



Family wins record settlement over toxic mold

Lumber company, 16 other defendants to pay \$22.6 million

The Associated Press

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LOS ANGELES - A family who claims toxic mold in their home caused brain damage in their baby has reached a \$22.6 million settlement against a lumber company and 16 other defendants.

The parents of Kellen Gorman claimed that he became sick because of mold on framing studs that had been improperly stored by Crenshaw Lumber Co. Inc. of Gardena, which agreed to pay \$13 million of the settlement. The studs were used in the custom-built Manhattan Beach home the family lived in for about two years beginning in 1999.

Kellen, now 5, functions as a 1½-year-old and needs 24-hour care, the family's lawyer, Brian D. Witzer, told the Daily Journal of Los Angeles.

Raymond P. Boucher, president of the Consumer Attorneys Association of Los Angeles, said the Oct. 19 settlement was the largest in the country for a mold case involving a single-family home.

Crenshaw settled the day after Los Angeles Superior Court Judge Victoria G. Chaney barred the wood supplier from using 10 of its 17 experts, including a toxicologist and a microbiologist, Witzer said.

The company said in a statement that it believes jurors would have "completely vindicated" it had the judge not excluded the witnesses.

Witzer said the judge excluded the experts because a lawyer for the defense allegedly missed a deadline for designating witnesses and backdated a document to cover it up. Chaney referred the issue to the State Bar for investigation, Witzer said.

Neither Crenshaw nor any of the other defendants admitted liability.

James D. Fraser, an attorney who represented a sheet metal company in the suit, said Kellen's doctors concluded he suffered from autism — a condition for which there is no known cause.

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ASU to pay \$96K for violating asbestos rules

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Associated Press

TEMPE - Arizona State University has been fined and ordered to implement an expensive education program because it ripped out flooring containing asbestos at a heavily used building without taking any required precautions.

The work at the Memorial Union in August 2006 involved using machines to rip out 5,000 square feet of material in the basement.

Tests later confirmed that asbestos dust and fibers, carcinogenic when inhaled, swirled into the basement air. Workers carted the contaminated tile through the food court and upstairs to open-air trash bins, potentially leaving a toxic mist throughout the university's busiest building.

It was several hours before ASU environmental safety officials realized what was happening.

Maricopa County fined ASU \$44,000 and required it to spend \$52,000 to sponsor a series of seminars on asbestos handling, including one on Wednesday at the Tempe campus.

University environmental safety officials knew the tile floor likely contained asbestos, but were not aware the flooring was being torn out.

University officials deny wrongdoing and blame an outside contractor that they argue removed the tile without approval. But county air quality officials say the contractor provided them with e-mail records showing that the then-director of the Memorial Union ordered them to proceed.

County air quality officials listed the ASU alleged violations as "major" due to asbestos' "extremely high" toxicity, enforcement records show. A "medium amount" of asbestos was released into the air.

ASU spokeswoman Terri Shafer said the university hired three additional environmental safety officials to handle asbestos issues and prevent similar hazards after the 2006 incident.

Scott I. MacDonald, the county's asbestos inspections supervisor, said any exposure probably wasn't of long-enough duration to cause any health problems.

The Roanoke Times

Roanoke.com

Monday, August 20, 2007

Carbon monoxide poisons 23

An apartment building closed after tests showed high levels of gas.

By Shawna Morrison , Greg Esposito and Angela Manese-Lee
The Roanoke Times

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- [Carbon monoxide leak: Nausea was the first sign of danger](#)
- [Learn about the effects of carbon monoxide](#)



Photos by Gene Dalton / The Roanoke Times

Blacksburg firefighters reach the top of Collegiate Suites on Henry Lane on Sunday. Five women were found unresponsive in an apartment that morning, and the building remains cordoned off after tests showed potentially lethal levels of gas there.

BLACKSBURG -- Less than an hour before Virginia Tech dedicated a memorial to 32 students and faculty members killed by a gunman April 16, Blacksburg was jolted by another incident Sunday when 23 people, many of them students, were sickened in a carbon monoxide leak at an off-campus apartment building.

Five women were still hospitalized Sunday night, and their Collegiate Suites apartment building at 1306 Henry Lane remained cordoned off after tests showed potentially lethal levels of the gas in their building. Authorities believe the leak was caused by a hot-water heater.

