Mold and the Insurance Industry

8.0 Credit Hours ● 82 pages ● 10 Lessons ● 1 Online Final
Mold and the Insurance Industry
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This course will address the following topics:
- Mold Facts and Misconceptions
- Toxic Mold Investigations
- Toxic Mold and Remediation
- Property Insurance and Mold Contaminants
- General Liability and Mold Contamination
- Trends in Occupational Health and Safety
- Professional Liability Expenses and Mold
- Workers Compensation and Toxic Mold
- Claims and Mold
- Homeowners’ Insurance
- Medical Insurance and Mold

This course includes:
- 10 Lessons
- 1 Online Final Exam
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Toxic Mold and Misconceptions

Toxic Mold – Is there such a thing?

Understanding Toxic Mold

Mold exists everywhere in our environment. Some molds such as penicillin are beneficial, while other types of mold can cause health problems. Concern over so-called "toxic mold" is growing as the medical community begins to understand some of the ailments such mold can cause. So-called sick buildings, including homes and offices, often contain toxic mold. Mold is more prevalent in cold, damp climates and tends to grow in dark interior spaces. Most large mold deposits can be detected through sight and smell.

Molds are undesirable when they grow where we do not want them, such as in homes. Over 270 species of mold have been identified as living in some homes. Molds that grow inside may be different from the ones found outdoors.

- Mold can be harmful or helpful—depending on where it grows.
- Mold needs moisture to grow.
- Mold does not grow on dry materials.
- Mold growing inside a home can affect the occupants.
- Occupants can learn to recognize mold.

Typical physical symptoms associated with exposure to toxic mold include memory loss, allergies, and breathing difficulties. Some people are particularly susceptible to illness from toxic mold, especially those with asthma and other existing respiratory problems and infants. These people may suffer fever and mold infections within their lungs. Many doctors fail to properly diagnose the cause of such symptoms as exposure to toxic mold.

Serious health conditions in humans, from toxic molds, have been referred to for hundreds of years. In the last ten years, there have been many reports of toxic molds causing serious, and even fatal, consequences for infants and sensitized individuals. Symptoms may include respiratory problems, skin rashes, headaches, lung disease,
cognitive memory loss and brain damage. These symptoms, however, may also be caused by other factors.

Long and short-term effects of toxic mold are just now being documented by the scientific community. People with allergies may be more sensitive to these molds. People with immune suppression or underlying lung disease are more susceptible to fungal infections.

Molds include Aspergillus, Cladisporium, Penicillium, Stachybotrys, and Trichoderma. These are names that are difficult to pronounce and most people cannot identify them in their surroundings. Mold spores and mycotoxins are airborne and so small that they cannot be seen by the naked eye. Hundreds of thousands of them can fit onto a single postage stamp. An individual’s home or workplace could be compromised by these molds without him knowing it. Molds that may contain mycotoxins should be considered the same as other common molds, which can grow in the house.

The most common cause of mold growth is moisture. Molds can grow on wood, paper, carpet, and foods. Anything producing moist conditions in a dark area will promote mold growth.

**Characteristics of Mold**

Molds are microscopic organisms commonly found both indoors and outdoors. Molds, along with mushrooms and yeast, are known scientifically as fungi. Their purpose in nature is to break down dead material and recycle nutrients in the environment. For molds to grow and reproduce, they need a food source - any organic material, such as leaves, wood, paper, or dirt - and moisture.

Since molds grow by “eating” the organic material, they gradually destroy whatever they are feeding on. Mold growth on surfaces can often be seen as a colored spot, frequently green, gray, brown, black or white. It commonly appears as a powdery, fuzzy, or hair-like material. Actively growing molds typically produce odors, sometimes described as earthy or moldy, or like mildew, old dirty socks, or ammonia. Molds release thousands of microscopic spores, which are lightweight, easily airborne and carried by air currents to surrounding areas. The spores must have both food and moisture to actually start growing, similar to plant seeds.

Damage to materials is one concern. Materials get stained or discolored, and over time they are ruined. Moldy paper and cardboard disintegrate over time. Fabrics are damaged. Continued mold growth can be indicative of moisture conditions favorable for growth of fungi that cause wood rot and structural damage. When molds are growing inside the home, there may be health concerns. Molds release chemicals and spores.
Health experts indicate that, depending on the type of mold present in a home, the amount and degree of exposure, and the health condition of the occupant, the health effects of mold can range from being insignificant to causing allergic reactions and illness. Pregnant women, infants, the elderly and those with health problems, such as respiratory disease or a weakened immune system, are more at risk when exposed to mold.

The Kingdom Fungi is a diverse kingdom consisting of over 1 million species and includes mushrooms, molds, and yeasts. Fungi are mainly saprophytic meaning they obtain their nutrition from the breakdown and decay of organic matter. They can thrive in many places, such as soil, plant litter, wood, live plants, dung, animal remains, fungal remains, etc, and play a vital role in the environment as a decomposer of dead-plant matter.

Commonly called mildew, molds (sometimes referred to as "black mold") are a subset of fungi that produce fluffy or powdery growth on surfaces. Toxic molds can grow on cloth, carpets, leather, wood, sheetrock, insulation, and human foods when moist conditions exist.

Molds are ubiquitous, the most common form of fungus on earth, and may grow at high levels indoors, in a home or building, if the right environmental conditions exist. Factors that influence the distribution of molds are most importantly a source of moisture, proper nutrients, temperature, and light.

Carbon containing materials that are abundant both indoors and outdoors may provide the essential nutrients for growth. Sources of moisture are usually the limiting and most important factor. They can come from high humidity levels, condensation, and water intrusion due to a number of events such as indoor leaks and floods. Temperature and light may affect fungal growth, but are usually not a limiting factor since most fungi can grow in light and total darkness.

Excessive exposure to molds can lead to adverse health issues for humans. The affects of human exposure to mold is not a new, emerging problem, but has been manifested for many years.

**Reproduction of House Mold**

Hyphae are the thread-like filamentous cells that release enzymes, which degrade and absorb nutrients from a substrate. A substrate is organic debris, cellulose, wood, or almost any carbon containing material, including human skin. Upon obtaining its
nutrition, the hyphae will grow into a mycelium, the main body of the fungus, which is also the visible portion.

Spores form on the ends of some hyphael cells. The formation of spores is dependent on a variety of environmental factors including light, oxygen levels, temperature, and nutrient availability. After the spores are formed, they are released into the air and carried elsewhere to begin the process of germination and growth all over again. Mold spores are highly resistant and durable. They can remain dormant for years in even hot and dry environments. Once the spore is dispersed to a new area and when the appropriate conditions exist, moisture and nutrient availability, the spore will begin to germinate into a new hyphael cell.

**What is Toxic Mold?**

**Types of Mold**

Mold is a naturally occurring part of our healthy ecology. Mold can be found almost everywhere, usually in moderate amounts. However, mold can flourish and cause a problem. When mold begins to grow, it releases spores, which can cause allergic reactions, asthma, infections, and other respiratory problems. These same spores then help to spread the mold, causing further damage and contamination.

Mold is a living organism and requires food and water to survive. Basements, attics, garages and other poorly ventilated areas are prime locations for mold growth. Mold often grows as a result of flooding, leaky roofs, sewer backflows, or plumbing leaks. Once a surface gets wet, it becomes a prime target for mold growth. When mold growth is not visible, it can be detected by a musty odor. Left untreated on a surface such as wood, mold will begin to break down the surface, weakening it and causing a potential structural problem. Exposure to mold can cause physical symptoms such as coughing, wheezing, sore throat, asthma, and nasal congestion.

There are over 100,000 species of molds. About three dozen cause health problems in humans.

*Aspergillus* is the most common type of fungi in our environment with more than 160 different species of mold. Sixteen of these species have been documented as causing human disease. This mold can be seen in several different colors, depending on the species. Aspergillus can withstand conditions of low moisture. It can be a very toxic mold due to the carcinogens it produces. These toxins can be especially toxic to the liver, brain, kidneys, and heart. Aspergillosis is now the 2nd most common fungal infection requiring hospitalization in the United States.
It is the most encountered species causing infection. It is seen abundantly in decomposing organic material, such as self-heating compost piles, since it readily grows at temperatures up to 55 C. People who handle contaminated material often develop hypersensitivity to the spores of Aspergillus and may suffer severe allergic reactions upon exposure.

It is also known to produce the mycotoxin aflatoxin, one of the most potent carcinogens known to man. Most countries have established levels for aflatoxin in food. However, the risks associated with airborne exposure are not adequately studied and no exposure standards exist.

**Stachybotrys** is another fungi that has the ability to produce mycotoxins, which are extremely toxic, suspected carcinogens, and immunosuppressive. Exposure to these mycotoxins can result through inhalation, ingestion, and dermal exposure. Symptoms of exposure include dermatitis, cough, nosebleeds, cold and flu-like symptoms, headache, general malaise, and fever.

Stachybotrys mold is wet, black, and slimy, and it smears when touched. Stachybotrys can grow on completely saturated surfaces due to its low nitrogen requirements. It has a high moisture requirement and a broad temperature range. This high moisture requirement categorizes it as a hydrophilic type of fungi.

Stachybotrys causes bleeding in the lungs. This can be fatal for infants and pregnant women. The Stachybotrys mold spores are inhaled into the lungs, where they weaken the blood vessels, which causes the lungs to bleed. Coughing up blood and frequent nosebleeds are symptoms of stachybotrys poisoning. Stachybotrys is found in wet areas, such as places affected by leaky pipes, or within or on walls exposed to excessive moisture.

This group of molds can thrive on water damaged, cellulose-rich material in buildings such as sheet rock, paper, ceiling tiles, insulation backing, wallpaper, etc. In the majority of cases where **Stachybotrys** is found indoors, water damage has gone unnoticed or ignored since it requires extended periods of time with increased levels of moisture for growth to occur.

**Penicillium** mold has a dense, brush-like appearance with many different branches. Penicillium tends to emerge at sub-basement levels and rooms. It can grow in fairly dry conditions. In addition to the toxins held by the mold spores, the actual penicillium growths also contain toxins. These growths can be found almost anywhere, increasing the threat of this mold in the home.
Penicillium fungi are commonly found in soil, food, cellulose, grains, paint, carpet, wallpaper, interior fiberglass duct insulation, and decaying vegetation. *Penicillium* may cause hypersensitivity pneumonitis, asthma, and allergic alveolitis in susceptible individuals.

Infection with some varieties of penicillium is acquired via inhalation, initially results in a pulmonary infection, spreads to other areas of the body (lymphatic system, liver, spleen, and bones), and is often fatal. An indication of infection is the appearance of papules that resemble acne on the face, trunk, and extremities.

*Penicillium* do have the ability to produce mycotoxins.

**Mycotoxins**

During the digestion of substrates, fungi secrete enzymes into nutrients in order to break down complex compounds into simpler compounds that can be taken up by the fungi and used as nutrition. These digested nutrients produce secondary metabolic byproducts called mycotoxins that are released to give the fungi a competitive edge over other microorganisms and fungi. Unfortunately, mycotoxins can also be incredibly toxic to humans causing a variety of responses including cold/flu-like symptoms, sore throats, headaches, nosebleeds, fatigue, diarrhea, dermatitis, and immune suppression. Some mycotoxins may also be carcinogenic and teratogenic.

Even though these molds may potentially produce mycotoxins, they will not do so unless specific environmental conditions exist. Currently, it is unknown exactly what conditions promote the growth of mycotoxin production, and more scientific research needs to be conducted on this topic for it to be fully understood.

**Aflatoxin** ~ This mycotoxin is primarily produced by *Aspergillus* species. It is one of the most potent carcinogens known to man and has been linked to a wide array of human health problems.

**Ochratoxin** ~ This mycotoxin is primarily produced by species of *Penicillium* and *Aspergillus*. It can be damaging to the kidneys / liver, and it is a suspected carcinogen. There is also evidence supporting its role in impairing immune system function.

**Tricothecene** ~ This mold is produced by *Stachybotrys* and *Fusarium* and has even been indicated as a potential agent for use as a biological weapon. One of the more deadly mycotoxins, it can severely damage the entire digestive tract and cause rapid death due to internal hemorrhaging if ingested in large amounts. It has also been implicated in human disease such as infant pulmonary hemosiderosis.
Understanding the Growth of Toxic Mold

Molds will grow if they are provided with moisture and nutrients. If we keep things dry, molds do not grow. High moisture levels can be the result of water coming in from the outside, through the floor, walls or roof; or from plumbing leaks; or moisture produced by the people living in the home, through daily activities like bathing, washing clothes, or cooking. Water enters the building when there is a weakness or failure in the structure. Moisture accumulates within the home when there is not enough ventilation to expel that moisture.

Different kinds of molds grow on different materials. Certain kinds of molds like an extremely wet environment. Other kinds of molds may be growing even if no water can be seen. Dampness inside the material can be enough to allow them to grow.

Molds can grow anywhere when the conditions are right. Mold spores are present in every environment and simply wait until the conditions are favorable. Oxygen-rich environments with either standing liquids or humidity over 70% are optimal for mold growth. Moisture is the key element in mold control and must be eliminated before mold growth will stop. Colonies will grow on any food source, including wood, paper, carpet, drywall, or other household items.

If one can see mold, there is mold. Once a colony has been established, it will continue to grow and expand until the food source is eliminated. If one smells a musty odor, there is mold. If a member of the family is having respiratory problems, he or she may have mold. Symptoms can include nasal congestion, coughing, wheezing, sore throat, asthma, and rhinitis. If symptoms improve when an individual leaves home or work, it is very likely that he has mold.

Contributing Factors To Mold Growth Indoors

High moisture is the major contributor to indoor microbiological activity. This is due to nutrients for spore germination and growth being readily available in most household constituents. These household constituents can be dirt, dust, wood, paper, adhesives, acoustical fiber, paint, textiles, stored material, carpets, floors, and much more.

The actual germination of fungal spores and mold growth is influenced by a several of factors. These factors are: time remaining wet, water source contamination, substrate, light, temperature, air velocity, nutrients, humidity, and moisture.

Time remaining wet ~ the longer the materials stay wet, the higher probability of bio-pollution.
Water source contamination ~ the greater the water sources, the greater the microbiological activity. Loose toilets, pipe condensation, pipe leaks, foundation leaks, crawl space leaks, and ice dams are examples of this type of water source.

Substrate ~ fungi prefer nature materials. Some fungi will grow on almost everything.

Light ~ most molds thrive in dark places - closets, attics, inside walls, behind wallpaper, behind refrigerators, in attics, and in basement corners.

Temperature ~ temperatures between 68 deg. F and 86 deg. F are the optimal temperatures for microbiological activity.

Air velocity ~ microbiological activity is preferred in stagnant areas. This is why more mold is seen in closets, attics, and inside walls.

Nutrients ~ organic material such as drywall, wood, ceilings, adhesives, paper, plaster, leather, cloth, and such are ideal for growth. Homes that are not desirably clean have more dust and debris than that of clean homes and will most certainly produce more microbiological growth.

Humidity ~ anything above 50% RH (relative humidity) is desirable for mold growth.

Moisture ~ when substrates are wet or damp, the opportunity for microbiological activity is great. Moisture content of 18% or greater can cause mold growth. This can occur in basement drywall, basement wood paneling, and drop ceiling material after it gets wet, cardboard boxes on the basement floor, and such.

