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## MEMORANDUM

TO: CLIENTS AND FRIENDS  
FROM: THOMAS V. JUNEAU, JR.  
SUBJECT: CASE UPDATE  
DATE: OCTOBER 31, 2006

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### COOPERATIVE BOARDS CAN BREATHE A LITTLE EASIER: MOLD IS NOT THE NEW ASBESTOS

Mold-related personal injury claims have mushroomed in recent years, fueled, in large part, by plaintiffs' lawyers who see mold as "the next asbestos." Unfortunately for those hoping to cash in on the "mold rush," we recently obtained an important ruling that dismissed personal injury claims based upon alleged mold exposure. The ruling, in Fraser v. 301-52 Townhouse Corp., was published in the New York Law Journal on October 23, 2006.<sup>1</sup>

The Frasers, who resided in a Manhattan cooperative, alleged that leaks in their apartment set the stage for a proliferation of mold that caused them to suffer various symptoms (e.g., headache, itchy eyes, stuffy nose, sore throat and fatigue).<sup>2</sup> We took the position that the Frasers' theory of causation is not generally accepted as reliable by the relevant scientific and medical communities and filed a motion to preclude the Frasers' medical experts from testifying at trial.

The Court conducted what is known as a Frye hearing, at which four doctors testified over the course of ten days and hundreds of pages of scientific and medical

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<sup>1</sup> The ruling is available at [http://www.nycourts.gov/reporter/3dseries/2006/2006\\_51855.htm](http://www.nycourts.gov/reporter/3dseries/2006/2006_51855.htm).

<sup>2</sup> The Frasers' claims for personal property damage and the alleged diminution in the value of their cooperative apartment were not subjects of the Court's ruling.

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papers, as well as several books, were admitted into evidence. After a thorough review of the testimony and the scientific and medical literature, the Court found that the Frasers had "failed to demonstrate that the community of allergists, immunologists, occupational and environmental health physicians and scientists accept their theory – that mold and/or damp indoor environments cause illness." Accordingly, the Court dismissed all of the Frasers' mold-related personal injury claims.

The Court's comprehensive decision will present a significant hurdle for those claiming that the presence of mold in an indoor residential environment causes illness. It is important to note, however, that the decision focuses on personal injury claims. Water intrusion and mold issues still must be appropriately addressed by cooperative boards and management, and remedied or paid for by the party responsible under the proprietary lease.

Please do not hesitate to contact us to discuss any questions you may have concerning this decision and mold-related issues.