

United States District Court
NORTHERN DISTRICT OF FLORIDA
UNITED STATES COURTHOUSE
ONE NORTH PALAFOX STREET
PENSACOLA, FLORIDA 32502

CHAMBERS OF
M. CASEY RODGERS
CHIEF JUDGE

TELEPHONE: (850) 435-8448

March 23, 2015

Mr. Norman Dong
Commissioner, Public Buildings Service, GSA
1800 F Street, N.W.
Washington, D.C. 20405-0001

Dear Commissioner Dong:

I am writing to request your assistance in resolving a serious and longstanding space and facilities issue at the United States Courthouse in Pensacola, Florida. Since the time of its construction in 1997, the Courthouse has suffered from significant water intrusion, which, as you can imagine after nearly twenty years of continuous moisture, has led to mold growth in multiple areas throughout the building, as well as damage to interior finishes and furnishings. As a result, valuable tax dollars have been wasted, and worse, court employees, attorneys, jurors, prisoners, and other members of the public have been required to work in, attend trial, perform jury duty, and otherwise occupy a mold-infested federal building for almost two decades.

We first reported the water intrusion problem to the General Services Administration (GSA) in 1997, when construction of the Courthouse was completed. At that time, the moisture and mold was so extensive that the Court's occupancy date had to be delayed eight months for mold remediation. Although the delay was frustrating, the Court remained optimistic that GSA would resolve the problem. Our optimism was short-lived, however, and we soon discovered after moving in that water was continuing to enter the building. Incredibly, 18 years later, this same problem still exists, despite repeated requests for action to the Savannah Service Center and Region IV.

The Region's response has been a seemingly endless and wasteful series of "studies" in 1997, 1999, 2003, 2011, 2012, and 2014. I say "wasteful" because each of these studies provided the Region with documentation supporting the existence of significant water intrusion and mold, as well as expert recommendations for resolving the problems; yet, despite having this information (at considerable taxpayer expense I might add), the Region has failed to implement the vast majority of the recommendations made, and, not surprisingly, the water intrusion and mold problems persist. At the present time, five areas in the Courthouse are under full containment as a result of mold, including areas in the United States Marshal's space, the Clerk's Office, a jury deliberation room, and my chambers on the fifth floor. The mold, however, is not

confined to these contained areas and instead is additionally present in multiple areas within the building's wall cavities and plumbing chaises.

The most recent professional study, which I understand cost approximately \$750,000, recommends significant repairs that would impact the building's roof and nearly every exterior wall, including the replacement of all windows (to include previously omitted flashing); installation of weather proofing behind the exterior brick veneer; reconstruction of the entire high-gutter system; reconstruction of roof drains and interior piping systems; replacement of the roofs; and replacement of fresh air intake louvers. The extensive and invasive nature of the required repairs to the exterior walls of the building and mold remediation will also directly impact the corresponding interior walls – requiring the removal and replacement of the majority of gypsum wallboard. I was shocked to see that a majority of the construction problems identified and recommendations made in this recent report were included in the 1999 study report. (See Attachment Pages 6-7, 11-12).

We have been told that GSA plans to perform these major repairs in multiple phases, during which time our Court employees, other building occupants, and members of the public will continue to occupy and use the facility. I have repeatedly advised the Region that this plan is unacceptable to the Court. The United States Marshal's Service and the Executive Office of United States Attorneys also object to the plan. Given what we know from experience about the length of time it takes GSA in this Region to complete even minor building projects, it is safe to assume that a final solution to the water intrusion problem is many years away. GSA has admitted that even if the present mold is remediated and some patchwork is done around the gutter and windows, the Courthouse will continue to leak, any newly replaced interior finishes will sustain water damage, and mold will continue to grow. Thus, the Region's plan will not only waste valuable taxpayer dollars by spending money on materials that – by the Region's own admission – will inevitably sustain water damage, but it will also subject the building occupants and members of the public to increased health risks from mold, not to mention the psychological stress they will experience from being forced to work in and otherwise occupy a clean-up environment where remediation workers will be wearing protective clothing and respirators. It is bad enough that GSA has allowed this problem to continue for 18 years, but it is nothing short of unconscionable that it is insisting on a plan that will require the building occupants, many of whom are already suffering from health problems consistent with mold exposure, to remain in the building while it tries to remediate the mold.

Many of the Courthouse employees have concerns about the air quality of their workplace and its effect on their health. Although no epidemiological study has been done, over 50% of the employees have reported symptoms consistent with mold and bacteria exposure: headaches and dizziness; nausea; aches and pains; fatigue; poor concentration; shortness of breath or chest tightness; eye and throat irritation; irritated, blocked or runny nose; and skin rashes. Many of them have suffered these symptoms for years, which makes the Region's

current plan to leave them in the Courthouse during the mold remediation process even more troubling. According to a 2012 study from the National Institute for Occupational Safety and Health (NIOSH):

Even with containment, building occupants may be exposed to dampness-related contaminants during remediation work. Therefore, prior to the start of any remediation work, management should strongly consider relocating occupants who might be exposed during the remediation. This is especially true if several building occupants have developed building-related respiratory symptoms or disease that suggests high health risk from dampness-related exposures.

Moreover, NIOSH has cautioned that “[i]n buildings with design and structural deficits that make successful remediation of water damage unlikely or prolonged, relocation of all occupants should be considered to protect occupant’s health.” This is precisely the situation at the Pensacola Courthouse and the reason why we are pleading with GSA to relocate occupants during the mold remediation and building repair process.