Controlling Mold Growth Indoors

With an awareness of the causes of indoor mold growth and the health hazards it poses to a family, an individual should know three simple rules to keep mold growth to a minimum in the home.

- **Controlling moisture** is the key to preventing indoor mold growth. Rapid response to moisture problems is often critical.

Indoor Air Temperature

Monitoring the indoor air temperature is a good way to inhibit mold growth, although it will not completely eliminate it. The air temperature inside the home has an effect on indoor mold growth. By keeping air temperatures around 68 degrees F, one can help to
inhibit mold growth in the home. Unfortunately, this is sometimes impractical during the hot, summer months.

**Well Ventilated Home**

Keeping a home well-ventilated will also inhibit mold growth, but will not eliminate it. Indoor areas should always be well ventilated and space for circulation should be allowed behind furniture and storage units. New, energy efficient houses are built so tight that they become “sick” homes unless adequate ventilation is provided.

Tight houses are more susceptible to indoor mold growth and spore development due to their more humid, stagnant environment. But they are also easier to control when mold growth is a problem. For this reason, a home should be kept well ventilated and areas behind furniture and storage units should be given enough space for circulation.

**Low Levels of Relative Humidity (RH)**

Keeping the relative humidity levels low is the only way to actually eliminate mold growth in the home. This the most important rule to follow in order to keep a home safe from mold growths. Mold growth can be reduced or eliminated by maintaining relative humidity levels below 50%. The ideal range is somewhere between 40% and 50% RH.

Humidity is the amount of moisture or water vapor in the air. An individual and his or her family and pets produce moisture when breathing or perspiring. Even indoor plants produce moisture. We add water vapor to indoor air through routine household activities: cooking, showering, bathing, doing laundry, and dishwashing. Even more moisture can enter the home from the surrounding soil through a basement or crawlspace.

Humidity is needed for comfort and health, but too much or too little humidity can produce a host of difficulties for householders. Many occur during the heating season when it is very cold outside, the windows are closed and indoor air circulation and ventilation is reduced.
Toxic Mold Investigations

An individual may suspect hidden mold if a building smells moldy. When the source cannot be seen or if it is known that there has been water damage and residents are reporting health problems, mold may be hidden in places such as the backside of dry wall, wallpaper, or paneling, the topside of ceiling tiles, and the underside of carpets and pads.

Other possible locations of hidden mold include areas inside walls around pipes (with leaking or condensing pipes), the surface of walls behind furniture (where condensation forms), inside ductwork, and in roof materials above ceiling tiles (due to roof leaks or insufficient insulation).

Selecting a Consultant

Investigating hidden mold problems may be difficult and will require caution when the investigation involves disturbing potential sites of mold growth. For example, removal of wallpaper can lead to a massive release of spores if there is mold growing on the underside of the paper. If an individual believes that there is a hidden mold problem, he or she may consider hiring an experienced professional to do a thorough inspection and give remediation suggestions.

Toxic mold inspection, mold investigation, and mold testing requires the toxic mold inspector or owner of a property or property manager to do thorough mold inspection and mold testing in one of the following:

- home, apartment, condo, office, commercial property, or work place

for the presence of the following:

- both visible and hidden water problems and mold problems
- higher than normal levels of airborne mold spores
- serious levels of toxic mold growth
- toxic mold infestation

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• toxic mold contamination including black mold, toxic mold
• Stachybotrys black toxic mold

**Investigation and Sampling**

During mold inspection, mold investigation and testing for mold, the following areas need to be checked:

- If any of the home residents or building occupants suffer from any of the most frequent general mold health symptoms, one needs to be very thorough in doing mold inspection and mold investigation and do mold testing of the home and workplaces of the residents to find all possible mold causes of any health problem.

- Too many trees too close to the building protect mold growth from the killing effect of ultraviolet sunlight. In addition, dead leaves and plants provide food to enable mold to grow. Growing mold creates airborne toxic mold spores to enter the building through open windows, doors, and the fresh air intake of today's modern HVAC system (heating, ventilating, and air conditioning).

- Investigation should include deciding if the land around a building is sloping away from the building (thus carrying rainfall and snow melt away from the building) or toward the building (thus bringing excess water to the building and causing possible water intrusion into the building's foundation, concrete slabs, and basement walls).

- The roof should be inspected to assure that it is in good repair. This would include good shingles and no cracks or holes in flashings around plumbing vent pipes, air conditioning units, and chimneys.

- The attic should be inspected for water stains or mold growth on the underside of the roof decking, the roof joists, the attic floor, and on and beneath insulation. Mold cannot eat fiberglass insulation, but it can eat the paper backing of such insulation, and mold can also eat and grow on organic dirt deposited onto the fiberglass strands.

- A building should be inspected for physical signs or evidence of water intrusion or mold growth anywhere in water-oriented rooms such as bathrooms, the kitchen, and the laundry room. The inspector needs to be very thorough in inspecting and testing for bathroom mold, kitchen mold, utility room mold, and laundry room mold.
The inspector should look for water stains, water damage areas, or suspicious discolorations of any other rooms' ceilings, walls, floors, and furniture that would indicate the need to investigate and to test for ceiling mold, wall mold, floor mold, living room mold, closet mold, dining room mold, bedroom mold, or, in other areas, attic mold, crawl space mold, basement mold, storage room mold, laundry room mold, utility room mold, or garage mold.

The inspector should look for hidden water moisture inside wall cavities, beneath floors, above ceilings, or behind ceramic tiles of bathroom walls, tubs and showers. The inspection should determine if the property has ever experienced roof leaks, water leaks, floods, plumbing problems, or other water problems and water intrusions. If so, the inspector should pay particular attention to inspecting, investigating, and mold testing building areas that experienced such past or present water intrusions.

The inspection should determine if the humidity level of the crawl space, basement, attic, or any room of the building is higher than sixty percent [60%] humidity. Humidity levels above 60% in any area of the home can provide sufficient moisture to enable mold to grow. The higher the humidity is above 60%, the greater will be the opportunity for mold growth.

The inspector should check to see if there are elevated levels of unhealthy mold spores in the air of the attic, crawl space, basement, and the various rooms of the home or other building. He should also check to see if the levels of mold spores indoors are greater than outside levels, and/or different as to the types of mold species present.

This can be done by doing the following sampling:

- mold culture plates upon which airborne mold settles onto after stirring up the air in the room with a disinfected fan for 15 minutes to 30 minutes
- controlled air testing impactors that use an air pump to draw in and impact airborne mold spores onto the sticky surface of a mold culture plate
- direct sampling of visually-noticeable mold growth through scraping of the suspect mold substance into a mold culture plate, or Scotch tape lift tape sampling, or actually cutting and saving a piece of what the suspect mold is growing on or in such as drywall, wood, or carpeting.

A certified toxic mold inspector can find and detect all of the toxic mold and black mold infestation hidden in a home or other real estate. Certified toxic mold inspectors are trained and certified to do thorough and professional toxic mold tests, detection,
inspection, assessment, testing, and identification of toxic mold and black mold spreading in a home and or other property.

Mold testing samples should be collected by certified mold contractors and certified mold remediators to prepare remediation protocol plans and remediation bids, and to conduct clearance testing after mold remediation are analyzed by doctors who specialize in infectious diseases and mold health problems. These doctors should have training in mold identification.

**Investigation and Documentation**

It is difficult to find definitive standards for comparison of fungal sample results. Most of the expert guidance documents indicate that comparisons should be made between out-of-doors and inside the building, and between complaint areas and non-complaint areas with the levels and types of biological organisms compared to determine whether indoor amplification is present.

The wide range of natural spore levels is dependent on the season, the surrounding vegetation, and even time of day. This fact makes the collection of out-of-doors comparison samples critical. However, these sorts of comparisons are not very helpful in determining the effectiveness of mold cleanups or even doing the risk assessment for the building occupants who have complaints about the indoor environments.

In an effort to deal more effectively with such cases, a number of scientists and consultants around the country have assembled large bodies of anecdotal information that relates fungal counts from direct analysis samples to complaints and symptoms of building occupants. This data has pushed a number of experts to adopt 2000 counts of mold spores per cubic meter of air as a maximum for a clean building.

Just as important as the total count, these “quasi-industry” standards set limits for species that are known to generate more significant allergic reactions as well as species that have toxigenic properties. There is some reason to be optimistic that continued studies of the relationship between airborne mold levels and health effects will eventually move the information from a quasi-industry standard to a full-fledged consensus standard and perhaps ultimately provide the basis for regulatory guidance.

Sampling of airborne microorganisms can be inconclusive. Generally, decisions are often made arbitrarily whether a dwelling has a bio-pollution or not. Methods of sample collections can have results that are very divergent. Due to divergent results, interpretation can vary for one consultant to another consultant. An example could be
that swabbing or taking a tape test of a cold air return may result in microbiological activity, but will not exactly correlate with airborne concentrations.

Measuring of airborne micro-organisms can also be inconclusive. Results for measuring can produce results that depend on interpretation. Many times the testing laboratories will not identify the exact type of microorganism, but will merely state that colonies were formed. Furthermore, because colonies were formed, they may state that the potential for bio-pollution exists.

Interpretation of results is difficult and can vary between consultants. Attempts to link bulk sources to airborne concentrations of microorganisms are difficult. The levels of microorganisms vary significantly during a day’s time. This is due to activity levels in an area and other factors such as fluctuation in humidity or temperature that determined the release of microbiological airborne spores.

These spores may still be allergenic and possibly toxic and may not grow on any medium they land on. Quick growing fungi may crowd slow growing fungi. The wrong medium may be tested for viable sampling. At this time no strict numerical guidelines exist which are appropriate for assessing whether the contamination is an area is acceptable or not.

**Understanding Sampling Methods**

**Anderson N-6 Bio-Aerosol Sampler**

This is a single stage petri plate impacter that consists of an aluminum device held together by 3 spring clamps and is sealed with O-ring gaskets. A high volume of air is drawn through the sampler causing multiple jets of air to direct airborne particles toward the surface of the agar collection plate. This will lead to biological growth if any microorganisms are present in the air that is sampled. A short collection period (3-5 minutes @ 28.3 lpm) should be used to prevent the plates from being overgrown by microorganisms. The sampler should be disinfected with isopropyl alcohol between each use.

**Spore Trap**

This indoor air quality sampler is a particulate sampling cassette designed for rapid collection and analysis of a wide range of airborne aerosols including mold spores, pollen, insect parts, and skin fragments. These types of samples are used to detect for total spore counts. It is useful for rapid analysis of airborne contaminants in IAQ testing, allergy testing and flood restoration monitoring.
Media is easy to store and has a long-shelf life; results are semi-quantitative and relate directly to airborne exposure; there is a rapid analysis of results. Differentiation between viable and non-viable organisms is difficult.

**Bulk/Surface Samples**

These types of sample are applicable when there is visible contamination of building materials such as drywall, flooring, insulation, and wood. Materials are collected then sent directly to a lab for microbial identification. Bulk/surface sampling is useful in verification of remediation.

**Swab/Tape Sampling for Building Surfaces**

A swab sample is collected with sterile cotton “Q-tip” applicator that has been moistened with sterile growth media. The area to be swabbed should be performed by a person wearing sterile latex surgical gloves. The cotton head of the applicator is broken off into the growth solution vial, and the vial and swabbed applicator are sent to a lab for plate culturing and counting.

This type of testing is inexpensive and non-destructive; there is a rapid analysis for spore counts; results can be quantitative and cultured for speciation; sampling can be performed on irregular surfaces. However, the results do not relate directly to airborne exposures; fungal structures may be damaged during collection causing identification of the mold to be less accurate; spores may germinate before lab analysis; and sample collection does not work well on dry surfaces.

**Testing A Home For Mold**

In some cases, testing a home for mold may not be recommended. Testing homes for mold in most instances is costly and usually produces results that have very little, if any, practical value. At worst, test results can be misleading. There are a number of inherent limitations to mold testing. Testing is only warranted when there is a clear objective that can only be met through obtaining sampling data.

In a residential setting, there are more reliable and cost effective methods for identifying environments needing intervention. A thorough visual inspection looking for mold growth or signs of water damage and wetness and locating sources of mold odors by smell is recommended. Once mold growth has been located, appropriate actions are needed to correct the source of the moisture and remove mold contamination.
Testing the Air

Testing of moldy materials or an air sample identifies the types of molds that may be present but does not identify the cause/source of moisture. The type of mold does not change the procedures for cleaning up areas of mold less than three-square meters.

Testing of a moldy material involves sending a swab, imprint on a Scotch tape, or piece of the material to a competent laboratory. Air sampling requires specialized equipment. An air sample typically captures mold spores in a period of minutes. Since replicate samples must be taken due to variations in the airborne molds over time (even hours) and compared with outdoor samples, air testing is both expensive and time-consuming. Interpretation of test results may not be very useful, since there are no advocated "safe levels" of indoor molds and the results will not tell the health risks from the molds.
III

Toxic Mold and Remediation

Outside and Inside Environment

Fungi are present almost everywhere in indoor and outdoor environments. The most common symptoms of fungal exposure are runny nose, eye irritation, cough, congestion, and aggravation of asthma. Although there is evidence documenting severe health effects of fungi in humans, most of this evidence is derived from ingestion of contaminated foods such as grain and peanut products or occupational exposures in agricultural settings where inhalation exposures were very high.

With the possible exception of remediation to very heavily contaminated indoor environments, such high-level exposures are not expected to occur while performing remedial work. Building materials supporting fungal growth must be remediated as rapidly as possible in order to ensure a healthy environment. Repair of the defects that led to water accumulation or elevated humidity should be conducted in conjunction with or prior to fungal remediation.

Extensive contamination, particularly if heating, ventilating, air conditioning (HVAC) systems or large occupied spaces are involved, should be assessed by an experienced health and safety professional and remediated by personnel with training and experience handling environmentally contaminated materials.

Causes for Hidden Mold Problems

Underlying Defects in Building

Lesser areas of contamination can usually be assessed and remediated by building maintenance personnel. In order to prevent contamination from recurring, underlying defects causing moisture buildup and water damage must be addressed. Effective communication with building occupants is an essential component of all remedial efforts.
Fungi in buildings may cause or exacerbate symptoms of allergies (such as wheezing, chest tightness, shortness of breath, nasal congestion, and eye irritation), especially in persons who have a history of allergic diseases. Individuals with persistent health problems that appear to be related to fungi or other bioaerosol exposure should see their physicians for a referral to practitioners who are trained in occupational/environmental medicine or related specialties and are knowledgeable about these types of exposures.

**Inaccessible Heating and Cooling System**

Many sections of a heating and cooling system may not be accessible for a visible inspection, so a service provider can point out any mold they say exists. Although a substance may look like mold, a positive determination of whether it is mold or not can be made only by an expert and may require laboratory analysis for final confirmation. If there are insulated air ducts and the insulation gets wet or moldy, it cannot be effectively cleaned and should be removed and replaced. If the conditions causing the mold growth in the first place are not corrected, mold growth will recur.

Decisions about removing individuals from an affected area must be based on the results of such medical evaluation, and be made on a case-by-case basis. Except in cases of widespread fungal contamination that are linked to illnesses throughout a building, building-wide evacuation is not indicated.