"At first when they were banging on the doors and yelling to get out, my first thought was that there was another shooting," said Jessica Foster, a Tech sophomore from Williamsburg who lives on the third floor. "It was just a gut feeling."

At the time they were evacuated shortly after 11 a.m., Foster and her roommate, Nadia Benkhadra, a sophomore from Olney, Md., were getting ready to go to the noon memorial dedication.

"It's just unfortunate, and it's a bad coincidence," Rachael Evans, a Tech junior from Suffolk said of the multiple tragedies involving the university the past year. "We just thought, going into this year, that this was going to be a better year, and then this happened. But it still will be."

The five women who remained hospitalized Sunday night were found unresponsive in their beds in apartment F Sunday morning by a gas company employee. Police identified the women as Elizabeth Amanda Burgin of Ashburn, Carolyn Ann Dorman of Potomac, Md., Nichole Marie Howarth of Chesterfield, Kristin Louise Julia of Waterford and Kirsten Wendie Halik of Vienna, Va. All are 19-year-old Tech students.



Collegiate Suites, the location of the carbon monoxide leak, is located on Henry Lane, just off of Main Street in Blacksburg.



A resident of the building had gotten sick and, suspecting a natural-gas leak, called Atmos Energy, Blacksburg police Capt. Bruce Bradbery said. The unidentified employee was let in by a maintenance worker and discovered that the problem was with carbon monoxide, not natural gas.

The employee carried the five women onto a landing for air, then called police. Others helped him carry the women outside onto the lawn, Bradbery said.

Julia and Halik were unable to breathe on their own, Bradbery said. They were placed on ventilators and flown to the University of Virginia Medical Center in Charlottesville for treatment.

They were in critical condition Sunday night.

Tommy Julia said late Sunday evening his sister's condition was "still 50/50."

Howarth and Dorman were able to breathe on their own but were unresponsive, Bradbery said. They and Burgin were taken to Duke University Medical Center for treatment. Burgin's condition improved as the day wore on, Bradbery said.

They were in stable condition Sunday night.

Kristin Carr, a Tech sophomore from Northern Virginia, lives with three roommates in a first-floor apartment in building 1306. This is her first year living at Collegiate Suites, which is popular with Tech students -- particularly with female students because it's fairly new and has walk-in closets, she said.

Carr, who moved into the building Friday, said she didn't notice anything unusual until about 11 a.m. Sunday.

"It was just crazy," she said. "We were sitting in the apartment watching TV after breakfast and we heard people banging on doors.

"Someone banged on our door, and we heard someone yelling, "There's a gas leak, get out," " she said.

As she walked out, Carr said she saw several women passed out on a second-floor landing.

Her boyfriend, Brett Hutcherson, a Tech junior from Lynchburg, said he is certified in cardiopulmonary resuscitation and helped the women.

"We came around the side of the building, and it didn't look like there were enough paramedics at that time," Hutcherson said. "I went over to see what I could do."

He said several women were lying on their backs, with pulses but unresponsive.

"I rolled them over on their sides to open up their airways," Hutcherson said. He also checked vital signs and stayed with the women until all of them had been loaded into ambulances.

"I just wanted to make sure everyone was OK, because this university has been through a lot," he said.

Bradbery said 21 people, including the five women, were taken to Montgomery Regional Hospital in Blacksburg. Sixteen were treated and released.

Two people were treated at Carilion New River Valley Medical Center in Montgomery County and released by Sunday evening, a hospital spokesman said.

Two others reported being sick but weren't taken to a hospital, Bradbery said.

Blacksburg Assistant Fire Chief Anthony Wilson said the source of the leak appears to have been a faulty valve on a hot-water heater in the women's laundry room. The relief valve was stuck open, he said, forcing the appliance to constantly burn fuel in an attempt to heat the water.

One person was killed and dozens more sickened at Roanoke College in July 2006 when a water heater caused a carbon monoxide leak there.

Three teams of firefighters were sent in to check carbon monoxide levels in all 12 apartments in the Collegiate Suites building on Sunday, Wilson said. Four apartments -- all on the second and third floors and confined to one side of the building -- had high levels, he said.

