



## The Insurance Advisors Survival Guide to Mold Exclusions

By:

David J. Dybdahl, CPCU, ARM, President  
American Risk Management Resources Network, LLC  
[dybdahl@armr.net](mailto:dybdahl@armr.net)  
(608) 513-6101 Sept. 2002

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### Mold=unprecedented risk for risk management advisors

- Hundreds of thousands of claims annually
- Loss exposure anywhere there is;
  1. Indoor air+people+moisture
  2. Builder's, contractor's, trades
  3. Owners, lessees
  4. Building products manufactures, suppliers
- Mold exclusions=pollution exclusions=most litigated words in the history of insurance

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### Relative Impact on Commercial Accounts (Mold is Bigger!)

	Asbestos	Superfund	Mold
# of firms* affected	4000	6000	10,000,000**
# of Claims	Hundreds of thousands in total	Less than 100,000	200,000 claims in 2002
\$ Exposure	\$ 20 Billion paid to date \$200 Billion next 20 years	\$26 Billion paid to date	\$76 Billion in <i>claims made</i> to date

\* More than \$100,000 in loss exposure

\*\* with mold exclusions on their insurance policies

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### Mold, new loss exposures to new classes of risk advisors

- Asbestos affected a handful of asbestos products manufactures and their insurance advisors
- The largest Superfund claims affected Fortune 1000 companies and their insurance advisors
- Mold claims will hit the middle market and their advisors, hard

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### Risk advisors, the insurers of last resort?

- Uninsured mold claims on property insurance policies will domino into liability claims for multiple defendants
- Uninsured losses = Insurance advisors Professional E&O Liability loss exposures

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### Insurance professionals face unprecedented risk

- One mold claim can evolve into multiple insurance agent/broker E&O claims
- A proposed separate mold exclusion in the Insurance Agents/Brokers E&O will leave the agents/brokers "bare" for mold related losses
- Mold loss exposure is far worse than Superfund or Asbestos for insurance agents/brokers

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## Changing the standard of Care

### LOW (never used)

- Our firm is not qualified to provide you with professional advice
- We assume no responsibility in procuring good insurance
- Do business with us at your own risk

### HIGH (often used)

- Our team of highly experience professionals will development a risk management plan for your firm

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## Duties of insurance agents/brokers to secured creditors

- Certificates of insurance must be accurate
- Acord Certificates specifically provide an area to show special conditions or exclusions
- Sophisticated banks are asking for disclosure of mold exclusions on certificates of insurance
- Insurance agents/advisors may have commom law responsibility to the bank for nondisclosure of mold exclusions

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## Risk management advice for insurance advisors

- With unreliable Professional E&O insurance for mold claims, loss control is even more important for insurance advisors
- The goal is to create a bullet proof defense of E&O claims against the agent/broker/advisor
- Solution, Make sure the client has the option to purchase coverage, and they understand the exposure

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## The unwritten rule for standard of care for insurance advisors

### Insurance advisors should

1. Advise the client of the risk they face
2. Point out coverage gaps in insurance
3. Offer appropriate insurance coverage if it is available in the market

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## Two options to provide a defense against E&O for risk advisors

### Full Disclaimer

Essentially,  
we assume no  
responsibility for  
anything we do

The disclaimer needs to  
be documented in the  
file (may not hold up)

### Full Disclosure

Essentially,  
the client makes an  
informed decision to  
insure/retain the risk

Document the file  
(Beware of poor memories, and  
lack of understanding)

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## The Four Step, Full Disclosure Defense

1. Advise of the loss exposure to mold
2. Advise of the impact of mold exclusions
3. Offer appropriate insurance, as a purchase option
4. Document the file if coverage is denied

(Remember, it is common for insurance buyers to not remember declining coverage or their reasons for declining coverage when faced with a significant uninsured loss at some point in the future)

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## What will the future bring?

- New microbial matter insurance policies will be introduced by environmental insurance underwriters
- Appropriate environmental insurance is available today which will supercharge the insurance agents E&O claims
- Lenders will be more concerned about mold exclusions
- Hundreds of thousands of insurance agents will be forced to deal with environmental insurance for the first time

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## Risk Management Advice for Insurance Advisors

- Become informed on environmental risk management, see the [www.erraonline.org](http://www.erraonline.org) website
- Implement the Full Disclosure E&O defense
- Seek Resources for environmental insurance placements
- **Do Not** ignore mold risk in the book

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