

**SAMPLE OF REPORTED MOLD CLAIMS/LOSSES IN THE UNITED STATES SINCE 2003  
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**7 Nov 2005 - Contractors settle construction South Carolina defect/mold lawsuit for \$870,000**

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Two contractors paid \$870,000 in 1/05, to settle a construction defect/toxic mold lawsuit filed by South Carolina homeowners (Crocker v. Jeffcoat Builders and Gordon Plastering Co.). The house was allegedly contaminated by mold to such an extent that it had to be destroyed. The lawsuit also alleges that the wife has become sensitized to mold exposure curtailing her lifestyle. The settlement will pay for living expenses and mortgage payments while the couple was living elsewhere medical expenses and \$300,000 of personal property that had to be destroyed. The contractors' insurers were Harleysville Mutual Ins. Co. and Zurich American Ins. Co. *Lawyers Weekly on 11/07/2005*

**7 Nov 2005 - HVAC contractor pays \$120,000 to settle North Carolina mold contamination lawsuit**

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An HVAC contractor agreed to pay \$120,000 to settle a mold contamination suit filed by a North Carolina homeowner (Willard v. Wren). The lawsuit alleged that during a remodeling project the contractor negligently installed an HVAC zoning system leading to excessive sweating and mold contamination.. The contractor settled a week before trial was to begin. The contractor's insurer was Interstate Fire & Casualty. *Lawyers Weekly on 11/07/2005*

**1 Nov 2005 - Contractors and product makers settle mold BI & PD lawsuit for \$23M**

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Several contractors who worked on a California homeowner's custom built home settled allegations of bodily injuries and property damage arising from mold contamination in the home for just under \$10 million (Gorman v. Komick and Bourgeois). Subsequently, on the day the plaintiff's rested their case a lumber company settled for an additional \$13 million. The plaintiffs alleged that in addition to property damage, exposure to mold caused chronic respiratory ailments, sinus infections, fatigue as well as their son's developmental delays and organic brain injury. "The settlement breakdown is as follows: Komick and Bourgeois, \$1 million; David Stull Sheet Metal, \$750,000; framer Double E Construction Co., \$1 million; Shaw Engineering, \$1 million; Weber Construction, \$1.3 million; Perceptive Carpentry, \$200,000; Adair Plumbing, \$300,000; B&M Glass, \$1 million; S&W Waterproofing, \$1.5 million; A&C Entry Systems, \$25,000; Action Roofing, \$3,500; California Drywall Inc., \$30,000; FAMA Tile, \$50,000; and grader Larry Murakami, \$4,000." Two other settlement agreements were made on the condition that the plaintiff not reveal the defendants' names. These included an \$800,000 settlement made by the stucco company and a \$600,000 settlement made by the window manufacturer. The lumber company, Crenshaw Co., agreed to pay \$13 million to settle allegations that it sold lumber contaminated with mold which spread to other areas of the home. *Mealey's Litigation Report Construction Defects on 10/31/2005*

**10 Nov 2005 - Maine's high court rules that illnesses caused by mold is supported by the scientific community**

In mold litigation filed by a homeowner against the developer of the home, Maine's Supreme Judicial Court, the state's highest court, found that the lower court did not err in allowing a doctor's testimony about alleged health affects experienced by plaintiffs due to mold contamination (*Searles v. Fleetwood Homes of Pennsylvania*). The court, which refused to adopt "Daubert" as Maine's standard for expert admissibility, held that the doctor's opinion finding the family's respiratory ailments were caused by mold exposure were supported by the scientific community. The court also upheld the \$281,000 award against the builder. The mold contamination began with faulty window installation. The plaintiffs alleged that the builder delayed making repairs until the mold spread behind the vinyl siding and into the studs. *Mealey's Litigation Report Construction Defects on 10/12/2005*

**30 Jan 2006 - Ohio appeals court upholds homeowners mold exclusion**

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An Ohio appellate court has upheld a mold exclusion contained in a Homeowners' policy (*Polk v. Walden Condo. Assoc.*). The court rejected the insured's ensuing loss argument finding that "because the mold damage is [specifically] excluded, it cannot be an ensuing covered loss." *Goldberg Segalla LLP Toxic Tort & Environmental Litigation Update on 10/04/2005*

**30 Jan 2006 - Louisiana appeals court upholds homeowners' mold exclusion**

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A Louisiana appellate court has upheld the mold exclusion in a homeowners' policy when the mold was caused by humidity and condensation (*Morgan v. Auto Family Ins. Co.*). The court rejected the insured's argument that the mold was an ensuing loss. *Goldberg Segalla LLP Toxic Tort & Environmental Litigation Update on 10/04/2005*

**24 Oct 2005 - California Supreme Court allows homeowner's \$1.75M punitive damages award in mold suit to stand**

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The California Supreme Court refused to hear an insurer's appeal of a \$1.75 million punitive damage award in a residential mold lawsuit (*Rogers v. U.S. Automobile Assoc.*). The underlying claim alleged bad faith in the insurer's handling of water damage/mold claims in the insured's kitchen. A California Superior Court awarded the homeowner \$2,187,500 including \$1.75 million in punitive damages. *Mealey's Litigation Report Mold on 10/01/2005*

**24 Oct 2005 - Connecticut municipality settles mold BI & PD claims for \$378,000**

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The City of Derby, Connecticut and the Derby Water Pollution Control Authority have settled a homeowner's mold claims for \$378,000 (*Donofrio v. City of Derby*). The homeowner alleged that multiple sewer backups forcing sewage back through the home's toilets, sinks and bathtubs resulted in mold contamination. The suit alleged that the mold caused property damage as well as caused their child to develop health problems. The city settled for \$378,000. *Mealey's Litigation Report Mold on 10/01/2005*

**27 Sep 2005 - Arbitration results in contractor having to pay \$455,337 for California homeowners' mold contamination**

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An arbitration judge ruled that builder of a California home must pay the homeowners \$320,337 for illnesses caused by exposure to mold (Swarts v. Marquee Homes). The home was built in 2001 and within a year inspections discovered water intrusion and mold contamination. The homeowners filed suit alleging water intrusion from around windows and through exterior stucco walls resulted in mold contamination. The arbitration judge found that the mold exposure "produced mild symptoms and illnesses to all of the family members." Marquee Homes already paid the plaintiffs \$135,000 for property diminution (the difference between the the plaintiffs sold the home for and the \$525,000 estimated market value. Both the plaintiffs and Marquee Homes have filed lawsuits against various subcontractors who worked on the home including those who worked on the windows, framing, stucco and concrete. The plaintiffs will continue their suit against Marquee seeking \$130,000 in attorneys fees. ***Knight Ridder Tribune Business News on 09/27/2005***

**27 Sep 2005 - California jury orders Property manager & apartment complex owner to pay \$1.3M in mold-related suit**

A California jury ordered property management firm, Molln Properties Inc. and the owners of an 18 unit apartment complex to pay a family \$1,337,985 in damages (Rogers v. Molln Properties Inc.). The plaintiffs filed suit after being threatened by the property manager with eviction for complaining of mold contamination in their apartment. The award included \$450,000 for past pain and suffering and \$200,000 for future pain and suffering as well as \$44,550 in property damages and storage expenses. The jury ordered the Molln to pay \$694,550 for its malicious actions. ***HarrisMartin Columns on 09/27/2005***

**27 Sep 2005 - Louisiana court certifies class action filed on behalf of school children exposed to mold**

A Louisiana district court judge has certified a mold bodily injury class action lawsuit filed against an elementary school (Cardon v. Chalmette Christian Academy). The suit alleges the children were harmed by the mold exposure. The class could ultimately involve over 500 students in pre-school to fourth grade at the school in 2004 and 2005. ***HarrisMartin Columns on 09/01/2005***

