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NO. 62778-3-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MARY FUNG KOEHLER,

Plaintiff-Appellant,

v.

ALLSTATE INSURANCE COMPANY, an Illinois Corporation;
HILLYARD INDUSTRIES, aka HILLYARD, INC., a Missouri
corporation; PROFESSIONAL CLEANING AND RESTORATION
SERVICES, LLC., dba SERVPRO, a Washington corporation;
BRENT YOUNG and JANE DOE YOUNG, husband and wife and
the marital community composed thereof; AND James YOUNG and
JANE DOE YOUNG, husband and wife and the marital community
composed thereof.

Defendants-Respondents.

ON APPEAL FROM KING COUNTY SUPERIOR COURT
CAUSE NO. 07-2-21367-8 SEA (Hon. Michael J. Trickey)

OPENING BRIEF OF APPELLANT

MARY FUNG KOEHLER,
Appellant, *Pro se*,
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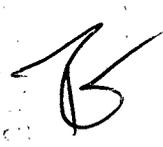


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INTRODUCTION

This appeal involves the wrongful summary judgment dismissal of Mary Fung Koehler's (herein after referred to as "Mary") " claims, set forth in her Amended Complaint for Breach of Contract; Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing; Breach of Fiduciary Duty; Promissory Estoppel; Aiding and Abetting Breach of Fiduciary Duty; *Res Ipsa Loquitor*, Negligence Intentional Infliction of Emotional Distress; Violation of the Consumer Protection Act; Failure to Warn; Violation of RCW 7.72, the Washington Products Liability Act: Design Defect; and Misrepresentation," in favor of the Defendant- Respondents named in the title page. (CP 634-652)

This is a *Res Ipsa Loquitor* case where Servpro's employees were directed by Allstate to spray for mold for the sole purpose of limiting its obligation under the insurance coverage due its insured, Mary Koehler, to \$5,000.00. Unfortunately, Servpro misused the pesticide Re-Juv-Nal containing EPA hazardous ingredients, which is manufactured and poorly designed by Hillyard.

Contrary to inadequate warnings on the product and/or lack of supervision of its employees, Servpro mist sprayed the product which reacted to the wet rugs, property and porous surfaces resulting in "hazardous decomposition products or by products which produced toxic vapors of hydrogen chloride, amines, and

other organic materials, and oxides of carbon and nitrogen.” (CP 707-708)

A. IDENTITY OF PARTIES

Appellant is Plaintiff, *Pro Se*, Mary Fung Koehler, who will hereafter be referred to as “Mary.”

The defendants are the Respondents who will be hereafter be referred to as follows; “Allstate” for Allstate Insurance Company; “Hillyard” for Hillyard Industries, aka Hillyard, Inc.; “Servpro” for Professional Cleaning Restoration Services, LLC., dba Servpro; Brent Young; and James Young.

B. ASSIGNMENTS OF ERROR

1. The Court erred in disregarding the stipulation of the parties in writing and signed by the Court on October 8, 2008 to continue the trial date from December 15, 2008 to June 8, 2009 with a new discovery date of April 20, 2009.
2. The Court erred in denying Mary’s oral motion to have this matter continued pursuant to CR 56(f) to allow further discovery and time to require all the defendants to fully answer the interrogatories propounded to them and/or supply the requested documents. (VRP of October 24, 2008 hearing)
3. The Court erred in ordering that “All statements that contain hearsay, speculation, and unfounded expert opinions are stricken. The remaining statements of the declarations will be considered by the court.” By its own admission, the Court then “considered” the remaining evidence in those documents, and in doing so is estopped from finding that there is no Issue of fact. By doing so, the Court weighed the remaining evidence and in doing so reached the result which is unlawful. (CP 130, lines 1-3)
4. The Court erred in finding that the declarations of Timothy Ronald Fung, Jerry Bedlington, Mark Keltner, Nicholas Chariton

and Maria Roberts in Opposition to Defendants' Motions for Summary Judgment contain hearsay, speculation, and unfounded expert opinions,. (CP 129, lines 21-23)

5. The Court erred in ordering that Allstate's Motion to Strike Declarations filed in Support of Plaintiff's Response in Opposition to Motions for Summary Judgment of Dismissal by Defendants is hereby Granted in part—reasons given on record.” (CP 129, lines 25-27)

6, The Court erred in failing to reconsider his October 24, 2008 Finding at (CP 132, line 19) that Allstate's Motion for Summary Judgment is granted and Ordered that plaintiff's bad faith, negligence, violation of Consumer Protection Act and all extra contractual claims as it pertains to Defendant Allstate are dismissed with prejudice.
(CP 131-2)

7. The Court erred in orally finding that *Res Ipsa Loquitor* does not apply because of the exclusivity issue on the basis of Servpro's lack of exclusive control of the home after the act of spraying and the passage of time so that there was no reason to continue the case against them,. (VRP of October 24, 2008 hearing at pp. 32 lines 18-25 andp.33 lines 1-20)

8. The Court erred in granting the “Motion for Summary Judgment of Dismissal by Defendants Professional Cleaning and Restoration Services, LLC, dba Servpro, a Washington Corporation, Brent Young and Jane Doe Young, husband and the marital community composed thereof and James Young and Jane Doe Young, husband and the marital community composed thereof and Plaintiff's Complaint against by Defendants Professional Cleaning and Restoration Services, LLC, dba Servpro, a Washington Corporation, Brent Young and Jane Doe Young, husband and the marital community composed thereof and James Young and Jane Doe Young, husband and the marital community composed was dismissed with prejudice and without costs, (CP 136-8). Again there are no written findings in this order.

9. The Court erred in orally finding the legal standard espoused by Allstate that the basis of causation for plaintiff's claim of a medical injury and that her house was contaminated requiring medical or expert testimony.

10. The Court erred in orally finding that there is no material question of law or fact on Mary's claims. (Transcription of October 24, 2008 hearing at pp. 32 lines 18-25 and p.33 lines 1-20)

11. The Court erred in failing to consider the 700 pages of Mary's deposition taken by all the defendant's (CP 753-940) that Amy Mangano attached to her Declaration in Support of Defendant Hillyard, Inc.'s Motion for Summary Judgment that was attached as her EXHIBIT 5. (CP 711-944)

12. The Court erred in entering his oral statement in that under the Washington Product Liability Act there has to be expert testimony about the defective design of the product and some medical testimony on causation. (VRP of October 24, 2008 hearing at p. 32 lines 12-17)

13. The Court erred in granting Defendant Hillyard, Inc.'s Motion Summary Judgment and dismissing "from this action with prejudice all of Plaintiff's claims against Defendant Hillyard and dismissing from this action Defendant Hillyard, Inc., with prejudice" without any written findings. (CP 135)

14. The Court erred in refusing to reconsider Mary's Motions for Reconsideration of his summary judgment orders of October 24, 2008 dismissing all the defendants from this action. (CP 139-145)

Issues Pertaining to Assignments of Error

1. Has Mary been deprived of due process of law in light of the Stipulation of the Parties and the sanction of the court by its Order dated October 8, 2008 allowing Discovery Cutoff to continue to April 20, 2009?

2. Is the denial of Mary's CR 56(f) oral motion to continue the summary judgment hearing allow time for completion of Discovery from Defendants, in derogation of the Court's own Order dated October 8, 2008 allowing Discovery to continue to April 20, 2009, thus denying Mary of due process?

3. Should this court have granted Mary's oral motion to continue the summary judgment hearing pursuant to Cr 56(f) especially since all of the defendants never completed their responses to the interrogatories propounded to them by Mary which they admitted.

4. Did this court consider all the evidence and the reasonable inferences therefrom most favorably toward Mary, the nonmoving party?
5. Does this court's limit for total argument to barely half an hour for all the parties violate Mary's due process rights to be heard in a meaningful fashion?
6. Have there been abuses of discretion by The Court?
7. Are there valid grounds and proof of negligence by the defendants?
8. What is the material issue of fact that is missing?
9. Does *Res Ipsa Loquitor* apply in this case?
10. Is there a factual issue of Allstate's and Servpro's violation of RCW 19.86?

B. STATEMENT OF THE CASE

Statement of Proceedings

On June 27, 2007, Mary filed this action in King County Superior Court against the defendants and had them all served within 90 days of filing (CP 1-13).

After the defendants answered, there were protracted proceedings. Thereafter the parties commenced discovery. Mary propounded interrogatories and requests for production of documents which were either incomplete, objected to, or absolute refusals to answer. Those matters remain outstanding and remained incomplete. All three Defendants admitted not providing the discovery requested of them (CP 1200, 1203-1205, 1285)

The right to be able to use the facts surrounding Allstate's handling of those prior claims and Servpro's remediation techniques for proving her RCW 19.86 Consumer Protection Act and bad faith claims against Allstate was granted by The Court on February 1, 2008. (CP 534-536)

During the Court sanctioned window of discovery, the Defendants filed their motions for summary judgment. After several continuances, the Court issued its orders upon which this appeal is based. The court denied Mary's CR 56(f) oral motion to allow enforcement of the Defendants' failure to comply with outstanding discovery.

On October 10, 2008, the Stipulation and Order Continuing Trial Date and Amending Case Schedule was signed by the Court. All the parties stipulated in writing to a new trial date of June 8, 2009 from December 15, 2008 and a new discovery cut-off date of April 20, 2009.

On October 24, 2008, the Judge issued its orders granting summary judgments and dismissing all the parties with prejudice upon which this appeal is based.

On November 17, 2008, Mary filed her Motions for Reconsideration of the Court's Summary Judgments Orders dismissing her all claims against all the Defendants. She attached computer print outs documentation by her treating physicians at

GHC from August 14 to September 29, 2008 to satisfy the Court's need for legal proof of her continuation requests due to medical reasons. (CP146-1448, 1450-1457) The Court denied her motions for reconsideration.

Statement of Facts

Mary is an insured under a Homeowners Policy issued by Defendant Allstate since 1997 and resided there without severe respiratory problems until the remediation process by Servpro.

On June 22, 2004, she discovered water in the basement hallway carpeting of the insured premises. Mary previously received an estimate of \$1500.00 from Columbian Restoration. She then called Allstate, her insurer, and reported a claim under the water damage coverage of her Homeowner's Policy. (CP 760, 917)

Mary told Allstate of the estimate from Colombia Restoration. (CP 763, 790)

The Allstate adjuster recommended that Mary use Servpro for the job. He advised Mary that it was appropriate to allow Servpro to respond on behalf of Allstate; Mary acceded to that directive. He called and authorized Servpro to do the cleanup and arrange for the use of a storage container to store furniture, books and other items during the remediation. (CP 763, 767, 790)

On Friday, June 25, 2004, two representatives from Servpro arrived at the insured premises, presented Mary with a written contract, and requested her signature. The two men, Isidro and Jose, began dismantling a bed, doors, moldings, shelving for access to lift the carpet to remove and dispose of some of the padding. (CP 767-8, 791-794, 835)

The water had spread to the two bedrooms down the hall beyond the water heater and up the hall around the corner to the open area leading to the stairway up to the family room and there wasn't much room for the workers to maneuver.

