

Court Affirms Verdict For Nationwide Insurance in Texas Diminution Case Harris Martin

DALLAS — A Texas appellate court concluded June 22 that there was sufficient evidence for a jury to conclude that mold contamination neither reduced the value of a house nor made it 'untenantable.' *Swiercinsky v. Nationwide Insurance Enterprise*, No. 05-04-00124-CV (Texas Ct. App., Dallas).

Michael and Caprice Swiercinsky appealed the verdict reached by a jury in Rockwall County, Texas, that found the house was damaged by mold but awarded the couple '\$0' for diminished value, rather than the \$150,000 the couple sought. The jury also answered 'no' when asked whether the house had been rendered untenantable.

The Swiercinskys complained that Nationwide denied their claim for \$150,000, which the couple said was the difference between the \$150,000 they sold the house for and prices for comparable houses that were not contaminated by mold.

The 5th District Court of Appeals, in affirming the take-nothing judgment, said there was ample evidence at trial as to the market value of the house before the inception of the Nationwide policy, including a report from a contractor detailing mold and water damage and a repair estimate of \$100,000 to \$150,000.

The Swiercinskys asserted that the damage was repaired prior to the inception of the Nationwide policy, but 'the jury had before it contradictory evidence' the court said.

'Given evidence that the remediation cost was already \$150,000 before the policy period, the jury could infer that the Swiercinskys suffered no further loss in value of the house during

the policy period,' the court concluded.

In affirming the jury verdict on habitability, the court also found that Michael Swiercinsky's claim that the family suffered health problems was unsupported by medical testimony. The court noted that the Swiercinskys air quality expert testified that the home was contaminated by mold but that he could not give an opinion on health effects.

David O. Kemp and Joanne T. Saberre in Dallas represent the Swiercinskys.

Randall G. Walters and Linda M. Szuhay of Touchstone, Bernays, Johnston, Beall, Smith & Stollenwerck in Dallas represent Nationwide Insurance Enterprise.

Speaking of advocate judges.....

Anyone who has thought about selling a mold contaminated (or even remediated but previously contaminated) home, knows that one takes a HUGE hit on value.

Why? For a few reasons:

1. CLUE reporting by insurers alerts other insurers that a home has had previous problems and that means the buyer will pay a much higher rate. This higher rate can mean that a buyer cannot get affordable insurance on a home. If that happens, many buyers walk away from the transaction; and
2. The general public has been made aware of the costs of repairing these homes and many buyers will not or cannot afford to buy homes that have been water damaged because of the cost to cure.

When there is no buyer, there is no market for a home. When there is no market for a home, the value is reduced. This reduction of value is known as "diminution" and that is exactly what most real estate appraisers acknowledge happens to contaminated homes.

Diminution in value can also happen because of "stigma" — the association of something bad with a property. The condo that Nichole Simpson lived in before she was murdered was sold at a huge loss because of stigma, which in turn resulted in diminution in value.