

RSJG Obtains Excellent Result for Termite Company

RSJG attorney Paul James recently represented an Alabama termite company in a case tried in the Montgomery County Circuit Court. Prior to the trial, the plaintiffs' final demand exceeded \$150,000. At the end of a four-day trial, the jury returned a verdict for \$15,000, an amount that was further reduced by an offset successfully plead by Mr. James over the objection of the plaintiffs.

The case arose out of the sale of a home to a Montgomery couple. Prior to the purchase, the defendant prepared an Alabama Wood Infestation Inspection Report, known in layman's terms as a "termite letter." The firm conducted an inspection of the home and found no visible evidence of active or previous termites. The technician prepared the termite letter and sent the letter to the realtor who placed a copy in the mortgage closing file, which the plaintiffs allegedly reviewed.

After closing on the home, the plaintiffs discovered termite damage in their home just outside the 90-day period outlined in the Alabama Wood Infestation Inspection Report. The plaintiffs initiated legal action against the termite company on claims of fraud, misrepresentation, suppression, breach of contract, breach of warranty, negligence, and wantonness.

At summary judgment, James successfully argued that all claims for suppression and breach of contract should be dismissed. The case tried on the remaining issues.

The plaintiffs argued throughout trial that some evidence of active or previous termites was visible at the time of the inspection because an insurance adjuster had identified termite damage three weeks prior to the termite company's

inspection. The jury was told, and received documents supporting the plaintiffs' conclusions on this important issue. The plaintiffs contended that the short time period between the insurance adjuster's identification of termite damage and the preparation of the report made it clear that not only had the termite company and its technician intentionally defrauded the plaintiffs but it engaged in gross, wanton conduct that warranted the imposition of punitive damages. The plaintiffs asked for \$150,000 in compensatory damages and an unspecified amount in punitive damages. After nearly a day of deliberations, the jury returned a verdict for \$15,000, an amount that was reduced by a \$3,500 settlement with a co-defendant. This amount was later to be reduced by a subrogation claim.

During post-trial proceedings, James successfully argued that the offset should apply to further reduce the amount owed by the termite company to the plaintiffs. The plaintiffs did not challenge any further issues in the case.