In the interim, Neal Kutekunst (hereafter referred to as "Neal"), arrived and represented himself as the Allstate Claims Adjuster assigned to the water damage claim. He was looking at the carpet tack strips where a few old black mold marks appeared. (CP 792) He had Isidro use a moisture meter randomly on the wall of the utility room without moving anything in front of the wall. (CP 768, 879)

Neal told Mary that it appeared there were two sources of the water leakage. He claimed Allstate was responsible for the water heater leak but that there was an ongoing leak under the water basin pipes of the lower bathroom. He kept pointing out the few old black mold spots on the carpet wood strips the first time he appeared. (CP 825, 837-838) He was claiming that there's a

limitation for mold. (CP 793) Neal also expressed concern over the amount of personal property required to be evacuated and the rental of the cargo trailer being delivered Monday. (CP 825)

When Mary disputed Neal's statement that the leak was due to the water heater and criticized the improper way Isidro applied the moisture meter, Neal retorted that Isidro was his expert. (CP 768) They left the work site early. (791-4, 835 at page 307)

Mary remained in the house over the ensuing weekend, cooking and sleeping upstairs, and able to go downstairs when necessary without any physical discomfort. She had no respiratory problems since the flood occurred. (CP 768)

Jose and Isidro returned on Monday, June 28th, 2004. (CP 769, 783) Mary went outside to help the truck driver position the placement of the trailer cargo across part of the driveway and her circular drive about 1:00pm. Shortly thereafter Jose and Isidro came to the front door asking for water to rinse a large metal can with a sprayer attachment. They wore no gloves, safety glasses or any protective masks or clothing. She led them across the street to use her neighbor's garden hose and watched them rinse out the canister. (CP 798)

That afternoon, Neal called on the phone to discuss the coverage issue when Mary suddenly noticed a strong pungent odor emanating from the lower level was burning her lungs, throat,

nostrils, and skin causing a terrible headache and nausea. She immediately went outside to breathe. (CP 771, 795-797)

Neal acknowledged Mary's physical distress and gave her permission to move at Allstate's expense to other lodging until the air cleared. They discussed alternatives and she chose the modest Studio 6 he had recommended because it advertised internet access over her first choice. She had to actively trade stocks for her livelihood to barely make her mortgage payments for her house and vacant office building. (CP 759, 799)

Servpro's remediation workers had sprayed something downstairs without her knowledge or consent and without any warning of the dangers of exposure to the spray they used. (CP 161) The young worker, Jose, said he almost passed out downstairs until he walked outside of the building. That was the last time she ever saw him. (CP 160)

Before arriving at Studio 6, she made an appointment with her physician, Richard Bartlett D.C., N.D., to examine her immediate and acute symptoms of headaches, burning and soreness in the throat, body pain and nausea. (CP 771) By the time Mary arrived at Dr. Bartlett's office, she was having a severe allergic reactions exacerbation to the chemical agents used in the unknown disinfectant. Dr. Bartlett ordered that she remain out of the house. (CP 772-773)

Mary tried to enter the house a few days later, resulting in another immediate adverse reaction. She then continued staying out of the house letting her fiancée, Paul, open the doors, garage, and windows each day hoping to help the dissipation of the fumes. He suffered eye irritation and serious rashes all over his chest and back from exposure to the fumes in the garage where he was working there while waiting for Servpro to show up. He seemed to be able to tolerate breathing the odor with the garage doors open. (CP 774)

Allstate hired Indoor Air and Environmental Services (IAES) to inspect the residence. On July 7, 2004, certified Industrial Hygienist, Silvette Boyajian, MS, (hereafter referred to as "Silvette") met with Mary and Paul in the driveway.

Silvette spent two hours in the building with Paul without the use of any protective gear for either of them. Silvette emerged complaining of feeling ill with a splitting headache. (CP 815-817). She appeared very knowledgeable and had a good relationship with Mary to the point of her leaving her business card. She said to call any time and informed Mary that the report would be done in a few days. She would return to review the remedial work, which she had discussed would be outlined in her report.

Instead, when Mary called to inquire why she hadn't received her report yet, Silvette stated that she had been ill and just finished

the report but Neal required some changes in it. She was still friendly at that point. When Mary received the **unsigned report** (A -) and called to ask questions about the odors, she refused to respond. She would not talk anymore in contrast to how friendly she had been. That was the last time Silvette talked to Mary and never returned to inspect despite stating her intent to do so in the “**unsigned report**”. (CP 774, 611)

Silvette’s **unsigned report** dated July 18, 2004, was finally received. It stated that Servpro had used Re-Juv-Nal to disinfect the premises, but she did no chemical sampling for it because the information regarding the disinfectant was not yet available to her. (CP 782, 817-822, 827-828, 835-867) After the report, the only thing Servpro did was to bring in some large exhaust fans to draw the indoor air to the outside without following instructions or doing further remediation as outlined by IAES. After Servpro removed the fans, neither they nor Silvette ever returned to the house. (CP 819-823, 914)

After three weeks Mary was still suffering the same symptoms when she was treated again by Dr. Bartlett on July 28th, 2004. He wrote a letter for Allstate stating that she must stay out of the house (CP 892.893). Neal refused to pay for any more housing, claiming that the house was habitable and safe to live in. (CP 803, 826)

After Mary was forced to pay for a fourth week at the motel, her daughter, Jennifer and her boyfriend then, moved a bed into the loft of Mary's vacant office building. Repairs to the office were necessary as the water had been disconnected for over a year and utilities, phone, and cable needed to be connected. (CP 926)

Mary hired D.A.M.P. to have air samples to analyze the pungent odor that had not diminished on July 18, 2004. They were given a copy of Silvette's report before they appeared on the scene for testing on July 21, 2004. They came dressed in white protective coveralls helmets and gloves. They took photos of the upstairs where they took an air sample and more downstairs to determine what remediation was necessary. Their photos show Servpro's huge fans, the plastic ducts to expel the air, and what had to be remediated.

A few days later in July, they produced a lab report that indicated there was very little mold in the air. (CP 807-8)

Under "D.A.M.P. REPORT OF INSPECTION B. USING THE MOISTURE METER TO DETECT MOISTURE LEVELS IN THE WALLS, FLOORS, AND CEILINGS THROUGHOUT THE PROPERTY, THE INSPECTOR FOUND ELEVATED MOSITURE LEVELS

1. Wall behind washer & dryer in utility was tested w/ a moisture meter and had a digital reading of 32.1 (decay possible)." This report was supplied to Neal. (CP 807-808)

In August 2004, the water heater was replaced and the water turned on. Immediately, it was evident that the non-contained water was coming from the washing machines since much of the carpeting, baseboards, and other articles in the hallway had been moved leaving bare concrete. After removing the washing machine, there was no more leaking and water service to the insured premises remained connected and serviceable.

(CP 805, 1373-1375).

Neal kept insisting the house was habitable in spite of being provided a copy of D.A.M.P.'s report that there was little mold there and the moisture reading behind the washer and dryer wall was confirmed by the leaky washer.

Hearing nothing from Neal or Servpro, Mary kept calling the Allstate office for some help and learned he was on vacation. After being passed from adjuster to adjuster, she finally encountered Allstate Claims Adjuster Rochelle Ptacek.

She sent Mary a check for \$1,246 that represented for two weeks of additional living accommodations at a rate of \$89.00 per night to compensate for Neal's failings. In this letter dated August 20, 2004, she also did not anticipate the process to take more than 4 weeks to ascertain the appropriate scope of remediation and align a vendor to make the actual repairs to the house. (CP 890)

On August 23, 2004, Neal returned to adjusting the claim. He and Servpro continued to ignore Mary's requests for information about the symptoms associated with the use of Re-Juv-Nal and how and where it was applied in the basement.

Neither Servpro nor Allstate would complete the remediation for the water damage claim nor return to clean up the pollution they caused, using what they claimed was RE-JUV-NAL. (CP 161)

Mary made repeated calls to Servpro and Allstate for information and access to the employees who sprayed the Re-Juv-Nai, to determine where and what was sprayed on June 28, 2004. Mary finally found a plain Servpro envelope containing a Material Safety Data Sheet (MSDS) on the Re-Juv-Nal in her mailbox at the house on September 3rd, 2004. (CP 160,) See A1-A-2.

Mary called the emergency and information phone numbers on the MSDS for help and was only told that she had waited too long to call. The emergency number was only for transit spills within eight hours. Mary had called various places in the phone book for laboratories to analyze the two EPA hazards, Dodecyl Dimethyl Ammonium Chloride and n-Alkyl Dimethyl Benzyl Ammonium Chloride, as listed on the material data sheet. No one including the referrals from those calls and different agencies knew how to test for them. It might have been the EPA that informed her that Hillyard was the manufacturer. (CP 928)

Mary found Hillyard on the internet and called the company. Luckily, a knowledgeable employee informed her **that the toxic fumes would not dissipate** but that it was water soluble. In his opinion, this meant removing the rugs and throwing them away because wall to wall carpeting can't be washed. Any wallboard or paneling would have to be removed and disposed of pursuant to federal, state and local regulations for hazardous materials.

Mary described the spray tank she saw the Servpro employees with. The Hillyard employee informed her that protective suits and breathing apparatus were required with that size tank. Re-Juv-Nal was not to be used on soft or porous surfaces as it is a hazardous material which can cause eye, inhalation and skin disorders. He mentioned **that Servpro was notorious for having problems using Re-Juv-Nal.** (CP 777-778)

D.ARGUMENT AND AUTHORITY

Oral motion to compel Defendants to provide discovery

CR 26 has been labeled as the "General Provisions Governing Discovery." Section (b) states as follows:

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible

things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

CR 33(b) states that "[i]nterrogatories may relate to any matters which can be inquired into under Rule Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise. (Footnote omitted.)

5] In general, parties are permitted broad "discovery regarding any matter, not privileged, which is relevant to the subject matter" of the lawsuit. CR 26(b)(1); Bushman v. New Holland Div. of Sperry Rand Corp., 83 Wn.2d 429, 518 P.2d 1078 (1974). The trial judge possesses a broad discretion to manage discovery in a fashion that will implement the philosophy of full disclosure of relevant information and at the same time afford protection against harmful side effects. J. Moore & J. Lucas, Moore's Federal Practice 26.67 (2d ed. 1979). To that end, the court can issue protective orders regulating the extent and manner of *discovery*. CR 26(c).

Mary sought the names, addresses and phone numbers of all the Servpro employees that had been dispatched to her home including the date and time of their arrival and the duration of their stay. Servpro at (CP 1200-12060, and the Brent Young at (CP 1284-1289) have failed to provide answers to the interrogatories and request for production: Servpro has not provided the requests

for production served by Mary on them nor provided any affidavits from Isidro and Jose regarding the process they followed in preparing the Re-Juv-Nal; who ordered the spraying when the MSDS recommended against mist spaying.; where and what was sprayed; the effect on them after the spraying. Why they did not return to the job; the effects on the fumes of their other co-worker; why some came and left; the long term effect on their health: and why they sprayed the house.

None of the Servpro declarants stated in their affidavits that they had personal contact with José and/or Isidro on June 28, 2004, the day of the spraying which caused the release of HCL fumes noxious fumes. Evidence is that most of the staff employees were not at work due to their move affecting their communication network.

It was error of The Court to deny Mary's oral motion under CR 56 (f) for a continuance in light of the defendants' filed incomplete interrogatories that are acknowledged in those documents. Assignments of Error No, 1 and 4 should be so reversed in light of the above case law. His rulings should be reversed as it was extremely prejudicial to Mary as noted below. Our conclusion that the trial court improperly curtailed discovery does not, however, require reversal of the judgment unless it was prejudicial. See Weber v. Biddle, 72 Wn.2d 22, 29-30, 431 P.2d 705

Stipulation and Court Order

The parties had all stipulated in writing and The Court had signed the Stipulation and Order continuing Trial Date and Amending the Case Schedule on October 8, 2008.

(CP 1137-1144) The original trial date of December 15, 2008 was amended to June 8, 2009 with a new discovery cut off of date of April 2009. This would have enabled Mary time to force Allstate, Servpro, and Hillyard time to fully provide the discovery requests of Mary that they had acknowledged were totally lacking and/or incomplete so that she could schedule depositions of necessary parties like Neal, Silvette, etc.

His failure to allow Mary's oral motion pursuant to CR 56(f) was prejudicial and a denial of her right to due process specially when she produced computer print outs of her care at Group Health attached to her Motion for Reconsideration Allstate will continue to falsify reports and declarations making the courts accessories to their fraud on their insureds.

The orders of dismissal must all be reversed with a reasonable amended case schedule as favorable as the one that was curtailed by substitute for the Court had an obligation to not award summary judgment of Dismissal of any of the defendants. This case should be remanded to the trial court with time for Mary to compel and extend the discovery process to prepare for trial.

Conflicting Evidence

A comparison of Neal's affidavit under oath is a blatant example of perjury. (973-1001) The following breakdown will prove that he and Mr. Leid manipulated the reports of the declarants in support of Allstate's motion for summary judgment of dismissal even if they have refused to produce documents requested or to even answer the interrogatories expounded to them by Mary.

