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First Quarter Newsletter, 2004

Injured Residents Failed to Prove Property Manager's Liability

Mold, Concealment and Liability

BY LAURI CROCE, ESQ.



The folks at Condominium Consultants, Inc., in La Mesa, California, report that in December 2003, a San Bernardino County jury reached a verdict in favor of the defense in *Hake v. Ackermann*, a case involving causes of action for negligence, breach of contract, breach of warranty of habitability, conversion, concealment and punitive damages brought by injured residents against the manager of a Big Bear residential property.

The Hakes leased a single family home in the Big Bear area in September 2001 and, they alleged, immediately became ill, suffering nausea, diarrhea, respiratory problems, difficulty concentrating, various memory issues, and severe headaches. The property managers moved the Hakes out of the house in November 2001. The Hakes never returned to the home. They left all of their possessions behind (except for a few clothes), believing that the possessions were infested with mold and dangerous to human health. They sued the owners of the home and the property manager for several hundred thousand dollars for bodily injuries and property damages. The Hakes also alleged that because the property manager "knew" of the mold infestation but concealed it, they were entitled to an award of punitive damages.

A month prior to trial, the owners settled the claims against them for

\$20,000. The Hakes' last settlement demand prior to the trial against the property manager was for \$250,000, and they lowered their settlement demand to \$135,000 during trial. The property manager's last, best offer was for \$35,000.

At the trial, the Hakes testified as to their illnesses, which they attributed to mold contamination. Further, they testified that they began to

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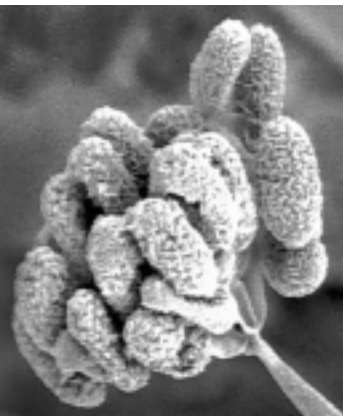


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recover from their symptoms after they moved out of the house and were completely recovered within several months. The Hakes told their allergist in December 2001 that the home was infested with "massive" amounts of *Stachybotrys* and *Aspergillus* molds. On the basis of the plaintiffs' statements alone, the doctor diagnosed them as suffering from contaminant exposure emitted from the molds. However, cross-examination revealed that the doctor never verified the presence of mold, nor did he take into account Mr. Hake's preexisting allergies and other ailments, including a prior concussion.

Not surprisingly, the Hakes mold expert – a "certified microbial consul-

tant" – supported the Hakes' claim of "massive" mold contamination. But the defense's more qualified Certified Industrial Hygienist refuted the Hakes' experts' conclusions, stating that at best, there were only low levels of microbial matter present.

The jury found for the defense on all causes of action (negligence, breach of contract, breach of warranty of habitability, conversion, concealment and punitive damages), by a vote of 9 to 3 after weighing the evidence introduced at the seven-day trial. Apparently, several members of the jury did not believe that the defendant's property manager concealed a dangerous

condition, or even knew of anything dangerous on the premises. The jurors also did not believe the mold was the main, or only, cause of the Hakes' illnesses; the jurors did not think the Hakes' allergist made a credible witness, and the Hakes' failed to rule out

other potential sources which may have caused or contributed to the injuries.

Despite the *Hake v. Ackermann* outcome in favor of the defense on both the bodily injury and property damage claims, it should be noted that at least half of the mold cases which go to trial result in a property damage award in favor of the plaintiffs. And in Northern California, a jury awarded the plaintiffs \$2.7 million against a property manager because of mold. However, most cases in California and nationally (at least 99%) never get to trial — they are settled out of court without the issues of liability or severity of injuries and property damage ever being definitively resolved. ■