

## SANTA MONICA JURY REJECTS CLAIMS OF CATASTROPHIC BRAIN INJURY FROM MOLD EXPOSURE; PLAINTIFF FACES MOTIONS FOR ATTORNEY'S FEES AND COSTS

Early this week, a Santa Monica jury returned a defense verdict in a closely watched case involving claims of catastrophic brain injury from alleged mold exposure. Plaintiff Steve White allegedly was exposed to mold while a tenant at a Simi Valley apartment complex. As a result, he claimed to have contracted allergic fungal sinusitis which led to a brain abscess and permanent neurological damage. Mr. White's undisputed medical costs were in excess of \$264,000.

The defendant landlord is one of the nation's largest real estate investment trusts and was represented by Wood, Smith, Henning & Berman, LLP partners Victoria Ersoff and Seymour Everett. Plaintiff was represented by three attorneys from the Law Offices of Brian D. Witzer, including prominent trial attorney Brian D. Witzer. Mr. Witzer is considered by some to be the foremost plaintiff's counsel in the field of mold personal injury litigation, having once obtained a \$22.6 million dollar settlement of a "toxic mold" case. That is the highest settlement amount achieved in the United States for this type of litigation.

A law suit was filed on June 30, 2006 on Mr. White's behalf and culminated in a jury trial in Santa Monica, California before the Honorable Jacqueline A. Connor. Plaintiff demanded \$2.5 million to settle prior to trial. Thirty two witnesses testified, fourteen of whom were identified as experts. Key testimony was also solicited from four of Mr. White' treating physicians.

Plaintiff accused defendants of failing to respond to complaints of mold in plaintiff's apartment over the course of his tenancy. During the trial defense counsel demonstrated that the complaints were not made to the defendant in a reasonable and proper manner. In addition, defense counsel successfully refuted the basis for plaintiff's medical claims. Following the trial, Ms. Ersoff commented, "while plaintiff's injury was significant and traumatic, there simply is no credible evidence to support Mr. White's claim that he developed Allergic Fungal Sinusitis based upon the well accepted diagnostic criteria for this condition." Mr. White had undergone emergency surgery

on January 9, 2005 to save his life following complications stemming from acute bacterial sinusitis.

A critical moment during the trial was the testimony of a former girlfriend of Mr. White. She disclosed to the jury that Mr. White was once evicted from an apartment because he created a dangerous condition when excessive humidity from his fish tank caused mold growth throughout the apartment. That testimony was later confirmed during the cross-examination of Mr. White's ex-wife, who was called as a rebuttal witness by Mr. Witzer. Trial attorney Seymour Everett, who examined both witnesses, commented that "the importance of revealing plaintiff's prior exposure to mold and knowledge of mold was key to establishing that plaintiff had a heightened duty to comply with our client's mold lease addendum." That testimony reinforced the importance of property managers and tenants' bilateral obligation to comply with such lease provisions. Mold lease addendums are becoming more commonplace in the property management industry as a way to educate and protect both tenants and property managers.

The defendant intends to file a motion to recover from Mr. White the substantial amount it paid to defend this action.



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