He states that he has reviewed her other claims files immediately claiming that Mary did not make her claim until the June 25, 2004 when in fact the Mary discovered the leak on June 22 and reported the claim on June 24, 2004 to an intake agent. Neal then swears under oath that Servpro continued cleaning services as a good faith effort to mitigate any further damage or mold proliferation. There was absolutely no mention of any mold proliferation until Neal first appeared on the scene in the afternoon. His next fabrication is that Mary first reported it as a water heater leak. He was claiming that it was the water heater while Mary and Paul disagreed. Water leaking from a water heater would be warm and possibly brown, not be cold and soapy. There was no leak in the upstairs bathroom until after the foreclosure in February 2005. In actuality, Neal started claiming that there was a slow leak in the

basement wash basin wall on the other side of the utility room the first time he appeared on the scene stating there was a coverage issue.

Mary had no reason to want to move to a hotel before noon on Monday June 28, 2004. Her bedroom suite was upstairs and there was no water leak upstairs. The two rooms affected by the flood were the 2 bedrooms downstairs. Her testimony cited above clearly was that she was comfortable living at home with the water shut off since Thursday, June 24, 2004. Mary had never heard of Studio 6 until the pungent odor hit her after 1pm. Neal had suggested that motel after the spraying occurred. He must have ordered that Servpro spray the basement otherwise he wouldn't have agreed to let Mary go to a motel so willingly.

The next untruth is his claim that Mary left him a voicemail at 7:00pm on June 28, 2004 informing him that she could not stay in the house because of the smell and that there was no running water. (CP 974 at lines 23-27)

Neal was contacted because Studio 6 he didn't show up earlier to pay the rent. Studio 6 would not let Mary sign in so she had to pay and be reimbursed by Neal with a check for \$309.33. Skipping the rest of his paragraph 9 at (CP 975) Neal is now mixing up his earlier activities on June 25th with July 1 at his paragraph 10. The moisture "check" incident occurred days before the spraying

occurred in contrast to his paragraph 12. Now he claims that Mary could not live at the residence because of the antimicrobial placed in the house and that the tack strips were mildewed and claims he didn't smell any chemicals used by Servpro in the house at his paragraph 12. No one showed up at the house and Mary was bedridden from the fumes for about a week.

Refuting his paragraphs on (CP 976) as follows;

14. Mary never planned to get her own indoor quality expert then as she had no idea of the nature of the substance used by Servpro or the ramifications from its misuse.

15. There were no mitigation services by Servpro as they didn't return until after Silvette's **unsigned report** dated July 18, 2004.

16. Servpro never replaced the water heater. Gregory Koehler did. (CP 497-502)Mary never told them not to go back into the house. Servpro answered in that they did not return to remediate as Neal told them that there was a coverage issue.

The ones that came only moved like zombies taking 4 hours to tape plastic sheeting from the large fans Servpro finally brought over to be exhausted through the utility window almost a month after the leak first occurred.

17. The alleged report by American Leak Detection dated 9-1-04 is definitely a fabrication by Neal. The font type on ALD's billing is completely different from the report which uses the photos taken by

ALD when Mary was present, but the wording is totally not what the man represented to Mary. Contrary to the notation, "Drain upstairs and down stairs were water tested for approximately 30 mins, with no backups or leaks detected." never occurred as the ALD man never turned on any water; never went upstairs: and was barely present for 25 minutes total.

18. Neal is now back to claiming the damage was caused by a leak in the water heater that ALD examined and found nothing wrong with it. (CP 998-999)

19. Neal paid Servpro in full without Mary's knowledge and consent for tearing up and dismantling the basement and restoring nothing. The rest of the paragraphs 20 to 22 at (CP 977) don't warrant any more time. Exhibit A that represents Servpro's billing and payment for leaving a disaster scene without completing any remediation has been rewarded by Allstate through Neal and its attorneys by assisting in perpetrating this fraud. (CP 980-997)

Servpro and Allstate's employees – agents were observed spraying the concrete floor and immediately covering it with the wet rugs that were also probably sprayed. The directions on the MSDS (A1-A2) sheet warned of the hazard and danger of using the product on porous surfaces. That is why the cardboard used to pack the books and paper in the house still contain that pungent order that is not a mold smell. One does not need an expert to

testify that as people vary in their sensitivities or abilities to experience smells. The physical symptoms of Overexposure listed in Section 6 - Health Hazard Data of Servpro's MSDS (A-2) do not require a medical doctor or expert to opine those signs.

Jose had expressed he almost passed out and from the fumes and was relieved to feel better once he went outside.

Conflicting Evidence

In the case at bar, there were volumes of conflicting evidence of disputed material fact submitted by the Defendants that the Court seemed to totally ignore. Disregarding the affidavits of Mary's lay witnesses with long work experience in charge of the safety of their co-workers from hazardous materials who identified the odors emanating from the house as hazardous at various times.

Allstate keeps trying to claim there was a mold problem at the house so they could justify their \$5,000 limitation on coverage for the water damage.

Timothy Ronald Fung had gone down to the basement to retrieve the Alpine air purifier XL-15 that was operating 24/7 for years to use at his house in Forks, Washington.

Work Experience Experts

Timothy Fung's declaration (CP 1150) describes his ten minute presence in and out of the house for the first and only time in his life only time in his life to retrieve one of Mary's air purifiers to use in

his Forks house. He stated that the intense smell in the basement was chemical and not a mold smell. It was affecting his breathing in that short a time.

It was his responsibility and work experience as an emergency response team member at his last job in a semiconductor manufacturing building to alert the employees to find the cause of bad smells or gas leaks that could affect their health and correct it as they worked with hazardous chemicals and gases, some of which can kill instantly or damage organs.. In his opinion he would have classified it as life threatening and ordered the workers to evacuate. (CP 1148-1152)

Jerry Bedlington is a retired structural mechanic at Boeing and had been the safety focal for his team. He knows how to assess MSDS for every toxic chemical in the plant by computer to learn how to handle them safely per the EPA outline. He could determine what clothing, gloves, respiratory and other safety gear was necessary to use to protect themselves from any chemical spills and familiar with the symptoms due to exposure. (CP 1160-1165)

In July 2005 Mary wanted to show him the inside of the house while getting her mail. As he approached the outside of the garage, he detected a toxic chemical odor based on his years of experience around the chemicals used at Boeing. He immediately stopped

breathing, holding his breath and moved quickly away from the house. It was definitely a pungent chemical smell and not a mold smell. He would have had his team evacuated the work area until the toxins were cleaned and removed. Mary's house and its surroundings were definitely uninhabitable then. He was of the opinion that but for her keen sense of smell and sensitivity, he doubted that she would be alive today. In his opinion, Paul saved her life by keeping her out of the house for the year they were together because he understood she was a universal reactor and extremely sensitive. (CP 1160-1165)

Maria Roberts first met Mary when she was hired by Bruce Balla to supervise the packing and removal of Mary's property from the house in March 2006. She described the rashes on her body and the effect on the health of the other temporary workers.

She was there for several months after the house was emptied and helped to tear down the walls down in the hallways as the ceiling had collapsed when Bruce took over the house and opened the water at the meter so that the pipes burst.

Mary had not spoken or seen Maria since that time and was unaware that Maria is now legally blind with other health problems. Mary had warned her the house was toxic, but Maria needed the money. Her son and other friends were at the house and are all having similar health problems like Mary described. Maria's doctor

had asked her if she was working with chemicals as it was not a mold problem. (CP 1170-1175)

On October 13, 2008, she signed her declaration meeting Mary for the first time in person after over two years. Maria stated that she has been a volunteer emergency medical technician for the Shoreline Fire Department and had hopes of getting a job as a permanent EMT, Her health will never permit it now.

While working at the polluted house she insisted that Bruce buy gloves and masks for the workers. He was seldom at the house except to lock up at the end of the day or bring money for supplies to be purchased as he spent his time working at other houses.

The Court totally ignores the 700 pages of undisputed facts in Mary's testimony and her role as an owner with chemical knowledge and experience.

Neal's fabricated declarations can be demolished by common sense reasoning and facts that a reasonable man might find laughable. He and the Servpro employees have not responded to discovery which is unjust.

Summary Judgment

Summary judgment is appropriate when the pleadings, affidavits, depositions, and admissions indicate that no genuine

issue of material fact exists and a party is entitled to judgment as a matter of law. In a summary judgment motion, the moving party bears the initial burden of showing the absence of an issue of material fact. See LaPlante v. State, 85 Wn.2d 154, 158, 531 P.2d 299 (1975).

Cotton v. Kronenberg , 111 Wn.App. 258, (2002) state an appellate court reviewing a summary judgment considers the facts of the case and the reasonable inferences that may be drawn from the facts in the light most favorable to the nonmoving party. The Court in the case at bar failed to do this

In the present case, Allstate has alleged that summary judgment is appropriate for it as Mary cannot produce any admissible evidence beyond mere allegations and conclusory statements, and that based on the record before the court, her contentions regarding extra contractual claims and alleged economic and bodily damages are wholly unsupported by any factual evidence. Allstate claimed to have acted reasonably at all times. (CP 1124, lines 13-19).

Mary will discuss the material issues of law and fact that she deems relevant where Allstate has not crossed the threshold required to put the burden on her. Allstate owed her a duty, defendant's conduct violated the duty; and (3) there was a

sufficiently close, actual, causal connection between defendant's conduct and the actual damage suffered by plaintiff.

Here Servpro's employees had exclusive control of the instrumentality which was the spray canister which was probably used to spray the Re-Juv-Nal.. Mary saw them with the unit when they came to her front door wearing no protective gear. There might have been a mild mold smell in the basement due to the moisture in the wet carpets because Servpro only brought in fans after Silvette's "**unsigned letter**" dated July 18, 2004. (CP) A-8 to A-12.

Law on Bad Faith Claims

An insured has a duty of good faith to its policy holder, and violation of that duty may give rise to a tort action for bad faith. *Truck Ins. Exch.v.Vanport Homes, Inc.*, 147 Wash 2d 751, 765, 58 P.3d 276 (2002). To prove bad faith the policy holder must show the insurer's breach of the insurance contract was unreasonable, frivolous, or unfounded. *Overton v. Consol. Ins. Co.*, 145 Wash 2d. 417, 433, 38 P.3d 322 (2002). Whether an insurer acted in bad faith is a question of fact. Wash.2d 784, 796, 16 P.3e 574 (221) *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 142 Wash. 2d 784, 796, 16 P. 3d 574 (2001).

Allstate has failed to handle Mary's claims in good faith and has taken action to deny her the coverage which she had paid premiums for.

Negligence is more than an Allegation of Bad Faith.

Under section III. **Causes of Action** under **Plaintiff's**

Amended Complaint for Damages, Mary laid out the facts of the tort of negligence as the direct and proximate cause of injuries to her body and property. (CP 646-48). She certified the factual statements (CP 36-46) of the amended complaint to be true and correct at (CP 650-51).

The existence of a duty is a question of law and "depends on mixed considerations of 'logic, common sense, justice, policy, and precedent.'" *Hartley v. State*, 103 Wn.2d768, 779, 698 P.2d 77 (1985) *Id.* at 66 citing *Snyder v. Med. Serv. Corp.*, 145 Wn.2d 233, 243, 35 P.3d 1158 (2001). An insured has a duty of good faith to its policy holder, and violation of that duty may give rise to a tort action for bad faith, *Am. States Ins. Co. v. Symes of Silverdale, Inc.*, 150 Wn.2d 462,470, 78 P.3d 1266 (2003); *Truck Ins. Ech. V. Vanport Homes, Inc.*, 147 Wn.2d 751, 765, 58 P.3d 276 (2002);

RCW 48.01.030. The duty of care is what a reasonable man would find as a question of fact.

RCW 48.01.030; The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

As evidenced by the nonevasive and thoroughness of her

Responses to deposition, interrogatories and requests for documents, Mary is incapable of not practicing honesty and being deceptive.

In addition, Mary went to Allstate's Rory Leid's, office for 3 days of examinations under oath (EUO) with 2 legal file boxes full of documents on February 28 to March 2, 2005 and gave 3 volumes of testimony (CP)

Mary had assumed her cooperation was finally going to lead to a settlement. Instead, Allstate writes a letter dated May 5, 2005 ostensibly from a Carrie Rohling but undoubtedly the product of Mr. Leid, notifying her that her house insurance coverage was being cancelled as of June 7, even though the premium had been prepaid to October 22, 2005. That act alone is an unfair practice under the RCW 19.86 Consumer Protection Act illegally cancelling Mary's policy based on their fraudulent misrepresentations.

