

TOXIC MOLD

Many insureds, particularly in the construction and contracting industries, are being forced by insurers to accept mold exclusions. The wording of these exclusions vary but it is becoming more common for both property and casualty placements.

The Issue

Molds are simple fungi which have existed for thousands upon thousands of years and, according to recent publications, there are over 100,000 species of mold. Most people have developed a tolerance for mold and the overwhelming majority are not harmful. In certain cases and with certain types, however, health symptoms may develop some extremely severe. This is particularly true with the very young and the elderly.

Recently, the insurance industry has been experiencing:

1. Increase in amounts of water damage claims

Failure to provide prompt and proper remediation may result in substantial if not total loss to a building.

2. Increased liability claims

Builders, developers and property managers are experiencing increased claim activity alleging construction defects.

Employers, building owners, house and building inspection firms and real estate agents are being sued.

3. **Bad faith judgments**

Where insurers delay or deny covered claims, suits alleging bad faith have resulted in adverse judgments

4. **Class action lawsuits**

Building materials manufacturers are facing such actions. Similar actions on behalf of students and teachers in school buildings which have been infested have also occurred.

Mold Conditions

Mold may develop when the following conditions are present:

- **Moisture:** Can come from flood or water damage or leaking pipes although high humidity sufficient.
- **Food Source:** Wood, paper or other cellulose based material.

High temperatures, lack of sunlight and lack of air movement may accelerate growth.

Coverage Issues

Property

Some insurers have sought to deny coverage based on:

- a. Mold is a condition in the property and not direct physical loss
- b. Forms may include wording which excludes “fungus, decay, deterioration, hidden or latent defect” or other pollution related wording.
- c. Based on “continuous or repeated leakage of water” wording if included in form

Casualty

In the past, some insurers have looked to the pollution exclusion (most policies, both personal and commercial will have some exclusionary wording to this effect). Whether or not mold is a pollutant as defined, depends on the exact wording of the exclusion.

Adding to this, many insurers (as well as The Insurance Services Office) are developing specific exclusionary wording to address this issue either by excluding totally or introducing limitations.

One solution which could possibly develop within the insurance industry is that environmental insurers may consider providing mold and indoor air quality coverage subject to detailed underwriting information. Given the nature of the problem, this may provide the best risk transfer solution.

The Future

At the present time, this entire subject is still developing with the magnitude yet to be determined. Articles in the insurance press are alluding to this being the next “asbestos.” Whether this will come to pass and exactly how the insurance industry will respond remains to be seen.