**Changes in Building Design**

Experts say that mold has been around for ages, but the current toxic mold epidemic has modern roots. Changes in building design from the 1970s onward have heightened today's mold problems. The drive toward energy efficiency had the unintended effect of sealing off indoor airflow so moisture does not evaporate well once introduced. Also, building materials are now more cellulose-based, with higher paper content, which mold thrives on. Unchecked mold growth can be serious. In second homes with absentee ownership and the right conditions, one can find mold overwhelming an environment and hanging down from the ceiling in as little as a month. In large commercial properties, the liability and property damage can be extensive, since mold may stay hidden longer with more room to grow.

**Lack of Mold Awareness**

Lack of mold awareness has been part of the problem as well. When building materials such as studs are left in unprotected storage, they can become wet or mold-
contaminated even at new construction or remodeling projects. It may be a shock to find mold contamination in a brand new home or building but it can happen especially with porous, cellulose-based materials in humid or rainy climates. If growth occurs out-of-sight - in walls, attics, basements, or near AC systems – damage can be substantial before the mold problem is identified.

The truth is that while liability issues may be debated among insurers, property professionals, and others, uncontrolled mold growth will only heighten property and health claims unless quickly checked and remediated.

Prompt remediation of contaminated material and infrastructure repair is the primary response to fungal contamination in buildings. Emphasis should be placed on preventing contamination through proper building and HVAC system maintenance and prompt repair of water damage. Emphasis should be on ensuring proper repairs of the building infrastructure, so that water damage and moisture buildup does not recur.

Know Your Expertise

Until recently, insurers and property professionals have tended to view mold remediation as a simple clean up task. But as the full extent of health, liability, and property risk unfolds, many are looking to mold remediation professionals to avoid turning a small problem into a large one. Remediation cleans or removes contaminated materials and prevents mold from spreading to other areas while protecting the health of abatement workers.

If an individual has just a few square feet of visible mold, he may be tempted to have anyone tackle the problem, but that can be a costly mistake. Without adequate precautions, they may open up a wall and expose themselves and the building occupants to unknown types and quantities of hidden mold. That could release mold spores into the air and ventilation systems, spreading mold growth throughout the building. Even professional drying firms that rely on fans and venting can make the same mistake if they approach a job without proper mold awareness.

Even though insurance companies want to reduce their risk of litigation and further mold claims, many of them still are not pre-qualifying their contractors or educating themselves on proper work practices as well as they should. Without proper area isolation, engineering controls, and work practices, a job of just a few days can grow into one requiring months of remediation, which would likely increase the chances of litigation as well.

Reputable mold remediators should possess one of two certifications:
• certified microbial remediation supervisor (CMRS) from the American Indoor Air Quality Council (AMIAQ)
• certified microbial remediator (CMR) from the Indoor Air Quality Association (IAQA)

It is also advisable to ask for a list of references, then follow up to see how previous projects went.

Experienced professional mold remediators should carry multi-million dollar liability insurance to protect the client if liability gets out of hand. They should also follow OSHA and other specified safety protocols to protect the health and safety of both the mold remediators and building occupants, which can minimize liability risk.

Remediation, Procedure and Communication

The size of the area impacted by fungal contamination primarily determines the type of remediation. The sizing levels below are based on professional judgment and practicality; currently there is not adequate data to relate the extent of contamination to frequency or severity of health effects. The goal of remediation is to remove or clean contaminated materials in a way that prevents the emission of fungi and dust contaminated with fungi from leaving a work area and entering an occupied or non-abatement area, while protecting the health of workers performing the abatement.

Level I

This includes small isolated areas (10 sq. ft or less), which would include ceiling tiles and small areas on walls. Remediation can be conducted by regular building maintenance staff. Such persons should receive training on proper clean up methods, personal protection, and potential health hazards. This training can be performed as part of a program to comply with the requirements of the OSHA Hazard Communication Standard. Respiratory protection in accordance with the OSHA respiratory protection standard is recommended. Gloves and eye protection should be worn.

The work area should be unoccupied. Vacating people from spaces adjacent to the work area is not necessary but is recommended in the presence of infants (less than 12 months old), persons recovering from recent surgery, immune suppressed people, or people with chronic inflammatory lung diseases (e.g., asthma, hypersensitivity pneumonitis, and severe allergies). Containment of the work area is not necessary. Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are recommended. Contaminated materials that cannot be cleaned should be removed from the building in a sealed plastic bag. There are no special requirements for the disposal of moldy materials.
**Level II**

This would include mid-sized isolated areas (10 - 30 sq. ft.), which would refer to individual wallboard panels. Remediation can be conducted by regular building maintenance staff. Such persons should receive training on proper clean up methods, personal protection, and potential health hazards. This training can be performed as part of a program to comply with the requirements of the OSHA Hazard Communication Standard. Respiratory protection in accordance with the OSHA respiratory protection standard is recommended. Gloves and eye protection should be worn. The work area should be unoccupied. Vacating people from spaces adjacent to the work area is not necessary but is recommended in the presence of infants (less than 12 months old), persons having undergone recent surgery, immune suppressed people, or people with chronic inflammatory lung diseases (e.g., asthma, hypersensitivity pneumonitis, and severe allergies). The work area should be covered with a plastic sheet(s) and sealed with tape before remediation to contain dust/debris.

Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are recommended. Contaminated materials that cannot be cleaned should be removed from the building in sealed plastic bags. There are no special requirements for the disposal of moldy materials. The work area and areas used by remedial workers for egress should be HEPA vacuumed (a vacuum equipped with a High-Efficiency Particulate Air filter) and cleaned with a damp cloth and/or mop and a detergent solution. All areas should be left dry and visibly free from contamination and debris.

**Level III**

This would include large isolated areas (30 - 100 square feet), which would refer to several wallboard panels. A health and safety professional with experience performing microbial investigations should be consulted prior to remediation activities to provide oversight for the project.

The following procedures *at a minimum* are recommended: Personnel trained in the handling of hazardous materials and equipped with respiratory protection, in accordance with the OSHA respiratory protection standard, are recommended. Gloves and eye protection should be worn. The work area and areas directly adjacent should be covered with a plastic sheet(s) and taped before remediation, to contain dust/debris. Seal ventilation ducts/grills in the work area and areas directly adjacent with plastic sheeting. The work area and areas directly adjacent should be unoccupied. Further vacating of people from spaces near the work area is recommended in the presence of infants persons having undergone recent surgery, immune suppressed people, or people with chronic inflammatory lung diseases (e.g., asthma, hypersensitivity pneumonitis).
pneumonitis, and severe allergies). Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are recommended.

**Level IV**

This would include extensive contamination in an area greater than 100 contiguous square feet in an area. A health and safety professional with experience performing microbial investigations should be consulted prior to remediation activities to provide oversight for the project.

Personnel trained in the handling of hazardous materials should be equipped with the following:

- full-face respirators with high efficiency particulate air (HEPA) cartridges
- disposable protective clothing covering both head and shoes
- gloves
- containment of the affected area
- complete isolation of work area from occupied spaces using plastic sheeting sealed with duct tape (including ventilation ducts/grills, fixtures, and any other openings)
- the use of an exhaust fan with a HEPA filter to generate negative pressurization
- airlocks and decontamination room

Vacating people from spaces adjacent to the work area is not necessary but is recommended in the presence of infants (less than 12 months old), persons having undergone recent surgery, immune suppressed people, or people with chronic inflammatory lung diseases such as asthma, hypersensitivity pneumonitis, and severe allergies.

**Level V**

This refers to remediation of HVAC systems. Remediation can be conducted by regular building maintenance staff. Such persons should receive training on proper clean up methods, personal protection, and potential health hazards. This training can be performed as part of a program to comply with the requirements of the OSHA Hazard Communication Standard. Respiratory protection in accordance with the OSHA respiratory protection standard is recommended. Gloves and eye protection should be worn. The HVAC system should be shut down prior to any remedial activities. The work area should be covered with a plastic sheet(s) and sealed with tape before remediation, to contain dust/debris. Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are recommended. Growth supporting materials that are contaminated, such as the paper on the insulation of interior lined ducts and
filters, should be removed. Other contaminated materials that cannot be cleaned should be removed in sealed plastic bags. There are no special requirements for the disposal of moldy materials.

**Medical Examination**

The analogy of a medical examination, diagnosis, and treatment is helpful in understanding the various parts of the mold remediation process. The first part of the process is the examination for mold, or mold inspection. Extreme care should be taken during this process not to disturb or remove any building materials in areas affected by mold (carpet, padding, drywall, wallpaper, wood, etc.)

Laboratory testing is often necessary to enable a physician to diagnose and treat a patient most effectively. Similarly, environmental testing and sampling of a mold-contaminated structure is often necessary to determine proper remediation procedures. An environmental professional who is specifically trained for this task should perform mold testing and sampling.

Once samples are collected, they are sent to an environmental laboratory where further mold testing is conducted to determine the type and severity of contamination. Although some media coverage would suggest otherwise, there is no piece of equipment or device that can determine on-site the number or type of mold colonies or spores present in a contaminated area. This analysis must be done in a laboratory and takes a minimum of several days to complete.

For mold testing, much like a physician uses the results of physical examination and laboratory analysis to make a diagnosis and prescribe an appropriate course of treatment, the qualified environmental professional at National Mold Specialists use visual inspection, photographs, and laboratory analysis to quantify the extent of mold contamination and determine an appropriate remediation plan or protocol. This protocol will specify what personal protective equipment (PPE) should be used, what level of containment should be erected, if any, and what procedures should be followed to clean and/or remove mold contaminated building materials.

Like a pharmacist fills a prescription written by a physician, a restoration company trained in mold testing and remediation follows the written remediation plan or protocol written by an environmental professional. Mold testing and remediation training is the equivalent of pharmacy school - it equips the restoration company to understand and implement the specifications contained in the remediation plan.

Finally, clearance mold testing is often performed after the mold remediation is complete, to ensure that microbial contamination has been eliminated or reduced to an
acceptable level. The same environmental professional who did the initial mold testing and sampling generally performs clearance mold testing.

Leaders in the environmental remediation industry tell us that toxic mold is a problem that the nation’s insurers and property professionals can no longer ignore. While there is a degree of sensationalism that the media has created about mold issues, mold contamination is a very real problem that must be handled in a timely and professional manner.
IV

Property Insurance and Mold Contaminants

One of the hottest issues facing the insurance industry today involves toxic mold claims under both personal and commercial lines policies. Following several recent multi-million dollar judgments, some attorneys are comparing this to asbestos and lead paint claims with regard to the litigation potential.

From the standpoint of commercial exposures, toxic mold claims are beginning to rival "construction defect" claims in their numbers and magnitude. Home and business owners are looking to their insurers and contractors, building material suppliers, plumbers, and others for remuneration for real or perceived property damage and bodily injury.

In many ways, bodily injury claims for toxic mold are similar to pollution claims in that they allege injury that might occur in the future. This problem is compounded by an apparent lack of authoritative, scientific evidence demonstrating a causal relationship between mold and serious health conditions in otherwise healthy adults. Other than some EPA and CDC guidelines, there appear to be few, if any, state or federal regulations regarding mold infestations and remediation.

One of the reasons that mold is such a hot topic in the courtroom is that no consensus exists in the scientific community regarding the magnitude of risk presented by exposure to mold. Though most types of mold are innocuous, the heart of the mold debate is if and when mold exposure becomes toxic, and to whom. Toxic mold is a media-generated term. There is no scientific definition for "toxic mold," but there are thousands of species of fungus. Mold is everywhere - indoors and out. Mold requires only moisture, oxygen and food - such as the cellulose in drywall - to grow indoors.


**Mold and the Insurance Policy**

**Exclusion in Traditional Policies**

Although many commercial policies are written on customized, so-called "manuscript" forms, the Insurance Services Office (ISO) publishes a document with model policies offered by individual insurance companies. Prior to the recent changes, most of these policies have had either a general pollution exclusion or an absolute pollution exclusion.

A standard general pollution exclusion usually provided that the insurance does not apply to the following:

"bodily injury or property damage arising out of discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkaline, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course of body, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden or accidental."

A standard absolute exclusion usually stated that the insurance does not apply to the following:

"bodily injury or bodily injury arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants...at or from premises you own, rent or occupy."

In the past, such clauses were used to bar coverage for industrial pollution, but courts have started to address the issue of whether insurance companies can hide behind such provisions to protect themselves from mold-related claims.

Four basic questions seem to determine whether mold-related issues will be covered by such exclusions.

- **Is mold an irritant, contaminant or pollutant?**

Based on the definition above, the jury is still out. Some cases have supported the exclusion and others have not. The current trend indicates that as mold issues become more widely known, it is more likely that courts will find mold covered as a "pollutant," and it is more likely that insurance companies will expressly define "pollutant" to include mold, thereby excluding coverage for mold-related claims.
Has the mold been "released, dispersed or discharged" into the environment?

Historically, this clause was applicable to chemicals that produce fumes, and thus, the issue is whether mycotoxins produced by mold are sufficient. Courts have to determine whether mold contaminants are released or rather are formed over time because of water and moisture affecting environmental conditions.

Is the environment (i.e. indoor air contamination) covered by the exclusion?

To date, courts have required a discharge into the outside environment to trigger a general pollution exclusion, and have held that an absolute pollution exclusion applies to indoor pollution - meaning there is no coverage.

Was the mold the cause of the alleged property damage?

It can be argued that alleged property damage is not from the mold itself, but the cause of the mold, which is from moisture or water. Therefore, the pollution exclusion may not apply.

There is no simple answer to any of these questions, and the result often depends on the jurisdiction addressing the issue. This uncertainty is compounded by the fact that only a few courts have issued opinions regarding these issues directly in the context of mold, and instead, parties are left to rely on precedent involving other indoor air pollutants, such as asbestos and carbon dioxide.

Overall, the courts seem to be broadening the application of the exclusion to include mold as long as it is consistent with the reasonable expectations of the insured. Certainly, as mold becomes more widely associated with the more common indoor air pollutants, it is more likely that courts will find it covered by these exclusionary clauses.

Specific mold exclusions are found in traditional residential and commercial policies. Such exclusions often provide no insurance against "loss caused by smog, rust, other corrosion, mold or wet or dry rot." Generally, courts have found that if the mold damage occurs over time as a result of climatic conditions, long-term wear and tear losses, rather than from a covered and identifiable event, such as a burst pipe, the exclusion bars coverage.

Mold Exclusions Today

The insurance industry is not relying on traditional policy language to protect it from rising numbers of mold claims. Nor is it waiting and hoping that favorable case law develops. The
insurers are addressing the issue directly in the contract by modifying the exclusion language used in residential and commercial policies for property and liability coverage to exclude mold issues more clearly.

While the approaches taken by various insurance companies of course vary, here are some examples from recently revised exclusions:

- Reference to fungus and to wet or dry rot has been broadened to refer specifically to mycotoxins and spores.
- Policies specifically reference contact (whether actual, threatened or alleged) with fungus or bacteria.
- Sometimes exclusion applies even if an otherwise insured cause (like fire) occurred first; sometimes policy continues to override exclusion if fire or lightning occurs, before the mold appears.
- Exclusions have been broadened to cover abating, testing, monitoring, remediating, etc.
- Sometimes policies use "but for" test relating to fungi.
- Sometimes policies expressly disclaim any duty to investigate or to defend.
- Sometimes policies cut off coverage if water leaks continue over a period of time such as 14 days.
- Sometimes a policy covers the loss, but with a cap such as $10,000.

