



100 Million Mold Exclusions Will Have A Impact On Somebody

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A brief history on mold claims

- Mold claims exploded onto the insurance scene in 2001.
- With losses equaling all the losses incurred from the peril Fire in 2002, insurers excluded mold losses beginning on 2003.
- Mold was excluded faster and on a wider scale than terrorism, asbestos or pollution.
- The result is unprecedented gaps in risk management strategies.

A Typical Contractors Insurance Program

exclusions	Affected by mold
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,
- Usually limited to \$10,000 for mold damages
- 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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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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New Mold Exclusions

- In theory 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.
- Mold exclusions are universal in personal lines, and commercial lines insurance policies.

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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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Insurance Coverage

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	Excluded	Maybe	Excluded	Maybe	Excluded	Maybe	Excluded	Maybe	Covered
Extra Expense	Maybe	Excluded	Maybe	Excluded	Maybe	Excluded	Maybe	Excluded	Maybe	Covered
BI	Maybe	Excluded	Maybe	Excluded	Maybe	Excluded	Maybe	Excluded	Maybe	Covered
Defense Costs	Maybe	Excluded	Maybe	Excluded	Maybe	Excluded	Maybe	Excluded	Maybe	Covered
Contractual Liability	Maybe	Excluded	Maybe	Excluded	Maybe	Excluded	Maybe	Excluded	Maybe	Covered

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This was an actual case

- The contractor had insurance because the occurrence predated mold exclusions by 6 months.
- Bad press about the contractor and union problems reached the front page of newspapers.
- Legal expenses and loss of reputation caused the quiet bankruptcy of the firm 3 years later.

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

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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.
- Also covers Contractual Liability
- Training in mold prevention is usually required
- Beware of the "Your Work" Exclusion

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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
- Current policies issued may or may not have mold exclusions.
- Beware, renewals of Claims Made insurance can retroactively eliminate coverage for mold or anything else.

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Environmental Impairment Liability

- Site Specific Pollution Insurance
- Covers third party claims for Bodily Injury, Property Damage, 1st Party No Fault Clean Up and Defense
- This is the preferred policy form to address mold risks in buildings.
- Can provide prefunded loss control, multi-year policies, assignable to new owners.

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Advice

- Never act with arrogance and indifference in a toxic court case.
- Remember, uninsured losses are potentially career limiting for everyone involved.
- Do not ignore the insurance implications one hundred million mold exclusions.
- Implement a comprehensive water intrusion risk management plan including separate insurance for environmental and mold risks.

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