

Mold Bulletin!

For questions or comments,
please contact
mpietrykowski@gordonrees.com

SAN FRANCISCO

Embarcadero Center West
275 Battery Street
Suite 2000
San Francisco, CA 94111
Telephone: (415) 986-5900
Fax: (415) 986-8054

SAN DIEGO

101 West Broadway
Suite 1600
San Diego, CA 92101
Telephone: (619) 696-6700
Fax: (619) 696-7124

LOS ANGELES

300 South Grand Avenue
Suite 2075
Los Angeles, CA 90071
Telephone: (213) 576-5000
Fax: (213) 680-4470

ORANGE COUNTY

18881 Van Karman
Suite 1500
Irvine, CA 92612
Telephone: (949) 271-9331
Fax: (949) 271-9301

***BALLARD* AWARD DRASTICALLY REDUCED**

On December 19, 2002, the \$32 million dollar bad faith verdict rendered in *Ballard v. Fire Insurance Exchange* on was reduced to a \$4 million verdict, plus attorney's fees.

The Third District Court of Appeals of Texas affirmed plaintiffs' \$4 million award in actual damages, but found that there was insufficient evidence to support the findings of fraud or that the insurer "knowingly" breached its duty of good faith and fair dealing. Therefore, the court eliminated the \$5 million award for mental anguish and the \$22 million award for punitive damages.

Significantly, the appellate court found no error in the trial court's exclusion of the homeowners' medical causation. According to plaintiff's experts, Wayne Gordon, PhD. and Eckardt Johanning, M.D., plaintiff's husband had "toxic encephalopathy" from exposure to *Stachybotrys* mold in the home. The court found that the underlying data plaintiffs' experts used to form their opinions were not sufficiently reliable to prove general causation under the Daubert standards. Similarly, the appellate court affirmed the trial court's judgment dismissing plaintiff husband's mold-related personal injury claims.

The attorneys at Gordon & Rees LLP are available to discuss the implications this decision may have for you and your business. We are attorneys experienced in litigation and coverage issues specifically associated with mold. Please feel free to contact us for further information.