Even if a policyholder negotiates for some mold protection, a mold-related claim will not necessarily be covered. The claim still must meet all other requirements of the policy, including compliance with the applicable notification period. Often, a policy that does not address the issue directly is more of a risk than one that definitely excludes mold. If a policy clearly excludes mold claims, at least then a party can evaluate the true risks associated with its lack of coverage.

**Ensuing Damage with Regard to Water Damage Claims**

When a home or building has experienced flooding, microbial contamination can begin within 24-48 hours of the initial water damage. It is important that the homeowner act quickly in order to prevent further loss. He should contact his insurance carrier to report the loss, and he should work with a consultant to document his loss.

If the water damage occurred unnoticed and has recently been discovered, he should have the damage evaluated by a consultant that is familiar with water damage restoration projects. Many times contractors perform repairs by removing damaged building materials, painting, drying wet areas, etc. It is critical that the contractor performing the repairs to the water damaged home be trained in water damage remediation. An improper remediation can worsen the problem, especially if microbial contamination is present.

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The homeowner should read and understand his policy as it relates to water damage. Does it cover water damage? A policy may cover damage from water under certain conditions and not others. If a water leak is a covered item, does the policy also cover ensuing damage? Microbial contamination may be considered ensuing damage, depending on the source of the water damage.

**Business Insurance and Mold Contamination**

**Business Interruption Coverage**

Most business income losses result from direct damage to owned property. As a result of that damage, the process or activity of the business is interrupted, and there is a financial loss because of reduced income, increased expenses, or both. The most frequent cause of interruption of the activities of an organization is damage to its premises, resulting in a "business interruption" loss.

A business interruption loss is equal to the reduction in profits that result from the interruption plus the expenses that necessarily continue during the interruption. The period of loss runs from the time the organization is partially or fully shut down until the time at which normal volume of business is restored after business resumes. Normal business volume is not often reached again until sometime after the organization reopens, usually because some former customers do not return immediately.

Most businesses will need either business interruption coverage or extra expense coverage, but there are situations in which the insured will wish to have both forms of insurance protection. Some insureds have a recognizable need for both coverages because the business is potentially exposed to both a "business interruption loss" and an "extra expense" loss.

Business interruption insurance is usually part of a package, or an endorsement to a property policy. The terms are not uniform and can vary widely. There are some basic principles, however, common to most policies. In general, covered claims must arise from a covered cause of loss that causes direct physical loss to property at the described premises. The covered loss must cause a necessary suspension or interruption of operation that causes a loss of business income. Issues likely to arise in evaluating these claims include documentation of losses, the period of recovery, and what perils are covered.
Suspension of Operations

For the claim to be viable, the policy usually requires a "necessary suspension" of the insured's operations. Unfortunately, "necessary suspension" is an undefined term in the ISO policy. The majority of cases construing this language hold that a total cessation is required; a mere work slowdown or decrease in business volume will not satisfy the "suspension" requirement.

Direct Physical Loss

Business interruption coverage also typically depends upon a "direct physical loss" to covered property. "Direct physical loss" usually requires some type of physical damage to the property. This requirement can be problematic. By example, if a virus creates loss of intangible computer data, there is a question whether any direct physical loss has occurred. This issue, first raised in anticipation of Y2K shutdowns, but revived by the current threat of virus attacks, remains largely unresolved.

A few courts have addressed the issue, but with inconsistent results. Similarly, in situations involving documented anthrax contamination of business premises, there may be an issue whether a "direct physical loss" has occurred. However, one would be hard-pressed to argue that any physical damage occurs where a building is simply evacuated due to a bioterrorism hoax.

Even without a direct physical loss, however, there may be short-term coverage for a forced closure. The ISO form provides limited coverage for loss of business income caused by the action of a civil authority that prohibits access to the insured premises due to direct physical loss or damage to property other than the actual premises itself.

Described Premises

The damage need not be to property covered under the policy, if it causes interruption at the described premises. In addition, if the insured occupies only a part of a building, damage to other areas that provide access to the described premises will give rise to coverage. Thus, damage to the ground floor may be sufficient to establish a claim if an upper-level resident is denied access to its premises.

Period of Restoration

Policies typically limit recovery to the actual loss for the period of time it would take to repair or replace the building in which the business is conducted or, if no physical damage is present, the length of the required and necessary closure of the business. There is also usually a waiting period. Many policies, for instance, provide coverage
only for the "period of restoration" which begins 48-72 hours after the direct physical loss suspends operation, and ends when the property is repaired with reasonable speed and similar quality, or business resumes at a new location. Short cessations—such as a bomb scare or temporary evacuation—may not be covered at all. There is also usually a maximum period of coverage—frequently 12 months, although the period of restoration is not limited by policy expiration.

Damages recoverable may include lost business income, often expressed in terms of lost profits or gross earnings less non-continuing expense. While lost income is typically proven through sales and production records, market trends may also be considered. Similarly, normal maintenance, downtime, or seasonal price fluctuations may affect the amount of loss.

**Insured's Duties**

Insureds also have duties following a claim that may be prerequisites to coverage. These include providing prompt notice of how and where the damage occurred, taking reasonable steps to protect the property from further damage, and allowing examination of physically damaged property. Businesses typically must permit the insurer access to financial books and records. The information typically requested includes profit and loss statements, production reports, inventory, invoices, and purchase orders.

**War Exclusion**

Most business interruption policies include a war exclusion. As was widely reported, Congress encouraged insurers not to rely on the war exclusion in regard to the World Trade Center disaster, and most insurers volunteered that they would not. While the swift assurance from the industry may have relaxed some concerns, the exclusion probably would not have applied, anyway. Although there is little reported law, the limited case law suggests that "war" is limited to an act of intentional destruction by a recognized nation. Thus, while we may be in a war against terrorism, we are not at war with a recognized nation. Moreover, while other terms of business interruption policies are not uniform, the common industry forms do not include a "terrorism" exclusion.

**Civil Commotion and Vandalism**

While war is not covered, riot or civil commotion, including looting and vandalism — defined as "willful and malicious damage to, or destruction of, Covered Property" — are frequently covered. Arguably, while it is certainly an understatement, acts of terrorism that result in property damage could be construed as vandalism.
Lost Income

Business interruption insurance is designed to protect the income, which the insured business would have enjoyed had there been no interruption of the business. There is typically coverage for loss of actual earnings as well as continuing expenses, such as payroll, rent and utility bills, that continue despite the cessation of business. The extra expenses of continuing business, to avoid shutdown, such as temporary lease space, are also covered.

Business Interruption and Mold Contamination

Property damage and business interruption are typically the insurer’s biggest exposures, and now there is a new concern over commercial and residential buildings that experience chronic water intrusion — mold. Personal and property damage claims relating to mold / microbiological contamination are on the rise, with increasingly larger verdicts and settlements being reported.

Microbiological fungi, mold, and a variety of indoor air pollutants are commonly found in buildings with water intrusion problems. The Environmental Protection Agency estimates that the actual amount of pollutants indoors can range between 100 to 200 times the amount of pollutants found in outdoor air.

Several mold species can produce a wide variety of mycotoxins or toxic chemicals that are usually contained in the spores. Mycotoxins tend to elicit a toxic response in most individuals who come in contact with them; entering the body via inhalation or contact with the skin. These mycotoxins can, at minimal levels, create adverse health effects, including skin irritation, pathogenic disease and immune disorders. These health effects typically result from repeated exposure to the fungal/mold spores.

Fungal growth and amplification are probably the most significant contributor to complaints of microbiological contamination. Conditions necessary for the development of the mycotoxin include the following:

- Fungal spores, which are produced in the millions and found everywhere indoors and outdoors
- Food sources, which includes any object containing carbon based matter, including petroleum products, plastic, textiles, and paint
- Wood, carpet, drywall, building paper, wallpaper, and other common building materials
- Water without which a fungus will not grow. Fungi grow when there is more than 60% relative humidity.
Because of the frequency of hidden mold growth in buildings with a history of chronic water intrusion, claims relating to mold/microbiological contamination have risen dramatically in recent years in residential construction litigation. Lawsuits arising from these exposures typically involve both personal injury and property damage.

Personal injuries caused by exposure to a microbiological agent in "Sick Building Syndrome" or "Building Related Illnesses" cases are usually alleviated upon leaving the building. However, actual microbiological contamination creates not only a significant continuing adverse health risk, but becomes the potential link between the microbiological agent found in the structure and the occupant's illnesses.

Since most microbiological cases seek recovery for property damage, both to repair and remediate the defective conditions, as well as for personal injury, larger verdicts and settlements are being reported with increased frequency nationwide. Additionally, mold claims are being asserted in larger construction defect cases by homeowners associations as a method of triggering insurance coverage for personal injury or loss of use. The focus in evaluating these types of losses should include an analysis of the following:

**Types of Claimants**

All residential and commercial building owners and occupants are potential claimants.

**Types of Defendants**

- Any persons or entities who can be causally linked to the water intrusion or conditions that are causing the mold to develop
- Architects, engineers, developers, general contractors, and subcontractors involved in the design and construction of building components that are allowing water intrusion
- Less obvious defendants are those involved in the design and construction of HVAC systems that can spread the spores and mycotoxins.
- Homeowners associations, property managers, landlords and those who exacerbate the mold problems through their abatement measures

**Lack of Regulatory Standards**

Mold has been around for centuries. This recent and sudden outburst of mold-related litigation stems from a combination of factors. The significant increase in media coverage and the swelling number of cases directed at the insurance industry have contributed to the rise in cases. Some commentators contend that new construction techniques may have played a role as well. With a move toward creating more energy-efficient buildings, commercial structures, especially schools,
are often sealed tightly and rely on recycled air systems to provide adequate ventilation. More contractors are using new building materials, which many allege are more susceptible to mold growth.

The main reason behind the sudden acceleration of such claims, however, is a lack of regulatory standards addressing mold. No regulatory agency has formulated any regulatory standard addressing "safe" levels of mold, proper identification of mold, or methods of mold remediation.

Although recent federal and state legislation and studies have been launched, the scientific research necessary to develop well-grounded standards for mold regulation is likely to be years away. Builders and contractors are left to rely on basic building codes that have no provisions regarding mold. Without nationally accepted standards, it is not surprising that lawyers, environmental consultants, and other professionals addressing the mold issue are left to take conservative approaches when addressing the existence of mold and recommending an appropriate remediation protocol, in order to protect clients adequately.

**Extra Expense Coverage**

Two basic types of extra expenses may be incurred as the result of a business income loss.

- Some extra expenses ultimately reduce the loss.
- Others enable the business to remain in operation.

Extra expense insurance is designed for those businesses that simply cannot allow a physical damage loss to cause a shutdown of operations.

One group of businesses that needs such coverage consists of enterprises that will suffer a permanent loss of customer goodwill as a result of even the temporary curtailment of operations. Continuity of service is the key to success for those businesses, because an interruption will immediately send clients to the firm's competitors, and a number of these clients may never return. Newspaper, milk distributors, laundries, dry cleaning establishments, and fuel oil dealers are examples of this type of business.

Extra expense insurance is also designed to serve the needs of businesses that bear a special relationship to the public and whose uninterrupted service is vital to the community's welfare. Examples include banks, power plants operated by public utilities, hospitals, nursing homes, and orphanages. Such concerns simply cannot tell their clients to "go elsewhere" until normal operations can be resumed.
For the types of businesses discussed, there is an imperative need to continue normal operations as fully as possible during the period of time necessary to repair physical damage after a fire or other loss. Extra expense insurance meets this need, for it reimburses the insured for those expenditures in excess of normal operating costs that are required to keep the business going while repairs to physical property damage are made. Examples might include the cost of renting temporary quarters and substitute equipment, the cost of overtime for employees, and any extra transportation expenses required to relocate the business.

The extra expenses that reduce a business income loss include increased advertising expenses to announce a "fire sale" or expediting expenses to speed reconstruction. If the amount spent is smaller than the revenue derived from the expenditure, the overall amount of the loss will be reduced.

**First-Party Hazardous Material Cleanup**

Another important issue in water damage claims is the cleanup. If an individual or business has experienced water damage and suspects that microbial contamination is present, the cleanup should be carefully considered. If the contamination is severe, an improper cleanup can make matters worse and increase the cost of the cleanup.

The contractor that was sent to perform the cleanup should be a certified microbial remediation specialist. The contractor should also have a supervisor present during any microbial abatement project to assure that proper procedures are followed. This is where having a consultant can help to assure that proper abatement and cleanup procedures are being followed.

**Ordinance or Law Exclusion**

A related issue to this discussion involves the Ordinance or Law exclusion. As indicated earlier, there are currently few, if any, laws or regulations dealing with toxic mold cleanup. If and when such laws are passed, this exclusion might become material to otherwise covered claims with regard to tearing down "undamaged" portions of a structure, cleaning and/or disposing of the materials, and increased reconstruction costs.

An exclusion found in most standard property coverage forms clarifies that there is no coverage for loss or damage that occurs as a direct result of the enforcement of any law or ordinance regarding construction, use, or repair of property. Nor does it cover any property that has to be torn down as required by ordinance or law, after a fire, or other physical damage loss, even if that damage is a result of an otherwise covered cause of loss.

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General Liability and Mold Contamination

General Liability Insurance and Exclusions

The current ISO CGL policy provides broad coverage for liability, but two sets of exclusions could be applicable to mold claims.

- The first is the pollution exclusion.
- The second is the series of property damage exclusions.

As we have discussed some issues in mold contamination and liability arena are the following questions:

- Is mold a pollutant?
- In these claims, has there been discharge, dispersal, seepage, migration, release or escape?

With regard to contractors working at a client’s premises, the pollution exclusion is generally inapplicable unless they bring the pollutant onto the premises, which would not be the case with mold claims.

It is estimated that as much as 25% of the earth’s entire biomass consists of molds and other fungi. In other words, molds are naturally occurring organisms, not man-made substances. At issue is whether or not the intent of the pollution exclusion, or the literal reading of the wording to a reasonable person, is to exclude coverage for a naturally occurring substance such as mold. Courts are divided in answering this question.

Whether or not the pollution exclusion applies, there are several other property damage exclusions that could certainly preclude coverage for claims of legal liability, regardless of the cause of the damage that creates that liability.


Property Damage

For example, the following exclusionary excerpts could apply to any liability claim, including mold claims:

- Damage to Property, which includes the following:
  - property an individual owns, rents, or occupies
  - premises he sells, gives away or abandons, if the property damage arises out of any part of those premises
  - that particular part of real property on which he or any contractors or subcontractors working directly or indirectly on his behalf is performing operations, if the property damage arises out of those operations
  - that particular part of any property that must be restored, repaired or replaced because his work was incorrectly performed on it

- Damage To Work which includes:
  - Property damage to one’s work arising out of it or any part of it and included in the products-completed operations hazard

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on the insured’s behalf by a subcontractor.