**4 Oct 2005 - Ontario court awards plaintiffs \$21,675 primarily for stress in mold exposure case**

In one of the first mold exposure cases to go to court in Canada, an Ontario Superior Court justice ordered a home builder to pay plaintiffs \$21,675 in damages even though the court found that the plaintiffs failed to prove their injuries were caused by exposure to mold arising from construction defects (Sommerville v. Ashcroft Development Inc.). The court awarded the plaintiffs' \$15,000 for stress and emotional upset. The remainder of the damages were largely for costs to repair a leaking roof. ***Mealey's Litigation Report Mold on 09/01/2005***

**2 Aug 2005 - Contractor will pay \$23.2M to settle two Texas mold/CD lawsuits**

Austin based contractor, the Landmark Organization, has agreed to settle a mold lawsuit filed by the Pharr-San Juan-Alamo school district over contamination at the PSJA High School. The school board claimed that mold contamination at the school was the result of design and construction defects. The school board announced that the \$11.2 million is only

a partial settlement as they expect the 44 subcontractors also named in their suit will also settle. Landmark Organization has also stated that it will attempt to recoup the \$11.2 million by filing lawsuits against the subcontractors that worked on the high school. This settlement comes on the heels of another mold settlement reached by the Landmark Organization under which it agreed to pay \$12 million for mold contamination at the Carrizales Detention Center in Cameron County, Texas. The county alleged the mold was caused by construction defects. *The Monitor on 08/02/2005*

**17 Aug 2005 - Contractors settle Colorado mold construction defects suit for \$39.5M**

A Texas home builder has agreed to pay \$39.5 million to settle a mold/construction defects lawsuit filed by a condo association (The Summit At Rock Creek Homeowners Assoc. Inc. v. D.R. Horton Inc.). The suit alleged various construction defects including water intrusion coming in from around windows and roof leaks which led to mold contamination. Defendants in the suit: D.R. Horton Inc., Trimark Communities Inc., and Trimark Communities LLC d/b/a T.M. Holdings LLC, have filed lawsuits against over 30 subcontractors who worked on the development. Some of these subcontractors have filed suit against more than a dozen other companies that worked on the site. *Mealey's Litigation Report Mold, The Denver Post on 08/01/2005*

**27 Jul 2005 - Oregon jury orders builder to pay homeowner \$498,417 for illnesses caused by mold exposure**

An Oregon jury ordered Adair Homes Inc. to pay the plaintiff homeowner \$498,417 for illnesses allegedly caused by exposure to mold (Haynes v. Adair Homes Inc.). The plaintiff alleged that due to construction defects the new home became contaminated by mold on the interior walls, floors, crawl space, and other areas of the home. As a result of exposure to that mold, the plaintiffs alleged illnesses including: diarrhea, vomiting, nausea, sensory integration disorder, muscle and joint pain, respiratory ailments, weight loss, emotional distress, fear and anxiety and impaired social and physical development. *Mealey's Litigation Report Mold on 07/01/2005*

**27 Jun 2005 - New Texas law requires mold remediators to be certified and carry liability insurance**

A new mold assessment and remediation law passed in Texas requires mold remediation contractors and consultants who assess mold damage to be certified and carry liability insurance with \$1 million of liability limits. Subsequently, the number of companies engaged in these activities in the state has declined dramatically. *Herald Democrat on 06/19/2005*

**2 Jun 2005 - Michigan jury awards apartment resident \$925K for illness caused by mold exposure**

A Michigan jury has awarded an apartment resident \$925,000 for the development of permanent severe asthma allegedly caused by mold in her apartment. The plaintiff, Elizabeth Mahaffy, complained to the owner of the apartment complex for years about mold growth on her walls and ceiling after a 2001 flood from a toilet in the apartment above hers. She was subsequently hospitalized three times for severe asthma attacks. Although the building owner hired a handyman to rip out wet and damp drywall, the jury

found the landlord had not done enough to stop and prevent mold growth. This is the highest personal injury damages award resulting from mold exposure in Michigan. The trial, in the Wayne County Circuit Court, lasted seven days. *Business Wire on 06/02/2005*

#### **29 Jun 2005 - Texas jury orders insurer to pay \$845,000 in mold/bad faith case**

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A Texas jury has ordered State Farm Lloyds to pay the plaintiffs \$845,000 in a mold/bad faith lawsuit (McLeod v. State Farm Lloyds). Numerous roof leaks resulted in mold contamination throughout the home. The homeowners filed a claim with their homeowners' carrier. State Farm paid the policy's limits of \$25,000 for the family's alternative living expenses and \$10,000 for remediation of the contents of the home. The family filed a lawsuit against State Farm alleging bad faith and unfair, deceptive, false and misleading acts. The jury awarded the homeowner \$845,000 including \$180,000 for repair costs to the home and \$150,000 for mental anguish. The homeowner is still pursuing a claim against the insurer for between \$500,000 and \$750,000 for attorney fees. *Mealey's Litigation Report Mold on 06/01/2005*

#### **29 Jun 2005 - New York appeals court upholds homeowners mold exclusion**

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A New York appellate court, interpreting Connecticut law, has upheld the mold exclusion in a homeowners' policy (Hritz v. Saco, Great Northern Ins. Co.). The court held that the ensuing loss exception within Great Northern's homeowners' policy did not provide coverage for mold damage and injuries and that damage and/or injuries caused by mold was barred by the policy's mold exclusion. The court did not buy into the homeowners argument that "a jury could reasonably conclude that the proximate cause was the mycotoxins [released by the mold] that poisoned the air [in the home] rather than the mold that emitted them." *Mealey's Litigation Report Mold on 06/01/2005*

#### **29 Jun 2005 - California appeals court reinstates \$1.7M punitive damages award in mold/bad faith suit**

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The Fourth District California Court of Appeal has reinstated a \$1.7 million punitive damages award against a homeowners' carrier in a mold/bad faith lawsuit (Rogers v. United Services Automobile Assoc.). Two separate leaks occurred in the plumbing of the home one from a plumbing leak beneath the kitchen floor, one from an angle stop leak under the sink. USAA hired a flooring company to put in a new floor, but before the flooring was installed the homeowner received his renewal policy which now contained a mold limitation. Two weeks after the new floor's installation the problem reoccurred and high levels of mold was discovered. USAA required the homeowner to file a new claim for the new leak. State Farm told the homeowner that the new claim would be subject to the renewal policy's mold limitation. The homeowner sued for bad faith. *Mealey's Litigation Report Mold on 06/01/2005*

#### **20 Jul 2005 - Louisiana hotel owner to pay \$7.7M to settle mold injury claims filed by guests and employees**

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The Owner of the "Crescent on Canal" hotel in Louisiana have reached tentative settlements totaling \$7.7 million with former employees and hotel guests alleging exposure to mold in the hotel is responsible for their ailments (Powell v. Credit Suisse First Boston Mortgage Capital and Brown v. Credit Suisse First Boston Corp.). If approved by the

Louisiana District Court for the Parish of Orleans, under separate settlements former employees alleging illnesses caused by exposure to mold who worked at the hotel between 1995 and the hotel's closure in 2002 will split \$5 million. Guests who stayed at the hotel between January 1, 1997 and August 26, 2002 and who allegedly became ill due to mold exposure will split \$2.7 million. *HarrisMartin Columns on 06/01/2005*

