

## Recent Mold Claims Scenarios February 20, 2007

Here are a few mold losses examples involving construction and the possible outcomes if Real Estate Environmental Liability (REEL) insurance was involved.

1. This claim came in December 2006. It is our first claim under a REEL policy.

In a condo conversion, the plumber used a wax ring seal between the toilets and the floor that was too small. This is a 50-cent part.

One year later, mold was discovered in three units that was created by leaking sewage from the bad joints. There are many more units in the development so this claim could easily grow. The current loss reserve is \$1,500,000 on the three known units and there is an investigation on the rest of the complex. The property carrier has already declined the loss due to the mold exclusion on the policy. The GL carrier on the plumber and general contractor will likely deny the claim as well because it is mold related and water out of that end of a toilet is considered a pollutant in the state where the condo is located.

There is a REEL policy sold by ARMR on this project, which provides first party clean up of mold coverage. The REEL policy is covering the remediation of the mold subject to the \$100,000 SIR. The REEL carrier already has the Plumber and the GC in their sights for subrogation. The Plumber and the GC may have their insurance agent's in their sights for professional liability for not advising why they needed CPL insurance to cover mold damages and not offering to procure this coverage on behalf of these contractors. The insurance agents may have a difficult time mounting a viable defense because the Plumber and the GC could have purchased a \$1,000,000 CPL policy covering these damages on for about 1/10 of 1% of their revenue in 2006. In 2006 a google search for mold insurance identified at least 10 vendors of this coverage on the first page of results.

2. On a new commercial construction project, soundproofing concrete was poured in after the dry wall was up and the building had been closed in. As a result of too much humidity in the building, the installed dry wall in the building turned moldy and had to be replaced. This was a \$450,000 problem. A claim for the damage was made against the owner controlled builders risk policy, which promptly denied the loss due to a mold related claims exclusion on that policy. The building owner then sued the contractor for the \$450,000. \$1,000,000 of plaintiffs lawyer's fees were subsequently accumulated in the insurance coverage dispute on the builders risk policy. The contractor subsequently sued the insurance broker of the builders risk policy for malpractice for leaving the contractor uninsured for this loss. The insurance agent in turn tendered the professional liability claim to their insurance agents professional errors and omissions liability underwriter. The claims adjuster promptly denied the E&O claim because of the "mold related" losses exclusion on E&O policy and because the proximate cause of the insurance agents professional liability was moldy dry wall. The original E&O claim over time morphed from failure to procure appropriate insurance to not issuing a certificate of insurance properly to the contractor, which was a covered loss in the E&O policy. After paying the SIR of \$150,000 and paying for the lawyers to sue the insurance agent E&O underwriter (AIG), the insurance agency figures the \$450,000 mold loss cost the agency \$200,000 out of pocket plus a significant amount of lost time. The other defendants including subcontractors contributed towards the \$1,450,000 in a negotiated settlement. The insurance agents E&O underwriter paid \$200,000 towards that amount. This entire fiasco was all because there was no first party coverage for mold damages on the project, which is one of the coverage grants a REEL policy provides. Had a lender been

faced with a uninsured mold loss theoretically the lender could pursue the insurance agent for fraud because the lender specified All Risk Property insurance to cover the construction loan, the insurance agent supplied a certificate indicating builders risk coverage was on the project without showing there was a mold related claims exclusion on the builders risk policy. Relying on the certificate of insurance evidencing the coverage required in the loan covenant, with no mention of the mold exclusion endorsement on the certificate, the lender provided the money for the project. In this scenario did the agent become an accomplice in defrauding the lender into lending money on a project that did not meet the insurance requirement? None of this would even be an issue if there was a REEL policy on the project in the first place.

3. During the application phase for a REEL, the mSolve water intrusion loss control inspectors visited a high rise that was under construction. During their visit it was raining very heavily. The mSolve inspection team noted pools of water on the floor and mold growing up the dry wall on the three lower floors, which was apparently caused by the wicking of the water on the floor up the wall-board. There was a water intrusion loss prevention firm engaged on the project that apparently did not see a problem with windows leaking top and bottom and mold growing on walls from repeated rain events in the past. Our solution was to recommend resealing all the windows, replacing all the effected dry wall and replacing the water intrusion loss prevention consultant. This was all done before REEL coverage could be bound. Without the mSolve inspectors what likely was going to happen is the dry wall would have been painted with a sealing primer to camouflage the true problem, carpet would have been laid masking the pooling on the floor and a few years down the line, the occupants would have brought a toxic mold claim for tens of millions of dollars. Even the application process for a REEL policy provides valuable risk management services. In this case a water intrusion problem was avoided before it could turn into a liability claim.