- Damage To Impaired Property Or Property Not Physically Injured
  - Property damage to impaired property or property that has not been physically injured, arising out of a defect, deficiency, inadequacy, or dangerous condition in an individual’s product or work
  - a delay or failure by the insured or anyone acting on his behalf to perform a contract or agreement in accordance with its terms

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to an individual’s product or work after it has been put to its intended use.
Pollution Exclusion

Potential damages and liabilities resulting from the illegal or unintended release into the environment of hazardous substances can be divided into three major categories:

- fines and administratively mandated cleanup costs
- common law (tort) actions by third parties affected by illegal or unintended releases
- damages to property or operations experienced directly by a firm as a result of its release of hazardous substances

Property insurance protects a business’s interest in physical property against loss or the loss of its income producing abilities. Under this general heading are particular property coverages, such as fire or theft.

Comprehensive general liability insurance protects a business against all legal liability not specifically excluded. Such coverage includes injury to other people or the property of others.

Based on these differences in coverage, property policies are also referred to as “first party” policies while comprehensive general liability policies are referred to as “third party” policies.

Most property and comprehensive general liability coverages contain an explicit “pollution exclusion.” This standard provision excludes any coverage for damages or liabilities resulting from the use or release of pollution, including hazardous substances. The pollution exclusion is a series of exclusions to limit coverage for costs and liabilities related to pollution, including costs and liabilities resulting from the use or generation of hazardous substances.

Absolute Pollution Exclusion

After previous efforts to limit coverage for damages and liabilities related to use or generation of hazardous materials proved unsuccessful in the courts, the insurance industry trade organization introduced the “absolute pollution exclusion” in 1986. This exclusion states that an insurance policy containing the exclusion does not apply to injury or damages resulting from “discharge, dispersal, release, or escape” of various hazardous substances “whether or not such discharge, dispersal, release, or escape is sudden or accidental.

This absolute pollution exclusion applies to:
on-site property damage
common law (tort) claims for bodily injury and property damage
the major federal and state legislation establishing liability for management of hazardous substances and for clean-up of hazardous waste sites

While state courts have generally supported this exclusion, some cases alleging coverage under comprehensive general liability policies have been decided in favor of the policyholders. The causes for such findings are specific to each case. However, some ambiguity remains regarding whether coverage exists under comprehensive general liability policies for liabilities resulting from use or generation of hazardous substances.

**Liability of Damages by Hazardous Substances**

By virtue of the “pollution exclusion,” property coverage usually excludes on-site damages resulting from the use or generation of hazardous substances. However, use or generation of hazardous substances can significantly influence claims allowed under conventional property insurance. For example, fire risk can be reduced by elimination of hazardous substances that are explosive or flammable. Many businesses are not aware that reducing the use of flammable products or improved environmental management may qualify them for a reduction in their conventional property insurance costs.

Special coverages have been developed for the potential costs and liabilities targeted by these specific exclusions. The most significant of these coverages is environmental liability coverage, some versions of which also include coverage for property owned by the insured and for liability incurred by the insured in the transport of hazardous substances. Specific environmental property coverages may cover a range of damages resulting from use or generation of hazardous materials, including loss in value of the property, interruption of business activities, and cleanup costs.

Buyers and sellers of commercial and industrial properties to protect against possible clean-up costs resulting from historic site contamination purchase the major portion of environmental insurance. Such coverage has only a very limited impact on current or future use or generation of hazardous substances.

A reduction in use or generation of hazardous substances can significantly reduce routine health costs and may result in reduced health insurance premiums. However, such reductions are seldom, if ever, granted prospectively. Third party health claims are not covered under conventional health insurance. Because of the pollution exclusion, off-site health claims are not usually covered under comprehensive general liability.
policies. They are covered under most environmental liability policies. Most such policies specifically exclude coverage of employees of the insured.

The Court of Appeals also stated that insurance policies generally require "fortuity" and thus implicitly exclude coverage for intended or expected harms. Thus, the requirement of a fortuitous loss was a necessary element of insurance policies based on either an "accident" or "occurrence." The insured, therefore, had the initial burden of proving that the damage was the result of an "accident" or "occurrence" in order to establish coverage where it otherwise would not exist. Only once such coverage has been established, the insurer then bore the burden of providing that an exclusion applied.

**Bodily Injury and Property Damage**

Pollution can harm both persons and their property. This coverage section pays for damages sustained by parties other than the insured for property damage and bodily injury caused by pollution for which the insured is liable. Damages may be personal injury damages such as pain and suffering, including mental anguish, and medical costs sustained to treat such illness. Damages may be costs incurred to replace or repair another’s property damage resulting from a pollution incident.

**Clean-Up Costs**

This policy pays for the costs an insured business must incur to address contamination and comply with environmental laws – whether the pollution was just released or was latent and just discovered. Costs such as investigation, removal, treatment and monitoring of pollution conditions are insured.

**Legal Defense Expense**

This coverage section pays for the insured business’s legal costs incurred as a result of defending or settling a liability dispute for pollution whether claims are made by private third parties or the government. Insured costs include attorney fees; expert and witness fees; court costs, charges and expenses; costs of bonds to release attachments; costs of appeal bonds; and pre and post judgment interest.
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Professional Liability and Toxic Mold

Definition of Professional Liability

A common definition provides that “a professional is an individual who, in the process of following and practicing a chosen field, performs services or supplies goods or advice involving the utilization of special knowledge or skills.” In general, civil statutes or administrative rules define and limit with great specificity the prescribed parameters in which a given profession may operate and how that particular group of activities may be undertaken in the performance of services or the provision of goods for consumers.

These regulations include licensing and oversight by legislative or industry-specific boards or committees. Once licensed, the professional must practice his or her profession properly and in compliance with all statutory duties, obligations, standards, rules, and regulations. It is the breach of these specific duties and rules that subjects the real estate professional to both civil and administrative liability.

Professional “malpractice” involves both intentional and negligent misconduct on the part of the professional in the course and scope of performing professional services for clients. The causes of action asserted against professionals tend to be a cross between contract and tort causes of action, frequently asserted as a combination of causes of action with interwoven facts and elements. Intentional actions involve violations of common law and/or statute and may be characterized further as misrepresentation, fraud, or deceit. It is understood among legal professionals that intentional conduct is harder to prove, yet once proven, will result in the greatest professional and personal exposure both in terms of fines and monetary damages.

Professional “negligence” involves a different set of legal issues. The elements of negligence are the following:

- a duty of care
- breach of this specific duty
- proximate causation
resulting damage

The plaintiff must prove, within the parameters of the particular burden of proof for the jurisdiction in question, the presence of all four elements.

**Professional Liability Exposures**

Fear of toxic mold has created a storm of environmental damage claims with unprecedented frequency and severity. By fact, history and circumstance, risk advisors have been positioned to be the insurer of last resort for the uninsured environmental and toxic mold claims of their clients.

Damages from toxic mold have created unprecedented professional errors and omissions loss exposure for insurance and risk management advisors. Toxic mold claims are much more frequent than either asbestos or superfund claims. Insurance companies have taken the lessons learned from their dismal experience with asbestos and superfund claims and have moved proactively to exclude mold claims from all property and liability policies.

Over the past few years, allegations of damage arising from the presence of toxic mold in buildings have resulted in the filing of hundreds of lawsuits for property damage and/or personal injury. Plaintiffs, many of whom are seriously ill, are suing building owners, property managers, architects, contractors, and commercial and personal lines insurers for millions of dollars – and winning.

Personal injury and property damage claims related to mold exposure are increasing at lightening speed. Engineers, developers, landlords, contractors, subcontractors, architects, property owners and managers, insurers, and others need to quickly evaluate how they can proactively manage the risk associated with potential future claims of mold infestation.

**Professional Liability Underwriting**

To completely shut the door on their exposure to toxic mold claims, the professional liability underwriters are adding mold and even new pollution related damage exclusions to insurance agents’ professional liability policies. With insurance available to cover environmental damages, including covering mold as a pollutant on commercial accounts and the availability of buy backs for mold damages on homeowners insurance policies, the professional liability underwriters wisely did not want to become the insurers of last resort for the mold and pollution loss exposures the risk advisors were negligently leaving unaddressed in their customer base.
The new mold and environmental related damage exclusions on the risk advisor’s professional liability policies are unusually onerous. Not only do they exclude claims for current activities, they exclude everything the advisor has done in the past that leads to an uninsured claim today. The professional liability insurance policies purchased by insurance agents, brokers, and consultants cover the claims made against them during the policy period for professional errors and omissions. Each new professional liability policy purchased usually provides coverage for the new errors, acts, and omissions made during the policy period, plus all of the prior acts of the insured. The new professional liability exclusions will also exclude everything the advisor has ever done in the past to leave a client unprotected for environmental and mold losses.

Another concern with design professional’s liability insurance is whether the policy is a “claims made” or an “occurrence” policy. “Claims made” policies cover only those claims made during the policy period, regardless of when they arose. “Occurrence” policies cover claims that arose during the policy period, regardless of when they are made. It is not uncommon for owners to require design professionals to have errors and omissions coverage during a project, only to find that the coverage has been dropped by the time the claim arises, leaving the owner with nothing to fall back on.

**Professional Errors and Omissions**

As tens of thousands of property owners seek insurance recoveries to pay for expensive mold remediations, mold exclusions on new homeowners and property insurance policies are destined to force the transformation of many first party insurance claims into a new wave of liability claims against potentially liable parties. These property damage and personal injury liability claims will also likely be excluded by mold exclusions in the new liability insurance policies purchased by the defendants.

Ultimately a significant number of these uninsured mold claims will find their way to the insurance advisors in the form of professional errors and omissions claims for leaving their clients uninsured for mold related damages. There is specialty environmental insurance and homeowner insurance to cover mold related damages available in the insurance market place.

However insurance agents, insurance brokers, risk management consultants, and lawyers that advise their clients on risk management issues have largely ignored these specialty insurance products in the past. The historic apathy of risk advisors towards environmental insurance in general (and mold insurance products specifically) will leave tens of thousands of future mold damage claims unnecessarily uninsured.
Categories of Professional Expenses with Mold

Real Estate Agents Liability

Traditionally, the three most important economic considerations for any purchaser or investor regarding the acquisition and/or development of improved real property, whether retail, commercial, single family residential, multifamily residential, or industrial, have been location, location, and location.

However, from 2000 on into the foreseeable future, a strong argument can be made that across many areas of the United States that the three most important economic considerations in the acquisition and/or development of improved real property are:

- Is there a current or past history of water intrusion events “occurring” in any enclosed portion of the building structure?
- Has the failure to address these water intrusion events in a timely, adequate and effective manner produced conditions “conducive” to the amplification of microbial growth?
- Are there active reservoirs of microbial growth producing measurable quantities of airborne contaminants of a type and amount not found in the external environment and containing toxic agents?

As the field of toxic mold litigation further expands and develops, more real estate professionals are being drawn into this legal conflict. At this point, no one can predict with any degree of certainty where toxic mold litigation will end. It is important for the real estate professional to (1) understand that the two most likely sources of liability exposure relating directly to toxic mold in his practice are professional malpractice and negligence and then (2) take steps to minimize this liability exposure.

The rules, regulations, and case law governing both the acts and omissions of real estate professionals vary widely across jurisdictions. The industry professional should engage an attorney competent in his or her geographic area of practice in the event litigation is anticipated or undertaken. Certain steps can be taken prior in the performance of these professional services that may reduce, limit, or prevent legal liability exposure. Attorneys familiar with contract and tort law in a specific locale should be engaged by the real estate professional to draft these concepts into the professional services contract used by the industry professional.

Just as the three most important considerations in the acquisition and/or development of improved real property were location, location, and location, a new list should be proposed in light of current developments in mold litigation.
Real estate brokers/agents, inspectors, and appraisers should keep these three things in mind when they are involved in a real estate transaction:

- **Disclosure, Disclosure, Disclosure.** Unless the professional directly or indirectly contributed to the mold problem in some form or fashion, the greatest liability exposure in many cases results from failing to report a condition or fact known and then trying to disclaim knowledge of these facts.

**Landlord Liability**

There are no federal or state environmental laws that require an office building, home, or any other building to be mold-free. Landlords do often have a state law legal obligation to provide habitable housing to their tenants.

**Employer Liability**

The U.S. Environmental Protection Agency and most state EPA agencies consider serious mold infestation in the workplace to be an EPA health and safety violation by an employer. Mold in the workplace that is ignored by an employer aware of the mold problem is a safety violation under the OSHA law (U.S. Occupational Safety and Health Administration and its corresponding sister state OSHA agencies).

It is illegal for an employer to fire an employee who reports safety and health violations to the health department or OSHA. If an employee is fired for being concerned about his environmental health in the workplace and taking action to test and to report environmental problems, he could win a large financial judgment against his employer because of such wrongful job termination.

**Building Contractor’s Liability**

Usually contractors purchase builder’s risk insurance to cover possible property damage while the project is under construction. However, sometimes the policy includes the owner as an “additional insured,” thus providing additional insurance. The Polk County, Florida courthouse was one of the first “sick building” cases in the United States. The courthouse was riddled with mold resulting from water leaks through the walls and windows and HVAC defects.

The county was named as an additional insured on the general contractor’s builder’s risk policy. The county sued the architect and the general contractor for design and construction defects; it also sued the builder’s risk insurer for breach of contract for denying its claim. After settling with the contractor and the architect for $12.8 million, the
county went to a jury trial against the insurance company and obtained a $25.9 million judgment. The case was settled on appeal.
Workers’ Compensation and Toxic Mold

Workers’ compensation refers to the money or benefits provided by an employer to an employee who is injured on the job. Whether the employer pays directly or through insurance, the money is used to defray medical costs and recompense lost wages. Workers’ compensation benefits are awarded regardless of fault or negligence.

Workers’ compensation is most often used when an employee is hurt in a specific incident, such as a fall or other accident. Still, the system is not limited to injuries sustained in accidents. Illnesses or injuries incurred through participation in a normal, daily work environment or routine, such as repetitive stress injuries or problems from long-term exposure to toxic chemicals, may also qualify for benefits.

These are only sometimes covered. Employees who suffer from job stress or job-related depression cannot usually rely on benefits from workers’ compensation for assistance. If, however, a specific, traumatic event is witnessed or experienced on the job, and it leads to mental or emotional problems, the employee may be able to receive compensation. For example, a cashier robbed at gunpoint while on duty may be entitled to workers’ compensation if he or she needs psychological treatment or counseling after the event.

An employee is eligible for workers’ compensation benefits if his or her injury occurs while working or stems from the nature or responsibilities of the job. The employee is responsible for demonstrating that the risk of harm was increased by being at work or by performing job functions. Risks generally fall into one of the following categories:

**Risk directly linked to employment** - A factory worker whose hand is caught in a machine and injured would not have been hurt if he had not been working. His job was the only reason his hands were near the machine.

**Personal risk** - An employee who develops adult-onset diabetes after years of smoking, neglecting to exercise, and choosing a poor diet is usually not eligible for benefits, because the risks and injury were personal rather than work-related.
Neutral risk - These cases are the most difficult, because the contributing factors are either mixed or unclear. Examples include a lifeguard who develops heatstroke while on the job, a teacher assaulted by a parent after school, and a person injured at work during an earthquake or other natural disaster. In addition to increased risk, the employee must prove that the injury took place during the course of employment - meaning not only that he or she was employed by the company at the time but also that the location and activity being performed were connected to employment. The injury does not necessarily have to occur during normal work hours to merit compensation.

