



## Insurance Coverage for Mold Claims Past, Present & Future

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Prior to the media attention, Mold  
Claims were water damage claims  
without Bodily Injury, Defense costs  
or Punitive Damages

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Why are risks associated mold create  
difficult to manage?

- No recognized standards for exposure
- Poor medical cause & affect relationship
- Losses are expensive - multi-million dollar claims are common
- Historical loss costs are irrelevant in predicting the future cost
- Insurance coverage is being eliminated

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## Is this the next asbestos crises?

### Issues are not the same

- Historical exposure is more limited
- Mold is naturally occurring
- No common exposure across a class

### Insurers reaction will mirror asbestos

- Exclusions & Non Renewals
- Mold affects ten million commercial insurance buyers!
- Introduction of new mold insurance policies

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## Common themes in insurance policy drafting

- There will be no insurance for non-fortuitous causes of loss
- There will be no coverage for "pollution" losses – pollution exclusions driven by superfund claims.

Mold claims can fall into each category

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## A Typical Contractors Insurance Program

exclusions	Affected by mold
Builders Risk	*
Property Insurances	*
General & Umbrella Liability	*
Workers Compensation	
Automobile Liability	
Insurance Agent Professional Liability	

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## Mold Coverage in Property Insurance Policies

1994 ISO Policy

**Insuring Agreement will pay for direct physical loss**

### Limitations

- Pollutant Clean Up and Removal, Limited to \$10,000
- Policy does not cover testing monitoring

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## The Definition of Pollutant in a Property Policy

**"Pollutants"** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Does mold fall into this definition?

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## Mold Coverage in Builders Risk Insurance policies

### Insuring Agreement

Pay for direct Physical Loss of, or Damage to, Covered Property

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## Limitations in Builders Risk

- Wear and tear, gradual deterioration, corrosion, rust, rot, mold, inherent vice, latent defect, insects, rodents, birds and other animals are not covered as a proximate cause of loss
- Water damage caused by freezing of water in plumbing, air-conditioning, or other systems, unless proper precautions have been taken
- Pollution, unless the release results from specified perils, subject to limitations

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## General Liability

### Insuring Agreement

Pay those sums that the insured becomes legally obligated to pay for Bodily Injury & Property Damage

Also provides for Defense Costs and Contractual Liability

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## Limitations in the GL Policy

- Pollution exclusion
- Damage to your work once completed
- A defect or dangerous condition in your work
- A delay to perform on a contract

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## Umbrella Liability Policies

Insuring Agreement mirrors those in General Liability Insurance Policies

### Limitations

Pollution exclusion offers some coverage for losses that fit certain time elements, usually hours

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## Pollution Exclusions in General Liability Policies

- In theory may not apply to mold
- In theory do not apply to losses from completed operations or products liability
- In theory were not intended to exclude mold claims

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## Troublesome words in the "Absolute" Pollution exclusion on the General Liability Policy

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste Includes materials to be recycled, reconditioned or reclaimed

Does mold fall into this definition?

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## The GL Pollution Exclusion

### f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants
- (d) At or from any premises, site of location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
  - (iii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

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## The General Liability Pollution Exclusion

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

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The new wave of exclusions on commercial and home owners insurance policies seek to either eliminate or sub-limit coverage for mold claims

These new exclusions exclude coverage for more than mold to include all microbial matter which would include anthrax.

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## Case Study I

A plumber during the construction of a new school leaves a pipe fitting loose which drips down an interior wall near an air intake. Mold begins growing in the wall cavity and is taken into the air recirculation system. The occupants of the building report breathing problems and eye irritations. Testing indicates there is toxic mold in the school.

- Remediation takes nine months.
- Alternative class room facilities need to be leased.
- Forty students report lingering side effects.

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## The loss from the event includes:

- Replacing dry wall, flooring and ceiling tile
- Extra expense of school district
- Bodily injury claims from students
- Legal defense costs

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 Maybe Covered
  Excluded
  Covered

	Property		Builders Risk		General Liability		Umbrella		Pollution Liability	
	Covered Cause of Loss	Mold Exclusion	Covered Cause of Loss	Mold Exclusion	Traditional Pollution Exclusion	Mold Exclusion	Traditional Pollution Exclusion	Mold Exclusion	Traditional Definitions	Specific Mold Coverage
Replacement Costs	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Covered
Extra Expense	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Covered
BI	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Covered
Defense Costs	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Covered
Contractual Liability	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Excluded	Maybe Covered	Covered

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## How to insure against Mold losses

- Make sure the policy specifically addresses mold as a covered loss.
- If you are reading the exclusion section of any insurance policy looking for the mold coverage , there will be trouble if there is a claim.

“No matter how well we plan, the loss will always be different than our plan”

John Marcum, Risk Manager  
Bridgestone Firestone, 1999

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## Environmental Insurance can address liability claims from mold

- Contractors Pollution Liability Insurance**
- Professional Liability**
- Environmental Impairment Liability**

Information on Environmental Insurance can be found at [www.erraonline.org](http://www.erraonline.org) .

The web site of the Environmental Risk Resources Association

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## What will the future bring?

- More claims
- New Mold Exclusions on all traditional commercial insurance policies
- Lenders will become concerned about uninsured loss exposures
- New microbial matter insurance policies will be introduced by environmental insurance underwriters
- Appropriate environmental insurance is available today

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