Two unlawful detainer actions by the bank and then the buyer after the auction were initiated in an attempt to force her to remove her property from her foreclosed house. Resolution of the legal aspects in March of 2006 then morphed into several weeks of trying to salvage her valuables, files, records and memories from what was being discarded by about twenty Labor Ready and other employees of the contractor in charge of the removal. Mary was not allowed in the house until everything was removed. She was

then led in to verify that the house was emptied of her personal property. (CP)

Mr. Leid is considered to be an employee of Allstate as no law suit had been filed by Mary in the EUO phase. He has no attorney-client privilege in his work so that Allstate is required to have him respond to Mary's Interrogatories and Requests for Admission propounded to it which he has refused to comply.

Negligent Infliction of Emotional Distress

We reexamined liability for negligent infliction of emotional distress in *Hunsley v. Giard*, 87 Wn.2d 424,433, 553 P.2d 1096 (1976). There we held a cause of action for same does exist in Washington but cautioned: "Not every act which causes harm results in legal liability." Id. at 434. As with any claim sounding in negligence, where a plaintiff brings suit based on negligent infliction of emotional distress "we test the plaintiff's negligence claim against the established concepts of duty, breach, proximate cause, and damage or injury." Id. at 434.

When considering the evidence and reasonable inferences therefrom in the light most favorable to Mary, there are genuine issues of material fact as to her claims for intentional and negligent infliction of emotional distress and for failure to settle her water damage claim and not to interfere with her relationship with Servpro as to their performance of her contract and Servpro's responsibility to timely provide her promptly with the Material Safety Data Sheet (MSDS) and details of where and what was sprayed. Servpro had an obligation to communicate and warn Mary and others including their own employees of the dangers inherent in their improper use

of Re-Juv-Nal and acknowledge promptly the information that they were not coming to repair the damage

They had not asked for permission to spray nor warned of the dangers of exposures to Re-Juv-Nal. (CP 795-798) At the time Mary was unaware that they had sprayed anything or what product was used

Actual length of discovery time here

The Court erred in failing to continue the motion for summary judgment especially since the parties only started engaging in discovery in January of 2008. Defendants have had more excessive than adequate discovery of Mary. The defendants had not provided the evidence they agreed were due pursuant to the discovery requests from Mary. Mr. Leid provided responses to essentially nothing for the responses due from Allstate. He claims attorney client privilege in spite of the fact that he acted as an employee of Allstate in engaging in the EUO's in 2005 prior to the filing of this case in 2007. (CP 183-206)

Opinion Expert

Defendants argue that Mary is lacking a material issue of fact because she has no medical expert to testify as to the cause of her health problems or scientific evidence to bolster her belief that

Servpro probably used an improper dilution of the Re-Juv-Nal they used to spray.

In State v. Ortiz, 119 Wn.2d 294, P.2d 060 (1992) the Supreme Court ruled that a trial court's decision on the admissibility of evidence is reviewed under the abuse of discretion. Under ER 602 and ER 701, the opinion testimony of a lay witness is admissible if it is helpful to the trier of fact and is based on personal knowledge and perception. The admission of expert testimony is a discretionary decision for the trial court.

Practical experience can qualify a witness as an expert. An expert opinion need not be based on an explanatory theory generally accepted as in the scientific community if it does not involve a new method of proof or novel scientific principle but rather is the result of practical experience and acquired knowledge. Such an opinion must be understandable by ordinary persons.

Doctrine of Res Ipsa Loquitor

Miles v. St. Regis Paper Co., 77 Wn.2d 828, 832, 467 P.2d 307 (1970) held that the three prerequisites to application of the doctrine of *Res Ipsa Loquitor* are (1) an event which ordinarily does not occur unless someone is negligent; (2) the agent or instrumentality causing the event must be within the exclusive

control of the defendant; (3) there must be no voluntary action or contribution to the event on the part of the plaintiff.

The doctrine is clearly applicable in the case at bar as:

(1) According to Hillyard's MSDS for its product RE-Juv-Nal under SECTION V – PHYSICAL HAZARDS, thermal decomposition may produce toxic vapors/fumes of hydrogen chloride, amines, and other organic materials, and oxides of carbon and nitrogen. These compounds are gases that can keep reacting with plastics, metals, gases, that set off chain reactions of unknown compounds.

Hillyard's MSDS does not recommend the fine fog mist application of Re-Juv-Nal. The health hazards are that exposure to the spray mist using 2 oz. of Re-Juv-Nal to a gallon of water can cause irreversible eye damage. Inhalation of it can cause irritation of mucous membranes, skin irritation, as well as being listed as a carcinogen or potential carcinogen. (CP 707-708) A-

(2) The spray canister used to create the fumes is the instrumentality that was in the sole exclusive control and possession of Servpro as they were alone in the basement at the time they used it to mist spray the product. The **unsigned report** of Silvette stated that Servpro identified the name of the product and content as Re-Juv-Nal. (CP 968-972) (A -)

(3) Mary as plaintiff did not contribute to the event nor did she volunteer by any act. In fact she was upstairs in her kitchen, totally

unaware of any intention to use the hazardous substance in or on her house. . (CP 770-771) She would not have authorized nor approved of its use due to her chronic, severe sensitivity to perfumes, cigarettes, exhaust gas, cooking and other odor. (CP763-766)

The argument of Mr. Soderland's total lack of exclusivity by Servpro of control of the damages can be distinguished from the authorities he cites on (COA# 778-3-I at pages 28 and 29) the house was not being in the exclusive control of Servpro for a long time is absurd as the person who was injured is Mary. The damage was done as soon as they sprayed the Re-Juv-Nal. The unknown chain of chemical reactions had started with that one time application and its pungent odor persists to this day.

(2) Servpro's employees, Isidro and/or Jose, were the agents who operated and had exclusive control of and possession of the instrumentality which was the spray canister and its contents, before and after the extraordinary event. They were solely in control of whatever substance or product was placed in the canister and only they know what strength, mixture, or concentration was used by them. (CP 690-694)

(3) Mary did not contribute to the event and did she volunteer any act. She was at her kitchen counter upstairs and totally unaware of the intention to use the hazardous substance in her house nor

had she authorized or approved the use of it due to severe sensitivity to perfumes, cigarettes, exhaust gas, cooking and other odors.

It was only months later that Mary found a Servpro envelope containing a material safety data sheet (herein after refer to as "MSDS" sheet) in her mail box. It was then that she learned that the spray contained hazardous substances and that the symptoms corresponded with those that she had been experiencing such as respiratory, skin rashes, and eye irritations. (CP 161-163) Injury to her caused by the toxic fumes arising out of the negligent act of Servpro in the misuse of Re-Juv-Nal is set forth in the following response. (CP 163-165)

Misrepresentation

Neal, Leid, and Allstate have disrespected Mary and this court. She was not ready to depose defendants' so called expert witnesses without them supplying the requested documentation. Courts have long held that "where inquiry is made, one owes a duty to answer truthfully." 37 CJS *Fraud* section 16, *Goodin v. Palace Store Co.*, 164 Wash.625, 4 P.2d 493 (1931).

Mary continually inquired of Neal and Servpro for information and funds to right the wrongs they committed. She believes that Neal told Servpro to spray for mold which was totally unnecessary at the time. The total removal of the wet rugs and padding and the proper

use of fans would have eliminated the problem. She would never have given consent to any spraying. It was the work of Neal to follow the culture of Allstate in defrauding its insureds.

“If the circumstances surrounding the contract impose a duty upon one of the parties to disclose all material facts known to him and not known to the other, want of disclosure with intent to deceive will amount to fraud.” Lincoln v. Keene, 316 P.2d 899, 51 Wn.2d 171 (1957).

Fraud, under Washington law, is defined by the combination of nine elements.

- “1. A representation of an existing fact;
2. its materiality;
3. its falsity;
4. speaker’s knowledge of its falsity or ignorance of its
5. his intent that it should be acted on by the person to
6. ignorance of its falsity on the part of the person to
7. the latter’s reliance on the truth of the representation;
8. his right to rely on it; and
9. his consequent damage.” Martin v. Miller, 24 Wn. App. 306, 600 P.2d 698 (1979); Turner v. Enders, App, 875, 552 P.2d 694 (1976).

The trustee moved to convert Mary’s Chapter 11 bankruptcy to Chapter 7 due in part to her inability to obtain insurance on her condo after Allstate illegally canceled her house policy in May 2005 even though the premium was paid to October 22, 2005. Judge Thomas Glover dismissed her case so that she lost the sale of her office building for \$890,000.00. Mary was damaged as a result of Allstate’s misrepresentations that she had made material intentional misstatements. It was years after that Allstate produced her 1990 Chapter 11 bankruptcy exemption schedule of about \$37,000 (1109-1110) that Rohling/Lied used intentionally to misrepresent

Mary was fraudulently claiming her damaged property was worth about \$90,000. (482-488) This was the only thing Lied could find after 3 days of examining her financial records in the March 2005 EUO's.

“One who holds himself out as having the skill and knowledge in a particular area will be liable to another if information given is inaccurate and is justifiably relied upon.” Rogers v. City of Toppenish, 23 Wa. App.554,596 P.2d 1096 (1979).

This evidence clearly proves that The Court had no basis in fact in making the order striking Mary's affirmative defenses of fraud, duress, and mental impairment as to the CPA and bad faith claims. (CP 83-4, lines 6-10)

Unclean Hands

“Unclean hands” within the meaning of the maxim that he who comes into equity must come with clean hands is the figurative description of a class of suitors to whom a court of equity as a court of conscience will not ever listen, because the conduct of such suitors is unconscionable. J.L. Cooper & Co., v. Anchor Securities Co., 113 P.2d 845, 857,. 9 Wash. 2d 45 (1900).

The facts set forth the unclean hands of Allstate. Their failure to provide the insurance coverage Mary paid for has led them to pay the Lake Forest Park officers to make false, hearsay statements such as claiming Mary was in the house for an hour with one of the

officers. She was in fact outside in the street for most of the hour with her next door neighbors waiting to be allowed in. She never saw the officer that took the digital photos that showed condition of the ransacked house.

Her examination of them will definitely shred their hearsay statements. They have the nerve to still claim she committed both burglaries even after the Bothell Police notified them that they had some of the property stolen from her house within days of the December 2004 burglary. Mary would never destroy her property to fabricate a claim.

Summary Judgment Standard

Summary judgment is appropriate when the pleadings, affidavits, depositions, and admissions indicate that “there is no genuine issue as to any material fact and ...the moving party is entitled to a judgment as a matter of law” CR 56(c). The purpose of summary judgment is to avoid unnecessary trial where insufficient evidence exists. *Young v. Key Pharm, Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989). The party moving for summary judgment bears the initial burden of showing the absence of an issue of material fact, See, e.g., *Cox v. Malcom*, 60 Wn. App 894,897, 808 P.2d 758, review denied, 117 Wn.2d 1014 (1991); *Guile v. Ballard Community Hospital*, 70 Wn. App. 18, 21, 851 P.2d 689 (1990). A material fact is one on which the outcome of the litigation is based

in whole or in part. See, e.g., Atherton condominium Apartment-Owners Ass'n v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P. 2d 250 (1990).

A defendant may meet their burden by challenging the sufficiency of plaintiff's evidence. *Young*, 112 Wn.2d at 225; *Carlyle v. Safeway Stores, Inc.*, 78 Wn. App. 272, 275, 896 P.2d 750, review denied, 128 Wn.2d 1004 (1995). Once the defendant has made his or her showing, the plaintiff must produce additional evidence showing the existence of a genuine issue for trial. CR 56(e). If the plaintiff's response "fails to make a showing sufficient to establish the existence of an element essential to his case," then the defendant's motion for summary judgment should be granted. *Atherton*, 115 Wn.2d at 516; *Young*, 112 Wn.2d at 225; see also CR 56(e). A complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. *Young*, 112 Wn.2d at 225.

Further, the nonmoving party cannot rely on speculation, but must assert specific facts to defeat summary judgment. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

Self-serving testimony that is contrary to all of the documentary evidence in the record will be insufficient to raise a genuine issue of material fact. *Sedwick v. Gwinn*, 73 Wn. App. 879, 873 P.2d 528 (1994); see also *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,

475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)
("Where the moving party has carried its burden under Rule 56©,
its opponent must do more than simply show that there is some
metaphysical doubt as to the material facts.") A party is entitled to
judgment as a matter of law where the nonmoving party fails to
make a sufficient showing on an essential element of a claim in the
case on which the nonmoving party has the burden of proof.
Celotex Corp. v. Catrett, 477 U.S, 317, 323, 106 S. Ct. 2548, 91
L.Ed.2d (1986).

