

## \$8 Million Damage Award Against State Farm Upheld on Appeal

By TONY RIZZO, The Kansas City Star



A Missouri appeals court Tuesday upheld an \$8 million punitive damages judgment imposed in Jackson County against State Farm Insurance.

The case involved a lawsuit filed by Johnson County residents Jennie Hampton and Marvin Vail, who accused State Farm of malicious prosecution and breach of contract.

The case began a decade ago when Hampton reported the theft of her Toyota 4Runner, which was found abandoned and burned in Miami County, Kan. State Farm declined to pay her \$10,000 claim and, working through an industry investigative ser-

vice, referred the case to Johnson County prosecutors, who charged Hampton and Vail with insurance fraud.

After a jury acquitted them in 2001, they filed the civil action against State Farm.

In September 2005, a Jackson County jury awarded them each \$400,000. Later that year, a judge adjusted those amounts to \$250,000 because of a statutory cap, and he also assessed the punitive awards.

State Farm appealed. The Court of Appeals for the Western District of Missouri upheld the judge's actions.

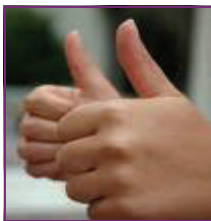
A State Farm spokeswoman said the company was disappointed by Tuesday's ruling and thought the large punitive award was contrary to the evidence and represented an unconstitutionally unfair judgment. Further appeals are being considered, said public affairs supervisor Tamara O'Connor.

James Fricleton, who represents Hampton and Vail, said he was happy for his clients, who have now been vindicated by two juries and the appeals court.

"They've been fighting this for 10 years," he said.

## California Judge to Insurer: Mold Exclusion is Null and Void

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Even though the policy specifically excluded mold, it was covered because of the proximate clause doctrines.

The plaintiffs were awarded \$1.2 million — half of which was punitive damages.

In a recent California case styled *Decena v Pacific Specialty Insurance Company*, ("PSIC"), Judge Judith Chirlin of the Los Angeles Superior Court, issued a verdict of \$1,200,000 for the homeowner plaintiffs.

Here, the plaintiffs' three bedroom home was damaged by a crane on February 7, 2003. The roof damage allowed rainwater into the home and mold eventually developed. PSIC paid the family's rentals and build back costs but denied mold related costs of \$50,000 based on its policy's absolute mold exclusion which states that there is no coverage for

any loss or damage "from or in a way involving directly or indirectly, mold, fungi, etc... **regardless of cause**". Plaintiffs' counsel argued that the exclusion should not apply in light of the proximate cause doctrines under the cases of *Garvey* and *Sabella*.

The judge agreed and found coverage for mold.

The bad faith, however, was not based on the denial of coverage but based on the carrier's conduct of pursuing subrogation against its own insured, and of using subrogation in order to pres-

sure the insured to withdraw their bad faith claims.

In addition to the \$50,000 in mold remediation costs, the judge awarded \$5,000 in personal property damages, \$20,000 in rentals, \$145,000 in emotional distress, \$380,000 in attorneys fees and costs, and \$600,000 in punitive damages.

POA congratulates plaintiff attorney Joe Sayas. He did an excellent job for his clients.

[CLICK HERE](#) to view the judgment.