

TARRANT COUNTY**CONSUMER PROTECTION**

DTPA — Fraud

Residential foundation design problems claimed by plaintiffs**VERDICT** \$51,175,577

CASE Robert E. Cull and S. Jane Cull v. Perry Homes, a Joint Venture, Home Owners Multiple Equity Inc., d/b/a HOME/RWC of Texas, and Warranty Underwriters Insurance Co., No. 236-184813-00

COURT Tarrant County District Court, 236th, TX

JUDGE Tom Lowe

DATE 3/1/2010

PLAINTIFF

ATTORNEY(S) Daniel K. Hagood, Fitzpatrick Hagood Smith & Uhl, LLP, Dallas, TX
Evan Lane "Van" Shaw, Law Offices of Van Shaw, Dallas, TX

DEFENSE

ATTORNEY(S) Greg Harwell, Gardere & Wynne, Dallas, TX

FACTS & ALLEGATIONS Plaintiffs Robert E. and S. Jane Cull claimed that a 2,800-square-foot house in Mansfield that Perry Homes built for them in 1996 had fundamental and significant foundation problems. Perry Homes repaired cracks and gaps in the walls, roof and concrete and provided surface drains, but denied responsibility for any fundamental defects.

The Culls had a warranty from Warranty Underwriters Insurance Co. Home Owners Multiple Equity Inc. (HOME) was a company related to Perry Homes.

In 2000, the Culls sued Perry Homes and HOME for DTPA violations, fraud, breach of contract, breach of warranty, unconscionability and negligence, alleging failure to design the foundation properly. The Culls sued Warranty Underwriters for DTPA violations, breach of the duty of good faith and fair dealing, fraud and breach of warranty, alleging that Warranty Underwriters falsely represented that foundation defects would be covered by the warranty. No claims were submitted to the jury against HOME.

According to the Culls, the foundation was underdesigned for the soil conditions of northeast Texas. This soil is very volatile, the plaintiffs said, and the house was built during a very dry period. When the soil eventually rehydrated, it heaved and did not do so uniformly. Therefore, according to the plaintiffs, it moved and cracked the foundation and was continuing to do so.