

ALERT

Mold-Related Bad Faith Claims Continue to Plague Insurers

A. Hatley v. Century Nat'l Ins. Co.

On November 26, 2001, an Arizona jury awarded a family more than \$4 million in a mold-related lawsuit against the family's insurer, despite the presence of a mold exclusion in the policy. *Daniel Hatley, et al. v. Century Nat'l Ins. Co.*, No. CV2000-006713, Ariz., Super., Maricopa Co. The *Hatley* litigation arose out of a claim for water-related property damage that allegedly resulted from a leaky dishwasher and broken pipe. The water damage allegedly led to mold infestation, which in turn allegedly caused or contributed to the hospitalization of the Hatley's seven-year old son who already suffered from cystic fibrosis. When Hatley submitted the claim to its insurer, Century National, the insurer denied the claim based on the policy's mold exclusion. Hatley challenged that denial contending that the mold resulted from leaks that were covered water losses, and that any loss resulting from mold should therefore be covered. Hatley further argued that to deny the claim based on the mold exclusion amounted to bad faith.

The jury agreed with Hatley, concluded that the mold exclusion did not bar coverage and awarded Hatley more than \$237,000 in compensatory damages and \$4 million in punitive damages.

B. Ballard v. Fire Insurance Exchange

Similarly, in perhaps the most watched mold case in the country, a Travis County, Texas trial court recently upheld a \$32 million verdict against an insurer in *Ballard v. Fire Insurance Exchange*, No. 99-05252, Texas Dist., Travis Co. That verdict, which is among the largest of its kind, was awarded to Melinda Ballard after the jury in that case found that the Ballards' insurer acted in an unfair, deceptive and fraudulent manner when adjusting Ballard's claim for mold-related property damage, which like *Hatley*, stemmed from a relatively innocuous water leak.

C. Implications

- *Hatley and Ballard* emphasize the potentially devastating magnitude of seemingly innocuous water damage claims, when those claims are not properly adjusted. The decisions are reminders that greater attention must be paid to the manner in which carriers approach and handle claims that potentially involve a mold component.
- *Hatley and Ballard* also demonstrate the importance of working closely with remediation personnel and contractors to ensure that all appropriate actions are taken to prevent ensuing damage, which might lead to unforeseen coverage implications.
- The two decisions further demonstrate the importance of forum selection. Insurers need to be mindful of which districts or jurisdictions might properly entertain a coverage action, considering early in the claim handling process whether an affirmative declaratory judgment action in an appropriate jurisdiction may support the company's coverage determination and prevent bad faith exposure.

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