

## **BOARD OF GOVERNORS MEETING**

The University of North Carolina

May 11, 2006

The Board of Governors met in special session on May 11, 2006, in the Board Room of the General Administration Building, Chapel Hill. Mr. Wilson, the chairman, called the meeting to order at 1:00 p.m.

### **ROLL CALL**

Secretary Perry called the roll and the following members were present:

Bradley T. Adcock  
Brent D. Barringer  
R. Steve Bowden  
F. Edward Broadwell, Jr.  
William L. Burns, Jr.  
John W. Davis III  
Phillip R. Dixon  
Ray S. Farris  
Hannah D. Gage  
Willie J. Gilchrist  
H. Frank Grainger  
Peter D. Hans  
Charles A. Hayes  
James E. Holshouser, Jr.  
Peter Keber  
Adelaide D. Key

G. Leroy Lail  
Charles H. Mercer, Jr.  
Fred G. Mills  
Charles S. Norwood  
Cary C. Owen  
Patsy B. Perry  
Jim W. Phillips, Jr.  
Gladys Ashe Robinson  
Irvin A. Roseman  
Benjamin S. Ruffin  
Estelle W. Sanders  
William G. Smith  
J. Craig Souza  
Priscilla P. Taylor  
J. Bradley Wilson  
David W. Young

The following members were absent:

Peaches Gunter Blank  
Dudley E. Flood

Zachary A. Wynne

On motion of Dr. Perry, seconded by Mr. Young, the board voted to convene in closed session to consult with our attorney to consider and give instructions concerning a judicial

action in the case of the Board of Governors of the University of North Carolina, et al. v. R.K. Stewart & Son, Inc., Atlantic Coast Mechanical, Inc. and Cam-Ful Industries, Inc., et al., pursuant to North Carolina General Statutes 143-318.11(a)(3). The motion carried.

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The Board of Governors went into closed session at 1:10 p.m. and returned to open session at 1:45 p.m.

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### **REPORT OF THE COMMITTEE TO OVERSEE MOLD LITIGATION**

Chairman Wilson, chair of the Committee to Oversee Mold Litigation, presented the committee's report by making the following statement to the public:

Today, the UNC Board of Governors has agreed to settle for \$1.5 million its claims against the architect and contractors who constructed two dormitories that North Carolina Central University was forced to close and substantially renovate in 2003 because of mold infestation.

When widespread mold infestation was discovered in two relatively new NCCU residence halls in 2003, NCCU's immediate priority was protecting the health and safety of our students. The NCCU campus took quick action to relocate affected students and the Board of Governors, the Governor, and Office of State Construction redirected funds to expedite building repairs and minimize disruption for students.

Outside experts retained by the Board, in conjunction with the State Attorney General's Office, determined that several significant construction and design errors contributed to the mold infestation. The Board then asked the Attorney General to pursue appropriate legal claims against the architect and several contractors in an effort to recoup as much of the repair costs as feasible. Lawsuits were filed against the prime contractors and the architect. The claim against the electrical contractor, which was unrelated to the mold claims, was settled earlier.

Given the number of contractors and subcontractors involved in the construction and the litigation (three prime contractors, the architect, and fifteen subcontractors were parties to this litigation), it became increasingly apparent that it would be difficult to apportion precisely

responsibility for the development of the mold. UNC alleged that multiple construction defects and design errors contributed to the build-up of excessive moisture, which created the conditions for widespread mold to develop. UNC also alleged that the architect failed to adequately inspect the buildings during construction. Other State agencies, however, also had separate roles in approving the design of the buildings and inspecting them during construction; leaks in aging steam lines at NCCU may have contributed to the moisture problem; and steps that NCCU took in attempting to correct construction problems made it difficult to trace the moisture to the original construction.

Because the mold infestation was not discovered until several years after the residence halls were completed, the time that lapsed before suits were filed posed a potential technical legal barrier to full recovery.

The decision to settle these lawsuits in mediation was made on the advice of the Attorney General, taking into account the factual and legal hurdles to a fuller recovery and the extensive costs associated with bringing such a complex case to trial. While the damages recovered only partially offset the repair costs incurred, the Board of Governors and the Attorney General agree that this settlement is in the best interests of the University and the taxpayers of North Carolina.

As then required by State law, these two dormitories were constructed using multi-prime contracting, which means that no one contractor is responsible for the quality of the whole building. Since then, State law has been amended--at the request of UNC and other public entities--to allow UNC and other public entities to use single-prime contracting on its construction projects, resulting in a single responsible contractor. In addition, in response to the passage of the 2000 Higher Education Bond referendum, UNC has done a thorough assessment of its capacity to manage construction projects and facility maintenance, and has augmented that capacity where necessary. As a result of these two changes, it is unlikely that similar problems will reoccur within the University of North Carolina.

There being no further business, the meeting adjourned at 2:00 p.m.

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Secretary