The Risk of Mold Exposure

Mold has been a high profile topic, primarily focused on property and liability issues relating to allegations of construction defects and building maintenance because of the potential for large awards. With the increase in media coverage and growing public awareness of the supposed health risks associated with exposure to mold, workers’ compensation claim activity alleging exposure to mold is likely to increase.

Mold grows nearly everywhere and plays an important function in the ecosystem as a biodegrader. However, with recent increased publicity, the insurance industry has seen mold claims grow at a rapid rate. From 2000 to 2001, claims costs increased five times. In Texas alone, mold claims increased 548% during this same period.

Four main factors contribute to the increased awareness of mold:

- More energy-efficient construction breeds a perfect environment for mold to proliferate.
- Although there is debate whether mold causes adverse health conditions in the masses, it is known that allergy and asthma sufferers are posed with a higher risk when exposed to mold. It is important to note, however, that it is nearly impossible to determine how much mold is acceptable because the sensitivity to mold varies from person to person. Also, the Centers for Disease Control has no set standard for indoor mold levels. Several multimillion-dollar settlements have been awarded to the plaintiff.
- There has been an increased focus on mold by the media.
- The insurance industry has responded by limiting coverage to control its exposure. Some of these changes include the development of limited coverage buy-back and mold exclusions. Exclusions have been developed in both personal and commercial insurance, especially in the area of construction defects.

Sometimes called Sick Building Syndrome, Occupational Asthma can have many causes depending on where an individual works. Part of the problem is the way new buildings are built. To be energy efficient, new construction concentrates on sealing and
isolating the internal environment from the external environment. The savings in heating and air-conditioning costs are offset by concentrating the outgassing of carpets and building material. Poorly maintained and filtered air-conditioning/heating ducts support asthma triggers like mold, spores, and dust mites. Air handlers and poorly designed ventilation systems circulate chemicals used in one place throughout the building.

**Employers and Mold Contamination**

Mold has become a huge problem – not just for homebuilders and apartment owners, but for employers as well. Employees are bringing workers’ compensation claims, and lawsuits and employers are being forced to relocate offices, often leaving furnishings behind. Some states have adopted new regulations requiring employers to take steps to prevent employee exposure to mold, and even stricter mold regulation may be on the way.

Mold is a generic term for the types of fungus that can grow on structural surfaces, or within organic materials, generally in the presence of moisture, and includes mildew. According to the U.S. Environmental Protection Agency, there are many types of mold, and all have the potential to cause negative health effects if left unchecked.

Molds produce tiny spores that reproduce. Mold spores waft through the indoor and outdoor air continually. When mold spores land on a damp spot indoors, they may begin growing and digesting whatever they are growing on in order to survive. There are molds that can grow on wood, paper, carpet and foods. When excessive moisture or water accumulates indoors, mold growth will often occur, particularly if the moisture problem remains undiscovered or unaddressed.

There is no practical way to eliminate all mold and mold spores in the indoor environment; the way to control indoor mold growth is to control moisture.

The headlines reporting the closure of schools, government buildings, and other public places because of the presence of mold are becoming more frequent and commonplace. These stories often include reports of the physical ailments among groups of employees working in these buildings and the filing of workers’ compensation claims and in some instances lawsuits. The issues relating to workplace exposure to mold and workers’ compensation are varied and complex and include such things as causation; challenges to the exclusive remedy doctrine; the potential for a large number of claimants from one employer; subrogation; and overall workplace panic and hysteria.

In general, for a workers’ compensation claim to be compensable, the injury or occupational disease must arise out of and in the course of employment and there must be a causal relationship between the individual’s symptoms or condition of ill being and
their employment. The test for causation varies from state to state but generally requires that the claimant prove that the work-related activity or exposure caused or contributed to the claimant’s medical condition as a matter of medical fact.

**Mold in the Work Environment**

Experts have identified two types of problems molds can present in the work environment.

- Employees exposed to airborne mold spores (or mycotoxins related to molds) may suffer a variety of adverse health effects. Health effects are of increasing severity, ranging from relatively mild allergic reactions similar to hay fever, to aggravation of asthma, and, in rare cases, hypersensitivity reactions or an invasive infection by some mold species. The likelihood of lost work time increases with the degree of infestation of the work environment by molds.
- If mold colonization is not curtailed by cleaning in its early stages, heavy infestations can physically damage the surfaces they infest such as carpeting, walls, and other structural components of a building. Such damage could require costly remediation procedures.

In recent years, mold has become a serious and frustrating issue for businesses, schools, and homeowners. An increasing number of employers and business owners have been forced to face unanticipated environmental health and safety issues as a result of mold growth and infestation. In some cases, the fact that a problem exists may not manifest itself until mold growth is pervasive in the workplace.

Employers and business owners may face a multitude of issues as a result of mold growth and contamination in commercial buildings, including the following:

- negative impacts on the health of employees
- Sick Building Syndrome
- other structural damage issues
- the expense of investigation
- environmental testing and/or remediation
- legal pitfalls and litigation
- negative publicity

**Sources of Entry into the Body**

Moisture in the workplace environment may result from improper ventilation, flooding, steam, high humidity, and leaks in roofs, pipes, or windows. Indoor mold feasts upon dead moist organic matter, including wood, paper, dust, and fabrics. When these
conditions exist, mold produces seed-like spores that are tiny enough to spread through the air and multiply.

Even if mold is not readily visible, you may notice a mildew, musty, or earthy smell. Mold growth may be found on or under carpets, ceilings, walls, floorboards, behind wallpaper, in crawl spaces, or in heating, ventilation, and air-conditioning (HVAC) systems. In cases where mold growth transpires in areas that are not readily visible and where odors are stifled, the first hint that a mold problem exists may come from employee health complaints.

Most people have no reaction to mold exposure. However, individuals with higher levels of sensitivity may exhibit symptoms as a result of mold exposure. Those most likely to suffer symptoms include the following: infants and children, the elderly, diabetics, pregnant women, those with allergies or existing respiratory conditions such as asthma or lung disease, and those with already compromised immune systems such as AIDS patients, leukemia patients, organ transplant recipients, and those receiving chemotherapy.

Most symptoms are temporary. When the individual leaves the mold-laden environment, symptoms diminish or vanish. The most common symptoms include allergic reactions, allergic sinusitis, aggravated asthma, and headache. Less common yet reported symptoms include: fatigue and lethargy, muscle aches, fever, difficulty concentrating and memory loss, and mood changes.

Mold has also been blamed for structural damage. When the right environmental conditions exist, mold growth may cause wallpaper and floor boards to buckle or cause wood and other cellulose building materials to disintegrate. Mold-related contamination and disintegration of interior building structures is commonly referred to as “Sick Building Syndrome,” particularly when structural damage is coupled with physical harm to building inhabitants or occupants.

**Loss Control to Reduce Mold Exposure**

The National Institute for Occupational Safety and Health (NIOSH) is currently conducting a study to determine if indoor mold is a genuine health threat causing work-related respiratory illness and other health ailments. NIOSH has selected several buildings across the country for testing. Buildings selected for the study have an unusually high number of workers that are sick. NIOSH investigators are taking air and dust samples from workstations and work areas in the selected buildings. Building workers are also asked to complete a medical history questionnaire and to participate in allergy and lung function tests. The goal of the study is to determine if there is a cause and effect relationship between indoor air quality and the increased incidence of
occupational asthma and respiratory ailments. It will be some time before NIOSH completes the study and makes its findings known.

Training to Identify and Control Mold

A business should develop a plan to control moisture in its workplace. There are several resources available, such as Building Air Quality: A Guide for Building Owners and Facility Managers, developed by the U.S. Environmental Protection Agency and the National Institute for Occupational Safety and Health (NIOSH).

Inspection Procedures

A team should be appointed to survey the workplace for signs of the following:

- exterior water intrusion
- leakage from interior water sources
- other uncontrolled accumulation of water

They should clean mold from hard surfaces with water and detergent and dry completely. The employer should provide appropriate training and personal protection equipment before doing so. If the workplace has biological contaminants (including mold), chemical pollutants, or particles, a more complex building air quality management plan may be necessary.

An employer should train employees to recognize the signs of mold, exterior water intrusion, leakage from interior water sources, or other uncontrolled accumulation of water, and report them to supervisors.

As with most issues that arise in the employment environment, prevention is key. Unfortunately, many employers and business owners overlook or ignore potential issues until they become problems. As a result, these employers and business owners face legal consequences, the expense of remediation, publicity nightmares, and human resources complications that could have been avoided.

Instead, employers and business owners should perform informal inspections of their premises on a regular basis. Leaks and water damage should be addressed as soon as possible. HVAC and other ventilation systems should be cleaned and serviced periodically. Employee complaints and comments regarding health concerns should be taken seriously. When mold is found, it should be cleaned up as soon as possible in a manner that protects employees, building occupants and visitors. As with most problems that arise in the employment environment, a little prevention can go a long way.

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Regulations and Standards

At this time, there are no federal statutory or regulatory standards regarding levels and limits on exposure via physical contact and inhalation. Congress has considered enacting legislation that would begin to study the effects of mold and to consider the viability of implementing programs and standards to address mold in various indoor environments.

As explained by the New York City Department of Health, “susceptibility varies with genetic disposition, age, state of health, and concurrent exposure. For these reasons, and because measurements of exposure are not standardized and biological markers of exposure to fungi are largely unknown, it is not possible to determine ‘safe’ or ‘unsafe’ levels of exposure for people in general.”

As of May 2003 three states have enacted statutes, and nine states have proposed legislation since January 1, 2003, to deal with mold-related issues. The Maryland and New Jersey State Legislatures recently passed resolutions that direct State officials to study the effects of various types of mold and the impact on indoor environments. Connecticut, New York, and Massachusetts have proposed legislation that currently sits in legislative committees. California is the only state to have enacted legislation that over time will establish actual standards for assessment, exposure limits, and remediation.

The proof issues for determining compensability in mold exposure claims are the same as the proof issues for claims alleging “sick building syndrome” and multiple chemical sensitivities. In cases where the compensability of claims alleging sick building syndrome or multiple chemical sensitivities has been denied, the courts have reasoned that since there is no specific diagnosis attributed to the sick building or chemical exposure, there is no definitive cause and effect relationship. The employee’s symptoms are considered to be an ordinary disease of life.

Since there are conflicting reports from the medical community as to the relationship of the exposure to certain molds and health problems, the same cause and effect issues for occupational exposure versus ordinary disease of life exist for workplace mold exposures. Other possible exposures to mold outside the workplace, such as in the home, are likely to be an issue in those cases.

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**Exposure Versus Injury**

Another issue to consider is exposure versus injury. An employee merely exposed to mold would not be considered to have suffered a work-related injury in most states. Exposure does not equate to injury or occupational disease if no medical condition results. There are no easy yes or no answers on the compensability of workers’ compensation mold claims. Each case has to be judged on its own merits and in some instances be subject to interpretation by the courts on a state-by-state basis.

**Exclusive Remedy Protections**

Alleged workplace mold exposures could pose threats to the exclusive remedy protections in those states where the workers’ compensation statute contains exceptions to the exclusive remedy rule such as for “intentional tort,” “willful and wanton gross negligence,” and “deliberate act of the employer.” Whether or not an employer’s knowledge of and/or failure to act in remediation of mold on its premises would circumvent the workers’ compensation exclusive remedy protections for the exceptions provided by the workers’ compensation statutes would have to be determined by the courts.

Because mold in office buildings and other places of employment has the potential for affecting numerous employees in a given location, it creates a situation that could lead to large numbers of employees pursuing workers’ compensation claims and/or suing their employer for damages for alleged physical, mental, and emotional injuries. Although many of these claims may subsequently be dismissed because of the causal relationship issues mentioned above, insurers still have to deal with increased claim frequency and in some instances claim severity and associated claim costs from classes of employees not typically considered to present a high risk of injury or exposure. The cost of defending against such claims, even if not compensable, could be substantial.

**Other Potentially Liable Parties**

With the increased public attention on toxic molds, employees are also looking to other potentially liable parties. The employee may pursue benefits under workers’ compensation as well as file suit against building owners, maintenance companies, and building contractors for construction defect or faulty building design. In cases where workers’ compensation benefits have been awarded and an action is pursued against some third party, the employer may have an opportunity for recovery of compensation benefits paid pursuant to the subrogation provisions under the workers’ compensation laws. In some instances, where groups of employees have been affected, class action suits have followed.
**Explosion of Litigation**

Over the past few years, allegations of bodily injuries and property damage arising from the presence of toxic mold in buildings have resulted in an explosion of litigation across the nation. Plaintiffs in toxic mold litigation are pursuing building owners, property managers, architects, and contractors including roofers, plumbers, waterproofers, and heating and ventilation and air conditioning contractors. In several cases, plaintiffs are also directly pursuing defendants’ insurance companies. Employees are also litigating against employers in states where they can get around the Workers’ Compensation exclusive remedy provisions.

In addition to compensatory damages for bodily injuries and property damage, plaintiffs in these cases may also be seeking medical monitoring costs and relocation expenses under such causes of action as strict liability, negligence, breach of warranty and or/contract, misrepresentation, and mental anguish. Many of these cases also involve allegations of construction defects as the initial cause, or a contributing cause, of the mold’s presence and growth.
The Basis for Claims

The harm caused by mold can be costly, both in terms of human suffering and property damage. People exposed to indoor toxic mold may experience allergic reactions, respiratory illness, emotional distress, and other problems such as fatigue, dizziness, nausea, asthma, and even brain injury. Mold may also damage homes, apartments, and commercial and public buildings by making them unsafe places in which to work or live.

If an individual suffers from toxic mold exposure in the home or workplace, he may have damages for medical injuries and emotional distress. Personal injuries and property claims may be based on the following:

- construction defects
- decreased property value
- the loss of a living space
- the interruption of a business that takes place in a mold-contaminated building
- the cost of mold remediation
- unfair business practices
- failure to disclose the presence of mold
- negligence or fraud
- bad faith claims by homeowners and commercial property owners against their own insurance companies for failing to promptly and fairly process claims

Common defendants in mold cases include the following:

- contractors
- builders
- landlords
- home sellers
- realtors
- home inspectors
- homeowner associations
Insurance companies may also be involved. In one case, now on appeal, a jury handed down a $32 million verdict in favor of a homeowner who sued her insurer for false claims handling practices and fraud.

Insurers covering property/casualty have already begun to see claims rising due to toxic mold contamination, but those providing homeowners’ general liability, personal, and/or commercial umbrella, as well as standard property lines such as commercial package and commercial multi-peril, may all be impacted.

Lawyers are already zeroing in on strict liability, professional malpractice, breach of implied warranties, worker’s compensation, and failure to disclose in the sale of property. While toxic mold bodily injury claims still face legal issues, lawyers in civil lawsuits only need a preponderance of evidence, not absolute certainty. Furthermore, exposure that may have occurred over multiple policy years raises the specter of legal limit stacking for increased litigation risk.

**Phases of a Toxic Mold Claim**

The three crucial phases of a toxic mold claim are the following:

- **water intrusion**
- **mold and fungus growth**
- **health problems**

Both the water intrusion and mold growth problems may disappear for a variety of reasons, including a change of residence or repairs to the affected areas. Therefore, a certified mold specialist should inspect the property and obtain samples for evaluation as soon as possible.