CONCLUSION

All of the summary judgment motions granted and the dismissal
of all the defendants should be reversed and vacated. The court
rulings contravene a preexisting order allowing discovery. By its
admission, the court acknowledged that it weighed evidence by
considering the affidavits by both sides, which ipso facto,
establishes that that evidence was weighed.

The court should be compelled to comply with its own order in
light of the acknowledged refusal of the Defendants to fully respond
to discovery.

Dated this 14th day of June, 2010.

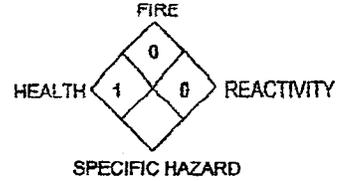


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SERVPRO INDUSTRIES, INC.

**Material Safety Data Sheet (USA)
#166 Re-Juv-Nal**

HAZARD RATING:
4 = EXTREME
3 = HIGH
2 = MODERATE
1 = SLIGHT
0 = INSIGNIFICANT



SECTION 1 – PRODUCT INFORMATION		
Product Name Re-Juv-Nal	Product Use EPA Registered Disinfectant/Cleaner	EPA Number 47371-131-1658
Distributor's Name SERVPRO INDUSTRIES, INC.		Supplier's Name
Street Address 575 Airport Blvd., Gallatin, Tn. 37066		Street Address
Information Telephone Number (615) 451-0200	Date Prepared Jan. 02, 2002	City, State, Zip
Emergency Telephone Number (800) 535-5053	Sig. of Preparer (optional) Chemical Dept.	Emergency Telephone Number

SECTION 2 – INGREDIENTS				
HAZARDOUS INGREDIENTS	OSHA PEL	ACGIH TLV	Other limits	%
Dodecyl Dimethyl Ammonium Chloride CAS# 7173-51-5	N/E	N/E	N/E	2.31
n-Alkyl Dimethyl Benzyl Ammonium Chloride CAS# 8001-54-5	N/E	N/E	N/E	1.54
Octyl Dimethyl Amine Oxide CAS# 2605-78-9	N/E	N/E	N/E	N/E
Edtate Disodium CAS# 139-33-3	N/E	N/E	N/E	N/E
Deionized Water CAS# 7732-18-5	N/E	N/E	N/E	N/E

SECTION 3 – PHYSICAL DATA		
Appearance and Odor Pale red/orange liquid with pleasant floral fragrance.	Solubility in Water Completely	Evaporation Rate (Butyl Acetate = 1) <1
Boiling Point (°F) 210°F	Vapor Pressure (mm Hg) 17.6	Vapor Density (Air=1) 0.6
Specific Gravity (H ₂ O=1) 1.0	Melting Point (°F) N/A	pH 6.5-7.5

SECTION 4 – FIRE AND EXPLOSION DATA	
Flash Point (Method Used) Non-flammable. N/A	
Extinguishing Media None required. If other materials are on fire in the area these containers may swell and burst. Water spray is effective at cooling.	
Special Fire Fighting Procedures Water may be used to cool containers to prevent pressure build-up and possible explosion when exposed to extreme heat.	
Unusual Fire and Explosion Hazards Closed containers may explode (due to build-up of steam pressure) when exposed to extreme heat.	

SECTION 5 – REACTIVITY DATA	
Stability Stable <input checked="" type="checkbox"/> Unstable <input type="checkbox"/> Conditions to Avoid High temperatures.	
Incompatibility (Materials to Avoid). Strong oxidizing agents (i.e. nitric acid, permanganates, etc.) avoid water reactive materials.	Hazardous Decomposition Byproducts CO, CO₂ and various hydrocarbon compounds.
Hazardous Polymerization Will Not Occur <input checked="" type="checkbox"/> May Occur <input type="checkbox"/>	
Conditions to Avoid None.	

APPENDIX

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PRODUCT IDENTIFIER	#166 Re-Juv-Nal
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SECTION 6 – HEALTH HAZARD DATA

ROUTE(S) OF ENTRY	<input checked="" type="checkbox"/> Skin Contact <input checked="" type="checkbox"/> Skin Absorption <input checked="" type="checkbox"/> Eye Contact <input checked="" type="checkbox"/> Inhalation <input checked="" type="checkbox"/> Ingestion						
Health Hazards (Acute and Chronic)	Eye contact: primary irritation. Ingestion: can cause gastrointestinal irritation, nausea, vomiting and diarrhea. Skin contact: possible primary irritation. May be harmful if swallowed. (LD50 = 6.9 g/kg) Fine mist application is not recommended.						
CARCINOGENICITY	<table border="0"> <tr> <td>NTP?</td> <td>IARC Monographs?</td> <td>OSHA Related?</td> </tr> <tr> <td>No</td> <td>No</td> <td>No</td> </tr> </table>	NTP?	IARC Monographs?	OSHA Related?	No	No	No
NTP?	IARC Monographs?	OSHA Related?					
No	No	No					
Signs and Symptoms of Overexposure	Irritation of affected organ or organs. Direct eye and skin contact can cause irritation.						
Medical Conditions Generally Aggravated by Exposure	Dermatitis.						
Emergency and First Aid Procedures	SKIN: Wash skin with soap and water for 15 minutes. Call a physician. EYES: Flush with water for 15 minutes. If irritation persists, consult a physician. INHALATION: Move to fresh air. Seek medical attention if breathing becomes difficult. INGESTION: Induce vomiting, consult a physician & drink promptly a large quantity of water. GENERAL ADVICE: Avoid alcohol and call a physician immediately.						

SECTION 7 – PRECAUTIONS FOR SAFE HANDLING AND USE

Steps to be Taken in Case Material is Released or Spilled	Contain and remove with inert absorbent rags or sand. Avoid contamination of food, water or feed.
Waste Disposal Method	Dispose only in accordance with all federal, state and local regulations. Pesticide wastes are acutely hazardous. Improper disposal of excess pesticide, spray mixture or rinsate is a violation of Federal law.
Precautions to be Taken in Handling and Storing	Protect from freezing. Keep away from children.
Other Precautions	Triple rinse empty containers thoroughly with water before disposal. Remove contaminated clothing and wash before reuse. This product contains no reportable quantities of toxic chemicals subject to reporting requirements of section 313 of SARA Title 111 Emergency Planning and Community Right to Know Act of 1986 and 40 CFR part 372.

SECTION 8 – CONTROL MEASURES

Respiratory Protection	None needed unless applied by spraying, then use Niosh approved respirator.			
VENTILATION	Local Exhaust	Mechanical	Special	Other
	Must provide adequate ventilation.	If necessary	N/A	N/A
Protective Gloves	Eye Protection	Other Protecting Clothing or Equipment		
Rubber	Safety goggles	None		
Work/Hygienic Practices	Good work habits. Wash hands after use.			

This form complies with OSHA's Hazard Communication Standard, 20 CFR 1910.1200. Servpro, Inc. believes the above information is reliable. Handling of the designated product shall be restricted to qualified persons. Servpro, Inc. makes no warranty, expressed or implied, with respect to such information and assumes no responsibility whatsoever for any damage which results from the use of such information or the designated product. Users must make their own tests when using the designated product with any other product or any process.

APPENDIX

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MATERIAL SAFETY DATA SHEET

EPA Reg. No. 47371-131-1658

EPA Est. No. 1658-MO-1

NFPA RATING: Health = 2 Flammability = 0 Reactivity = 0
 HMIS RATING: Health = 2 Flammability = 1 Reactivity = 0

SECTION I -- IDENTITY AND MANUFACTURER'S INFORMATION (1090A)

Manufacturer's Name: HILLYARD INDUSTRIES Product Name: RE-JUV-NAL
 Address: 302 North Fourth Street Date Prepared: September 21, 2006
 St. Joseph, MO 64501 Prepared by: Regulatory Affairs Department
 Emergency Telephone No.: (800) 424-9300 (Only in the event of chemical emergency involving a spill, leak, fire, exposure or accident involving chemicals.) Other information calls: (816) 233-1321 (Ext. 8285)
<http://www.hillyard.com>

SECTION II -- INGREDIENTS/IDENTITY INFORMATION

Components

(Specific Chemical Identity:

Common Name(s)	CAS#	OSHA PEL	ACGIH TLV	OTHER LIMITS RECOMMENDED	%
Didecyl dimethyl ammonium chloride	7173-51-5	not established	N/A	N/A	2.54
n-Alkyl (C ₁₄ 50%, C ₁₂ 40%, C ₁₆ 10%) dimethyl benzyl ammonium chloride	8001-54-5	not established	N/A	N/A	1.69
Octyl dimethyl amine oxide	2605-78-9	not established	N/A	N/A	---
Edtate Disodium	139-33-3	not established	N/A	N/A	---
Deionized water	7732-18-5	none	N/A	N/A	---

SECTION III -- PHYSICAL / CHEMICAL CHARACTERISTICS

Boiling Point: 210°F Specific Gravity (H₂O = 1): 25°C = 1.00 & 39°C = 1.00
 Vapor Pressure (mm Hg.): 17.6 Percent Volatile by Volume (%): 94.7
 Vapor Density (AIR = 1): 0.6 Evaporation Rate (ethyl ether = 1): slower than 1
 Solubility in Water: complete Appearance and Odor: clear, reddish-orange liquid; floral odor
 pH of concentrate: 7.2 - 8.2

SECTION IV -- FIRE AND EXPLOSION HAZARD DATA

Flash point: >200°F (Tag Closed Cup) Flammable Limits: LEL = Not applicable UEL = Not applicable
 Extinguishing Media: Foam, alcohol foam, carbon dioxide, dry chemical, water
 Special Fire Fighting Procedures: Must wear NIOSH/MSHA approved self-contained breathing apparatus and protective clothing. Cool fire-exposed containers with water spray.
 Unusual Fire and Explosion Hazards: Products of combustion are toxic.

SECTION V -- PHYSICAL HAZARDS

Stability: Stable Conditions to Avoid: N/A
 Incompatibility (Materials to Avoid): Strong oxidizing and reducing agents.
 Hazardous Decomposition Products or Byproducts: Thermal decomposition may produce toxic vapors/fumes of Hydrogen chloride, amines, and other organic materials, and oxides of carbon and nitrogen.
 Hazardous Polymerization: Will not occur Conditions to Avoid: None known to Hillyard

SECTION VI -- HEALTH HAZARD DATA

Routes of entry: Inhalation? yes Skin? yes Eye? Yes Ingestion? yes

HEALTH HAZARDS (1. Acute and 2. Chronic)

1. From previous experience with a 2 oz. per gallon alkaline quat, the oral LD50 (rat): 1850 mg/kg; Dermal LD50 (Rabbit): 4430 mg/kg.; Eye: Diluted product 1:64 (rabbit) essentially non-irritating; Skin irritation: Diluted product 1:64 (rabbit) non-irritating. Inhalation of fine fog mist can cause irritation of mucous membranes. Fine fog mist application is not recommended. 2. None known to Hillyard.

Chemical listed as Carcinogen or Potential Carcinogen:

National Toxicology Program = No I.A.R.C. Monographs = No OSHA = No

Signs and Symptoms of Exposure: Causes irreversible eye damage. Do not get in eyes or clothing. Wear protective eyewear (goggles, face shield, or safety glasses). Avoid contact with skin. Harmful if inhaled. Avoid breathing spray mist. Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash clothing before reuse.

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SECTION VI -- HEALTH HAZARD DATA continued:

Medical Conditions Generally Aggravated by Exposure: None known to manufacturer.

Emergency and First Aid Procedures: **If in eyes:** Hold eye open and rinse slowly and gently with water for at least 15-20 minutes. **If on skin or clothing:** Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. **If inhaled:** Move person to fresh air. If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible. Call a poison control center or doctor for treatment advice. Have the product container or label with you when calling a poison control center or doctor or going for treatment. **NOTE TO PHYSICIAN:** Probable mucosal damage may contraindicate the use of gastric lavage.

