

Insurance Policies and Claims:

Coverage, Limits & Exclusions:

2001- According to a Guy Carpenter study, approximately half of the "toxic" mold cases filed in the United States and Canada during 2001 involved alleged bad faith on the part of insurers (Insurance Information Institute, 2003).¹

August 2003- The insurance departments of 39 states had approved mold exclusions in homeowners' insurance policies.²

June 2004- Aon, the global insurance broker, said the owner of a 25-story building in Texas would pay about \$75,000 a year for pollution coverage with a cap of \$5 million (with a \$100,000 deductible), on top of its property and liability premium of \$75,000 to \$100,000. Mold coverage, if allowed, would cost an additional \$50,000. The average commercial loss for a single incident of mold is \$200,000.³

September 2004- Insurance coverage that once cost a contractor \$10,000 or \$15,000 now cost \$150,000 or \$200,000 and did not include coverage for mold or water damage.⁴

January 2005- Fearing a debilitating litigation boom, insurance companies had taken a proactive approach and more than thirty-five states, including New York, successfully lobbied insurance regulators to permit insurers to exclude mold coverage from their policies.⁵

Increasingly, liability insurance policies now contain mold exclusions, cap payments or offer mold coverage as an add-on to general liability coverage. As a result, owners are increasingly being named as defendants.⁶

April 2005- Insurers mitigated the severity of mold-related claims by excluding most mold-related losses, without the option of buying back coverage by endorsement or as a separate coverage; excluding most mold-related losses, with the option to buy back limited coverage by endorsement or as a separate coverage; providing limited coverage for mold by creating an internal policy limit on mold-related damage, and/or only covering certain expenses, such as clean-up, but excluding others, such as testing; including

¹ The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A

⁰¹ April 2005 Journal of Insurance Regulation Volume 23; Issue 3;

² Mold Contamination Cases

Anderson, Kim E 01 September 2004

Volume 49; Issue 9

³ Is mold becoming the next asbestos?

Terry Pristin

The New York Times

03 June 2004

International Herald Tribune

⁴ A growing problem; Mold, water damage and accompanying litigation hamper building industry

Melody Finnemore 01 September 2004 Northwest Construction Volume 7, Number 9

⁵ Prevention is the best medicine in mold litigation cases.

Lyons, Alan R. Shuttleworth, Mary Ellen, 05 January 2005

Volume 51; Issue 21

⁶ Prevention is the best medicine in mold litigation cases.

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mold-related losses as a coverage but increasing the policy price; and/or placing tighter restrictions on underwriting standards, such as not insuring homes with prior water damage claims or structures containing certain building materials.⁷

Insurers feared potential bad faith exposure for actions such as improper handling of claims and denial of claims that should have been covered.⁸

Typically, if mold is the actual cause of the loss, coverage is not provided. However, when mold results from a covered peril, such as a covered water loss, coverage is provided.⁹

Specifically, if the mold resulted from lack of proper maintenance or "wear, tear, and deterioration," claims are typically denied. In addition, in cases where the policy contains a pollution exclusion, insurers are denying coverage, stating that "toxic" mold is a pollutant and therefore an excluded peril (Stockenberg, 2003).¹⁰

May 2005- Some insurance companies don't offer mold coverage. Others - such as AAA Insurance - offer it but only pay under strict circumstances. "Mold is a very tricky thing," said Janice Reed, AAA customer service representative. "Our policy is to offer up to \$5,000 coverage for testing and removal." But only for mold caused by a "covered peril." That means that whatever caused the mold has to be something the homeowner's policy covers.¹¹

October 2005- "The recent hurricanes have brought the financially catastrophic aspect of the mold issue to the forefront, much the same way that 9/11 highlighted terrorism liabilities for financial institutions. As insurers proceeded to exclude terrorism coverage, they simultaneously built in mold exclusions, allowing them to avoid billions of dollars in claims on Katrina and Rita damages down the line."¹²

February 2006- Randy Raynolds, deputy vice president of the Illinois Association of Realtors, said insurance companies with homeowner policies that cover mold generally limit payments between \$5,000 and \$10,000.¹³

⁷ The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
01 April 2005 Journal of Insurance Regulation Volume 23; Issue 3;

⁸ The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
01 April 2005 Journal of Insurance Regulation Volume 23; Issue 3;

⁹ The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
01 April 2005 Journal of Insurance Regulation Volume 23; Issue 3;

¹⁰ The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
01 April 2005 Journal of Insurance Regulation Volume 23; Issue 3;

¹¹ Health concerns over toxic mold increase in area
Shultz TM 22 May 2005
Lansing State Journal

¹² Mold Numbers Among Lender Challenges in Aftermath of Storms
31 October 2005 Vol. 30, No. 6

¹³ **Does mold have a hold? Any kind of water damage in a home has the potential for a growing problem**
Deborah Donovan Daily Herald Homes Writer
03 February 2006
Chicago Daily Herald