**Legislations Regarding Toxic Mold**

**Federal Law**

At present, there is no federal law that specifically addresses the issue of toxic mold exposure. In June 2002, Representative John Conyers, Jr. (D-MI) introduced the Toxic Mold Safety and Protection Act, which would have required the government to study toxic molds and to issue mold inspection guidelines. The Act would also have created a federal insurance program to protect homeowners from losses due to mold, established standards for mold testing, and required rental property lessors to conduct annual indoor mold inspections. The EPA and housing agencies would have issued regulations requiring mold hazard disclosure when a property was sold or leased.
State Legislation

The state of California has been a pioneer in enacting toxic mold legislation. The Toxic Mold Protection Act of 2001 requires the state Department of Health Services (DHS) to study the health threat posed by indoor molds and to develop standards for toxic mold exposure. Commercial and industrial landlords must remediate for mold if they know that it is present or if the premises are subject to chronic water problems or flood.

By July 2003, the DHS must adopt guidelines for mold identification and remediation and consider establishing a Permissible Exposure Limit (PEL) for mold. If a PEL is adopted, sellers of commercial and industrial property, landlords, and public entities must provide written disclosure of the presence of mold in excess of this limit.

Other states have attempted to pass legislation concerning toxic molds, but so far without much success. Nevertheless, renewed efforts to deal with this growing health issue can be expected.

Claims and Liability Issues

Third-Party Liability

Sometimes, an individual can seek and collect damages and compensation from third parties for mold property damage and mold health damage. Several such sources of third-party compensation include the following:

- **Homeowner's insurance** coverage or comparable insurance coverage on other types of buildings such as rental properties, offices, and stores. Even if an individual's policy appears to exclude mold as a covered risk, he can usually collect if he can prove that the mold damage is a direct result of an insured peril such as a sudden water pipe break, flood, or fire. One usually needs to determine a specific date that the insured peril/event happened to be successful in collecting on his homeowner's insurance policy.

- **Landlord Liability.** If a landlord has failed to provide a tenant with habitable housing by allowing a serious mold problem to jeopardize his health and his personal possessions, and by not fully, completely, and safely removing the mold contamination after the tenant’s written complaint about the mold problem, he may have a legal mold claim against the landlord for injury to his health and personal possessions.

- **Seller Liability.** If an individual has recently purchased a home or other real estate building that already has an existing mold problem, he may be able to rescind his purchase agreement and/or obtain compensatory damages from the
real estate seller to remove mold completely and safely from his home, and for compensation for replacing mold contaminated personal possessions, and for medical testing and treatment for him and his family members exposed to the mold problem.

**Claims and Property Insurance**

More and more homeowners are filing insurance claims and lawsuits over toxic mold, and insurance companies are worried the claims could overwhelm them.

**Agent-Client Communication**

While insurers should make every effort to handle claims promptly and thoroughly, circumstances may exist that would make time periods or other steps infeasible or not applicable. With every claim, the claimant and the insurer should maintain communication so that processes and steps utilized by that insurer are thoroughly and effectively conveyed to the claimant.

As an insured and potential claimant, these are some key points to be aware of when faced with water damage that could lead to the development of mold. Not all water and mold damage is covered by residential property insurance policy - coverage and limitations vary with individual policies. Whether or not water damage is a covered claim, the homeowner should take immediate action to stop the leak and dry the area to prevent mold growth that could cause further damage to his home and/or affect his family’s health.

Since molds require moisture to grow and can begin growing within 24 to 48 hours of a water event, stopping the flow of water and drying out materials as soon as possible reduces the potential for mold growth. Water damage claims that include active mold growth involve significantly higher costs than water damage claims without mold. The insurance policy allows an individual to protect his property from further damage without jeopardizing his coverage. It is important to document any repairs, keep all materials for review by the insurer, and to document expenses.

**Property Owner’s Responsibilities**

The homeowner’s duties, as outlined in most residential property insurance policies, include, but are not limited to the following:

- Give prompt written notice to the insurer of the facts relating to the claim.
- Protect the property from further damage.
- Make reasonable and necessary repairs to protect the property.
• Keep an accurate record of repair expenses.

Mold testing can be expensive and time-consuming. At this time, there are no numerical health standards to which test results can be compared, making interpretation difficult. The insurance policy may not cover mold testing, and money spent on mold testing could reduce the amount available for cleaning up the mold and repairing the home. The insurance company, however, may choose to conduct testing. If the insurance company insists on conducting tests, this should be done at the insurer’s expense and not included as part of the settlement amount.

Post-remediation testing, performed after the home is remediated, is used to determine whether remediation has been effective. This type of testing is best used only as a quality control check on the mold remediation specialist and should be done while the area is still under containment.

**Claims and Professional Liability**

The insurance industry is not alone in facing the dramatic rise in toxic mold claims and litigation. Property owner/managers, as well as builders, subcontractors, realtors, and others, are also subject to dramatic liability risks.

In 1999, more than 150 families sued their housing complex $12 billion for health complaints ranging from headaches, nosebleeds, and chronic fatigue to respiratory problems and death resulting from exposure to toxic mold.

California Superior Court Judge Elisabeth Krant took medical leave and later sued Tulare County following the discovery of stachybotrys toxic mold at her courthouse. Stachybotrys mold is considered so dangerous that it is listed as an agent of biological warfare in a military manual.

Across the nation, toxic mold awareness has increased dramatically as outbreaks have appeared in millions of US homes, offices, schools, and public buildings. Recently, California’s Governor Davis responded to the groundswell of health concerns surrounding mold by signing the Toxic Mold Protection Act, which directs state health officials to set exposure limits for homes, schools, businesses, and public buildings.

The law, which took effect January 2002, also requires landlords and real estate owners to disclose when forthcoming mold limits are exceeded. Other states are expected to follow in passing legislation, which would establish mold standards and direct the department of health to offer recommendations for toxic mold exposure limits. The message is clear:
Insurers, re-insurers, and property professionals ignore toxic mold at their peril as claims are rising, legal precedent has been set, and toxic mold legislation is being enacted nationwide.

Insurers, initially caught off guard by the proliferation of toxic mold claims and litigation, are beginning to respond with mold exclusion lines and premium hikes; a few are even pulling out of some markets completely.

While shifting responsibility for toxic mold to consumers, businesses, and builders may salve some of the insurance industry’s short-term pain, it carries the risk of not only disrupting realtor and lender markets, but also of energizing consumer groups and even legislators if citizens are left with no insurance, unaffordable insurance, or opt to walk away from homes or buildings taken over by toxic mold growth.
IX

Homeowners’ Insurance and Toxic Mold

The Homeowner’s Policy and Mold

The Homeowners-3 (HO-3)

The Homeowners-3 (HO-3) is the most common homeowners policy in the United States. The HO-3 provides broad coverage for a large number of perils. There are some limits, however, on the amount of insurance the insured has.

This coverage does not provide flood insurance. The federal government, under a program run by the Federal Insurance Administration, provides flood insurance. If the insured is in a flood prone area it may be wise to purchase flood insurance. In some parts of the country, homes can be damaged or destroyed by mudslides. This risk is also covered under flood policies.

The HO-3 provides coverage for accidental discharge of water from a plumbing system. Water seepage is excluded under the HO-3. And if the water seepage is not due to a flood the insured will not be covered under a flood policy. Problems like seepage are viewed as maintenance issues and are not covered by insurance.

Exclusions

From the insurance perspective, damage from mold, like rust, rot and mildew is specifically excluded in the standard homeowners policy. Mold contamination is covered under the homeowner’s policy only if it is the result of a covered peril. For example, the costs of cleaning up mold caused by water from a burst pipe are covered under the policy because water damage from a burst pipe is a covered peril.

But mold caused by water from excessive humidity, leaks, condensation or flooding is a maintenance issue for the property owner, like termite or mildew prevention, and is not covered by the policy. Most people routinely clean up mold before it grows large enough to become a hazard. Caught early, mold usually can be removed by a thorough cleaning with bleach and water.
While mold has been around for millennia, the number of mold claims submitted to home insurers only increased significantly in the last couple years. But if insurers are now going to be asked to pay claims for something that is not covered in the policy, the price of home insurance will inevitably rise.

If the homeowner’s coverage exclusion for mold is eroded by jury verdicts or judicial interpretations, the basic premises on which the property insurance contract is based will be reversed, and the economic consequences will be severe. To prevent this, corrective action by regulators and legislators is being considered.

**Clarifying Language**

To avoid confusion, many insurers are now inserting clarifying language in their homeowner’s policies. Some companies may decide to cover all mold claims and price the policy accordingly. Others may exclude mold, but offer an attachment to the policy, called an endorsement, that allows the homeowner to add the coverage. Still other companies may provide a tighter definition of what is and what is not covered. While some may prefer to create an absolute exclusion, most major insurers have announced some form of restriction on writing water damage policies.

Potential rate increases needed to cover the cost of mold claims threaten to make home insurance coverage unaffordable for some and unavailable for others. A crisis in the price and availability of homeowner’s coverage could have far-reaching effects on home sales and, as a result, the economy as a whole.

**The Impact of Mold upon Homeowners’ Insurance**

**Rising Costs and Rising Premiums**

Homeowner’s insurance premiums are rising dramatically. Studies show that the number of recent catastrophes, the high cost of home repairs, the aging of the housing stock and mold claims are responsible for the increasing rates. The average cost of homeowners insurance rose by about 8% in 2002 and is expected to rise by 9% in 2003.

In 2000 the average amount paid for each homeowners claim rose to $4,168, up 10.5% from $3,773 in 1999. Total homeowners losses incurred rose 22.4% from $21.9 billion in 2000 to $26.8 billion in 2001. Many factors affect the cost of homeowners insurance.

Mold damage claims appear to have increased recently, particularly in Texas and other states in the south and west of the United States where heat and humidity combine to
make fertile breeding grounds for mold. Explanations for the increase include more energy-conserving building construction that prevents moisture from escaping, changes in building materials, poor quality construction and inadequate maintenance.

**Proposed Legislation**

In response to the mold claims, federal legislation has been introduced that calls for the Environmental Protection Agency to establish:

- guidelines to identify conditions that facilitate indoor mold growth
- measures to prevent mold growth, identify acceptable levels of mold in a home, and establish professional standards for mold inspectors

The proposed legislation would also establish an insurance pool that would cover the costs associated with toxic mold cleanup for people who opt to purchase the additional coverage from the pool. Advocates of this legislation claim that this legislation would result in lower insurance premiums.

**Insurance Claim History**

The insurance industry reportedly has been canceling policies on homeowners who they characterize as having filed too many claims. Some insurers have begun investigating the property itself, and if the property has had too many claims in the past, they are declining to insure it. There have also been reports of homebuyers having their homeowner's insurance canceled after closing on a home purchase because of the insurance claims previously submitted by the seller of the home. Again, the claims that appear to be of most concern to insurers have to do with mold and conditions conducive to mold, such as water damage.

A home's insurance claim history may be obtained from the Comprehensive Loss Underwriting Exchange ("CLUE"). CLUE generally tracks claims going back for five years and provides information on the cause of loss and the claim amount.

Homeowners have the right to request a CLUE report on their own property, but buyers do not have the right to the report until they close escrow. However, buyers should consider asking sellers for a copy of the home's CLUE report before submitting an offer or during the contract inspection period. If the report will not be available until after the inspection period, a buyer can make an offer contingent upon review and approval of the report.
Mold Damage Exposures

The standard homeowner’s policy should cover mold clean up as part of water damage claim. If the water damage is covered, the mold cleanup should be covered. The cost of cleanup and remediation can run as high as $150.00 a square foot. Remediation costs can run as much as ten times as much as simple tearing out and replacement. Anything, over a 100 square feet of mold probably means the expensive remediation that uses methods like those used in asbestos removal. It is the consensus of many industry experts that mold from high humidity is excluded but if the mold is from, for example, a burst pipe or wind and water damage, the mold cleanup is covered by the policy. So cleanup from a loss that is covered should be paid by the homeowner insurance.

If water damage is the result of a covered loss, the result of water damage, mold, (including fungi, mildew, etc.), is probably also covered and must be considered in preparing the scope of damages and cost of repair. Mold may start to grow in 24 to 48 hours. This means there should have been a quick response to the water damage. Water damage not addressed in 24 to 72 hours may result in growth and spreading of mold that could be toxic.

A visual inspection is the most important step in finding mold contamination.

➢ The rule of thumb is this: if you can see or smell mold, the adjuster should take steps to have it removed.

The adjuster has to seek out and find any and all damage associated with the loss. The mold following water damage is something he should know to look for and find. If the adjuster does not have the knowledge or experience to properly handle a water damage claim -- including mold, he is obligated to get someone to help him do the job right.

The adjuster should bring in a professional restoration consultant when more than a small area of mold is found. A mid-sized area of more than 10 square feet but less than 30 square feet, requires special handling -- over 30 square or more requires a professional. If the area is more than 100 square feet, the professionals need to be trained in handling hazardous materials and have the equipment to protect themselves and the resident with special containment items and negative pressure. This will be like asbestos clean-up.

Toxic Mold and Mortgage Brokers

Mortgage lenders are grappling with insurance issues related to toxic mold that could hobble residential-lending industry. Toxic mold has already caused some major insurers
to temporarily cease writing new homeowners policies or to alter existing coverage, without which home loans cannot be underwritten.

Now, experts say, the secondary mortgage market could stop purchasing some lenders’ home loans if they deem the insurance coverage to be inadequate. That would force lenders to keep such loans in their portfolios, cutting into their bottom lines.

Some states have three homeowners policy types, commonly referred to as Homeowners A, B or C. A represents the least comprehensive coverage and C is the most comprehensive; B is the most commonly issued. The B coverage reads that all types of water damage, most of which leads to mold damage, must be covered. With mold claims increasing around the state, however, insurers have balked at that language, saying the policy should only require coverage for "sudden and accidental" water damage.

From the lenders' view, mold would become a much bigger problem if insurance became unavailable or too expensive for homeowners with existing policies. Banks have already committed to those loans. There may be some insurance companies that are out of it, but borrowers are still able to acquire insurance. Both Freddie Mac and Fannie Mae buy mortgages in Texas and California. They are huge secondary markets that sell bonds to buy huge pools of mortgages.

**Insurance Companies and Mold**

Mold is bad enough for the market to have really gone into a rather critical situation. Critical in the sense that we hear a lot from consumers who are in a situation where they need to buy a policy because they are buying or selling a house, and the lack of adequate coverage is holding up the loan transaction. Mortgage experts say the more comprehensive B or C coverage is still available from smaller insurers, but for much higher premiums. That, in turn, results in lost income for lenders.

When people see their coverage change and see their premiums go up, the first person they’re going to complain to is probably their lender, because those premiums are probably being escrowed and paid by the lender on their behalf -- even though the lender is not the one who’s changing the coverage or the premium.

