

### SACRAMENTO COUNTY

### CENTRAL

#### TOXIC TORTS

Mold — Landlord and Tenant — Habitability — Residence

### Plaintiff claimed toxic mold in rental house caused illness

**VERDICT \$1,388,488**

**ACTUAL \$1,448,764**

**CASE** Trina Medina, Manuel Medina, Emily Garcia, Angelo Addiego, a Minor through his GAL Angela Medina, Destiny Addiego, a Minor through his GAL Angela Medina, and Draven Addiego, a Minor through his GAL Angela Medina v. Lillian Penton, Leanne Morris and Does 1 through 25, Inclusive, No. 34-2011-00110427

**COURT** Superior Court of Sacramento County, Sacramento

**JUDGE** Richard K. Sueyoshi

**DATE** 10/10/2014

**PLAINTIFF ATTORNEY(S)** Cheryl D. Bossio, BossioLaw, Sausalito, CA

**DEFENSE ATTORNEY(S)** Victoria L. Ersoff, Wood, Smith, Henning & Berman LLP, Los Angeles, CA (Lillian Penton, Leanne Morris) Elizabeth W. Lawley, Borton Petrini LLP, Sacramento, CA (Lillian Penton, Leanne Morris) Robert S. Rucci, Borton Petrini LLP, San Diego, CA (Lillian Penton, Leanne Morris) None reported (Cornelia Naughten)

**FACTS & ALLEGATIONS** In 2009, plaintiff Manuel Medina, 26, a warranty coordinator for a residential housing builder, moved into an approximately 2,200 square foot rental residence, in Antelope, with his wife and three children. Over the next nine months, the family allegedly became ill with ongoing flu-like symptoms, chronic coughing, headaches and

general malaise. Toward the end of their tenancy, one year after moving in, Medina's parents surmised that the only common factor amongst the ailing family members was the house. As a result, the family tested the house with a home mold test kit purchased from Home Depot and it revealed high levels of mold. The family then investigated the area around the living room wet bar, which they suspected was the source of the mold. Around the same time, the family notified the property owners, Lillian Penton and Leanne Morris, of their concerns about mold being present. A local, professional indoor environmental inspector was then sent to investigate and test the home for elevated toxins. Air samplings revealed high levels of *Aspergillus/Penicillium*.

Manuel Medina; his wife, Trina Medina; his mother who lived with the family, Emily Garcia; and his three minor children, Angelo Addiego (age 12), Destiny Addiego (age 9) and Draven Addiego (age 7), through the children's guardian ad litem, Angela Medina, sued Penton and Morris. Mr. Medina and his family alleged that Penton and Morris failed to maintain the home and breached the warranty of habitability.

A third defendant, Cornelia Naughten, was later added to the case, but ultimately settled out early in the litigation.

Prior to trial, plaintiffs' counsel offered to dismiss the children, their mother and their grandmother in exchange for a waiver of costs. Defense counsel refused, but plaintiffs' counsel dismissed Mrs. Medina, Garcia and the children anyway in order to focus on Mr. Medina's injuries and causation, as he was believed to have had the strongest causation argument and highest damages out of all the family members. Defense counsel subsequently pursued cost judgments against Garcia, Mrs. Medina, and each of the minor children. In addition, after plaintiff's counsel stipulated to the dismissal of the causes of action relating to alleged dust mites, trespass to chattel, damages related to personal property, breach of contract and fraud, the court granted defense counsel's motions for nonsuit as to those claims. Thus, the matter proceeded to trial with Mr. Medina's single cause of action in negligence against Penton and Morris only.

Plaintiff's counsel contended that the rental home had a history of plumbing leaks and flooding. Thus, counsel argued that the water-damaged building materials were never properly remediated by the homeowners before the Medina family rented the home, causing the house, unbeknownst to the renters, to have high levels of indoor contamination, including toxic black mold. Plaintiff's counsel contended that in addition to the high levels of *Aspergillus/Penicillium*, the environmental inspector also detected *Stachybotrys*, which is the black mold that has most been associated being toxic, and determined that there was a likelihood of formaldehyde contamination from laminate flooring that had water damage.

