

6th Circuit Affirms Verdict for State Farm in Dispute Over Experts *by HarrisMartin Publishing*

CINCINNATI — A trial court properly allowed an insurance carrier's expert structural engineer to testify to the likelihood that a leaky roof led to moisture and mold growth, the 6th Circuit held May 5 in affirming a verdict for the carrier in a coverage suit. *Bureau v. State Farm Fire and Casualty Co.*, No. 03-1830 (6th Cir.).

A federal jury in Detroit agreed with State Farm that mold growth in the home of Susan and Charles Bureau was the result of long-term water intrusion rather than an August 2000 thunderstorm.

State Farm paid \$1,155.30 after the storm on the Bureaus' claim for roof damage and water intrusion. An adjuster noted storm damage to ceilings in some rooms, but did not report any damage to floors or any mold intrusion.

The Bureaus filed a second claim in January 2001, asserting coverage for mold and for water leaks in a crawlspace and in one bedroom. An indoor air quality firm retained by the Bureaus, Sanit-Air, reported that the house was uninhabitable and contained two types of mold: one, caused by long-term moisture, and a second caused by short-term water intrusion from the August 2000 storm.

State Farm denied the crawlspace claim after retaining a plumber, who reported that the water was caused by flooding.

State Farm also retained an engineering firm, Soils and Materials Engineering, which agreed with the

Bureaus' expert as to the presence of mold, but opined that it resulted from the leaky roof. SME retained a structural engineer, Michael Neuman, who opined that the roof should have been replaced years earlier and the failure to replace it.

On that basis, State Farm denied the claim, and the Bureaus sued for coverage.

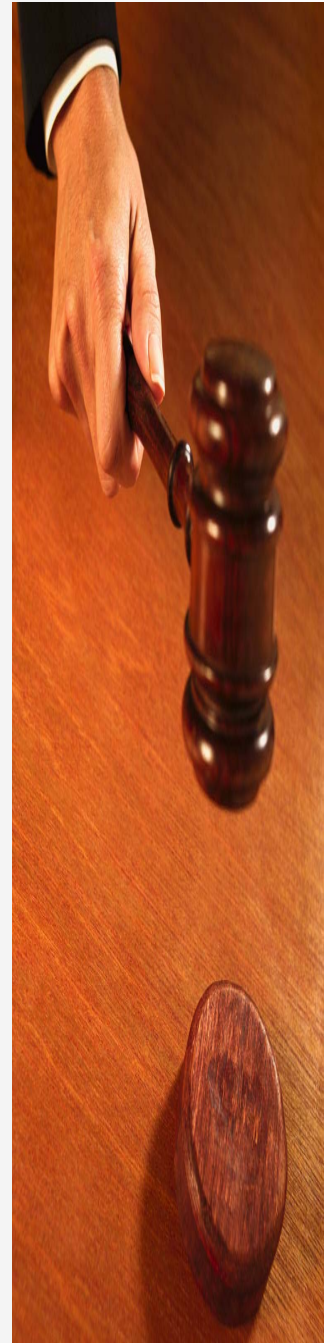
After the jury rendered its verdict in favor of State Farm, the Bureaus appealed the verdict and the trial court's decision to allow Neuman to testify.

The Bureaus argued on appeal that the U.S. District Court for the Eastern District of Michigan abrogated its gatekeeper role under *Daubert v. Merrell Dow Pharmaceuticals* (509 U.S. 579 [1993]) by allowing Neuman to testify because his testimony 'that a poor roof and inadequate attic ventilation caused chronic moisture in the attic' was irrelevant.

They also argued that Neuman's visual inspection of the roof was insufficient basis for an opinion and that he was not qualified to testify as a mold expert.

In its unpublished, per curiam opinion, the 6th Circuit said, '[t]his court has previously upheld limited comments and findings of a district court reading the reliability of an expert's methods where such methods are relatively uncontroversial' (*United States v. Demjanjuk*, 367 F.3d 623, 635 [6th Cir. 2004]).

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Contrary to the plaintiffs' assertion, the District Court did consider the Daubert motion and noted that it thoroughly reviewed the motion.

Neuman did not use sophisticated equipment and testified to dry rot, water marks, efflorescence and other damage that was supported by photographic evidence, the Court of Appeals explained.

'As the district court notes, the extent to which the roof was leaky prior to the August 2 storm is relevant in determining whether moisture and water penetrated the interior of the Crocker House as a result of long-term maintenance issues, or solely as a result of [the] August 2 storm. . . . In other words, given the relatively uncontroversial nature of his testimony, and the district court's knowledge of Mr. Neuman's methodology and awareness of the standard under Daubert, it was not error to allow the testimony.'

In affirming judgment for State Farm, the Circuit Court rejected the Bureaus' argument that State Farm failed to counter their expert's testimony that it was scientifically impossible to conclude that the 'primary invading fungus' found in the home was caused by chronic moisture problems.

There was sufficient evidence to support the theory that the leaking roof caused the mold

problems, the court concluded.

Stuart A. Sklar of Fabian, Sklar & David in Farmington Hills, Mich., and Donald M. Fulkerson of Westland, Mich., represented the Bureaus.

Paul H. Johnson Jr. and Stacey L. Heinonen of Patrick, Johnson & King in Southfield, Mich., represented State Farm.