According to insurance departments, water damage is the second-leading cause of homeowners’ loss. Most homeowners initially worry about fire coverage, which is the third-leading cause of loss; hail and wind damage rank first. As a result, insurance companies are pushing harder to use the same policies they use in other states. Those other policies generally don’t provide the generous water coverage offered in some state’s homeowners B policy. The insurance department said there is a request
pending from the Insurance Services Office -- a national service organization that drafts standard policy language that companies can adopt for their own use -- to bring a more standardized insurance form to the state.
Medical Insurance and Mold

Federal HIPAA Regulations and Mold Contamination

Recent jury verdicts in the millions of dollars, and attention from the news media, have made toxic mold contamination a growth industry. Companies that can expect to be adversely affected by this trend include building owners and lessors, sellers of property, realtors, building contractors, building system manufacturers, architects and engineers, construction managers, property managers and insurance carriers.

For the foreseeable future, it seems virtually certain that the number of mold cases and insurance claims will grow, although the insurance industry is quickly moving to revise policies to limit its exposure. How quickly and large the mold litigation bubble will grow will principally depend upon the ability of the scientific and medical communities to establish a causal link between exposure to mold and serious, permanent health impacts.

Compliance Deadline and Claim Submissions

On October 16, 2003, the Health Insurance Portability and Accountability Act (“HIPAA”) requires employer-sponsored group health plans and others to be in compliance with the Transaction and Code Sets (“TCS”) standards for electronic transactions adopted by the Department of Health and Human Services (“HHS”).

The federal government has been warned of potential disruption in the claim submission and payment cycles because the health care industry remains substantially non-compliant.

HIPAA’s TCS Standards

HIPAA’s TCS standards address electronic claims, remittance advice, eligibility verification, referral authorization, claims status inquiry and other transactions. The intent of these standards, and the identifiers standards for health plans and others who
use electronic transactions, is to have a single standard that replaces the many versions of electronic professional and institutional claims and other transaction formats in order to streamline, enhance and automate the transaction processes. Reduction of errors, paper claims and manual posting is forecast to result in significant savings to health plans and providers from the implementation of the TCS standards.

There are great incentives for compliance by the October 16, 2003 deadline, as Medicare is prohibited from paying claims that are not submitted electronically after the deadline. HHS may grant waivers to providers employing fewer than 10 persons and in other circumstances. After October 16, 2003, if a compliant health plan accepts a non-compliant transaction in order to avoid the cost and administrative burden of a paper claim and manual processing, it is a potential civil and criminal violation.

Claim Processing Disruption Warnings

The Secretary of HHS has been warned about the unintended consequences and adverse impacts of non-compliance, such as:

- rejection of non-standard electronic transactions
- disruption of payment flows to providers under Medicare, Medicaid and private health plans
- reversion to paper transactions

The American Hospital Association (AHA) has stated that hospitals are having difficulty getting insurers and HMOs to commit to conducting end-to-end testing in a timely fashion. Of particular concern to the AHA are:

- rejection of an entire batch of claims if one of the included claims is missing data elements (this may impact an employer-sponsored self-insured health plan's ability to process claims within the time frames required by the U.S. Department of Labor's Claims Procedure regulations)
- rejection of claims due to differing interpretations of required situational data elements for specific patients, services and health plan benefits coverage
- significantly increased administrative costs due to system slowdowns or failures

New York State Regulations

There is nothing in the New York Insurance Law or regulations that specifically restricts or otherwise addresses mold exclusions in either a property or liability insurance policy, whether issued by an authorized insurer or on an excess line basis. However, there are certain statutorily mandated coverages, such as certain types of motor vehicle insurance (including statutory automobile liability, no-fault insurance and uninsured
motorist coverage) and workers’ compensation insurance, where a mold exclusion is not permitted because such an exclusion is not specifically authorized.

While the New York Insurance Department has received over one hundred filings restricting mold coverage, the Department has not approved any of them. As the Superintendent stated on May 3, 2002, in testimony before the Joint Senate Committees on Health and Environmental Conservation Regarding the Issue of Toxic Mold, in light of the scientific uncertainty concerning mold-related damages, the Department has not yet formulated a policy position but will proceed in such a manner as to ensure that New Yorkers continue to have access to affordable and meaningful insurance coverage. In the meantime, the Superintendent has stated that the Department will not approve any limitations or exclusions for mold-related coverages until it receives information sufficient to warrant such exclusions or limitations.

**Medical Benefit Programs and Mold Exposure**

**Health Hazards Due to Toxic Mold**

Mold can produce a variety of allergenic substances, odorous chemicals, and toxic metabolites. When it multiplies and spreads indoors, high levels of mold can cause a spectrum of health effects. People are mainly exposed to mold by inhaling spores and skin/eye contact. Actively-growing mold also releases chemicals to the air which people breathe. Tolerance/susceptibility to molds varies in the population. Health impacts can vary greatly from person to person. Allergic symptoms are the most common problems such as mucous membrane irritation, rhinitis, and rashes. More severe effects such as asthma attacks, hypersensitivity pneumonitis, infections, or toxic reactions may also occur. Individuals who are more susceptible include those with:

- respiratory problems
- compromised immune system
- the elderly and the very young

**Types of Exposure**

Mold can only affect health if people are exposed to the tiny particles or chemical by-products of the mold. Exposure mainly occurs via inhalation of airborne mold products or to a lesser degree through bare skin contact with mold contaminated materials.

The health effects of indoor mold experienced by occupants are diverse; depending on the types of mold, the amounts of mold, the types and amounts of certain metabolites produced by the molds, and the susceptibility of an exposed individual. Because all of
these factors can vary considerably over time and from person to person, the extent and severity of health problems due to any specific indoor mold situation is unpredictable.

Indoor mold growth has been associated with "sick building syndrome" and with instances of building related illnesses. Nearly every type of indoor setting can host mold growth, which might affect occupants' health. Although mold is only one of many possible causes of symptoms related to poor indoor air quality, it should be considered a potential hazard to occupants whenever evidence suggests excess moisture is occurring.

The Amount Of Mold

The amount of mold that it takes to make a person sick depends on the situation and the person. It is also difficult to say how much sun is needed to give sunburn. The amount varies from person to person. What one person can tolerate with little or no effect, may produce symptoms in another similarly exposed individual. In fact, the reaction to both the amount and types of mold varies from one person to the next.

The issue is further complicated since many different molds are usually involved and each can produce different health effects. The ability of even a single mold species to produce harmful by-products depends on many factors related to the mold colony's micro-environment; for example, molds capable of producing toxic agents do not always do so. Since factors that influence a colony's growth and its release of harmful agents can change over time and vary from setting to setting, the potential hazards of a particular mold situation are not always predictable.

Inhaling Mold

Exposure to mold can occur when airborne mold cells, mostly spores, are inhaled. We breathe in these cells every day, indoors and out. Usually these exposures do not present a health risk. But when exposure is great, some individuals, particularly those with allergies and asthma, can experience illness that could be mild to serious or anywhere in between. The following is a description of the health problems that can be caused by exposure to mold.

When mold cells are inhaled and land in the respiratory tract, the body's immune system's response to those invading cells can cause allergic illness. The immune system tries to destroy the mold as it would an agent, like a flu virus, that might cause infection. In a relatively small portion of the population (about 10% of people in the U.S.), the immune system overreacts and causes the allergic response that results in symptoms such as runny nose, scratchy throat and sneezing. Most of us know this allergic illness as "hay fever" or "allergic rhinitis."
Asthma is a lung disease in which the airways that carry oxygen to the lungs can partially close, causing breathing difficulties ranging from mild (such as a dry cough) to life-threatening (inability to breathe). More than half of asthmatics have respiratory allergies, often to mold. Molds can trigger asthma episodes in sensitive asthmatics.

**Health Problems Caused by Mold**

**Allergies**

Allergies are the most common health hazard connected with indoor mold growth. An allergic reaction is a hypersensitive bodily reaction to amounts of environmental factors or substances that do not affect most people. In a large percentage of the population, the body reacts to a harmless substance as if it was harmful. In defense, the immune system produces IgE antibodies that attach to certain cells in the body. These cells then release chemicals called histamines, which trigger an allergic reaction. People who are affected by allergies have abnormally high levels of these IgE antibodies.

Allergic reactions are elicited when a substance such as mold that is not harmful in itself causes an immune response in susceptible individuals. The most common symptoms of an allergic response to increased levels of mold range from runny noses, itchy-watery eyes, coughing, sneezing, and throat irritation to more severe symptoms caused by chronic conditions such as sinusitis and asthma.

**Infection**

Some mold species can cause respiratory infection when the live mold invades the tissues of the lungs or respiratory tract. This is not a significant risk for healthy people, but can be dangerous for individuals with severely weakened immune systems.

**Asthma**

Asthma is a lung disease that can be life threatening. Asthma is a chronic, or long-term disease, which can affect an individual for the rest of his life.

Asthma causes breathing problems. The airways in the lungs get blocked, causing the lungs to get less air than normal. Symptoms of an “asthma attack” can be difficulty with breathing, a tight feeling in the chest, coughing and wheezing. Asthma can develop quickly and it can range from being a mild discomfort to a life-threatening attack if breathing stops completely. Asthma problems are often separated by symptom-free periods.
Asthma attacks can be caused by something that bothers the lungs. These are called asthma triggers. There are many kinds of asthma triggers. Two major categories of asthma triggers are allergens and irritants. Cutting down exposure to certain triggers may help in avoiding asthma attacks. When attacks occur, they will probably be less severe.

**Sinus Conditions**

When sinuses are “invaded” by mold one’s body releases a protein that not only attacks the mold but also irritates the lining of the sinuses as well. Research tells us that 40 different kinds of mold thrive in the labyrinthine sinus passages of healthy and sick people alike. In fact, fungi may be the primary cause of sinus problems. Even minimal exposure to mold can cause susceptible people to feel constantly sick with stuffy sinuses.

**Pulmonary Hemorrhage**

Very little is currently known about acute idiopathic pulmonary hemorrhage among infants. This is a newly recognized problem and knowledge is expected to be evolving rapidly. In view of the severity of the problem, environmental controls to eliminate water problems and to reduce the growth of indoor molds are wise. Until more is known about the etiology of idiopathic pulmonary hemorrhage, prudence dictates that pediatricians try to ensure that infants under 1 year of age are not exposed to chronically moldy, water-damaged environments.

**Various Symptoms**

Mold has been linked to a myriad of health conditions. Some of these are well-documented. Others are still unproven, and not accepted by many medical authorities. Most everyone has some of the symptoms attributed to mold some of the time. Mold can irritate mucous membranes of the eyes and respiratory system. Trigeminal nerve effects have been associated with mold, and have been reported to cause decreased attention, disorientation, diminished reflex time, and dizziness. Volatile compounds (VOCs) produced by mold are thought to cause headache, attention deficit, inability to concentrate, and dizziness.

It is uncertain whether exposure over time to moldy odors can desensitize an individual so they have less perception of all odors, or cause them to be more highly irritated by odors. Some molds (fungi) produce toxins or poisons. Toxic molds can suppress the immune system, or damage intestines, skin, or lungs. They can increase susceptibility to cancer. They can cause blood vessels in the skin or lungs to rupture.
Very large doses of certain molds, whether inhaled or ingested, can result in poisoning caused by toxins, called mycotoxins, in the mold cells. It is not clear whether an individual can receive a high enough exposure to mold growing indoors to experience these toxic effects.

Many species of mold produce toxic metabolites called mycotoxins which are believed to be most prevalent in spores (both living and dead spores). Mycotoxins are of special concern since some may present a greater hazard to humans than all other conditions. Symptoms of toxicosis from mold include cold and flu-like symptoms, headache, nosebleeds, dermatitis, immune suppression, etc.

**Alzheimer's Disease & Mold**

Because the effects of toxic mold (Stachybotrys) are very similar to Alzheimer's Disease it is possible that relatives and friends of toxic mold victims think that their relative's memory losses and mental diminishment are a sign of advancing age, or of the onset of Alzheimer's Disease. Medical researchers strongly believe that environmental factors help trigger what is ultimately a genetic condition. Mold contamination may be one of those environmental factors.

If someone is experiencing memory losses and difficulty in thinking, the person's home, office, and other living and working space should be tested for the presence of toxic mold and other unhealthy molds. Unlike Alzheimer's that presently has no cure, mold can be tested for and removed. The environment of people with Alzheimer's should be a mold-free environment so that the effects of toxic mold do not complicate and worsen the already deteriorating mental abilities of residents of moldy areas.

**Mold Prevention**

Mold often accumulates in the kitchen, bathroom, and basement, where moisture levels are higher than other parts of the house. In most of the United States, the regular outdoor mold season is from spring to late fall. The season lasts longer in warmer, more humid climates. Indoor mold can grow year-round and cause perennial allergy and asthma symptoms if not properly controlled.

Aside from the damage mold growth can do to furniture and clothing, airborne mold spores can cause a range of symptoms, including a stuffed-up nose, eye irritation, wheezing, shortness of breath, and fever. Exposure to common household mold has also been implicated as the main cause of fungal sinusitis. After exposure to certain mold, people with weakened immune systems are particularly susceptible to life-threatening infection from fungus.
There are four requirements for mold to grow: food, air, water, and a good temperature. Since mold will eat almost anything, there is always air available, and mold likes the same temperature as people, the only way to fight it is to control moisture. The best way to deal with mold is to dry it out, clean it up, and keep it dry.

**Mold Illness and Insurance**

While plaintiff and defense attorneys lock horns in court, insurers and their regulators ponder what will come next and how to deal with it. The situation is not helped by the fact that there have been conflicting reports from the medical community as to the relationship between certain molds and health problems.

According to some mold case experts, the health effect issue presents a vast assortment of variables. For example, a pre-existing condition might be exacerbated. Also, mold can act as both an allergen and a toxin; consequently, there are two completely different pathologies that may affect different people with exactly the same exposure.

- **Mold can also create or promote conditions that have a certain level of occurrence in a general population; in many instances, the reaction or the disease is something that also occurs without the presence of mold.**

These facts raise the following questions:

- What is the action of the disease?
- Is it one in which somebody builds up a reaction, so there’s no disease until a certain point in time?
- Should it be treated as a continuous injury type of situation?
- Is an allergy bodily injury?

Insurance carriers are increasingly searching for answers amid all the uncertainty. Such steps include:

- bringing mold experts and specially trained personnel on board
- retaining legal consultants who specialize in mold cases
- evaluating possible changes to policy language and adding mold exclusions.

**A Mold Exclusion**

There are those that believe that, particularly in certain areas of the country, it would be foolhardy not to have a mold exclusion in that the exposure is too hard to quantify and too expensive to undertake. Again, this raises questions:
• Once a mold exclusion is in place, should there be a sick building exclusion because there could be viruses and bacteria?
• In a sick building, is the problem mold or bacteria, or both?
• Or is it the toxins released by dead mold, and is this something an insured has a right to expect coverage for?

Another take on the issue is the belief that tort law often follows insurance coverage. Under this reasoning, it is held that if for some reason mold-related injuries were not covered by insurance, the development of the case law would be greatly curtailed.

Insurance and Litigation

Mold cases are extremely complicated and expensive cases to try. On the medical side alone, a veritable army of experts can be involved, including mycologists, microbiologists, industrial hygienists, occupational environmental doctors, toxicologists, immunologists, allergists and neuropsychologists. And these questions have to be considered:

✓ How much mold is required to actually sicken a person susceptible to the adverse effects of a certain species?
✓ Once you remove that susceptible person from the source of mold exposure, what are, if any, the long-term health effects?
✓ How can you be absolutely sure that a person’s symptoms are caused directly by exposure to mold?