**9 Mar 2005 - Contractor ordered to pay \$498,419 in toxic mold suit**

An Oregon jury has ordered home builder, Adair Homes, to pay \$498,419 in damages for illness caused by exposure to mold contamination in their home. The plaintiffs sued the contractor alleging the exposure caused injuries including a diagnosis of sensory integration disorder and mold antibodies in the blood of one child. The homeowners hired the contractor to increase the size of their home in 2001. *Knight Ridder Tribune Business News on 03/09/2005*

**4 Mar 2005 - 68 California tenants sue apartment owner for toxic mold exposure**

Sixty-eight tenants of the Coventry apartment complex in Bakersfield, California have filed a lawsuit alleging exposure to mold in their apartments resulted in illnesses including the death of a two year old. According to the plaintiffs' attorney, "elevated levels of toxigenic molds" have been found in 16 of 18 apartments tested and mold growth has been documented in the apartments since 1999. *cbsnews.com on 03/04/2005*

**3 Feb 2005 - Contractors, architect and insurers settle mold/construction defects lawsuit for \$5.6M**

The contractors and architect who worked on the Seminole County, Florida Sheriff's Office and Public Safety Building have agreed to pay \$5.6 million to settle a mold/construction defects lawsuit filed by the county. The county reportedly paid over \$5 million to remediate mold contamination and repair leaks in the building. Legal and other expenses drove the costs of the county to \$6.4 million. In the lawsuit the county named the construction manager, subcontractors, the architect and the parties insurers as defendants. The agreement detailing which parties will pay how much of the settlement remains confidential. *Sun-Sentinel on 02/03/2005*

**14 Mar 2005 - California tenant reaches \$550,000 toxic mold settlement with landlord**

The renter of a California home has reached a \$550,000 settlement with landlord South Warner Business Center (Black v. South Warner Business Center). The suit alleged that exposure to toxic mold, which resulted from water intrusion and septic leaks, caused his illnesses which included severe asthma, allergic sensitivity and other ailments. The plaintiff was allegedly forced to vacate the premises after the landlord failed to take appropriate remedial actions. The \$550,000 settlement was reached during mediation. *Mealey's Litigation Report Mold on 02/01/2005*

**14 Mar 2005 - Contractors to pay \$2.6M to Colorado Condo owners for mold contamination//water damage**

The 1727 Pearl Street Homeowners Association filed a lawsuit against developer Triton

Development LLC alleging water intrusion from leaky roofs, water-saturated drywall and cracked bricks resulted in mold contamination in the Colorado condominium complex. An arbitration panel awarded the homeowners association \$2.6 million in damages. *Mealey's Litigation Report Mold on 02/01/2005*

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**18 Jan 2005 - California landlord settles toxic mold suit with tenant foe \$550,000**

Landlords of an Orange County, California apartment have agreed to pay \$550,000 to settle a toxic mold lawsuit. The suit, filed in Superior Court in Orange County, was filed by the tenant alleging respiratory ailments, including asthma as a result of exposure to toxic mold. Water intrusion and septic leaks in the apartment resulted in mold contamination. The landlord failed to adequately remediate the mold contamination and had been cited by the City of Huntington Beach for various code violations. *PR Newswire on 01/18/2005*

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**31 Jan 2005 - Company settles toxic mold lawsuit with correctional facility workers**

Ten Iowa Department of Corrections workers filed suit against building owner Community Resources Corp. seeking damages for illnesses caused by exposure to mold at the Residential Corrections Facility. Injuries alleged included respiratory ailments, headaches, memory problems, nosebleeds and vascular problems. The company settled the suit for \$175,000. *Mealey's Litigation Report Mold on 01/01/2005*

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**9 Feb 2005 - Insurer to pay \$750,000 to settle Texas mold/bad faith suit**

Travelers Lloyds of Texas agreed to settle a mold/bad faith lawsuit by agreeing to pay a homeowner \$750,000 in damages (Rothenberg v. Travelers Lloyds of Texas). The homeowner bought the house in 1995 for \$360,000. Mold contamination was discovered and a claim filed in 2001. An outside adjuster, hired by Travelers, recommended in writing that the insurer pay \$107,000 for the mold claim. Travelers paid \$33,000 and indicated that no additional funds would be forthcoming. One week before the lawsuit was set to go to trial, Travelers settled for \$750,000. *HarrisMartin Columns on 12/01/2004*

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**9 Nov 2004 - Irish State Claims Agency sees its first toxic mold claim**

An Irish public service worker has filed with the State Claims Agency (SCA) seeking compensation for illness allegedly caused by exposure to toxic mold. This is the first mold claim seen by the SCA and the agency does not expect to see many such mold claims. The SCA plans on releasing mold removal guidelines to the Office of Public Works to prevent future mold claims among public service workers. *Irish Independent on 11/08/2004*

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**4 Oct 2004 - Georgia jury orders HVAC contractor to pay homeowner \$556,000 for mold**

A Georgia jury has ordered an HVAC contractor to pay a homeowner \$556,000 for damages caused by mold contamination found in the air ducts of her home (Sailor v. R.S. Andrews Services). The plaintiff alleged illnesses such as respiratory infections, sinus ailments, headaches, nosebleeds, skin rashes and loss of hair were caused by the exposure to mold in her home. She evacuated her home in March 2002 on the advice of two physicians and three industrial hygienists. The suit also alleged that her home and all its contents were ruined by the

mold. In her suit that plaintiff alleged that the HVAC system was improperly installed by R.S. Andrews Services which resulted in the mold contamination. This is believed to be the first mold suit in Georgia to win an award. *The Atlanta Journal-Constitution on 10/02/2004*

- **25 Oct 2004 - California apartment owner settles mold bodily injuries suit for \$392,500**

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The owners of a California apartment building have settled a mold bodily injury suit for \$392,500 (Miller v. The Palm Garden Apartments Ltd Partnership). The plaintiffs had alleged that water intrusion caused by leaking plumbing in the unit above theirs caused mold growth and exposure to the mold caused asthma and allergies. *Mealey's Litigation Report Mold on 10/01/2004*

- **25 Oct 2004 - Washington appeals court upholds mold exclusion finds exclusion bars coverage under ensuing loss provision**

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A Washington appellate court has upheld the mold exclusion in a homeowners' policy finding that the exclusion bars coverage under the ensuing loss provision of the policy (Wright v. Safeco Ins, Co.). The court held that mold damage is covered under the ensuing loss provision only if it is not specifically excluded by some other provision in the policy. Since the plaintiff's policy specifically excluded mold, the ensuing loss provision does not provide coverage for mold damages. *Mealey's Litigation Report Mold on 10/01/2004*

- **25 Oct 2004 - California apartment owner settles mold bodily injury & property damage suit for \$149,100**

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A California apartment owner settled a mold bodily injury and property damage lawsuit for \$149,100 (Lynch v. Al E. Saroyan). The plaintiff alleged that mold contamination in her apartment, which the landlord left unremediated for over a year, caused cardiopulmonary disease and damaged her personal property. *Mealey's Litigation Report Mold on 10/01/2004*

- **1 Dec 2004 - Mold exclusion contained in homeowners policy does not bar mold as an ensuing loss**

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A Wisconsin appeals court, reversing a lower court decision, has held that the mold exclusion contained in a homeowners policy did not bar mold claims when mold contamination was an ensuing loss (Arnold v. Cincinnati Ins. Co.). The plaintiffs alleged that rain entering their home through window caulking damaged by power washing performed by a contractor resulted in mold contamination. Cincinnati denied the claim citing among other policy defenses the policy's faulty workmanship and mold exclusions. The appellate court held that the faulty workmanship exclusion would bar claims arising from the damaged caulking, however, it found that neither the faulty workmanship exclusion or the policy's mold exclusion bar claims arising from the ensuing loss of rain leaking into the walls due to the damaged caulking. *HarrisMartin Columns on 10/01/2004*