Half an hour after police were first called about the leak at 11:18 a.m., carbon monoxide levels within the apartment shared by the five women were at 500 parts per million parts of air, Wilson said. He called that amount "a potentially lethal dose."

He said people can experience symptoms of carbon monoxide poisoning at levels as low as 25 parts per million.

The apartment building remained closed late Sunday, and residents were being housed at hotels. Wilson said officials would work today to try to confirm that the water heater was the source of the leak.

Staff writers Anna Mallory, Tim Thornton and Donna Alvis-Banks contributed to this report.

THE ROANOKE TIMES
roanoke.com

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ST. PAUL, Minn., Aug. 10, 2007 LAWFUEL - The Class Actions Newswire -- Homeowners in Minnesota have filed a class action lawsuit in federal district court against the manufacturer of residential plumbing systems. The homeowners, Denise and Terry Cox from Detroit Lakes, Minnesota, started the nationwide class action against Zurn Pex, Inc. and Zurn Industries after brass plumbing fittings used in their home's PEX plumbing system failed shortly after completion of their new home. The failures caused water and other damage at the Cox home.

PEX plumbing systems involve flexible plastic plumbing tubes (as opposed to the more common copper plumbing systems) that are attached to brass fittings throughout the plumbing system. "PEX" is a generic term for cross linked polyethylene -- the material used to make the plastic piping. PEX plumbing systems are the newest generation of non-copper plumbing systems coming into favor after the plumbing industry stopped selling the failure-prone polybutylene pipe systems.

According to Cox's attorney, Shawn Raiter, the problems with Zurn's brass fittings can cause significant damage to homes. "Water damage from a total failure, or even a slow leak, can cause serious damage. A large percentage of the brass fittings in a typical residential PEX system are hidden behind drywall or between floors. If undetected, water damage from a leaking fitting can even lead to mold, which in turn can pose a health risk."

Over the last six years, Zurn has reportedly sold 139 million of the brass PEX fittings. Because of the premature failures, certain Zurn distributors have subsequently requested and received refunds for the brass fittings. In fact, according to Raiter, Zurn no longer recommends installation of the brass fittings in certain geographic areas. Yet, Zurn currently denies that these failures will continue, much like its predecessor U.S. Brass did before filing bankruptcy because of litigation related to its polybutylene systems.

Some plumbers have had 150 or more claims related to failed Zurn fittings. And while Zurn initially honored its warranty and covered the damage caused by the failed brass fittings, the company stopped paying claims, leaving homeowners to pay for the damage themselves.

The Cox's lawsuit seeks to include the claims of all owners of Zurn PEX systems with brass fittings in the United States. The Cox's are seeking damages to pay for the complete replacement of all brass Zurn fittings for PEX systems, regardless of whether those fittings have already failed, as a way to prevent damage caused by future leaks and failures.

The lawyers for the Cox's recommend that owners' properties with Zurn PEX systems contact them to discuss their rights. "It is important that consumers are aware of this lawsuit. If consumers provide their contact information, we can keep them informed about the status of the litigation. Also, if the lawsuit is successful -- by settlement or judgment -- contact information can help us notify consumers how to obtain their share of any recovery," said Shawn Raiter.

More information about the lawsuit may be obtained at www.zurnclassaction.com

\$22.6M Awarded - Largest Toxic Mold Settlement in US History

The country's largest toxic mold personal injury lawsuit was settled for \$22.6 million and has lawmakers nationwide looking to the possibility of more claims. The suit took place in Los Angeles California and was filed by a family that claimed toxic mold found in moldy lumber used in building their house was the culprit in causing their son to become brain damaged.

Five-year-old Kellen Gorman cannot talk, still needs diapers, and requires a level of care that is unusual in children his age.

The settlement is the first of its kind because for many years toxic mold trials were generally unsuccessful in proving the link between mold damage and serious illnesses.

The Gorman's house was constructed in 1999 using molded wood. The mold grew and seeped throughout the house, covering the insides of the walls and floors and exposed the whole family to an organic toxic mold they think caused Kellen's brain damage.

While medical documentation provides a direct link between toxic mold and a number of health problems, the link between the mold and brain damage is seen as being controversial.

