

Mold Risk And Insurance

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A Brief History On Mold Claims

- Mold claims exploded onto the insurance scene in 2001.
- With estimated mold losses in 2002 equaling all the losses incurred from the peril fire, insurers excluded mold related losses beginning in 2003.
- Mold was excluded faster and on a wider scale than terrorism, asbestos or pollution.
- The result is unprecedented gaps in insurance coverage for a defined cause of loss.

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What contributed to the increase in mold claims?

- Changes in building materials and techniques
- An emphasis on energy efficient buildings
- Poor craftsmanship in new construction
- Thousands of lawyers attended hundreds of "mold is gold" seminars
- There have been hundreds of thousands of successful claims, for billions of dollars

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The effect of the new mold exclusions on coverage

- The part of the loss related to mold, fungus and microbial matter is now excluded.
- Products and completed operations liability coverage is eliminated for mold related damages.
- Mold Exclusions = Pollution Exclusions = The most litigated words in the history of insurance

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100 Million Mold Exclusions Will Adversely Effect Somebody

- Hundreds of thousands of mold related losses occur annually
- There is loss exposure anywhere there is;
 1. Indoor air+people+moisture
 2. Builder's, contractor's, trades
 3. Owners, lessees, lenders
 4. Building products manufactures, suppliers

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Common Limitations In Property Policies

- 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
- Pollution, unless the release results from specified perils, subject to limitations

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New Mold "Related" Claims Exclusions In Property Policies

- Expands the traditional exclusion to eliminate coverage for consequential loss and eliminates efficient proximate causes theories for coverage of mold damages.
- This is an endorsement that supercedes other policy language.
- A policy with a mold "related" exclusion endorsement is not "All Risk" property insurance. (Every loan requires "All Risk" coverage)

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Limitations For Mold Losses In The GL Policy

- Pollution exclusion
- Damage to your work once completed
- A defect or dangerous condition in your work
- Mold "related" claims

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New Mold "Related" Claims Exclusions

- A mold exclusion in a GL policy is a total pollution exclusion for the specific pollutant mold.
- A mold specific total pollution exclusion eliminates coverage for mold claims arising from products and completed operations in addition to premises and operations.
- Mold exclusions are endorsements which over ride the preprinted policy form.

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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
But mold related claims are usually excluded by endorsement

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Case Study Mold Exclusions In Effect-Liability Insurance

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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General Liability Coverage

- No Mold Exclusion
 - Mold is not a Pollutant
 - Loss arose from completed operations
 - The insured did not bring the pollutant to the job site
- This should be a covered claim
- With A Mold Related Claims Exclusion
 - All loss was related to mold
- The entire loss is excluded

Case Study Mold Exclusions In Effect- Property Insurance

- A windstorm breaks \$100,000 of windows in a hotel. Wind driven rain enters the building. Unable to dry the building within three days mold grows throughout the building.
 - Remediation takes 6 months and costs \$500,000
 - All contents need to be replaced \$500,000
 - Business interruption \$500,000

Property Insurance Coverage

- Traditional Mold Exclusion
 - The Proximate Cause of the loss was wind driven rain.
 - Mold was an ensuing damage from a covered peril
- Therefore the entire loss \$1,600,000 is covered
- Mold Related Claims Exclusion
 - The glass is covered
 - The other damage was caused or contributed to by mold, therefore it is excluded
- Therefore only \$100,000 of the loss is covered

Obtaining Mold Coverage In Commercial Insurance

- Mold Exclusions = Pollution Exclusions
- Coverage solutions are in environmental insurance policies.
- Beware of non standardized environmental policy forms, illusionary coverage and inherently defective environmental insurance when designing insurance programs to cover mold.
- Off the shelf environmental insurance policies were not designed to insure mold.

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Using Environmental Insurance To Cover Mold Loss Exposures

- Properly structured environmental insurance fills the coverage gaps in Property and Liability insurance policies.
- Contractors Pollution Liability
- Professional Liability
- Environmental Impairment Liability

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Contractors Pollution Liability

- Insures Bodily Injury, Property Damage, Clean Up and Defense, from a release of Pollutants, arising from the insured's negligent described operations
 - Appropriate for general contractors, home builders, remediation contractors, roofers, plumbers, trades, fire restoration,ect.
- Beware of the "Your Work", "Impaired Property" and "Materials Supplied By The Insured" exclusions.

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State Of The Art In Mold CPL

- Minimum Premium \$7500
- Minimum SIR \$10,000
- Typical rates
- Restoration ½ of 1%
- HVAC 1/10 of 1%
- Mold Remediator 3%
- Home Builder? Size Matters

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Environmental Impairment Liability

- Site Specific Pollution Insurance
- Covers third party claims for Bodily Injury, Property Damage, Plus First Party No Fault Clean Up of Mold and Defense
- This policy fixes the coverage gaps created by mold exclusions in the GL and Property policies.
- This insurance is needed to comply with insurance specifications for All Risk property coverage.

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Real Estate Based Environmental Insurance- REEL/HPR/Mold

- Pioneered over the past three years by ARMOR.
- Features
 - WI based building science loss control for the building plan/as built/occupancy
 - Insures the Developer/Contractor/Owner/Lender
 - Policy is assignable, maintaining good loss control
- The absolute state of the art in new construction.

CPL versus REEL/HPR/Mold

- CPL
 - Negligence based
 - No loss control
 - Insurers term of construction - 3 yrs
 - May exclude damage to the work and from materials supplied by the insured
 - Fixes the GL coverage gap of the contractor
- REEL
 - Discovery based
 - Loss control over the statute of repose
 - Assignable to new owners
 - 10 yr policy terms
 - Fixes the GL and Property insurance coverage gaps for all the named insureds
 - Lenders need this cover

REEL/HPR/Mold Terms

- Available on all classes of commercial construction.
- Available in all territories
- \$.50-\$2.00/ per sq ft
- \$10,000,000 limits
- 10 year policy term plus a prepaid 3 yr ERP
- Minimum premium \$100,000 for \$5,000,000 limits

Mold Risk Management In Practice

- Change all lease, sale and purchase contracts to reflect mold exclusions in traditional insurance policies.
- Change all vendor contracts to ask for appropriate mold coverage..
- Just like general liability and property insurance, everybody needs their own insurance coverage for mold related damages.
- Engage building science based water intrusion loss control services. Call ARMR.Net for help on this.

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Thank you for listening !

- For information on environmental insurance and mold see our website at www.armr.net

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