- **1 Dec 2004 - Contractors to pay \$8.6M to settle toxic mold suit**

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Some 40 contractors have settled a mold lawsuit filed on behalf of residents of a California condo complex by agreeing to pay \$8.6 million (Spectrum Community Assoc. v. Bristol House Partnership). The settlement includes \$6,392,028 for property damages and \$2,179,000 for

bodily injury claims for 505 individuals. Settling defendants include the original developer, Bristol House Partnership, and the subsequent developer, Goldrich & Kest Industries as well as numerous subcontractors including Bluestar Realty Ventures, Santa Ana Spectrum Corp., C.H. Construction Co. Inc., Prestige Homes Inc., Mercantile Builders Inc., and G&K Management Co. *HarrisMartin Columns on 10/01/2004*

- **22 Sep 2004 - Apartment owner and property manager settles mold bodily injury suit filed by tenant for \$392,500**

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The owner of The Palm Garden Apartments Ltd. and the apartment manager, Apartment Management Consultants, LLC, have agreed to settle a mold bodily injury lawsuit filed on behalf of the tenant and her two children. Joanne Miller alleged that mold contamination caused by instances of water intrusion in her apartment resulted in the development of asthma, allergies and other respiratory symptoms. defendants settled the suit for \$392,500. *PR Leased Line on 09/22/2004*

- **17 Sep 2004 - Texas jury orders apartment building owner to pay renters \$2M for mold contamination**

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*Mealey's Litigation Report Mold on 09/13/2004*

- **3 Sep 2004 - Honeywell International settles mold contamination suit by agreeing to pay \$15M**

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Honeywell International has agreed to settle a mold contamination lawsuit filed by the San Benito (Texas) school board by agreeing to pay \$15 million in damages. The company which installed and maintained heating and cooling systems installed in schools. The suit alleged that the mismanagement of these heating and cooling systems from 1994 to 2001 resulted in mold contamination. *Knight Ridder Tribune Business News on 09/02/2004*

- **5 Oct 2004 - Business risk exclusion in CGL policies bar mold claims against subcontractor**

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The First Circuit Court of Appeals has held that the business risk exclusion contained in a CGL policy bar defense or indemnification of a subcontractor in a mold/construction defect lawsuit (B&T Masonry Construction Co. v. Public Service Mutual ins. Co.). B&T Masonry was a third party defendant in a mold construction defect lawsuit brought by the City of Everett, Massachusetts against Barletta Engineering Corp. The city was seeking damages for allegedly faulty workmanship that resulted in defects and mold contamination on a school's walls, ceiling, floors and other portions of the building. The First Circuit held that the CGL policy excluded coverage for damage to the property B&T was working on, or arises out of such work or alleged "defect, deficiency, inadequacy or dangerous condition." Attorneys' for the contractor raised the argument that such a reading of the policy would render coverage illusory. The First Circuit disagreed finding many negligence claims would still be covered. [Editor's note: the 1st Circuit covers Maine, New Hampshire, Massachusetts, Rhode Island and Puerto Rico] *HarrisMartin Columns on 09/01/2004*

- **31 Aug 2004 - Home builder proposes \$24M settlement of mold claims filed by 2,100 Indiana homeowners**

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Home builder Trinity Homes, owned by Beazer Homes, has proposed a settlement in a mold lawsuit filed by 2,100 Indianapolis-area homeowners. Under the proposed settlement, which is expected to cost \$24 million, the builder will test affected homes for moisture, remediate any mold and repair construction defects and certify remediated homes mold free. Several homeowners are concerned that the proposed settlement does not address the damage to their health, cost of previous mold inspections and legal fees and lost wages. Improperly installed brick facade is responsible for many of the mold claims, however, some homes also have leaking roofs and incorrect grading of soil around the foundations that allegedly contributed to the contamination. The homes were built between 1998 and 2002. *Indianapolis Star on 08/31/2004*

- **1 Sep 2004 - Property insurer settles mold claim with bank for \$164,000**

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Zurich Insurance Co. has settled a mold/bad faith suit filed by First Guaranty Bank for \$164,000. The bank alleged that mold contamination resulted after a sudden severe rainstorm caused damage to the roof and water poured into the walls of the bank branch. Zurich argued that there was no damage to the roof and the damage was not covered or excluded. The bank was seeking to recoup \$175,000 in repair costs. *Mealey's Litigation Report Mold on 08/01/2004*

- **28 Jul 2004 - Texas jury orders apartment building owner to pay \$2.29M for damages due to mold**

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A Texas jury ordered defendants to pay 26 residents of an apartment complex contaminated with mold \$1,238,000 for damages to personal property that had to be disposed of (Auzston v. Elder), plus \$208,000 for mental anguish, \$150,000 in attorney fees and \$650,000 (\$25,000 each) in additional damages. Defendants in the lawsuit included building owner Vestcor Development Corp., Alpha-Barnes Real Estate Services, Vestcor Companies Inc. d/b/a Bay Colony Apartments, and Bay Colony LP. *HarrisMartin Columns, Mealey's Litigation Report Mold on 07/28/2004*

- **26 Jul 2004 - Illinois university seeks to recover \$10M in mold remediation costs from dorm builders**

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Southern Illinois University Edwardsville has filed a lawsuit against companies involved in the design and construction of three campus dormitories. The university seeks to recover some \$10 million spent on mold remediation. Defendants include Kane Mechanical; Solomon Cordwell Buenze & Associates; S.M. Wilson & Co.; WMA Consulting Engineers; Kennedy Associates/Architects; Fru-Con Construction. The suit also names insurers as defendants. *Belleville News-Democrat on 07/25/2004*

- **21 Jul 2004 - California apartment building with water leaks and mold contamination cost \$10.1M to remediate**

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Mold contamination caused by water intrusion in the Gaia building cost \$10,079,000 to remediate. The seven story building houses apartments and retail space. The building owners have filed suit against the contractor, Kimes Morris and many other contractors. The suit specifically names seven defendants plus another 100 "Does" i.e. yet to be named defendants. The contractor has filed suit against the subcontractor who installed the EIFS and interior dry

wall. *Berkeley Daily Planet* on 07/20/2004

- **23 Jun 2004 - California apartment building owner settles toxic mold suit for \$3.8M**

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The owner of the Park Hill Apartments in Hayward, California has reached a settlement with some 124 current and former tenants who were alleging that exposure to toxic mold and other substandard living conditions caused their illnesses. The apartment complex, built in the 1960s, includes nine buildings with 106 units. The plaintiffs alleged that exposure to mold in their apartments caused a variety of illnesses including asthma, upper respiratory and sinus ailments, headaches and skin rashes. The building owner's four liability insurers made the settlement offer before trial was to begin. The suit was settled for \$3.83 million. Individual payouts remain confidential. *San Francisco Chronicle, The Argus* on 06/22/2004

- **30 Apr 2004 - Mold contaminated buildings at N. Carolina university to cost \$58M to remediate**

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The most recent estimate of the cost to remediate about 12 North Carolina Central University buildings contaminated with mold is \$58 million. *Newsobserver.com* on 04/29/2004

- **12 Apr 2004 - Hawaiian court orders condo association to pay apartment owner \$470,000 for mold contamination**

