



Insurance Coverage for Mold Claims Past, Present & Future

By:

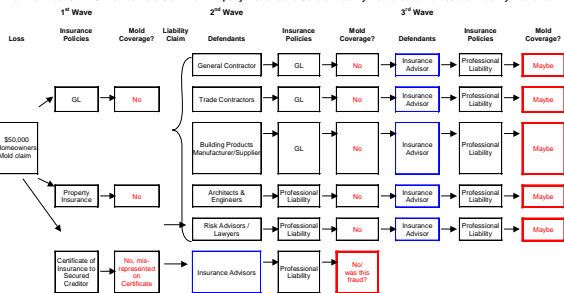
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Mold is the fastest growing risk management problem in the US

- A rapid increase in mold claims, followed by universal insurance exclusions for mold related claims will create hundreds of thousands of uninsured mold losses within the next 18 months. An army of specialized plaintiffs lawyers will gravitate towards liability lawsuits to seek recovery for injured parties when the property policies deny the loss. Insurance to cover mold is available in the environmental insurance market, but risk management advisors historically ignore environmental insurance. The result is unprecedented E&O exposure for insurance advisors. There will be a separate mold exclusion in the advisors own E&O policies.

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



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Mold Science 101

- Mold is naturally occurring
- There are more than 100,000 different types of mold
- Mold was here long before humans
- Four types of mold are thought to be harmful to humans
- The Bible contains a good mold remediation protocol
- To grow, mold needs food, temperature and moisture
- We can not eliminate the first two, moisture elimination is the key to prevention

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

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 adjust?

- 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, nobody knows to what extent

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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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Relative Impact on Commercial Accounts (Mold is Bigger!)

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

* More than \$100,000 in loss exposure

** with mold exclusions on their insurance policies

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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

The states with the most risk and least risk related to mold damages

- Top 10
 - Texas 2.95
 - Florida 2.50
 - Oklahoma 2.45
 - South Carolina 1.91
 - Nevada 1.90
 - Arizona 1.90
 - California 1.73
 - South Dakota 1.47
 - Tennessee 1.33
 - Kansas 1.25
- Bottom 5
 - Wisconsin .06
 - West Virginia .07
 - Alabama .13
 - Massachusetts .18
 - Minnesota .19
 - None are zero

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Common themes in insurance policy drafting

- There will be no insurance for non-fortuitous causes of loss, business risk and inherent vice are excluded
- 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	
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 for arising from a covered peril

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Limitations in Builders Risk and Property Insurance 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?

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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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7 reasons why mold is not a pollutant

- Mold does not release or escape.
- Mold is not a waste.
- The proximate cause of mold is water.
- Mold is naturally occurring.
- Mold is not covered in many EIL policies.
- Historically no mention of mold in training materials.
- If mold was excluded, why add new exclusions?

Mold exclusions

- Hundreds of variations
- Basically three types
 1. Total exclusion for all mold related damages
 2. Partial exclusion for resulting loss
 3. Coverage if caused by a covered loss
- Sublimits are common

Common traits in mold exclusions

- Exclude more than mold to include fungus and sometimes all microbial matter
- By default many bio terrorism agents would be excluded
- Are usually trying to clarify other policy limitations in respect to mold

ISO Property exclusions

- Exclusion does not apply to losses caused by fire or lightning losses caused by named perils
- Back up of sewer and sump losses are excluded

ISO General Liability Exclusions

- Exclude BI and PD for loss in whole or in part cause by fungi and bacteria
- All loss caused by remediation of fungi
- In theory are total pollution exclusions

The exclusion does not apply to fungi or bacteria meant for consumption. The blue cheese exemption

Typical Homeowners Exclusion

- Reaffirms losses from continuous or repeated leaks are not insured
- Excludes wet and dry rot
- Newly excludes loss of use, remediation of mold or any costs for testing and monitoring.

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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Coverage triggers

- Covered perils
- Definition of occurrence
completed operations
- Claims Made polices

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 with the claim.
- There are no “standard” environmental insurance policies 140 different policies .

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Environmental Insurance policies can address liability 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
- 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

How can buyers find appropriate coverage for mold damages?

- Buy backs on homeowners policies
- Environmental insurance on commercial accounts
- The biggest constraint in the market will be the number of qualified advisors for the buyers.
- There is likely be a flood of professional liability claims against risk advisors

The claims adjusters job is very complex today

- No industry standards for adjusters
- Water loss frequency+ toxic torts is a dangerous mix for everyone involved
- Industry standard time frames are too slow
- Policies are difficult to interpret
- Potential personal Liability for negligence
- All insurance now has mold exclusions

Personal Risk Management Advice

- Become informed on the hazards of mold
- Do no further harm
- Review indemnity contracts with employers
- Review you own professional liability coverage
- Accelerate the turn around time on water claims
- Never act with arrogance and indifference

Risk Management Advice for Insurance Advisors

- Become informed on mold, see the www.erraonline.org website
- The bullet proof E&O defense
 1. Advise of the exposure
 2. Advise of the insurance exclusions
 3. Offer to obtain appropriate mold coverage
 4. Get a signed letter from the client declining the coverage
- Use Resources

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 and Claims Adjusters E&O insurance
- Uninsured Mold claims on property policies will transform into liability claims against contactors, building products suppliers/manufactures, and advisors

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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
- 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

Conclusion

- Mold will continue to be a growing problem in the insurance industry
- The effects of the new mold exclusions are yet to be felt
- The adjusters job will become more complex
- Personal risk management will be important
- Specialized skills in water claims are now needed.
