

VERDICT *of the* **WEEK****TOXIC TORTS****Mold — Landlord and Tenant — Habitability — Fraud****Respiratory diseases from mold at rental property, girl asserted****VERDICT** **\$1,272,395**

CASE Patrick Fetzer and Lauren Fetzer v. Sadiq Saferzadeh, No. 30-200900117812

COURT Superior Court of Orange County, Santa Ana, CA

JUDGE Franz E. Miller

DATE 3/30/2010

PLAINTIFF
ATTORNEY(S) **William M. Paoli**, Wentworth, Paoli & Purdy LLP, Newport Beach, CA
Court B. Purdy, Wentworth, Paoli & Purdy LLP, Newport Beach, CA

DEFENSE
ATTORNEY(S) **Thomas W. Ely**, Wesierski & Zurek LLP, Irvine, CA
Robert S. Lewin, Attorney at Law, Temecula, CA

FACTS & ALLEGATIONS From June 2006 to August 2008, plaintiffs Patrick Fetzer and his daughter Lauren Fetzer, age 9, were allegedly exposed to mold as a result of living in a chronically water-damaged rental property on Center Street in Laguna Beach. The plaintiffs and other family members began to notice strong musty odors in the home along with roof and window leaks during winter 2006-2007.

The Fetzers sued their landlord, Sadiq Saferzadeh, alleging negligence, fraud and breach of the implied warranty of habitability.

Plaintiffs' counsel claimed that Saferzadeh had been aware of water leaks from the roof, plumbing, windows and other locations in the home for years before leasing the property to the Fetzers.

The lawyers asserted that the defendant failed to eliminate the sources of water intrusion or remediate the mold or other harmful contaminants that resulted from the water damage. They contended that the previous property owner had notified him of a prior tenant's complaints and that there was likely mold in the house.

Counsel contended that Saferzadeh actively concealed pivotal information from the Fetzers and intentionally misrepresented other important facts.

Saferzadeh denied any knowledge of prior complaints or mold growth within the property before or during the Fetzers' tenancy. The defendant also denied that any mold had grown in the house during the plaintiffs' tenancy and insisted that he had fixed any problems with leaks by replacing the roof prior to their tenancy.

INJURIES/DAMAGES *asthma; emotional distress; pulmonary; respiratory distress; sinusitis*

Lauren reportedly developed severe respiratory conditions, including bronchial asthma, chronic allergic sensitivity to dust mites and sinusitis. Shortly after the family moved from the residence, she was diagnosed with pulmonary alveolar proteinosis, a debilitating respiratory disease. Lauren was hospitalized with aggravation of her asthma and respiratory failure on two separate occasions, once involving a stay of almost three weeks. She alleged ongoing asthma and allergic rhinitis.

Lauren sought past medical expenses of \$411,000 and anticipated future medical costs of \$407,000.

Mr. Fetzer sought damages for rent monies he had paid, his security deposit and the emotional distress he purportedly sustained due to Saferzadeh's fraudulent conduct. He sought \$52,000 in economic damages, plus emotional distress.

The defense argued that Lauren did not have asthma or any allergic disease and that her symptoms began before the subject tenancy.

RESULT The jury found for the plaintiffs and awarded \$1,272,395.

LAUREN FETZER \$1,005,629 compensatory damages
 \$140,000 punitive damages
 \$1,145,629

PATRICK FETZER \$116,766 compensatory damages
 \$10,000 punitive damages
 \$126,766

DEMAND \$500,000 (policy limits)
OFFER \$19,000 (Mr. Fetzer); \$481,000 (Lauren)

INSURER(S) **Pacific Specialty Insurance Co.**

TRIAL DETAILS Trial Length: 26 days
 Trial Deliberations: 3 days