Some 17 companies, including the Crenshaw Lumber Co. Inc., who supplied the wood, were involved in the suit. As part of their settlement they admit no wrongdoing.

The settlement is seen as vindication to many around the country who believe that toxic mold can actually cause serious health problems like brain damage and developmental disorders.

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Toxic mold comp suit can go forward, court rules

By Roberto Cenicerros

October 16 14:42:00, 2006

SAN FRANCISCO—An injured employee has been allowed to proceed with a lawsuit alleging that Costco Wholesale Corp. fraudulently concealed information about the presence of toxic mold on its property, a California appeals court has ruled.

The plaintiff in *Renee Bernadou vs. Costco Wholesale Corp.* found water leaking into her office window in Livermore, Calif., beginning in 1995. Ms. Bernadou complained to Costco for years about the leak that wet her office carpet each winter, court records show.

In 2003, her doctor diagnosed her with asthma, possibly related to the flooding at her work site, and she filed a workers compensation claim.

Ms. Bernadou later filed the current suit containing several allegations, including that Costco provided her doctor with a report issued by an environmental testing company that Costco retained, but withheld five of the report's eight pages. She ultimately obtained the entire report and alleged in her suit that Costco knew of toxic mold in the workplace prior to her filing her workers comp claim.

A trial court dismissed other defendants including Costco from the lawsuit after finding several causes of action in the suit were barred by workers compensation exclusivity, among other shortcomings.

However, California's 1st District Court of Appeals disagreed. The San Francisco-based court ruled last Thursday that Ms. Bernadou's complaint adequately met requirements necessary to establish an exception to workers' compensation exclusivity, which prevents workers from suing their employers.

<http://www.businessinsurance.com/cgi-bin/news.pl?newsId=8585>

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Santa Clara County gets \$12 Million settlement in EIFS case

From ENR, August 13, 2001:

A MOLD-RIDDEN COURTHOUSE IN SAN Martin, Calif., shuttered since 1999, will find new life as an office building following a \$12-million settlement. Announced last month, the settlement concludes a two-year-old lawsuit between Santa Clara County and the project team, including Salinas-based general contractor H.A. Ekelin & Associates, San Francisco-based architect Kaplan McLaughlin Diaz, the contractor's surety, Reliance Insurance Co., and over a dozen subcontractors and suppliers.

In its lawsuit, the county alleged that the building has severe envelope deficiencies, including defects to the exterior insulation and finish system, a synthetic stucco material. The county claims that because the EIFS has no internal drainage, it is susceptible to leakage that damaged the wood framing, exterior sheathing and interior drywall. Destructive testing later revealed extensive mold growth within the exterior wall cavities.

Representatives of H.A. Ekelin, KMD and other project team members could not be reached for comment, but the defendants have previously denied the county's allegations. Following detection of the toxic mold, the county relocated courtrooms, offices, jury deliberation rooms and other functions of the 33,000-sq-ft justice center to temporary modular building' compensation claims against the county and 12 employees filed as yet unresolved personal injury actions against the contractors, architects and suppliers.

The case is "an example of how the mold growth can result in a substantial increase in liability exposure," says Robert A. McGregor, a San Diego-based attorney and the county's co-counsel on the case. "This is a very conservative client. They don't shut buildings down on a whimsical basis."

The Santa Clara County building is at least the second mold-infested institutional building in California to be the subject of a settlement this summer. A \$6.1-million settlement announced in June will enable San Diego State University to renovate a damaged dormitory during a year-long closure (ENR 7/23 p. 17).

Rather than use the damaged San Martin facility for its previous purpose the county will probably convert the courthouse "into a generic county office building," says Kevin Carruth, the county's director of general services. To replace the facility, the county will build a \$22-million, 60,000-sq-ft justice center in Morgan Hill. The county decided to build a new justice center, not because of the damage to the existing building, but because \$7 million in redevelopment funds were available to the city, according to one county official."

[BACK](#)

4 builders tied to Ariz. fined by EPA for polluting

[15 comments](#) by **Ginger D. Richardson and J. Craig Anderson** - Jun. 12, 2008 12:00 AM

The Arizona Republic

Four of the country's largest home builders have agreed to pay \$4.3 million in fines over claims that they repeatedly failed to take basic steps to prevent construction-site dirt and pollutants from contaminating the nation's waterways.