SECTION VII -- PRECAUTIONS FOR SAFE HANDLING AND USE

Steps To Be Taken In Case Material Is Released Or Spilled: Caution. Floors may become slippery. Wear appropriate protective gear and respiratory protection where mist or vapors of unknown concentrations may be generated (self-contained breathing apparatus preferred). Dike and contain spill with inert material (sand, earth, etc.) and transfer the liquid and solid separately to containers of recovery or disposal. Keep spill out of sewers and open bodies of water.

Waste Disposal Method: Dispose of in compliance with all federal, state and local laws and regulations. Incineration is the preferred method.

Precautions To Be Taken In Handling And Storing: Keep away from children.

Other Precautions: Store in original container in areas inaccessible to children. Open dumping is prohibited. Do not reuse empty container. This product contains no reportable quantities of toxic chemicals subject to reporting requirements of Section 313 of SARA Title III Emergency Planning & Community Right to Know Act of 1986 and 40 CFR Part 372.

SECTION VIII -- CONTROL MEASURES

Ventilation: In processes where mists or vapors must be generated, proper ventilation must be provided in accordance with good ventilation practices.

Respiratory Protection (Specify Type): In processes where mists or vapors may be generated, a NIOSH/MSHA jointly approved respirator is advised in the absence of proper environmental controls. **Protective Gloves:** Rubber or neoprene, when needed, to prevent skin contact with concentrate. **Eye Protection:** Wear chemical splash goggles where there is a potential for eye contact. Use safety glasses with side shields under normal use conditions. **Other Protective Clothing or Equipment:** Eye wash; safety shower, protective clothing (long sleeves, coveralls or other, as appropriate), when needed to prevent skin contact with concentrate. **Work / Hygienic Practices:** Wash hands thoroughly after handling.

SECTION IX -- TRANSPORTATION INFORMATION

Applicable regulations: 49 CFR = No; IMCO = No; IATA = No

Proper shipping name: Cleaning Compound; **UN No.:** Not applicable; **Limited Qty.:** Not applicable;

Hazard Class: Not applicable

Labels required: Not required **Exception:** Not applicable

EPA Hazardous waste number/code: Not listed

Hazardous waste characteristics: Ignitability = Not applicable; Corrosivity = Not applicable; Reactivity = Not applicable

DISCLAIMER OF WARRANTIES

NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY NATURE ARE MADE WITH RESPECT TO THE PRODUCT(S) OR INFORMATION CONTAINED IN THIS MATERIAL SAFETY DATA SHEET. The information and recommendations contained in this Material Safety Data Sheet are supplied pursuant to 29 CFR 1910.1200 of the Occupational Safety and Health Standards Hazard Communication Rule. All information contained herein is presented in good faith and is believed to be appropriate and accurate. THE BUYER OR USER ASSUMES ALL RISKS ASSOCIATED WITH THE USE, MISUSE OR DISPOSAL OF THIS PRODUCT. THE BUYER OR USER IS RESPONSIBLE TO COMPLY WITH ALL FEDERAL, STATE OR LOCAL REGULATIONS CONCERNING THE USE, MISUSE OR DISPOSAL OF THESE PRODUCTS.

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The Honorable Michael Trickey
Trial Date: December 15, 2008
Hearing Date: August 29, 2008 @ 10:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MARY FUNG KOEHLER, a single person,

Plaintiff,

v.

ALLSTATE INSURANCE COMPANY, an
Illinois Corporation; HILLYARD INDUSTRIES,
aka Hillyard Inc., a Missouri corporation;
PROFESSIONAL CLEANING AND
RESTORATION SERVICES, L.L.C., dba
SERVPRO, a Washington Corporation,
BRENT YOUNG and JANE DOE YOUNG,
husband and wife and the marital community
composed thereof, and JAMES YOUNG and
JANE DOE YOUNG, husband and wife and
the marital community composed thereof,

Defendants.

No. 07-2-21367-8 SEA

**DECLARATION OF SILVETTE
BOYAJIAN**

I, Silvette Boyajian, make the following declaration certified to be true under penalty
of perjury pursuant to RCW 9A.72.085:

1. I am over the age of eighteen and competent to testify. I have personal
knowledge of the facts and pleadings contained herein because on July 7, 2004, I
conducted an inspection on the residence located at 4652 NE 20th Place, Lake Forest
park, Washington.

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1 2. I am a certified industrial hygienist with a Master's Degree in Science. I own
2 Indoor Air & Environmental Services, Co. *Attached hereto as Exhibit A is a true and*
3 *correct copy of Silvette Boyajian's curriculum vitae.*

4 3. I was asked by Neal Gutekunst of Allstate to investigate a possible water leak
5 on surrounding surfaces and the potential growth of mold as a result of the leak. I was
6 informed that Servpro, a water restoration company, was called to remediate the water
7 damage. I was also told that the homeowner had reported severe irritation symptoms
8 following the remedial action and the reported use of chemical products to disinfect the
9 areas.

10 4. On July 18, 2004, I produced a report to Neal Gutekunst of Allstate regarding
11 my inspection and investigation of 4652 NE 201st Place, Lake Forest Park, Washington.
12 *Attached hereto as Exhibit B is a true and correct copy of the report.* The findings and
13 opinions therein are made under the penalty of perjury.

14 5. I conducted a pressure test using visible smoke to assess the direction of
15 airflow. I found that the air from the basement was actively drawn to the upper floor
16 through the stairwell stack and the laundry chute located in the utility room of the home.

17 6. At the time of the inspection, I could not detect any odors from the use of a
18 chemical disinfectant upon entering the home. Further, I actively looked for possible
19 contamination through the affected areas of the home and did not smell any odors from the
20 use of chemical disinfectants. Moreover, I did not observe any evidence that would
21 indicate that a chemical disinfectant was improperly used.

22 7. I later contacted Servpro to identify the name of the product used in the home
23 and its content. Servpro reported that it was a product called "Re-Juv-Nal." This is a
24 disinfectant recommended for mild cases of contamination. The active ingredients are
25 water-soluble and not documented to have any long-term health effects.

26 8. There is a possibility that any chemicals in the air would have lingered longer
27 upstairs because of the airflow.

 9. With adequate ventilation, such as opening windows upstairs, no residual
irritant compounds from this disinfectant would have stayed in the home. In other words, if

DECLARATION OF SILVETTE BOYAJIAN - 2
ENSJMOTION.BADFAITH.BOYAJIAN.DEC.DOC

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my instructions to ventilate the home would have been followed, the house would have been fully remediated for any possible irritant from the Re-Juv-Nal. Nothing else needed to be done to rectify the use of any Re-Juv-Nal.

10. I have not suffered or experienced any immediate or long term medical problems, headaches, or physical side effects or symptoms as a result of Re-Juv-Nal, any disinfectant, or mold from the house located at 4652 NE 201st Place, Lake Forest park, Washington.

11. If my recommended protocol was followed lingering effects of chemical disinfectants, if any, and the mold would have been remediated.

I declare under penalty of perjury under the laws of the State of Washington that the above statements are true and correct.

Dated this 17 day of June, 2008, at Richland, Washington.


SILVETTE BOYAJIAN

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July 18, 2004

Neil Kutekunst
Property Adjuster
All State Washington Property
P.O. Box 3033
Bothell, WA 98041

Project #: IAES-04-353
All State Claim #: 4673027175

Dear Mr. Kutekunst,

In response to your request Indoor Air and Environmental Services (IAES) inspected the residence at 4652 NE 201st Place, Lake Forest Park, Washington, on July 7, 2004. This was conducted to investigate the impact of a water heater leak on surrounding surfaces and the potential growth of mold as a result of this leak. Reportedly, shortly after the leak had occurred, Servpro a water restoration company was called in to remediate the water. The homeowner reported severe irritation symptoms following the remedial action and the reported use of a chemical product to disinfect the surfaces.

This evaluation included a visual inspection for signs of water damage and/or mold growth, measuring moisture content using a Wagner L609 non-intrusive moisture meter, and air sampling for total mold spores. No chemical sampling was conducted at this time because the information regarding the disinfectant was not yet available.

Visual and Moisture Content Inspection

The inspected home is one story house with a daylight full basement. The water heater was located in a closet in the hallway of the basement. The following observation were made during this inspection:

- The padding under the carpet was removed from the basement hallway and the two bedrooms. The carpet was dry and did not show signs of visible mold growth in the hallway around the reported water heater leak.
- The walls in the hallway were dry (moisture content less than 10%).
- A one square foot of the wall inside the water heater closet was freshly wet from ongoing dripping from the cold water pipe connection that was not properly capped.
- The carpet tack strips were discolored in the hallway and in the bedroom that is adjacent to the bathroom. The discoloration was darker and older in the bedroom along the wall that backed the bathroom. However, the tacks were clean towards the stairwell leading to the upper floor.
- The wall in the utility room behind the washer and dryer was wet (moisture content > 20%) up to 4 feet of height and trough the length of the wall. Also, the bathroom wall on the other side of the utility room was wet. A dark layer of visible mold growth was noted at the bottom of the wall in the utility room under the trimming. Some mold

15213 Fremont Avenue N, Shoreline, WA 98133
Phone: 206-362-5925, Fax: 425-977-0196



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growth was also noted under the trimming in the bathroom behind the toilet and in the bedroom that backed the bathroom.

- The bottom trimming of a particleboard cabinet located in the utility room was wet all around, front and back.

A pressure test using visible smoke was conducted to assess the direction of the airflow. It was noted that the air from the basement is actively drawn to the upper floor through the stairwell stack and the laundry shoot located in the utility room. Therefore, the occupants on the upper floor may have been exposed to any potential airborne contaminant emitted on the lower floor.

At the time of the inspection, the IAES investigator could not detect odors from the use of chemical disinfectant. However, Servpro was later contacted to identify the name of the product used and its content.

Reportedly, the product used was "Re-Juv-Nal", which is a disinfectant recommended for mild cases of contamination. The active ingredients are water-soluble and are not documented to have any long-term health effect. Irritation of eye and skin may occur upon contact with the solution. It is a hospital grade disinfectant/detergent cleaner, sanitizer, fungicide, mildewstat, virucide, deodorizer that cleans and controls the hazard of cross-contamination from environmental surfaces. It is recommended for use on floors, walls, and other hard surfaces. Reportedly, it is formulated to minimize the impact on the environment. It is an EPA registered for application with a mechanical sprayer.

However, because the occupants are sensitive, it is likely that they experienced irritation symptoms during the application of the chemical because the mist and the odors were readily carried upwards to the upper floors. The odors may have lingered longer because the house was not adequately ventilated. Therefore, with adequate ventilation no residual irritant compounds from this disinfectant are expected.

Sampling & Results

Two air samples for total mold spores were collected during this inspection in order to assess the impact of the visible mold growth in the utility room on the air quality. One sample was collected in the hallway, and the other was collected outside for a baseline. The samples were submitted to GM Laboratories in Seattle, Washington.

Analytical results (Table 1) indicate that the concentration of moisture loving and potentially allergenic mold spores (*Chaetomium sp.*, *Aspergillus / Penicillium* and *Stachybotrys Chartarum*) is significantly higher in the hallway of the basement than the concentration measured outdoors. This indicates that the mold growth on the wall in the utility room, the bathroom and the bedroom are having an adverse effect on the air quality that may be causing some of the discomfort symptoms reported by the occupants.

Conclusion and Recommendations:

Based on these findings, it may be concluded that the drying of the areas around the water heater and in the hallway appeared to be effective except where the water pipe was left dripping water. It may be concluded that the moisture in the wall behind the washer and dryer are not likely to be caused by the recent water heater leak, and it most likely due to ongoing plumbing problems in the wall. This conclusion is based on the observation that the walls between the water heater and the utility room are all dry and the carpet tack stains in the adjacent bedroom penetrate beyond the surface of the wood, which usually occurs following several weeks or months of water damage and do not occur in few days. However, the moisture at the bottom of the particleboard cabinet may have been aggravated by direct contact with the from heater leak.

Occupants may have experienced irritation symptoms during the use of the disinfectant, but this should dissipate with time and dilution ventilation. However, potential irritation effects caused by exposure to allergenic mold spores may not dissipate until the source of mold growth is removed.

