

July 28, 2008

Ms. Laurie Ochoa  
Editor in Chief  
LA Weekly,  
3861 Sepulveda Blvd  
Culver City, CA 90230

Dear Ms. Ochoa:

Below you will find, in red, text taken directly from the article entitled: **THE TOXIC MOLD RUSH: CALIFORNIA MOM HELPS FUEL AN OBSESSION**

In 1999, Melinda Ballard, owner of a 22-room Texas mansion, sued over mold that had infested her home. Nationwide at the time, just 227 such claims were believed to exist — a number that has since exploded to tens of thousands. A Texas jury agreed that the Ballards had been made sick by mold, and in 2001 awarded the wealthy family \$32.1 million.

When the reporter, Daniel Heimpel, asked me about my case, I explained in great detail (via email on April 2, 2008, a true and correct copy of which is provided on page two through five of this letter) that my case was not about personal injury. I explained that the judge had gutted the case of any and all personal injury claims, leaving only the property damage. I even spelled out, specifically, the judgment, which was appealed and appealed again.

Later in my April 2<sup>nd</sup> email to Mr. Heimpel, I again stress that my case was NOT a “mold case”. It was a bad faith and fraud case.

Hence, Mr. Heimpel’s characterization of the case is completely false.

You owe it to your readers to clarify this fact.

Thank you,



Melinda Ballard  
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Charleston, SC 29401  
(843) 723-0710

**Subject:** Re: Mold Story LA Weekly  
**Date:** 4/2/2008  
**To:** [dheimpel@gmail.com](mailto:dheimpel@gmail.com)

I will be happy to put thing into perspective:

In a message dated 4/2/2008 12:10:23 P.M. Pacific Daylight Time, dheimpel@gmail.com writes:  
How did you come up with the damages you claimed?

Unlike CA, Texas has a higher burden of proof that was sent forth by the TX Supreme Court in the 1990s called "Havner". In the Havner opinion, the Texas Supreme Court set standards for toxic exposures that said that you must meet a higher bar than either the "Daubert" case or the "Frye" case. In fact, it's so strict that even an anthrax case could not meet the burden. (CA's litmus test is Frye.) Anyway, in Texas, for a jury to hear any testimony regarding personal injuries sustained, there would have to have been research conducted with thousands of patients whereby the subjects are split into two groups: one group of several hundred that were exposed to the same toxin, same quantity of toxin and same length of exposure (Group A). The other group (Group B) could not have been exposed to that toxin. If there is not a doubling of the SAME injuries by subjects from group A, the case gets tossed. Obviously, mold does not, and probably never will, meet this burden. Neither will anthrax but that doesn't mean it won't hurt you.

Given this, at the 11th hour, the judge in our case (John Dietz) decided that my husband's exposure and injuries would not meet the Texas Supreme Court's litmus test and toss his case.

That left the property case only which made it easy to determine the amount of damages:

Home:

\* Given our neighborhood, experts (on both sides) said that the house had to be partially remediated, even if it was going to be torn down. Their reasoning behind this was that the house contained so much mold that it could impact neighboring properties and livestock. The cost of partially remediating BEFORE bulldozing was \$1.2 million; plus

\* Bulldozing was \$100,000; plus

\* To rebuild, we had 3 binding bids, all hovering around \$3 million; plus

\* To replace contents (furniture, art, clothing, everything...) was about \$2 million.

TOTAL PERSONAL PROPERTY REPLACEMENT: \$8.3 million

Versus

Completely remediating the home and all contents of about \$10 million.

(Sometimes, it's cheaper to start from scratch rather than attempting to fix something.... Ask any antique car collector! We opted for the bulldozing and building from scratch option.)

Then consider additional living expenses that the insurer was supposed to pay but didn't -- all proved by receipt, rental leases, etc... of around \$350,000 over the course of four years. Now we are at \$8,650,000.

Add to that figure:

Interest of somewhere around 17% compounded annually from the time the insurer SHOULD have paid the money (which was December, 1998). That is around 4 years of interest or close to \$6 million.

Without anything more, that figure is \$14,650,000

Then add to that the attorney's fees of 40% or around \$5,860,000. And, my out of pocket expenses (I paid all costs relating to the suit excluding actual attorney fees) of around \$2 million. The total cost of litigation = \$7,860,000.

So, the actual economic damages in the case were close to \$22 million and all of it had to be substantiated.

The jury saw fit (appeals court disagreed) to award punitive damages and mental anguish, \$12 million and \$5 million, respectively.

Was your attorney pretty high powered?

Fred Hagans is very high powered. He is one of the most respected Texas attorneys and handles both plaintiff and defense cases.

How big was the case for mold litigation?