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A circuit court jury in Hawaii has ordered the Association of Apartment Owners, Phase 1, to pay an apartment owner nearly \$470,000 for mold contamination caused by defects in common areas. The plaintiff alleged that cracks in the concrete slab beneath her unit and the faulty placement/design of a rain gutter system resulted in mold contamination in her unit. According to the plaintiff's attorney, this may have been the first award to a homeowner in a mold case in Hawaii. *Honolulu Advisor* on 04/10/2004

- **9 Apr 2004 - Louisiana office owners & insurers settle toxic mold suit for \$4.25M**

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The owners of a 44 story office building in New Orleans, Louisiana and their insurers have proposed to settle a toxic mold lawsuit by paying \$4.25 million. The suit was filed on behalf of some 500 state employees housed in the office building who alleged mold contamination caused their illnesses. Insurers participating in the settlement include: American Equity Ins. Co., Monticello Ins. Co., Evanston Ins. Co., and United National Ins. Co. *Business Insurance* on 04/09/2004

- **9 Feb 2005 - Louisiana office building owner & insurers pay \$4.25M to settle toxic mold suit**

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A Louisiana office building owner and its insurers have agreed to pay \$4.25 million to settle a toxic mold lawsuit (*Watters v. Dept. of Social Services*). In the suit, employees of various state agencies housed in the Plaza Tower office building alleged that exposure to toxic mold caused their personal injuries. Three lawsuits filed on behalf of the plaintiffs were consolidated and one day before trial, the defendants agreed to settle the case. Settling parties include: Clarendon American Insurance Co., Great Lakes Reinsurance UK PLC, United National Group, Monticello Ins. Co., Evanston Ins. Co., American Equity Ins. Co., BG Real Estate Services Inc., Baha Towers L.P., Baha Development Inc., Bahar Development Inc., and MBA

Services LLC. Prior to the settlement, the Louisiana District Court ordered several insurers to post bonds. Great Lakes Reinsurance was ordered to post a \$2.5 million bond, Clarendon, Monticello, and American Equity were ordered to post \$2 million bonds, United National and Evanston were ordered to post \$500,000 bonds. Two other defendants, the Louisiana Department of Social Services and Calvert Ins. Co. have not agreed to settle the lawsuit.

*Mealey's Litigation Report Mold on 04/01/2004*

- **31 Mar 2004 - Farmers Insurance settles mold/bad faith homeowners suit with Melinda Ballard**

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Farmers Insurance and Melinda Ballard have reportedly agreed to settle the Ballard's mold/bad faith lawsuit. The terms of the settlement remain confidential. Ballard was awarded \$32 million in October 2001 which included \$^ million in property damages, \$5 million for emotional distress, \$12 million in punitive damages and \$9 million in attorneys' fees. A Texas appeals court subsequently reduced the award to \$4 million plus legal expenses. The appeal of the case was awaiting a hearing by the state's high court when the settlement was reached.

*Bestwire on 03/30/2004*

- **22 Mar 2004 - Nebraska Supreme Court rules that loss of personal property not covered under resulting loss provision in a homeowners/mold case**

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The Nebraska Supreme Court has held that loss of personal property arising from mold contamination is not covered under a resulting loss provision in a homeowners policy (Poulton v. State Farm Fire and Casualty Cos.). Because the resulting loss provision is found after 14 exclusions applicable to coverage A, the court found that the resulting loss provision applied only to the homeowners' dwelling (coverage A) and not the homeowners personal property (coverage B). *Mealey's Litigation Report Construction Defects on 03/19/2004*

- **12 Mar 2004 - Kansas jury awards homeowners \$1.05M for mold damages**

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A Kansas jury ordered the former owners of a mold ridden home to pay \$1,05,871 to the new homeowners (Phillips v. Tyler). The plaintiffs alleged that the roof leaked and caused extensive mold contamination in the walls of the house and argued that these defects should have been disclosed to them before they bought the home. The defendants argued that the roof was sound at the time of sale and they did not know about the mold contamination. The jury sided with the plaintiffs awarding \$855,000 for mold contamination in the house, nearly 189,000 for alternative housing costs for the plaintiffs and \$10,000 in damages for illnesses to one of the plaintiffs allegedly caused by mold exposure. *The Wichita Eagle on 03/12/2004*

- **12 Mar 2004 - Mold remediation at a ski resort housing complex cost \$5.5M**

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Mold remediation at a Heavenly Ski Resorts employee housing facility at its ski resort cost the company \$5.5 million. Heavenly Ski Resorts is owned by Vail Resorts Inc. *Associated Press on 03/11/2004*

- **10 Mar 2004 - Mold remediation at a Texas elementary school to cost \$2.9M - contractor sued**

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Mold remediation at the Somerset Early Childhood Elementary School will cost an estimated

\$2.9 million. The school, which cost \$3.9 million to build and opened in August 2000, was evacuated in April 2003 after the discovery that construction defects caused water intrusion and mold contamination. According to consultants hired by the school, the roof, walls, windows and doors all leak and a flawed heating and air conditioning system also contributed to high humidity. The school district has filed suit against Unico Construction, the general contractor of the school to recoup the remediation costs. *San Antonio Express-News on 03/10/2004*

- **8 Mar 2004 - Connecticut Senate introduces bill to prevent insurers from excluding mold**

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A bill has been introduced into the Connecticut Senate (S.B. 417 "An Act Concerning Insurance Coverage for Damage") which, if passed, would "prohibit insurers from excluding or limiting mold coverage from commercial or personal property coverage, except that the policy may include a minimum aggregate limit of \$50,000 for loss from mold or remediation." *Insurance Journal on 03/08/2004*

- **9 Mar 2004 - Mold remediation can exceed 50% of a hotel's construction costs**

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At least 15 major hotels in the U.S. are currently undergoing mold remediation projects. A recent Ernst & Young report on the hotel industry states that remediation of serious mold contamination can exceed 50% of a hotel's construction costs. *The Wall Street Journal on 03/04/2004*

- **10 Mar 2004 - Texas appeals court finds mold damage covered under renters policy**

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A Texas appeals court has ruled that mold damage is covered under a renters policy (DeLaurentis v. United Services Automobile Assoc.). The court noted that no Texas court had previously addressed whether mold must be specifically identified as a named peril in a HOB-T policy for coverage to exist. The court held claims for mold damage arising from a leaking air conditioning unit was covered under HOB-T because it was not specifically excluded. *Mealey's Emerging Insurance Disputes on 03/02/2004*

- **18 Mar 2004 - Insurer of liquidated contractor settles Ohio homeowners' mold claims**

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Travelers Insurance Co. , which had insured the bankrupt contractor Zaring National Corp., has agreed to pay \$2.29 million to settle a lawsuit brought by homeowners in an Ohio development that alleged construction defects led to mold contamination (Martinez v. Zaring Nat'l Corp.). Subcontractors have also agreed to pay an additional \$710,000. The settlement will be paid to some 130 homeowners in the White Blossom subdivision in Warren County. Before liquidating Zaring filed suit seeking indemnification for mold contamination costs from architects, masons, other subcontractors and building materials suppliers. These third party defendants included: Western Building Products n/k/a/ Builders Firstsource-Ohio Valley Inc., Ciraldo Masonry Construction, Casler Tokarsky & Assoc., Valle Home Improvement, MArtin Enterprises, J.P.Q. Masonry, The OMNIA Group Inc., Fishback Masonry, and W.B.P. Holding Co. f/k/a Western Home Center Inc. *HarrisMartin Columns, Mealey's Litigation Report Mold on 03/01/2004*

- **18 Mar 2004 - Mold class action filed against Florida apartment complex owners, including insurer, & managers**