Based the above-discussed findings, the following is recommended:

1. Isolate the work area prior to conducting remediation. This may be achieved by using plastic barriers separating the stairwell from the basement and a negative air machine exhausted to the outside through the utility room window. The laundry chute in the utility room should also be sealed with a plastic barrier. The furniture in the basement family room should be covered or isolated also behind the barrier.
2. The replacement of the following building materials is recommended:
 - i. One square foot of gypsum wallboard behind the water heater.
 - ii. The stained carpet tacks
 - iii. Four feet of the wall in the utility room and bathroom
 - iv. Six inches of the wall in the bedroom adjacent to the bathroom.
 - v. The trimming of the particle board cabinet
2. The furniture in the basement should be cleaned. The cleaning may include, but not limited to the following:
 - a. Smooth, hard and un-damaged surfaces could be cleaned with damp clean rags wetted with clean water and mild detergent (e.g. hand dishwashing soap). These rags should be frequently replaced to minimize the smearing of dust on surfaces.
 - b. Upholstered surfaces can be vacuumed with vacuum cleaners equipped with HEPA (High-Efficiency Particulate Air filter) filters.
 - c. Fabrics can be laundered or dry cleaned to remove settled spores.
2. Following the damaged building material removal, the water stained and/or visibly moldy wood framing in the walls and ceiling should be cleaned with steel brushing followed by HEPA vacuuming and damp mopping. These frames should not be covered unless their moisture content drops below 15%. Painting the frames with an encapsulating primer (e.g. Kilz) would help encapsulate non-viable residual spores on the walls and ceiling. This procedure should also be applied to the stairwell wood framing, which was still wet at the time of this inspection.

3. The removed water damaged materials should be placed in sealed plastic bags and discarded. There are no special requirements for the disposal of moldy materials.
4. Throughout the remediation work in the basement area, negative machine or an exhaust fan should be used at all times to flush the mold containing airborne dust outside the house.
5. Following the completion of water damaged material removal, all horizontal surfaces in the contained work area should be HEPA vacuumed and cleaned with a damp cloth and/or mop and a mild detergent solution.
6. After remediation work is completed the house should be well ventilated with an exhaust fans or a negative machine to flush out residual airborne particulate matter and odors for a minimum of 48 hours.
7. The workers performing the removal work should wear respiratory protection (e.g. respirator with P100 cartridges), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134). Gloves and eye protection are also recommended.

It was a pleasure being of service to you. If you have any questions, please call me at (206) 362-5925 or email me at silvette@qwest.net.

Sincerely,

Silvette Boyajian, MS
Certified Industrial Hygienist

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Table 1 – Total airborne mold spores and particulate

Sample #:	1	2
Location:	Basement Hallway	Outside
FUNGAL PARTICULATES	Total/M3	Total/M3
Summary Totals	13,307	39,947
Alternaria sp.	13	0
Ascospores	13	27
Chaetomium hyphae	13	0
Chaetomium sp.	140	0
Aspergillus / Penicillium	6,067	0
Basidiospores		
Coprinaceae	0	27
Ganoderma sp.	33	453
phaeo	20	7
Bipolaris/Dreschlera sp.	27	0
Cerebella andropogonis	7	0
Cladosporium large	1,533	633
Cladosporium medium	7	33
Epicoccum nigrum	73	40
Helicosporium sp.	7	13
Hyphal fragments phaeo	1,000	40
Miscellaneous spores	2,333	0
Stachybotrys chartarum	2,000	7
Ulocladium sp.	7	0
Urediospores	13	0
Yeast	0	38,667
FUNGAL CHAINS	Total/M3	Total/M3
Aspergillus / Penicillium chains	200	0
NONFUNGAL PARTICULATES	Total/M3	Total/M3
Summary Totals	89,333	41,333

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Washington Specialty
Market Claim Office
Allstate Insurance Company
18911 North Creek Parkway, Suite 105
Bothell, WA 98011
Bus: (800) 597-9001
Fax: (425) 489-2260



May 10, 2005

RECEIVED
MAY 10 2005

COLE, LETHER,
WATHEN, & LEID, P.C.

Personal and Confidential

Mary Fung Koehler
18486 Ballinger Way North
Lake Forest Park, WA 98155

Re: Insured : Koehler, Mary
Date of Loss : 12/7/04, 06/21/04, 02/16/02
Policy No. : 087745163
Claim Nos. : 4673068104, 4673027175, 4672760973

Dear Ms. Koehler:

You are respectfully advised that Allstate Insurance Company has made a final determination regarding your above-referenced insurance claims. Based upon the information which has been provided to date from you, from other sources, as well as Allstate's legal analysis of the coverage issues involved in these matters, you are advised that Allstate denies your above referenced insurance claims.

A. Misrepresentation and Concealment

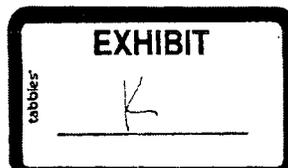
In this regard, Allstate Insurance Company Deluxe Plus Homeowner's Insurance Policy contains the following provision:

Concealment or Fraud

We do not cover any loss or occurrence in which any insured person has concealed or misrepresented any material fact or circumstance.

Allstate Deluxe Plus Policy at page 6.

In Washington, it has uniformly been upheld that if an insured misrepresents or conceals any material fact, the insured is not entitled to any coverage. *Mutual of Enumclaw v. Cox*, 110 Wn.2d 643, 757 P.2d 499 (1988); *Wickswat v. SAFECO Insurance*, 78 Wn. App. 958, 904 P.2d 767 (1995), *pet. for rev. den.*, 128 Wn.2d 1017 (1996); *Tornetta v. Allstate*, 94 Wn. App. 803, 973 P.2d 8 (1999); *Onyon v. Truck Ins. Exchange*, 859 F.Supp. 1338 (W.D. Wa. 1994).



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Koehler, Mary Fung
May 10, 2005
Page 2

In this regard, Allstate has determined that you have misrepresented and concealed material facts. You testified that all of the information in your 1991 bankruptcy was true and correct and could be relied upon by SAFECO. Your bankruptcy information directly contradicts your insurance claim. In your bankruptcy petition, you swore under the penalty of perjury that you kept only \$6,350 of personal property, not including your vehicle. And yet, you have claimed over \$125,000 worth of personal property on your inventories submitted to Allstate.

You did report that in 1991 you believed the value of your clothing and jewelry to be \$750. In your examination under oath and submitted inventory, you claimed that much of the valuable jewelry was purchased before 1991, including \$5,000 marriage bracelets, \$1,250 or \$1200 Thai rubies ring, \$1,100 or \$1,250 Thai sapphire ring. Merely the jewelry you claim on the inventory to have owned before 1991 totals more than \$10,000.

You stated on your bankruptcy that after 1991 you retained \$1,500 in household furnishings, which would include art, statues, tables, chairs, and other furniture. However, the 2002 inventory you did claim that everything besides the jewelry was valued at \$8500. Likewise, in the 2004 inventory claimed damage to or theft of 4 black enamel panes (\$2,400), 2 large teak frames (\$975 each), 1933 gilt framed ink, Italian Neapolitan scene in large gilt frame (\$3975), nude woman with wood base, blue flower design lamp (\$9,999), 3 Japanese Kimono dolls (\$306), "all kinds of expensive pottery, jars, bowls, etc," soapstone Chinese horse (\$355), green and gold elephant (\$1400), large brass camels (\$585), 10 ducks carved of wood (\$25 each), three Mahjong sets (\$5600), Chinese chest, mahogany wood box, and Korean chest. You claimed that over \$27,432 in household goods were stolen after claiming only \$1500 in household goods from the bankruptcy.

Regarding the 2002 theft loss, you claimed the theft of property totaling \$30,000 in fair market value. However, the inventory you submitted does not add up to \$30,000. Likewise, regarding the 2004 theft loss, you claimed the theft of property totaling \$95,000 in fair market value. However, the inventory you submitted does not add up to \$95,000. You created these values by "dowsing," rather than by actual cash value or documented replacement cost.

You changed the value of a claimed ring within the same inventory, primarily due to "dowsing" values on different days. Your first inventory of the burglary claims that "Thai rubies and diamonds white gold band ring" had a value of \$1,250. On the next page, you claim "1971 Thai princess white gold ring with 9 rubies and some diamonds" was appraised at \$1000 in 1973, but is now valued \$1200. You are actually claiming the same rings twice within the same inventory.

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Koehler, Mary Fung
May 10, 2005
Page 3

Please be advised that the foregoing are examples of misrepresentations and concealments upon which Allstate bases its coverage decision. Allstate specifically reserves the right to supplement and provide additional supporting facts in the event it becomes necessary. You are precluded from recovering under the policy of insurance due to misrepresentation and concealment of material facts.

B. Compliance

You failed to comply with the policy provisions. For the 2002 theft loss, you did not submit a written inventory nor a sworn proof of loss until after her second theft loss in 2004. For the 2004 theft loss, you did not submit a completed written inventory with values for each item stolen, nor a signed sworn proof of loss. You failed to send the requested corrected examination under oath transcript, as well as the following additional information:

1. All photographs and video tape in your possession of your property in support of your above referenced claims.
2. Full copies of all journal entries regarding the above referenced losses.

Your Allstate Deluxe Homeowners Insurance Policy contains the following provision:

3. What You Must Do After A Loss

In the event of a loss to any property that may be covered by this policy, **you** must:

- a) promptly give **us** or **our** agent notice. Report any theft to the police as soon as possible. If the loss involves a credit card, charge plate or bank fund transfer card, give written notice to the company or bank that issued the card or plate.
- b)
- c) separate damaged from undamaged personal property. Give **us** a detailed list of the damaged, destroyed or stolen property, showing the quantity, cost, actual cash value and the amount of loss claimed.
- d) give **us** all accounting records, bills, invoices and other vouchers, or certified copies which

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Koehler, Mary Fung
May 10, 2005
Page 4

we may reasonably request to examine and permit **us** to make copies.

- f) as often as **we** reasonably require:
- 1) show **us** the damaged property.
 - 2) at **our** request, submit to examinations under oath, separately and apart from any other person defined as **you** or **insured person** and sign a transcript of the same.
 - 3) produce representatives, employees, members of the insured's household or others to the extent it is within the **insured person's** power to do so; and
- g) within 60 days after the loss, give **us** a signed, sworn proof of loss. This statement must include the following information:
- 1) Date, time, location and cause of loss;
 - 2) the interest **Insured persons** and others have in the property, including any encumbrances;
 - 3) the actual cash value and amount of loss for each item damaged, destroyed or stolen;
 - 4) any other insurance that may cover the loss;
 - 5) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;
 - 6) at **our** request, the specifications of any damaged building structure or other structure;
 - 7) evidence supporting any claim under the Credit Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money protection. State the cause and amount of loss.

Allstate Deluxe Plus Policy at Page 21.

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Your failure to provide the requested documents and information is grounds for denial of your claim. *Keith v. Allstate Indemnity Co.*, 105 Wn.App. 251, 19 P.3d 443 (2001); *Tran v. State Farm Fire and Cas. Co.*, 136 Wn.2d 214, 961 P.2d 358 (1998); *Pilgrim v. State Farm*, 89 Wn. App. 712, 950 P.2d 479 (1997), *review denied*, 136 Wn.2d 1009 (1998); *Albee v. Farmers Insurance Company*, 92 Wn. App. 866, 967 P.2d 1 (1998).

C. Water Loss

Allstate conducted a full investigation of your water loss occurring on June 25, 2004. Allstate paid for all removal, storage, and cleaning of personal property, as well as your additional living expenses. Allstate paid for the cleaning of the covered portion of your water loss based on the estimate written by ServPro. Although ServPro completed a majority of the repairs, you directed them to stop working before completion. You did not pay them your \$500 deductible.

Allstate also conducted a full investigation into your allegations of mold damage. Allstate made a good faith payment of the entire mold remediation limit of \$5,000.

The Allstate Washington Amendatory Endorsement Deluxe Plus Homeowner's Insurance Policy contains the following provision:

II. In Section I - Your Property, the following changes are made:

...

B. In Coverage C Personal Property Protection, the following changes are made:

...

are 2. Under Losses We Do Not Cover Under Coverage C, the following changes are made:

...

b) The following provision is added:

15. Mold, fungus, wet rot, dry rot or bacteria. This includes any loss which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

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This exclusion applies regardless of whether mold, fungus, wet rot, dry rot or bacteria arises from any other cause of loss, including but not limited to a loss involving water, water damage or discharge, which may otherwise be covered by this policy, except as specifically provided in Section I, Conditions – Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Loss.

...