Penton and Morris denied the existence of habitability issues in the rental home and claimed that the Medina family was destructive in their investigation of the area around

the living room wet bar. They also claimed that they paid for the inspections and testing of the house and that once mold was detected, the home was immediately remediated, despite questions about the testing methodology of the environmental inspector. Specifically, Penton and Morris denied the presence of *Stachybotrys* and the likelihood of formaldehyde contamination in the home. Thus, defense counsel questioned the accuracy of the air sampling results due to various flaws in the collection of data, including the failure of the inspector to properly contain the area of the testing.

#### **INJURIES/DAMAGES** *aggravation of pre-existing condition; headaches; infection; pneumonia; respiratory*

Over a nine-month period, the family allegedly became ill with ongoing flu-like symptoms, chronic coughing, headaches and general malaise. During their tenancy, Mr. Medina's health grew increasingly worse until he was eventually unable to show up to work on a regular basis beginning in February 2010. He was ultimately rushed to an emergency room in 2010, after he was found to be unable to breathe due to infection and pneumonia.

Mr. Medina claimed that he was particularly hard hit from the toxic home due to the fact that he was already suffering from a pre-existing lung disorder called primary ciliary dyskinesia, which is a genetic disorder that is similar to cystic fibrosis, wherein individuals have difficulty clearing their airways and mucus bogs down to the point of interfering with their breathing capacity. Plaintiff's counsel contended that individuals with increased susceptibility to airway contaminants, such as the very young and the elderly, asthmatics, those with PCD and cystic fibrosis, and those with compromised immune systems, such as AIDS and HIV, are particularly vulnerable to mold, bacteria and the proliferation of dust mites resulting from unabated water damage in a home.

Mr. Medina claimed that, prior to moving into the rental residence, he had worked essentially full time since he was 16 years old. He was a full-time construction worker with D.R. Horton until being laid off during the housing market crash. He then resumed working full-time, taking on jobs that became available thereafter. However, he claimed that after moving out of the residence in 2010, his treating physicians rendered him unable to return to full-time work or his former occupation in construction. Thus, Mr. Medina claimed that his medical expenses escalated to \$245,000 by the time of trial.

Mr. Medina sought recovery of past and future medical costs, and past and future loss of earnings. He also sought recovery of damages for his pain and suffering.

Defense counsel pointed to evidence that Mr. Medina's condition had waxed and waned over the course of his life, citing similar bouts during various points of his youth and young adult life. Counsel also contended that during the family's tenancy, Mr. Medina did not once visit a doctor when his genetic condition seemed to worsen and that Mr. Medina eventually went to a hospital over four months after

he and his family had vacated the unit. Thus, defense counsel argued that all of Mr. Medina's health problems were due to his pre-existing respiratory illness.

**RESULT** The jury found that Penton and Morris were both negligent. It determined that Mr. Medina's damages totaled \$1,388,487.84. However, the jury denied the Mr. Medina's request for punitive damages.

<b>MANUEL MEDINA</b>	\$245,288 past medical cost \$200,000 future medical cost \$83,200 past lost earnings \$360,000 future lost earnings <b>\$500,000 past non-economic loss</b> \$1,388,488
<b>DEMAND OFFER</b>	\$600,000 (policy limits) (C.C.P. § 998) \$15,001 (C.C.P. § 998)
<b>INSURER(S)</b>	QBE North America for Lillian Penton and Leanne Morris
<b>TRIAL DETAILS</b>	Trial Length: 35 days Trial Deliberations: 3.5 days
<b>PLAINTIFF EXPERT(S)</b>	Phillip H. Allman, III, Ph.D., economics, Oakland, CA Carol R. Hyland, M.A., vocational rehabilitation, Lafayette, CA Alan Levin, M.D., allergy/asthma/immunology, San Francisco, CA W. Randy Martin, M.D., pulmonology, Roseville, CA Curtis Roberts, industrial hygiene, Elk Grove, CA
<b>DEFENSE EXPERT(S)</b>	Thomas S. Allems, M.D., internal medicine, San Francisco, CA (environmental medicine) Stephen C. Davis, M.P.H., industrial hygiene, Lafayette, CA

**POST-TRIAL** Defense counsel moved for a new trial and judgment notwithstanding the verdict. On Dec. 15, 2014, Judge Richard Sueyoshi denied the motions. Sueyoshi also awarded Mr. Medina \$60,276.54 in expert fees and costs, making Mr. Medina's total recovery \$1,448,764.38. Defendants Penton and Morris subsequently filed a notice of appeal on Jan. 13, 2015.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' and defense counsel.

—Priya Idiculla