Notwithstanding our pleas, the Region has advised us that the conditions at the Courthouse do not pose a health risk to employees or the public, a conclusion apparently reached based on air quality testing results. We are not persuaded. First, air quality test results are reliable only for the moment in time in which the air sample was collected. It is well known that the conditions in a room change significantly throughout the day based on a number of variables, the most obvious one in this part of the country being humidity, such that test results taken in the same room at different times of the day can yield markedly different results. My chambers breakroom on the 5th floor of the Courthouse is a good example. This past January, two separate and independent air quality tests were conducted on the same day, one raising no concern in regard to spore levels and the other confirming the presence of “Stachybotrys” mold, which I understand is a highly toxicogenic mold. At the time of the testing, this area was completely open (no door) with no concern for mold contamination based on previous air quality test results; however, following the tests, the area was placed under full containment on the recommendation of GSA’s air quality experts.

Also, air quality tests cannot detect or measure the presence or amount of mold that is located within wall cavities. While the Region suggests that proper measures will be taken to contain areas requiring remediation, it acknowledges that the extent of the mold growth behind the sheetrock is unknown. Moreover, throughout the Courthouse, there are numerous areas of penetration in the firewalls as a result of electrical conduits, sprinklers, etc., that have not been properly filled with fire stop/fire caulk, which will allow for the free movement of mold spores throughout the building plenum during remediation. Once in the plenum, the mold spores will eventually enter the air handler units and then spread throughout the Courthouse. Certainly, there is a substantial risk of this occurring during the planned remediation, which is precisely the

reason NIOSH recommends that building occupants be relocated, particularly when successful remediation of water damage is expected to be prolonged, as is the case here.

To complicate matters, GSA does not presently own the Courthouse and instead has leased the building from Keating Development since its completion. The lease is set to expire in July 2017, at which time the City of Pensacola will take fee simple title to the property and building, unless GSA exercises its option under the lease to purchase the building for a nominal fee to the City. We have repeatedly requested written assurance from the Region of GSA's intent to purchase the building so as to protect our Court and preserve its constitutional and statutory duty to administer justice to the citizens of Northwest Florida but to date no response has been received. This is concerning, and I imagine it may concern the City of Pensacola as well, in light of the building's significant construction deficits and mold issues, which we recently learned carry a price tag of \$20-30M to correct.

Attached is a detailed timeline of the Pensacola Courthouse's history of water intrusion, which has been compiled based on research of archived Court records. As will be plain when you read it, the Court's continuing pleas for a comprehensive solution to the problems have been ignored as a priority. For the past 18 years, the Region has turned a blind eye to the obvious and known problems, by taking minimal and ineffective band-aid steps to address the source of water intrusion rather than acting on the expert recommendations contained in the multiple professional reports it has spent millions of taxpayer dollars on. I suspect this problem has not been a funding priority for GSA because the Region has always known that the ultimate solution would require an above prospectus funding request to Congress, which in turn would require an admission by the Region that it had entered into a long-term lease on a courthouse building that had been poorly designed and constructed from the start, and that the known and obvious water intrusion and mold problems had never been effectively addressed. Incredibly, GSA has never answered to anyone, much less its tenants, for its failure to properly address, and competently resolve, the situation. This lack of accountability is a serious problem.

To give some perspective, the Court has paid over \$34M in rent to GSA over the past 18 years for the Pensacola Courthouse, while GSA in turn has paid Keating Development \$28.8M in lease payments, providing a net gain to GSA of over \$5M on the Court's rent alone (GSA also receives annual rent from the other tenants of the Courthouse). These numbers are staggering particularly when you consider that the Courthouse cost \$10M to build, but it is even more disturbing that despite the substantial rent and resulting profit to GSA, the water intrusion and mold problems still exist, and GSA now needs another \$20-30M to solve them.

The employees and occupants of the Pensacola Courthouse have suffered far too long as a result of GSA's failure to properly address the water intrusion problems, and it is high time for GSA to take whatever action is necessary to resolve them once and for all, in a timely and responsible manner (as opposed to the currently proposed multiple piecemeal projects spanning

the next decade). In our view, this includes buying out the remaining term on the lease with Keating and taking ownership of the building, formulating and carrying out a plan to relocate the building occupants to a courthouse facility suitable for our mission, and approaching Congress with an above prospectus funding request to complete the building repairs and mold remediation *in toto*. Given the quickly approaching lease expiration date, to the extent GSA does not intend to take ownership of the building and timely complete the construction repairs necessary to stop the water intrusion, the Court requests an immediate response from GSA regarding its plan for an alternative permanent courthouse facility.

I respectfully ask for your leadership in resolving this critical health and safety facilities issue, and I look forward to discussing it with you in person when I am in Washington, DC next month. In the meantime, if you would like to visit and tour the Courthouse, it would be our pleasure to have you here.

Sincerely,

A handwritten signature in black ink, reading "M. Casey Rodgers", with a long horizontal flourish extending to the right.

M. Casey Rodgers

Attachment

cc: Honorable Marco Rubio, United States Senate
Honorable Bill Nelson, United States Senate
Honorable Jeff Miller, United States House of Representatives
Honorable Ed Carnes, Chief Circuit Judge, Eleventh Circuit Court of Appeals
Honorable Beverly B. Martin, Circuit Judge, Eleventh Circuit Court of Appeals
Honorable Judges, United States District Court, Northern District of Florida
James Gerstenlauer, Circuit Executive, Eleventh Circuit Court of Appeals
Jessica Lyublanovits, Clerk of Court, Northern District of Florida
John J. Myers, Facilities Program Manager, Space and Facilities Division,
Administrative Office of the U.S. Courts
Jack A. Chandler, Jr., ACE for Space and Facilities, Eleventh Circuit Executive
Honorable Pamela C. Marsh, United States Attorney, Northern District of Florida
Honorable Edward M. Spooner, United States Marshal, Northern District of Florida