D. In Section I - Conditions, the following changes are made:

...

3. The following provision is added:

19. Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Loss

In the event of a covered loss under Coverage A - Dwelling Protection, Coverage B - Other Structures Protection or Coverage C - Personal Property Protection, we will pay up to \$5,000 for mold, fungus, wet rot or dry rot remediation.

Remediation means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property we cover under Coverage A - Dwelling Protection, Coverage B - Other Structures Protection or Coverage C - Personal Property Protection damaged by a covered loss, including payment for any reasonable increase in living expenses necessary to maintain your normal standard of living if mold, fungus, wet rot or dry rot makes your residence premises uninhabitable. Remediation also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.

This Condition does not increase the limits of liability under Coverage A - Dwelling Protection, Coverage B - Other Structures Protection or Coverage C - Personal Property Protection.

See Washington Amendatory Endorsement Allstate Deluxe Plus Policy, pp. 2-6.

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May 10, 2005
Page 7

Allstate does not owe any additional amounts beyond the \$5,000 already paid.

Please be advised that your policy of insurance also provides:

12. **Suit Against Us** - No suit may be brought against us unless there has been full compliance with all policy terms. Any suit or action must be brought within one year after the inception of loss or damage.

Allstate Deluxe Plus Policy at page 25.

You are advised that this letter is provided in compliance with Washington state law as an explanation of the facts and applicable policy language which would support the denial of your claim. In addition, you are advised that there may be additional policy defenses, facts, and limitations on recovery which may apply. It is recommended that you review your policy of insurance.

Please forward any facts or case law that you believe would alter Allstate's position regarding coverage in this matter. You may also contact the undersigned if you have any questions or concerns regarding this matter.

You are respectfully advised that Allstate Insurance Company insists on full and complete compliance with all the terms and conditions of the policy. Allstate Insurance Company reserves all of its rights and defenses, and no waiver nor estoppel is intended nor should it be inferred.

Sincerely,



Carrie Rohling
Allstate Insurance Company
Special Investigation Unit

CC: Rory Leid

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Filed _____
Lodged _____
Calendar _____
Docketed _____

FILED

JUN 5 4 31 PM '91

Honorable Thomas T. Glover
Chapter 11
Friday, June 21, 1991
9:30 a.m.

LF, ST. LEACH, CLK.
U.S. BANKRUPTCY COURT
W.D. OF WA - SEATTLE
BY *M* DEP. CLK.

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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IN RE:)
MARY FUNG KOEHLER,) NO. 91-02088
Debtor.) MEMORANDUM IN SUPPORT OF
MOTION FOR TURN-OVER OF
PROPERTY)

James K. Koehler, Debtor in Possession in Case No. 91-00176 has moved the Court for an order directing Mary Fung Koehler to vacate their former marital residence, or, in the alternative, granting relief from stay to commence an eviction proceeding against Mary Fung Koehler. He makes this motion on the basis that the Juanita residence is property of his bankruptcy estate, and Mrs. Koehler has no legal right to reside there.

1. Background.

James K. Koehler and Mary Fung Koehler were married in 1957. For many years, they maintained their marital residence at 9021 Juanita Lane, Kirkland, Washington. The marital residence was community property. The property is described on Exhibit A attached hereto.

In June 1990, the King County Superior Court entered a decree of dissolution ending the parties' marriage. Mary Fung Koehler has appealed the dissolution decree to the Washington

MEMORANDUM - 1



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SHAHER & BAILEY
ATTORNEYS AT LAW
SUITE 2201, SEATTLE TOWER
1218 THIRD AVENUE
SEATTLE, WASHINGTON 98101
(206) 682-4802

AMENDED Schedule B-4. -- Property claimed as exempt.

Debtor selects the following property as exempt pursuant to Title 11, United States Code, Section 522(d), or the laws of the State of Washington.

Election of State Alternative under Title 11, United states Code, Section 522(b)(2) by _____

Type of property.	(Location, description, and so far as relevant) (to the claim of exemption, present use of property) ()	Specify to statute) creating the) exemption.)	Value claimed exempt.
[X] Homestead	18486 Ballinger Way NE	RCW 6.12.010 <i>et seq.</i>	\$30,000.00
[X] Motor vehicle	1987 Nissan	RCW 6.15.010	\$1,200.00
[X] Household furnishings	HHG; 3 pianos	RCW 6.15.010	\$1,500.00
[X] Wearing apparel including fur, jewelry, and personal ornaments	Clothes	RCW 6.15.010	\$750.00
[X] Private library and all family pictures and keepsakes		RCW 6.15.010 (keepsakes)	\$1,000.00 \$100.00
[X] Tools of the trade	Chairs, desk, filing cabinets, phone system, etc.	RCW 6.15.010	\$3,000.00
[X] Any other property	Life Ins. CSV; Cash in Banks	RCW 6.15.010 <i>et seq.</i>	\$500.00
Additional exemptions:			
[X]	Provisions & Fuel	RCW 6.15.010(3)(b)	No limit
	Pension	RCW 6.15.020	No limit
	Disability Benefits	RCW 48.18.900	No limit
TOTALS			<u>\$37,950.00</u>

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Honorable Michael J. Trickey
Trial Date: June 8, 2009
Hearing Date: October 24, 2008
Oral Argument on Friday, at 2:30 P.M.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MARY FUNG KOEHLER, a single person.

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY, an Illinois Corporation; HILLYARD INDUSTRIES, aka, Hillyard, Inc., a Missouri corporation; PROFESSIONAL CLEANING AND RESTORATION SERVICES, LLC, dba SERVPRO, a Washington Corporation, BRENT YOUNG and JANE DOE YOUNG, husband and wife and the marital community composed thereof, and JAMES YOUNG and JANE DOE YOUNG, husband and wife and the marital community composed thereof,

Defendants.

Cause No.: 07-2-21367-8 SEA

RESPONSE OF MARY FUNG KOEHLER IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT OF DISMISSAL BY DEFENDANTS PROFESSIONAL CLEANING AND RESTORATION SERVICES, LLC, DBA SERVPRO, A WASHINGTON CORPORATION BRENT AND JANE DOE YOUNG, AND JAMES YOUNG AND JANE DOE YOUNG AND ALLSTATE

Mary Fung Koehler, hereby incorporates by reference all her prior pleadings in this matter for the sake of brevity as to the facts in this case. The motions of the defendants Allstate and Hillyard are repetitious of their prior motions for summary judgment so that Plaintiff's earlier responses to them have not changed. A copy Plaintiff's Answers to Interrogatories propounded to her by

Servpro will be attached as Exhibit A only to the court file and Judge Trickey's copy of this response

RESPONSE OF MARY FUNG KOEHLER IN OPPOSITION TO SERVPRO AND ALLSTATE'S MOTIONS FOR SUMMARY JUDGMENT

- Page 1

Mary Fung Koehler
18515 - 147th Court SE
Renton, Washington 98058-9331
Cell Phone: (425) 301-2967
E-mail: maryfung7@yahoo.com

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1 without attaching the same to defendants' copies of this motion as all parties are in possession of
2 copies of signed copies.

3 **FACTS THAT DEMONSTRATED THE RELATIONSHIP BETWEEN SERVPRO**
4 **AND ALLSTATE**

5
6 From Plaintiff's Amended Complaint at page 8, line 21 through page 9 represents her
7 following acts and thought processes since the beginning.

8
9 20. She contacted other Allstate agents and/or supervisors complaining of the weird actions
10 of their agent, Neil Kutekunst in telling Servpro what to do when she signed the contract with
11 Servpro.

12 He also kept insisting the house was habitable. At the time Koehler thought Kutekunst's
13 actions indicated he was getting a kickback from Servpro. He paid them money billed for a 20.
14 for work they never completed and damage they caused and never remediated.

15 She now knows that he was probably just following Allstate's protocol of creating a
16 situation to pay as little as possible in violation of their fiduciary duties to her and other insured
17 in violation of the Consumer Protection Act (CPA).

18 21. Defendants Allstate as principal and their agent, Servpro, negligently used
19 improper and unacceptable techniques in conducting abatement of the mold and the subsequent
20 pollution problem they created by their lack of due diligence and subjected Koehler and her
21 property to exposure to toxic mold and an unknown toxic substance later determined to be in
22 Re-Juv-Nal made by Hillyard.

23 22. In a letter dated August 20, 2004, Rochelle Ptacek of Allstate sent Koehler a
24 letter with a check for \$1,246 that represented two weeks of additional living accommodations at
25 a rate of \$89 per night. Ptacek also wrote that she did not anticipate the process to take more
26 than four weeks to ascertain the appropriate scope of remediation and align a vendor to make the
27 actual repairs to the house. She was the only Allstate adjuster who appeared to be acting
28 properly.

Her reasoning has finally been confirmed with Servpro's admission under oath that
they stopped work not because Mrs. Koehler would not let them finish the job but that Allstate
took control of their relationship and told Servpro what to do to minimize their coverage..

In Servpro's Answers to Interrogatory Propounded by Plaintiff dated October 10, 2008, NO.

**RESPONSE OF MARY FUNG KOEHLER IN
OPPOSITION TO SERVPRO AND ALLSTATE'S
MOTIONS FOR SUMMARY JUDGMENT
- Page 2**

Mary Fung Koehler
18515 - 147th Court SE
Renton, Washington 98058-9331
Cell Phone: (425) 301-2967
E-mail: maryfung7@yahoo.com

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1 16 on page 9, defendant was asked to

2 "Identify in full detail the circumstances of why Sservpro stopped packing and moving
3 plaintiff's personal property that were to be placed in the 20 foot cargo trailer that you has placed on
4 Plaintiff's circular driveway by Royal Wolf Portable Storage in order to give your employees the
work space to remediate the water damage."

5 Servpro responded on page 4 of Servpro's Answer at line8-10.

6
7 "There was a question of whether Allstate had insurance coverage for the loss. Until this was
8 resolved, Professional Cleaning and Restoration Service, LLC was instructed to stop packing and
moving Plaintiff's personal property."

9 This confirms all Plaintiff's allegations in her amended complaint as to the responsibility of
10 Allstate in concocted their evidence to avoid paying Mrs. Koehler and has caused all this greed and
11 expense to the parties in the name of greed.
12

13 Servpro's declarants do not state any dates if and when they were actually working. Why is it
14 that Jose and Isidro have not given them affidavits for their version. They probably have been so ill
15 and don't know they were entitled to Workman's compensation. They were following Allstate's
16 orders and did so because their superiors did.
17

18 Allstate's declarations are generally falsehoods except for Boyette. Allstate has failed to
19 answer a single question of the interrogatories propounded to it that is being filed an a copy for Judge
20 Trickey only as all parties have copies of it.
21

22 For these reasons, the motions for summary judgment of the superior Allstate and its
23 employee in fact should be denied. Plaintiff relies on most of her depositions as outlined in her
24 Declaration to follow.
25

26 Dated this 13th day of October, 2008, in Renton, Washington.
27

28 **RESPONSE OF MARY FUNG KOEHLER IN
OPPOSITION TO SERVPRO AND ALLSTATE'S
MOTIONS FOR SUMMARY JUDGMENT**

-- Page 3

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on June 14, 2010, I personally caused to be served upon counsel below a true and correct copy of Opening Brief of Appellant by hand delivering the same to:

Counsel for Hillyard Industries, aka Hillyard, Inc:

William J. Leedom T: (206) 622-5511
Tim E. Allen Fax: (206) 622-8986
Amy Magnano
Bennett Bigelow & Leedom, PS
1700 Seventh Avenue, #1900
Seattle, WA 98101

Counsel for Allstate Insurance Company

Rory W. Leid III T: (206) 622-0494
Cole Lether Wathen & Leid, PS Fax: (206) 587-2476
1000 Second Avenue, #1300
Seattle, WA 98101

Counsel for Professional Cleaning and Restoration Services, LLC, dba Servpro, Brent Young and Jane Doe Young, husband and wife, and James Young and Jane Doe Young, husband and wife:

David M. Soderland
Dunlop & Soderland, PS
901 Fifth Avenue, Suite #3003
Seattle, Washington 98164-2049
Phone: (206) 682-0902
Fax: (206) 682-1551

Dated this 14th day of June, 2010, at Seattle, Washington.


Mary Fung Koehler, WSBA#1327

2010 JUN 14 PM 4:55