The Environmental Protection Agency and the Department of Justice announced the settlement against Centex Corp., KB Home, Pulte Homes and Richmond American Homes on Wednesday. All four home builders have a large presence in [Arizona](#).

A federal complaint alleged that EPA inspection reports found violations of the [Clean Water](#) Act at more than 180 residential-construction sites in Maricopa, Pima and Pinal counties, including the master-planned communities of Anthem in north Phoenix, Verrado in Buckeye and Johnson Ranch in Queen Creek.

"When it rains, dirt and whatever else is on the ground can get caught in storm drains," said Granta Nakayama, assistant administrator for the EPA's Office of Enforcement and Compliance Assurance. "That means garbage, dirt, pesticides, cigarette butts . . . paint, concrete stucco. These and other materials can end up on your local beach or in your local waterways."

Once there, the dirt and pollutants can suffocate fish, block sunlight from plants and lower the quality of drinking water, Nakayama said.

As part of the settlement, the companies have also agreed to implement environmental controls that exceed those already on the books. The EPA estimates those measures will help keep 1.2 billion pounds of sediment out of the nation's waterways every year.

Building-boom years

The settlement covers alleged violations at 2,200 construction sites in 34 states and the District of Columbia from 2001 to 2005.

The states with the most sites covered by the settlement - [California](#), Florida, Texas, Arizona and Nevada - are also among those that saw huge housing booms during the time the inspections were conducted.

Centex, accused of violations at 18 sites in Arizona, paid the largest overall fine, at \$1.485 million.

KB Home agreed to pay \$1.185 million, which includes alleged violations at 36 sites in Arizona.

Meanwhile, Pulte Homes, accused of violations at 73 of its local construction sites, agreed to an \$877,000 fine. The company has also agreed to spend an additional \$600,000 on a watershed-restoration project in Northern California.

The fourth home builder, M.D.C. Holdings Inc., parent company of Richmond American, agreed to a \$795,000 fine. That settlement covers alleged violations at 53 Arizona sites.

The alleged violations cover a range of problems, including not obtaining permits in a timely fashion, or at all, and the failure to put in place "simple" pollution-prevention controls such as silt fences, phased site grading and sediment basins, Assistant Attorney General Ron Tenpas said.

"The impact of these settlements is much broader than the penalties these companies will pay," Tenpas said. "In the future, these home builders will implement companywide compliance programs that will provide better and more consistent protections at their construction sites across the country."

'Adequate job'

Pulte led the group in Arizona sites where alleged violations occurred, but company spokesman Mark Marymee said it did not knowingly allow construction crews to fall short of federal regulations.

"We believed we were doing an adequate job of controlling storm-water runoff," he said.

Marymee said that, although Pulte accepts ultimate responsibility for any pollution it may have caused, the large number of independent contractors involved in home construction during the housing boom created logistical challenges for management.

"There's definitely a lot of moving parts in building a community," he said.

Richmond American spokeswoman Kelli McFarland referred *The Arizona Republic* to a joint statement from the four home builders that says the alleged violations were mostly paperwork-related. Representatives from KB Home and Centex did not return calls seeking comment.

But Spencer Kamps, a lobbyist for the Home Builders Association of Central Arizona, said he believes the EPA focused its inspection efforts in boom states where the greatest number of homes were being built.

Although he agreed that all home builders should follow environmental regulations, Kamps said he does not believe storm-water runoff contamination is a serious issue in Arizona because of its dry climate and lack of sensitive aquatic life.

"You have to remember that the Clean Water Act was designed to protect rare aquatic species," he said. "How many aquatic species do we have that are endangered in the state of Arizona?"

Meanwhile, all four home builders have run afoul of local environmental-protection regulations designed specifically to address the region's air-quality problems.

Each was fined \$35,000 to \$160,000 during the past three years for air-pollution violations that included improper dust-control measures and insufficient permitting, said Erin Dunsey, a spokeswoman for the Maricopa County Air Quality Department.

Of the four, Pulte was hit with the largest fine, a \$160,000 penalty that was paid in February.