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Residents of a 325 unit apartment complex in Florida have filed a class action suit against VCP Gate Parkway, GAtE Parkway Joint Ventures d/b/a Portfolino, and Northwestern Mutual Life Ins. Co., the owners of the 20 building complex, for failing to prevent or properly remediate mold contamination Petzel v. VCP Gate Parkway). CalEx Realty Group, the property manager, has also been named as a defendant in the suit. *HarrisMartin Columns, Mealey's Litigation Report Mold on 03/01/2004*

- **26 Feb 2004 - California jury renders defense verdict in first mold wrongful death suit**

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A California jury has rendered a defense verdict in the nation's first mold wrongful death suit (Dayton v. Highlands Mobile Home Estates). The plaintiff was seeking \$7.5 million alleging the fatal fungal infection in her lungs was caused by exposure to mold in the plaintiff's home. According to defense attorneys, jurors did not believe the illness was caused by mold exposure. *HarrisMartin Columns on 02/25/2004*

- **20 Feb 2004 - CNA paid up to \$1B for mold and construction defects claims**

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CNA Financial has reportedly paid "as much as \$1 billion" for mold and construction defects claims. The company subsequently stopped providing coverage for contractors who do more than 10% of their business in residential construction. *Herald Tribune on 02/19/2004*

- **20 Feb 2004 - One of the "key drivers" impacting Allstate's loss reserve adequacy in 2001 & 2002 was increased severity of mold claims**

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According to A.M. Best, one of the "key drivers" impacting Allstate's loss reserve adequacy in 2001 & 2002 was increased severity of mold claims. *A.M. Best on 02/18/2004*

- **17 Feb 2004 - 21 Florida police station workers file WC claims for illnesses caused by mold exposure**

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Since 1997, twenty-one Sebastian police station employees have filed workers' compensation claims alleging exposure to mold in the station caused their illnesses. The League of Florida Cities settled six of the claims for lump sum payments. The remaining 15 were either settled for small amounts or dismissed. *The TCPalm Network on 02/13/2004*

- **18 Feb 2004 - Residents of a Florida apartment complex file a class action suit over mold exposure and damage**

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Twenty-eight residents of Portofino Apartments in Jacksonville, Florida have filed a class action suit seeking compensation for illnesses and property damages allegedly caused by mold contamination in the complex. Hundreds more may join the suit. Plaintiffs' attorneys reportedly believe that the mold contamination began with the heating and cooling system. *First Coast News on 02/12/2004*

- **23 Feb 2004 - Homeowners carrier to pay \$2.19M in mold/bad faith case where policy contained a mold limitation**

A California jury has ordered a homeowners' carrier to pay \$2,190,000 in a mold/bad faith lawsuit (Rogers v. USAA). The homeowners filed a claim arising from a leak which caused water damage and mold contamination to their kitchen. Their homeowners policy had limits of \$1.3 million, but contained an endorsement limiting coverage for mold-related claims to \$2,500. The homeowners sued for bad faith, breach of contract, fraud and malice arguing that the insurer was improperly applying the endorsement. By the time the case went to trial, USAA had paid all but \$35,000 of the claim. The jury awarded the couple \$35,000 for breach of contract, \$400,000 for their emotional distress, \$5,000 for medical costs associated with their exposure to mold and \$1.75 million in punitive damages. The jurors reportedly voted 10 to 2 in favor of the homeowners on the issue of malice and 11 to 1 in favor of the punitive damages award. The homeowners have also asked the court to add \$300,000 in attorneys fees and costs onto the award. *HarrisMartin Columns on 02/01/2004*

- **23 Feb 2004 - Texas jury awards Homeowners \$2.5M in mold/water damage breach of contract suit**

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A Texas jury ordered Fire Insurance Exchange, a division of Farmer's Insurance Company, to pay the plaintiffs in a residential water damage/mold contamination lawsuit \$2.5 million for breach of contract (Miler v. Farmers Ins. Group). The homeowners alleged that the insurer "denied, delayed or failed to pay or properly investigate some or all of their" water damage and/or mold claims "without a reasonable basis for doing so." The district court jury awarded the plaintiffs \$1.8 million for breach of contract. The court also ordered the insurer to pay the plaintiffs prejudgment interest plus an 18% statutory penalty bringing the total award to \$2.5 million. While the only claim before this jury was for breach of contract, the plaintiffs are also seeking damages for bad faith and personal injuries caused by exposure to mold. A trial date for the bad faith claim has yet to be set. *HarrisMartin Columns on 02/01/2004*

- **23 Feb 2004 - Contractors settle mold/water damage suit filed by school district for \$5.775M**

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Six defendants including architects, contractors and subcontractors, have settled a water damage/mold contamination lawsuit filed by a Texas school district for \$5.775 million (Edgewood Independent School District v. Bradley Molina Architects, Inc.). The school district sued several companies in 2002, some 5 years after they completed construction of a new auditorium alleging that defects caused the building to leak profusely resulting in severe mold contamination. Costs to repair the building were estimated to be between \$3 million and \$4 million. After mediation six defendants settled for \$5.775 million. Settling defendants included: Bradley Molina Architects, Inc. (designer and supervisor of the construction project), Ericstad, Inc. (mason), Incote, Inc. (builder), Dulaney Exterior Solutions (waterproofing), McNeil Roofing & Sheet Metal, and Louis Cruz Architects, Inc. *HarrisMartin Columns on 02/01/2004*

- **23 Feb 2004 - Michigan appeals court upholds mold/anticoncurrent causation exclusion in homeowners policy**

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A Michigan appeals court has found that a mold exclusion contained within a homeowners policy bars mold claims even when the mold contamination arose out of a covered event (Dahlke v. Home Owners Ins. Co.). The appellate court found that an anticoncurrent causation exclusion expressly precluded coverage for losses directly or indirectly caused in whole or in part by mold damage "even though the mold itself may have formed as the result of a covered

event." *HarrisMartin Columns on 02/01/2004*

- **1 Mar 2004 - Texas district court finds mold damage is covered despite ensuing loss exclusion in HO's policy**

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A Texas district court has held that mold damage is covered when the mold arose from water damage caused by a covered event (Corry v. Allstate Texas Lloyds). Allstate denied a water damage and mold contamination claim caused by an accidental leak from the home's plumbing, heating and air-conditioning system. Allstate argued that the claim was excluded by the ensuing loss exclusion contained in the homeowners' policy. The exclusion stated that "we do not cover ensuing loss caused by collapse of building or any part of the building, water damage or breakage of glass which is part of the building if the loss would otherwise be covered by this policy." The court held that despite the exclusion, water damage and mold contamination arising as an ensuing loss from a covered event is not barred by the exclusion. *Mealey's Litigation Report Mold on 02/01/2004*

- **29 Jan 2004 - Court orders homeowners' insurer to pay \$2.5M for mold/bad faith claims handling**

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A Texas jury has rendered a \$2.5 million award against a homeowners' insurer in a mold/bad faith action (Miller v. Farmers Ins. Group). The insurer allegedly refused to completely cover claims of mold contamination and water damage caused by plumbing and air conditioning leaks. The suit sought damages for bad faith and personal injuries caused by exposure to mold. The jury ordered Farmers to pay the plaintiffs \$1.8 million plus prejudgment interest and an 18% penalty bringing the total award to \$2.5 million. The homeowners have also brought suit against several contractors who allegedly performed substandard construction or repairs to the home. *HarrisMartin Columns on 01/19/2004*

- **13 Jan 2004 - Employees file toxic mold lawsuit against owners/operators of hotel**