Products:

"Best's Insurance News" claims more insurers are offering products since the legal environment improved. "There are more insurers that have gotten more comfortable with the science around the mold issue and how to underwrite it more properly"¹⁴

There are policies out in the marketplace for design professionals (HVAC), as well as contractors, to address their potential professional liability as a result of mold claims.¹⁵

- No-Burn Mold Exclusion Policy¹⁶
 - Originated in Wadsworth, Ohio
 - Offers a wide range of products to prevent mold before it grows
 - Seven-year No-Burn Mold Warranty covers the homebuilder for all areas treated with No-Burn MIH, a non-toxic compound designed to deny fuel for fire, as well as food for mold¹⁷
 - Warranty covers the homebuilder for up to \$50,000 in mold remediation-related costs
 - Is the only insurance-backed risk mitigation tool available
 - Open to both single-family homebuilders, builders of multi-family apartments and condominiums with eight units or less can be covered by the warranty.
 - No-Burn specialist takes care of the paperwork and the product application, even meeting with the homeowner personally to gain approval, if necessary.
 - The cost of using No-Burn is added to the cost of the construction job

- The Air Conditioning Contractors of America (ACCA) 18
 - Austin Texas
 - Announced members can now receive mold insurance coverage as part of a new Environmental Pollution Liability Policy.
 - Policy was introduced at the ACCA 37th Annual Conference & Indoor Air Expo.
 - ACCA members are eligible to enroll in the program

Claims:

General

Reports from the Insurance Information Institute indicated that while typical non-mold related claims cost approximately \$3,000 to \$4,000, mold-related homeowner claims typically cost between \$15,000 and \$30,000 (Insurance Information Institute, 2003).¹⁹

14 Broker: Commercial Carriers Gain Confidence in Mold Underwriting

21 February 2006 Best's Insurance News

15 Broker: Commercial Carriers Gain Confidence in Mold Underwriting

21 February 2006 Best's Insurance News

16 Mold Numbers Among Lender Challenges in Aftermath of Storms

31 October 2005 Vol. 30, No. 6

17 No-Burn Warranty helps builders deal with mold

Rusk, Ken 16 November 2005 Real Estate Weekly Volume 52; Issue 14

18 Mold coverage offered by ACCA Insurance Services.(Industry News)(Air Conditioning Contractors of America)(environmental insurance for members) Hall, John R. 28 March 2005 Air Conditioning, Heating & Refrigeration News Volume 224; Issue 13

19 The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A

01 April 2005 Journal of Insurance Regulation Volume 23; Issue 3;

By April 2005, mold had created a crisis in the insurance market that resulted in an estimated \$3 billion to \$8 billion in claims annually.²⁰

"Best's Insurance News" noted that underwriters were seeing a downward trend in the number of mold claims coming in, as well as the number of clients that are asking for the coverage. They believed this corresponded with a clearer understanding of the issue and less success in lawsuits.²¹

While the true cost of mold for the insurance industry is difficult to track, estimates for mold-related claims in 2002 range from \$3 billion to \$8 billion (Insurance Information Institute, 2003; Dybdahl and Lemon, 2004).²²

Arizona

Arizona has experienced increases in the frequency and severity of water-damage claims.

California

California has experienced increases in the frequency and severity of water-damage claims. For example, in 2002, water-related homeowners claims accounted for one-third of all homeowners claims in California (Insurance Information Institute, 2003).²³

Florida

Florida has noted increases in the frequency and severity of water-damage claims.²⁴

Illinois

Illinois has experienced increases in the frequency and severity of water-damage claims²⁵

20 The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
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24 The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
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25 The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
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Pennsylvania

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Nevada has experienced increases in the frequency and severity of water-damage claims²⁷

Texas

A study by the Texas Department of Insurance, released in 2002, estimated the total number of mold-related claims increased more than 500 percent in one year, rising from just over 7,000 in 2000, to more than 37,202 in 2001.²⁸

The predominance of mold cases in Texas and other states in the Southwest proved an impact on homeowners' insurance costs nationwide. The Baltimore Sun noted that during this time insurance companies had paid out \$3 billion in mold claims— more than double the \$1.4 billion paid in 2001. That, along with other issues affecting the insurance industry, had pushed up premiums.²⁹

An independent industry group estimated that between 2000 and 2002, Texas insurance companies paid just under \$4 billion in mold-related claims (Insurance Information Institute, 2003).³⁰

²⁶ The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
01 April 2005 Journal of Insurance Regulation Volume 23; Issue 3;

²⁷ The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
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²⁸ The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
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²⁹ **FEDERAL STUDY Breaking the mold**
BY EMILY BREGEL. THE BALTIMORE SUN. The Baltimore Sun is a Tribune Co.
23 July 2004 Newsday

³⁰ The Mold Crisis Cole, Cassandra R; McCullough, Kathleen A
01 April 2005 Journal of Insurance Regulation Volume 23; Issue 3;