

Eight-Figure Accord in Mold Contamination Suit

As U.S. District Judge Berle M. Schiller geared up to preside over a three-week trial of a civil rights suit against the Philadelphia Housing Authority, he tackled a stack of last-minute motions and issued a flurry of rulings.

And then the judge took one last shot at getting the lawyers to settle.

On Monday morning, those efforts paid off when the final piece of an \$11.6 million settlement was struck in *McKinney v. PHA* just moments after jury selection was completed.

Lead plaintiffs attorney Michael Trunk of Kline & Specter said Schiller held settlement talks last week on Tuesday and again on Friday that paved the way for the Monday-morning deal.

In the settlement, PHA agreed to pay more than \$9.6 million to settle claims by a mother and her two children that their repeated complaints of mold in Section 8 housing were ignored, exacerbating their breathing problems and triggering an acute asthma attack in the 12-year-old daughter that left her in a coma and brain damaged.

Prior to trial, a \$2 million settlement was struck with Artur Realty Inc. and Artur Property Management, the companies that managed the property for private landlords.

Trunk said the total settlement could ultimately top \$12 million because PHA's insurer has agreed to a contingency that could add another \$400,000 in later years.

Kline & Specter attorney Shanin Specter explained that PHA agreed to pay the entirety of its insurance coverage for several years in which the plaintiff's exposure occurred — a total of \$10,088,000.

But he said the agency insisted on retaining \$100,000 for each of the four years until it is certain that no other claims are filed.

Specter said the \$400,000 will be reserved for other claims for 20 years. But if no claims are filed, the remaining funds will be paid to Angelique McKinney and her children, Ebony Gage and Ronald Gage.

Trunk said Kline & Specter will be seeking court approval of an award of attorney fees equal to one-third of the settlement.

PHA spokesman Kirk Dorn said in a statement that the agency "did not cause the tragic event" that led to the plaintiff's asthma attack, but that the settlement "assures her family that her medical needs will be taken care of for the rest of her life with a certainty and finality that would not exist if the case was tied up in years of litigation."

Prior to trial, PHA's lawyers — Abbe F. Fletman and Rachel E. Licausi of Flaster Greenberg — had moved for summary judgment dismissal of the suit.

But in a 39-page opinion handed down last month, Schiller refused, finding that a jury could hold PHA responsible if it concluded that the agency acted with "deliberate indifference" when it approved the home despite problems with leaks, and later when it allegedly delayed the family's departure from the home by requiring 30-days' notice to the landlord before moving to a safer house.

It was during that waiting period, in March 2006, the suit says, that Ebony Gage suffered an asthma attack that left her in a coma from a lack of oxygen and led to extensive brain damage that now leaves her in need of round-the-clock care.

Schiller rejected the PHA's argument that it cannot be liable for a state-created danger because the McKinneys could have moved out of the troubled house earlier or even repaired the problems themselves.

Instead, Schiller said, the family's ability to move was "severely limited" because PHA was paying all of their rent and the family also lacked the means to repair persistent leaks or move to a different home without government assistance.

"This court will not absolve PHA of all responsibility for its conduct simply because plaintiffs could have avoided the danger by living on the street," Schiller wrote. •