

## **Ms. Ballard's Mold Case – Or, the Case of the Really Bad Screw-Up by An Insurance Company**

**By Michael K. McCracken, CPCU**

Mold seems to be the hot button issue in the insurance world these days. Of course, what put everyone into a tither, was the \$32 million "mold judgment" against Farmers Insurance Group.

My contention is that this case was never about mold and the coverage – or lack of coverage – for mold damage under a homeowners policy. This was, simply, a bad-faith case. It was a case of the insurer screwing-up so badly, it became comical. So comical, in fact, that the jury awarded \$32 million in compensatory and punitive to the homeowner, Ms. Melinda Ballard.

Melinda Ballard's beautiful 22-room home was damaged when the plumbing sprung a leak. Damage from a plumbing leak is clearly covered by the HO-3 policy (the most common homeowners form). In the case of a plumbing leak, any damage done by the water is covered. Even the cost to tear out part of the dwelling to get at the broken pipe is covered. The only thing the policy does not pay for is the actual broken pipe itself.

The HO-3 goes on to say that any subsequent damage done to the home by a covered cause of loss is also covered. In this case, the plumbing leak was the covered cause of loss – any damage done by that plumbing leak or subsequent to it is covered.

Because the damage from the plumbing leak at Ms. Ballard's house wasn't fixed properly, and the water wasn't cleaned-up adequately, mold grew. And it was the clean-up of this mold that the insurer and its employees just didn't seem to understand. They kept swinging at the issue and kept striking out.

Yes, the HO-3 does exclude mold. What it really excludes is mold as a cause of loss – it does *not* exclude *mold damage* that results from a covered cause of loss. The exclusion of mold in the HO-3 is contained within a longer list of things that happen over a period of time. Things like: wear and tear, marring, deterioration; inherent vice; mechanical breakdown; rust; etc. As mentioned, all of these things happen over a period of time and are, as such, uninsurable. These things *just happen* to property – they are part and parcel of being a property owner. In other words, the mold that is excluded is the kind that just grows *over a period of time* in the corner of a damp basement – or on the underside of the wood steps leading down into that basement.

But, as we know, that is not what happened to Ms. Ballard's home. The mold that grew in her house was the result of a sudden and accidental discharge from the plumbing system. The damage done by the water; the clean-up of the water; and any mold that grew as a result was all covered by the HO-3. But, as I said earlier, the insurance company just couldn't get it right.

Initially, the insurance company said that Ms. Ballard's home had a "foundation problem." With this mislabeling of the claim, it got assigned to an adjuster who had only a \$20,000 limit of authority. When the foundation was tested, no leaks were found. But, as we already know, Ms. Ballard's house didn't have a foundation problem.

In addition to the claim being mishandled, the underwriting department also did not do its job properly. On several occasions, the agent requested that the limit of liability be increased on the home – all to no avail, because the underwriting department never attended to the agent's requests.

In a conversation with Fred Hagans, attorney for Ms. Ballard, he told me that the insurance company was "always chasing the claim. They never had the right person in the right place to make a decision."

But, what saved the day for Ms. Ballard may have been her personality. According to Mr. Hagans, Ms. Ballard is a "strong-willed person, who knows what she wants and is not afraid to go after it." Still, such a person could, apparently, not get the attention of the appropriate people at the insurer.

Said Mr. Hagans: "I think this really came home to the jury. They thought that if Ms. Ballard couldn't get the insurance company's attention, there was little hope for any of them if they ever had a big claim. So, they got the insurer's attention in the only way they knew how--a big verdict."

And those of us who are not as strong-willed as Melinda Ballard may face the same possibility of ending up on the "short end of the stick" if and when we ever make a property claim. If you ever have a property claim of more than just a few hundred dollars, my best advice is this: hire a public adjuster. Public adjusters are experts in construction and insurance – and they work only for you, the policyholder. Hiring a public adjuster is the best way to assure yourself of a fair settlement. For more information about public adjusters, please go to <http://www.napia.com>. That is the Web Site of the National Association of Public Insurance Adjusters.

*Michael K. McCracken, CPCU, is a self-employed insurance consultant, specializing in property claims. He may be reached at:*

*2860 Kimberly Dr.*

*Maineville OH 45039*

*(513) 317-2972*

*<mailto:mike-mccracken@cinci.rr.com>*