



## Mold Risk Management and Insurance Strategies

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### Mold is the fastest growing risk management problem in the US

- Explosive claims growth in 2001-2002
- Forced universal insurance exclusions
- Tens of millions of insurance buyers are affected
- Armies of well educated plaintiffs lawyers
- Frequent seven figure judgments
- Tens of thousands of litigated claims
- Everybody is now uninsured

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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
- New science is making proving damages possible
- Thousands of lawyers attended hundreds of "mold is gold" seminars
- The press increases awareness
- There have been hundreds of thousands of successful claims, for billions of dollars

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## Why mold related risks are relatively easy to manage

- Keep water out of buildings and there is no risk.
- Unlike some other famous toxins, you can see and smell mold.
- You do not have to drill a \$5000 ground water monitoring well to see if you have mold.
- Mold does not bio accumulate up the food chain.
- Nobody passed a strict liability Superfund law for mold.
- Compared to other environmental damages, managing mold risks is easy

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## Why it is important to actively manage mold related risks

- There are no recognized standards for permissible levels of exposure. Emotions run high.
- Losses are expensive - multi-million dollar claims are common. There are billion dollar mold damage claims working their way through the courts.
- All traditional insurance coverage is being eliminated.
  1. Cascading uninsured mold claims will affect hundreds of thousands of insurance buyers.
  2. Mold claims can be "company busters" and unlike Superfund, they bring down firms fast.

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## Risk of Mold Litigation varies by State

(source, Madison Mold Hazard Ranking model)

- | • Highest Relative Risk |      | • Lowest Relative Risk |     |
|-------------------------|------|------------------------|-----|
| - Texas                 | 2.95 | - Wisconsin            | .06 |

Interpreting the Madison Mold Hazard Ranking system:

Other factors remaining equal, based on the amount of P&C insurance written in the state, there is a 49 times greater chance of becoming involved in a litigated mold damages claim in Texas than in Wisconsin.

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## Relative impact on commercial insurance buyers

	Asbestos	Superfund	Mold
# of firms* affected	4000	6000	10,000,000**
# of Claims	Hundreds of thousands in total	Less than 100,000 in total	300,000 claims in 2002
\$ Exposure	\$ 20 Billion paid to date \$200 Billion next 20 years	\$26 Billion paid to date	\$15 Billion paid to date \$9 Billion paid in 2002, \$12 incurred

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

\*\* with mold exclusions on their insurance policies

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## In relative terms - how big of a problem is this?

- In 2000, there were 505,000 fire insurance claims in the US, there were about 300,000 mold claims in 2002.
- Fire insurance claims totaled \$12.6 billion in 2000, Incurred mold related claims were about \$12 billion.
- Only \$50 million was paid for mold liability claims in 2002, compared to \$20 billion in liability claims over all.
- 100,000 mold damage claims were under \$2,000
- There were 2500 mold caused foreclosures in 2002 (estimate by Policy Holders of America)

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## Where is the mold risk management issue headed?

- Science is moving towards proving bodily injury damages.
- Total insurance exclusions for mold will trigger tens of thousands of new liability law suits.
- Foreclosures will increase dramatically, at least by 4 fold in 2004 because there is no longer property insurance to pay for the loss in 2003.
- Mold exclusions on property policies should shift \$3 billion of mold damage costs onto the banks in 2004.

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## Pollution Exclusions in traditional insurance policies

- In theory may not apply to mold
- In theory do not apply to losses from completed operations or products liability
- In theory should not eliminate mold coverage from a covered peril loss in property insurance policies

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## The affect of the new mold exclusions on coverage

- The part of the loss caused by mold, fungus and microbial matter is now excluded.
- Products and completed operations liability coverage is eliminated for mold related damages.
- On property policies, the resulting damage from mold will be eliminated from coverage. This overrides proximate cause coverage.
- Mold Exclusions = Pollution Exclusions =  
The most litigated words in the history of insurance

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## How to insure against Mold losses

- Three options, buy backs, environmental insurance on commercial accounts only, mortgage insurance.
- Make sure the policy specifically addresses mold as a covered loss. (Except with mortgage insurance.)
- As a general rule, 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, there are many different policies available .

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## Modified environmental insurance can insure mold damages

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

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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. There should not be a mold exclusion either.
- Policies are usually only sold to degreed "Professionals"

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## Environmental Impairment Liability

- Site Specific Pollution Insurance, appropriate for owners, lessees, lenders.
- Covers third party claims for Bodily Injury, Property Damage, Remediation Expenses and Defense
- Can cover, Contractual Liability, Business Interruption, Extra Expense, and Non Owned Disposal Sites
- Underwriters are requiring mold risk management plans from applicants.

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## Advice for the future (today)

- 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.
- Lenders need to enforce loan covenants to really get all-risk insurance from borrowers.
- Just like general liability and property insurance, everybody needs their own insurance coverage for mold related damages.

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## Managing mold related risks is easy.

- Create protocols to avoid or quickly respond to water intrusion in buildings.
- Quickly eliminate human exposure to indoor mold at high concentrations.
- Address mold in all risk financing protocols.
- Get multi disciplined help in the process!

Managing mold risks is easy, but a lot of work!

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## Where to find help on mold insurance topics

- This presentation and other resource materials on managing mold risks can be obtained on the web site of the Environmental Risk Resources Association at [www.erraonline.org](http://www.erraonline.org) and at [www.armr.net](http://www.armr.net)
- Specialized insurance practitioners are located in the directory on the site
- Send an e-mail to "Ask An Expert" on the ERRA site.
- Call me at 608 798 1427
- A recent internet search for ...mold insurance.... produced 187,000 hits, there is no reason to be bare.

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