



Mold Risk Management and Insurance

By:

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

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Mold is the fastest growing risk management problem in the US

- Explosive growth in claims
- Universal insurance exclusions
- Affects tens of millions of insurance buyers
- Armies of well educated plaintiffs lawyers
- Frequent seven figure judgments
- Available mold insurance is completely underutilized
- Professional E&O exclusions for mold

Where did all these claims come from?

- Prior to the new science linking mold to adverse health affects in humans, prior to the the lawyers and prior the media attention, mold claims were water damage claims without Bodily Injury and Defense costs

Water damage - to mold claims

- There are hundreds of thousands of water damage claims every year
- This frequency is not new, cannot be avoided
- One in five water damage claims could be a mold claim today
- Most hurricane and flood losses now have mold loss potential

New Claims Cost implications

- A mold remediation is ten times more expensive than a simple water damage claim
- Loss of Use
- Bodily Injury
- Insurance claims adjusting in bad faith

What contributed to the increase in mold claims?

- Changes in building materials and techniques
- An emphasis on energy efficient buildings
- New science made proving damages possible
- Lawyers attended hundreds of "mold is gold" seminars
- The press
- Thousands of successful claims, for billions of dollars

Why are risks associated mold 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
- All insurance coverage is being eliminated

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Relative claims frequency on Commercial Accounts (Mold is Bigger!)

	<u>Asbestos</u>	<u>Superfund</u>	<u>Mold</u>
# 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 <u>paid</u> to date \$200 Billion next 20 years	\$26 Billion <u>paid</u> to date	\$76 Billion in claims <u>made</u> to date

* More than \$100,000 in loss exposure

** with mold exclusions on their insurance policies

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Mold

Asbestos Superfund

- Affects tens of millions of accounts
- Recent construction has the most loss content
- Mold insurance is available on commercial accounts
- = Supercharged, uninsured E&O for risk advisors
- Affects a few thousand accounts
- Claims arose out of acts 50 years in the past
- Prospective insurance was universally unavailable
- Little E&O exposure for insurance agents/brokers

This is just a Texas homeowners insurance problem, right?

Wrong!

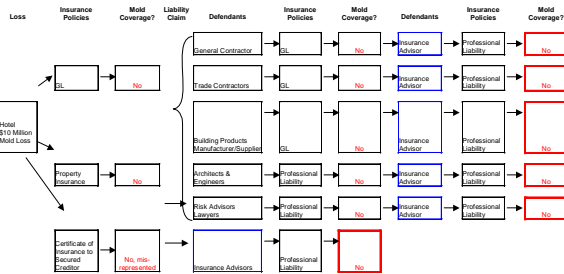
- There are mold claims in every state
- Mold grows well in places humans find comfortable
- This is an indoor air quality issue
- Mold claims can be “company busters” and unlike Superfund, they happen fast

What will the future bring?

- Hundreds of thousands of new mold claims
- New Mold exclusions on all types of insurance
- An unprecedented separate mold exclusion on Insurance Agents E&O insurance
- Uninsured Mold claims on property policies will transform into liability claims against contactors, building products suppliers/manufactures, property owners and lessees and their advisors

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Domino Effect Of An Uninsured Mold Claim from Property insurance to General Liability insurance to Professional Liability insurance



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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 when there are uninsured claims
- Lenders will become concerned about uninsured loss
- Hundreds of thousands of insurance agents will be forced to deal with environmental insurance for the first time=more professional liability loss exposures



Insurance Coverage for Mold Claims Past, Present & Future

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A Typical Contractors Insurance Program

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

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Mold Coverage in Property Insurance Policies

1994 ISO Policy

Insuring Agreement will pay for direct physical loss from covered perils

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

Pays for direct Physical Loss of, or Damage to, Covered Property arising from a covered peril

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Standard Exclusions in Builders Risk and 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
- 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? Nobody Knows!

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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
- Easily a \$10,000,000 loss

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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.
- There are no “standard” environmental insurance policies, 140 different policies .

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Environmental Insurance policies can address 1st and 3rd party claims from mold

Contractors Pollution Liability Insurance
Professional Liability
Environmental Impairment Liability

See the library on environmental insurance at
www.erraonline.org

The web site of the Environmental Risk Resources Association

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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 described operations
 - Appropriate for general contractors, home builders, remediation contractors, roofers, plumbers, trades, fire restoration,ect.
- Also covers Contractual Liability
- Training in mold prevention is usually required

Professional Liability

- Insures a negligent Professional Error Act or Omission
- Coverage is provided by eliminating the pollution exclusion and adding clean up to definition of damages
- Policies are usually only sold to degreed "Professionals"

Environmental Impairment Liability

- Site Specific Pollution Insurance
- Covers third party claims for Bodily Injury, Property Damage, Clean Up and Defense
- Can cover, Contractual Liability, Business Interruption, Extra Expense, and Non Owned Sites

Covering mold losses, what will the future bring?

- Five hundred thousand licensed insurance agents will deliver over 10,000,000 mold exclusions in 2002
- Next year, there will be at least 200,000 uninsured mold claims, \$22,500 average
- There will be one uninsured claim for every 2 1/2 insurance agents in the US

A perspective on the Insurance Agent and Broker industry

- 500,000 agents/brokers sell 10,000 environmental insurance policies annually (not including UST's)
- Less than 200 agents/brokers sell more than three environmental policies
- Environmental policies are not standardized, there are over 100 different policies
- There are limited training opportunities in environmental insurance, CPCU, ERRA, ERM

A break down in in the insurance distribution chain has already occurred

- Mold insurance is available today on commercial accounts, see attachment
- Insurance agents and brokers will find it difficult to deal in this coverage line
- Agents/Brokers will over look mold loss exposures, leaving their clients bare
- These losses will come back as uninsured E&O claims against the Agents and brokers

Advice for the future (today)

- Explore the availability of mold insurance coverage
- Advise the client, internal or external, of the mold loss exposure and coverage options
- Remember, uninsured losses are potentially career limiting for everyone involved
- Do not ignore the insurance implications of mold losses
