Harmed Oregon Family, Builder's Arbitration Clause Not Binding

The case (Haynes vs. Adair Homes Inc.) is a first in the Northwest to award personal injury damages to a family exposed to toxic mold in a newly built home. "This verdict is significant because it holds construction companies responsible when they negligently build sick buildings," said Kelly Vance, the family's attorney.

(PRWEB) March 9, 2005 -- A Clackamas County jury on Friday (March 4, 2005) held Adair Homes Inc. responsible for faulty construction practices that caused toxic mold to thrive inside Paul and Renee Haynes' new home in Sandy, Oregon. The jury also found Adair's negligence caused illness in Mrs. Haynes and the couple's two small children – Michael, 6, and Liam, 4. The family experienced severe respiratory, digestive and cognitive impairment. One half of a million dollars was awarded to the injured family.

The case is a first in the Northwest to award damages for personal injury to a family exposed to mold in a newly built home. "This verdict is significant because it holds construction companies responsible when they negligently build sick buildings," said Kelly Vance, the family's attorney.

Adair Homes, Inc. which builds hundreds of residences each year in Oregon, Washington and Idaho, built the house on the Haynes' five acres in early 2002. Four months after moving in and becoming ill, the family discovered rampant mold growth inside the walls of their new home. Dry wall and insulation were installed while the frame was wet from recent heavy rain. Evidence presented during the trial proved there was standing water in the wall cavities and the crawl space long after the construction was completed. This led to the growth of the toxigenic fungi. "You couldn't have made the framing in that house more wet if you had sprayed it with a firehose," stated Vance.

By the time the Haynes discovered the mold, it was too late. Mrs. Haynes and the children were exhibiting neurologic and immune system damage. Paul Haynes reported the problem to Adair Homes, but the company refused to take responsibility. The family was forced to flee their new house in an effort to save the health of the mother and young sons.

Two separate medical evaluations substantiated that both Renee Haynes and her son, Michael, had mold antibodies in their blood, indicative of dangerous exposure levels to mold. Numerous experts, including a fungal immunologist, an occupational therapist and a neuropsychologist testified concerning the Haynes children's developmental and sensory integration disorders.

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that began shortly after moving into the Adair built home. The family's treating physician and therapists agreed that Liam's and Michael's medical needs from the mold exposure will continue for several years to come. Michael's teacher testified that he was placed in a special disabled room at school and may need to remain there until at least junior high school. She expects Liam to suffer the same fate.

Amazingly, the Haynes family almost did not even get to tell their story to a jury. Adair, like many other commercial entities, utilizes an arbitration clause in its contract. That clause designates a specific preferred arbitration service. Adair uses Construction Arbitration Services, Inc., a company based far away from Adair's market, in Dallas, Texas. After the case was filed, Adair moved to stay the case pending arbitration and submitted affidavit from the owner of the arbitration service, Marshall Lippman. The judge allowed the case to go to trial when the family's attorney showed that Lippman had submitted a false affidavit concealing the fact that he had been disbarred by the State of New York and Washington D.C. The disbarments occurred because Lippman had been found to have stolen funds from his clients.

Dr. Bruce Kelman of GlobalTox, Inc, a Washington based environmental risk management company, testified as an expert witness for the defense, as he does in mold cases throughout the country. Upon viewing documents presented by the Haynes' attorney of Kelman's prior testimony from a case in Arizona, Dr. Kelman altered his under oath statements on the witness stand. He admitted the Manhattan Institute, a national political think-tank, paid GlobalTox \$40,000 to write a position paper regarding the potential health risks of toxic mold exposure. Although much medical research finds otherwise, the controversial piece claims that it is not plausible the types of illnesses experienced by the Haynes family and reported by thousands from across the US, could be caused by "toxic mold" exposure in homes, schools or office buildings.

In 2003, with the involvement of the US Chamber of Commerce and ex-developer, US Congressman Gary Miller (R-CA), the GlobalTox paper was disseminated to the real estate mortgage and building industries' associations. A version of the Manhattan Institute commissioned piece may also be found as a position statement on the website of a United States medical policy-writing body, the American College of Occupational and Environmental Medicine.

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