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Lawyers on behalf of 18 former hotel employees have filed a toxic mold suit against the owners and operators of a Louisiana hotel. The plaintiffs are alleging that the companies mismanaged water intrusion resulting mold contamination which caused their illnesses. After stachybotrys and penicillium were found in the hotel, the owners spent over \$100,000 to remediate the contamination. The suit alleges, however, that employees had been complaining about the mold contamination over 5 years before the company took remedial actions. Defendants in the suit include Omni Royal Crescent Hotel, Omni Hotels management Corp. and Decatur Hotels LLC. *The Times-Picayune on 01/13/2004*

- **12 Jan 2004 - 12 North Carolina firefighters want file WC claims for mold-related illnesses**

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A Dozen North Carolina firefighters have filed workers' compensation claims with the state's Industrial Commission alleging that mold contamination in their Wilmington fire station has caused their illnesses including sinus infections, fatigue respiratory ailments and obstructive pulmonary disease. *Associated Press on 01/12/2004*

- **7 Jan 2004 - Indiana builder buys back 68 mold ridden upscale homes and agrees to remediate others**

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One of Indiana's largest home builder, Trinity Homes, has bought back 68 upscale homes heavily contaminated by mold. The homes were bought back for \$200,000 to \$300,000 each (total costs of \$13.6 million to \$20.4 million). The builder, which is owned by Beazer Homes, has also reached an agreement with the state's Attorney General to remediate mold contamination allegedly caused by construction defects in 23 homes where the buyers have complained of mold contamination and also repair any future homes with defects and/or mold. At least six owners of homes with mold contamination that Trinity feels can be remediated have asked the builder to buy back the homes after previous attempts at repairing defects and mold contamination reportedly failed. The company is also facing at least two mold/construction defects lawsuits filed by homeowners. *Indianapolis Star, theindychannel.com on 01/07/2004*

- **6 Jan 2004 - California homeowners assoc. gets over \$13M in mold/construction defects suit**

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A California homeowners association has received over \$13.1 million from settlements and awards as a result of their mold/construction defects lawsuit filed against contractors. The El Escorial Home Owners Association filed suit against some 47 contractors and subcontractors who worked on the condominium complex between 1990 and 1996 after discovering mold contamination in the complex. The plaintiffs alleged that the mold was contamination was a health hazard and would cost millions to remediate. Thirty-five of the defendants paid \$10.6 million to settle their liability either before or just after the trial began. Six additional contractors settled for undisclosed amounts during the trial which lasted almost 200 days. At verdict, the jury ordered DLC Plastering to pay \$2 million and Alderman Construction to pay \$500,000. Four tile, painting and coating subcontractors were found not to be negligent by the jury. *Santa Barbara News-Press on 01/04/2004*

- **8 Jan 2004 - Florida apartment building owner pays millions to settle mold litigation**

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Archstone Smith Operating Trust and Smith Property Holdings Harbour House L.L.C., the owners of a 452 unit apartment building, has settled a mold lawsuit by agreeing to remediate all mold contaminated apartments, pay for temporary housing and pay the plaintiffs' counsel \$4.3 million fees and expenses. The settlement also will pay class members who lived in the building between 6/02 and 1/03 100% of their personal property damages, 65% of their lease obligation during that time period, 2.5 times any actual medical expenses incurred due to the mold contamination and an additional \$3,000 each. Class members who moved out of the building prior to 6/02 will get a cash payment of one months rent upon proof of damages caused by mold or moisture problems within the apartment. Under the settlement, plaintiffs can pursue, through jury trial, any personal injury claims that do not settle through mediation. The lawsuit, filed by current and former building tenants alleged that improper maintenance of the building's HVAC system caused extensive mold growth throughout the building. *HarrisMartin Columns on 01/01/2004*

- **29 Jan 2004 - Michigan appeals court holds that mold exclusion bars claims even though mold was caused by a covered cause of loss**

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A Michigan appeals court has held that a mold exclusion contained in a homeowners' policy bars claims for mold even when the mold contamination was caused by a covered cause of loss (Dahlke v. Home Owners Ins. Co.). The underlying claim involved ice and snow melted through the homeowner's roof. The extent of the mold contamination resulted in the home

being declared a total loss. *ShawPitman LLP Alert on 01/01/2004*

- **29 Jan 2004 - Texas office workers sue building owner over mold exposure**

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Current and former employees of Hidalgo County Community Services Agency have filed a lawsuit against the owner of the office building where they allege they were exposed to toxic mold. Some employees allege they have been exposed to mold since 1998. The building is owned by Richard Garza d/b/a BIC Investments. *Mealey's Litigation Report Mold on 01/01/2004*

- **6 Jan 2004 - Owners of Texas building file mold suit against contractors**

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The owners of a Texas office building have filed suit against several contractors after discovering mold contamination in the building. The building, which was leased for use as city hall, is owned by the 4b Corporation. 4b filed suit against T.I.G. Inc., the general contractor, project manager Goudeau Enterprises and Randall Refrigeration Inc., the HVAC contractor alleging that water leaks and construction defects caused mold contamination throughout the building. *The Courier on 12/22/2003*

- **23 Dec 2003 - Toxic mold wrongful death suit leads to \$2.35M settlement**

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Plaintiffs who filed a toxic mold lawsuit in California alleging that water leaks in their rented home led to mold contamination and that exposure caused their 16 month old child's death has been settled for \$2.35 million. The parents filed suit against two roofers, their landlord and the rental management company. Dodson Bros. Roofing which installed the roof settled their liability for \$1 million. The homeowner settled for \$800,000. Kaweah Rental Management settled for \$500,000 and Visalia Roofing which performed minor repair work on the roof settled for \$50,000. *The Fresno Bee on 12/21/2003*

- **18 Dec 2003 - Contractors settle mold suit for \$21M**

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Contractors involved in the building of Economedes High School in Edinburg, Texas have settled a mold lawsuit by agreeing to pay \$20.9 million. Construction of the school was completed four years ago and administrators blame mold contamination on construction defects. Defendant Landmark Organization has agreed to pay \$11 million of the settlement , while other 16 subcontractors have agreed to pay \$10.7 million. Nine additional subcontractors still remain defendants in the lawsuit. *Knight Ridder Tribune Business News, Valley Morning Star on 12/18/2003*

- **16 Dec 2003 - Indiana builders and realtors face mold litigation**

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Lawsuits alleging bodily injuries and/or property damages caused by mold contamination have been filed against Indiana home builders and realtors including Precedent Homes, Trinity Homes and Robert W. McKinney. One of the alleged sources of contamination in several of these suits is a failure to allow for a sufficient air gap between brick and the outer wood sheathing. Trinity Homes which is owned by Beezer Homes Investment Corp., is facing mold complaints from residents in several area developments. One plaintiffs' attorney is seeking class action status alleging improperly applied brick caused the mold contamination. This problem may affect hundreds of Indiana homes put up by the builder which builds 500 to 600

homes annually. *Knight Ridder Tribune Business News on 12/15/2003*

- **11 Dec 2003 - Insurers have paid \$4.4B for mold claims in 2001 & 2002**

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According to the Insurance Information Institute, insurers paid \$4.4 billion in mold claims in 2001 and 2002. In 2002, insurers paid \$3 billion, more than double the \$1.4 billion paid in 2001. *The New York Times on 12/11/2003*

- **12 Dec 2003 - Fourteen additional toxic mold suits filed against Florida school board**

