

# Mold/Remediation: Michigan Appellate Court Addresses Duty Owed Homeowner by Insurance Company and Cleanup Contractor



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The Court of Appeals of Michigan (“Court”) in an August 21st opinion addressed an issue regarding the duty and liability of Farmers Insurance Exchange (“Farmers”) and U.S. Disaster Services LLC (“U.S. Disaster”) owed to an insured homeowner in addressing flood damage. See *Abraham v. Farmers Insurance Exchange*, No. 335353, 2018 WL 3998728 (Mich. Ct. App. August 21, 2018).

The damage caused by interior flooding included significant mold growth.

The daughter of the homeowner (“Plaintiff”), reported flood damage in her mother’s home to the insurance company (Farmers). Farmers recommended using U.S. Disaster to mitigate the damage caused by the flooding. U.S. Disaster began working on the home after the Plaintiff signed a “Work and Direct Payment Authorization” document.

U.S. Disaster conducted remediation services. In the course of doing so it discovered mold in the subfloor. In response to this discovery the Court notes:

... the contract between the homeowner and U.S. Disaster provided that U.S. Disaster “will undertake best efforts to clean and remove only mold and mildew it discovers.” However, when the mold was discovered, U.S. Disaster employees did not attempt to “clean and remove any mold” other than to spray the subfloor with an antimicrobial chemical, an action which U.S. Disaster concedes, is at best, a means to prevent mold from spreading, not to eliminate or contain it. After spraying, U.S. Disaster ceased work and left the premises never to return.

The Plaintiff testified that she overheard a phone call between Farmers and U.S. Disaster in which Farmers told the employee of U.S. Disaster to leave the subfloor in place and not complete remediation.

U.S. Disaster conceded that after discovering the mold, it stopped working and recommended that the Plaintiff hire an environmental consultant.

The trial court granted summary disposition to Farmers and U.S. Disaster. In reviewing the trial court’s decision, the Court stated it must address three questions:

1. Whether Defendant owed a duty to the Plaintiff
2. Whether there is a question of fact that this duty was violated

3. Whether any claim was extinguished by release

The Plaintiff argued Farmers:

1. owed her a duty to hire a qualified mitigation company to mitigate the water damage,
2. warn her of the risks associated with mold and advise her to leave the home, and
3. not to direct or control the scope of U.S. Disaster's work.

The Court rejected all three arguments. It held the Plaintiff failed to establish any evidence which held the insurance company to such duty, failed to establish U.S. Disaster was not qualified, and failed to state a specific claim in relation to her testimony about overhearing the two Defendants.

The Plaintiff also argued that U.S. Disaster owed her a common law duty to take reasonable precautions to assure that their work did not harm her or make an existing hazard more dangerous. A common law duty analysis balances factors such as relationship of the parties and the foreseeability of harm.

The Court agreed that U.S. Disaster owed the Plaintiff a duty for two reasons:

1. The duty was to undertake the best efforts to clean and remove any mold
2. The harm was foreseeable, and U.S. Disaster admitted understanding the risk mold poses

Therefore, given the relationship and foreseeability of harm, U.S. Disaster was held to owe Plaintiff a duty to perform its work so as not to create any new harm or worsen already existing risk of harm.

U.S. Disaster also argued that the case should be dismissed because the Plaintiff signed a release. The Court rejected that argument for three reasons:

1. There is a question of fact as to when the release was signed and what was known at the time;
2. There is, at minimum, a question of fact as to whether Plaintiff signed the release as her mother's attorney-in-fact or in her individual capacity;
3. There is no evidence in the record that the release was signed in exchange for some consideration

The Court affirmed the grant of summary disposition to Farmers Insurance and reversed the grant of summary disposition to U.S. Disaster.

A [copy of the opinion](#) can be found here.