Our case wasn't a "mold" case, it was a bad faith and fraud case. But, it got a lot of attention because of the judgment of \$32,000,000 (which included punitive damages and mental anguish). It had both a positive and negative impact:

Positive: It caused many people (literally hundreds of thousands) to be mindful of mold and diligent about water damage. Most people knew nothing about the harmful health effects mold can have and the destruction of property that it can do. Because of that, people take better care of their homes now. It also was a wake up call to many people suffering from mold related symptoms.

Negative: As with anything like this, the nuts came out of the woodwork. A small percentage of people thought they could get rich off of mold and filed claims and lawsuits. This proved not to be an effective strategy because such cases get tossed long before trial. Most of the nutcases I heard from were people who were in the line of fire on liability: builders, insurers (adjusters, etc...), slumlords who don't spend a dime to repair rental properties, and those people who think all cases are frivolous. To this day, I get death threats and a few people still think I caused their insurance rates to skyrocket. (By law, rates must be set on a state-by-state basis. I left Texas in 2003 and since that time, coverage has been slashed by 60% and rates have gone up an average of 300% statewide and rates continue to climb.)

Why has the mold litigation ebbed in your opinion? How much is that due to the ACOEM paper?

The ACOEM paper only impacted the number of personal injury cases, which are large in number but not as large as the property damage cases. It most certainly impacted if a case gets tossed before a jury even is allowed to hear it.

The reason why property-damage mold litigation has "ebbed" is because appeals courts (state and federal appeals courts) have ruled in favor of the defense in so many cases. This is solely because many judges are advocates for the defense bar -- big insurance companies. Jurors (people who actually hear the cases) often rule in favor of the plaintiff but the appeals court judges (many of whom should affix State Farm, Allstate and other insurance company logos to their black robes) bend over backwards for these companies. (Many state appeals judges are elected and much of their campaign contributions come from this industry. Many were former defense attorneys and are buddy-buddy with insurance defense counsel. Many are just plain scared that if they rule against an insurer, the insurer will threaten to non-renew policies and leave the state (don't quote me on this but that is exactly what Farmers did in Texas just before the Third Court of Appeals heard the case). Nonrenewing policies or actually abandoning a state all together causes a serious shortage in the availability of insurance and rates skyrocket.

You should read our April newsletter article about such threats. See yellow highlighted article below:

<h1>The Policyholder Advocate</h1> 	
	Policyholders of America
<div style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block;">             April 2008 Edition           </div>	
<a href="#">AGAINST THE ODDS: IS SAFECO BETTING A TEXAS JURY WON'T BE SYMPATHETIC TO A GUY NAMED "MOHAMMAD"?</a>	<a href="#">1,11</a>
<a href="#">ALLSTATE AND STATE FARM HIT WITH RICO CHARGES</a>	<a href="#">1</a>
<a href="#">ARE YOU A MALINGERER? NEW TEST FLAWED BUT USED IN COURTS. TAKE THE TEST YOURSELF.</a>	<a href="#">2,12-14</a>
<a href="#">JUSTICE 4 SALE</a>	<a href="#">3</a>
<a href="#">CDC INVESTIGATED AGAIN</a>	<a href="#">4,10</a>
<a href="#">CONTINUING KATRINA COVERAGE:</a>	<a href="#">5-9</a>
<a href="#">LEGAL ROUND-UP,</a> <a href="#">HOW INSURERS USE PROXIES TO SWAY COURTS,</a> <a href="#">TOP LAWYER PLEADS GUILTY OF BRIBERY,</a> <a href="#">JURY AWARD REASON TO REVIEW YOUR POLICY,</a> <a href="#">BICKERING LAWYERS,</a> <a href="#">FEDS GIVE FREE PASS TO STEALING FROM TAXPAYERS, AND MORE...</a>	
<a href="#">ARE YOU INSURED?</a>	<a href="#">15-18</a>
<a href="#">RECENT MOLD-RELATED DECISIONS (3 OUT OF 5 ARE GOOD THE OTHER 2 ARE REALLY BAD)</a>	<a href="#">19-22</a>
<a href="#">THE FALL OF THE AMERICAN CONSUMER</a>	<a href="#">23</a>
<a href="#">YOU BET YOUR LIFE: HOW SENIORS ARE CASHING IN</a>	<a href="#">24</a>
<a href="#">WHAT HAPPENED IN HOMEOWNERS IS NOW HAPPENING IN AUTO. MORE INSURANCE CO. ABUSE</a>	<a href="#">25-27</a>
<a href="#">STATE WATCH: AL, CA, FL, MD, MI, NY, TX</a>	<a href="#">28-36</a>
<a href="#">STATE FARM LAWYER HITS "SEND" BUTTON AND ACCIDENTALLY EMAILS MEDIA, IGNITING FIREWORKS.</a>	<a href="#">Back Cover</a>

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