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Fourteen additional toxic mold lawsuits have been filed against the Broward County School District representing 17 former students and members of the school staff. Lawsuits representing 20 other teachers and students of were filed in September. All the plaintiffs worked or went to school at two elementary schools: Indian Trace and Riverside elementary schools. The suits were filed after the teachers and students allegedly became ill from exposure to mold. Both schools were built in the 1980s and the school district has reportedly already paid millions of dollars to remediate mold contamination in district schools. The suit seeks unspecified damages for past and future medical expenses and pain and suffering. *Sun-Sentinel on 12/11/2003*

- **4 Dec 2003 - Massachusetts homeowner files toxic mold suit against realtors and home inspector**

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A Massachusetts family has filed a lawsuit against their home inspector and two realtors alleging exposure to mold contamination in their home has caused illnesses including a "severe allergic reaction," and has damaged personal property. The family is represented by the attorney who recently won the state's first damages award paid for bodily injuries allegedly caused by exposure to mold. *Townsend Times on 12/03/2003*

- **4 Dec 2003 - California homeowner files toxic mold suit against contractor**

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A California family has filed a lawsuit against a contractor after their child allegedly became ill from exposure to mold. Tests have revealed high levels of stachybotrys, penicillium and aspergillus in the house. At the recommendation of the child's doctor they evacuate the house. The suit, filed against Jack Wilson Construction seeks the fair market value of the house, the costs of replacing personal property and up to \$3 million for personal injuries. *Knight Ridder Tribune Business News on 12/01/2003*

- **9 Dec 2003 - Federal appeals court finds that mold claims not covered when proximate cause occurred before policy inception**

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The Ninth Circuit Court of Appeals has found that "where leaks resulting from construction defects pre-date the policy's effective date, resulting in mold is an uncovered loss-in-progress - even if the mold first manifests itself during the term of the contract" (Factory Mutual Ins. Co. v. Churchill). The case involved a shopping mall with water intrusion that began in the mid 1980s. The owner waited for some 10 years, until mold contamination resulted from the leaks, before filing a first party property claim. *ShawPitman LLP Alert on 12/01/2003*

- **15 Dec 2003 - Property insurer settles mold claim for \$2.5M**

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Royal Surplus Lines Insurance Co. has reportedly settled a mold contamination lawsuit filed by La Mirage Homeowners Association by agreeing to pay the condo owners \$2.5 million. The suit filed in a Texas district court by the condo association sought damages for water intrusion leading to mold contamination and damages for bad faith. Royal Surplus which had provided the association with commercial property policy in 2001, had already paid \$250,000 in damages before the litigation began. *Mealey's Litigation Report Mold on 12/01/2003*

- **23 Dec 2003 - Toxic mold wrongful death lawsuit filed against California landlord**

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The parent of a deceased child has filed a lawsuit against her landlords alleging that exposure to mold contamination in the unit led to increased asthma attacks and the death of her four year old daughter (Green v. Simmons). The plaintiff alleged that the landlords "delay, failure and refusal to inspect, manage, repair, maintain and repair" the apartment led to mold contamination. The claim alleges that due to mold exposure the child was sent to hospital emergency rooms on 20 occasions for asthma attacks, the last of which resulted in coma and then death. The building contains four rental units. *Mealey's Litigation Report Mold on 12/01/2003*

- **26 Nov 2003 - Apartment complex owner settles toxic mold class action for an estimated \$25M - in addition to \$38M for remediation**

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Archstone-Smith has agreed to settle a mold class action suit filed on behalf of over 1,000 current and former tenants of Harbor House in Bal Harbour, Florida. While the total costs of the settlement remain unclear, Archstone estimates the cost will be \$25 million. The settlement calls for Archstone to pay 100% of each class member's personal property damages, 65% of each tenants rent obligation, \$3,000 for aggravated damages for each class member and 2.5 times actual medical expenses for certain medical conditions. Class members do not have to prove that mold caused their ailments. Under the settlement, class members preserve their right to pursue personal injury claims in court if they don't settle their individual claims in mediation. The estimated \$25 million settlement is in addition to the \$38 million archstone paid to remediate mold contamination from the 452 unit building. Plaintiffs alleged that an improperly executed renovation of the building's heating ventilation and air conditioning system caused the mold contamination. Mold at levels up to 100 times outdoor levels were found in 450 of the 452 units. Archstone "expects to recover a 'significant' portion of the settlement costs from its insurance carriers." The company has also filed a lawsuit seeking over \$30 million against architect Bernard Zyscovich, engineering firm Tiden Lobnitz & Cooper and Penn Refrigeration and Air Conditioning. *Miami Daily Business Review, The Miami Herald on 11/26/2003*

- **25 Nov 2003 - Homeowners insurers paid out \$3 billion for mold claims in 2002**

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According to the Insurance Information Institute, homeowners insurers paid out \$3 billion for mold claims in 2002, compared to \$1.4 billion in 2001. *The Boston Globe on 11/25/2003*

- **25 Nov 2003 - First Massachusetts award for toxic mold suit = \$549,326**

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After an 8 year legal battle, a Massachusetts jury ordered the Pirates Lane Condo Trust to pay a condo owner \$285,000, with interest \$549,326, for injuries allegedly caused by exposure to

toxic mold. The plaintiff alleged that exposure to mold caused her to experience flu-like symptoms, rashes and respiratory difficulties. The jury found the trustees were negligent and created a nuisance by allowing water to penetrate the basement of the unit causing mold to grow. *The Boston Globe on 11/25/2003*

- **21 Nov 2003 - Mold contamination hits two apartment complexes in Colorado**

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Mold contamination has been found in two apartment complexes in Vail, Colorado. Earlier this week some 300 residents were evacuated after mold contamination was found in 17 buildings in the Breckenridge housing complex. Most of those residents were employees of Vail Resorts. Visible mold and/or elevated mold spores were subsequently discovered in the 198 unit Timber Ridge Village Apartments. Only about 30 units were occupied, but leases have been suspended until further testing and remediation is complete. The apartments usually hold some 600 residents over the winter. *Associated Press on 11/20/2003*

- **20 Nov 2003 - Defense costs alone for mold bodily injury suit cost municipality \$1M**

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Tulare County, California has already paid \$835,812 in defense costs in a mold bodily injury lawsuit filed by a judge who alleged exposure to mold in a county courthouse caused her illnesses. While the county settled the suit for \$40,000, it expects its legal defense costs to increase as it is still awaiting bills for legal fees and expert witnesses. The county also paid \$200,000 to remediate mold from the courthouse. The judge, who has already received \$277,500 in settlements with other defendants, including the \$40,000 settlement with the county, still has lawsuits filed against three subcontractors who worked on the courthouse. *Tulare Advance-Register on 11/19/2003*

- **21 Nov 2003 - Wisconsin appeals court dismisses bad faith suit arising out of mold coverage dispute**

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A Wisconsin appeals court has dismissed a bad faith suit filed against a homeowners' carrier arising out of its denial of a mold claim (Vvalther v. American Family Mut. Ins. Co.). The court held that regardless of whether the insurer was correctly interpreting the policy language, the court concluded that because the language was "fairly debatable," the bad faith action was not sustainable. *Mealey's Emerging Insurance Disputes on 11/18/2003*

- **21 Nov 2003 - Pennsylvania court finds that mold can be covered as an ensuing loss even when the policy contains a mold exclusion**

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A Pennsylvania court of Common pleas judge has held that a mold claim can be covered as an ensuing loss even when the policy contains a mold exclusion (Tatlovich v. Pennsylvania National Mutual Casualty Ins. Co.). The judge reasoned that "The defendant contends that mold cannot be covered by the ensuing loss clause because it is specifically 'excluded or excepted' in the policy. We reject this argument because it would completely emasculate the ensuing loss clause. At best, the language in the ensuing loss clause is reasonably susceptible to more than one meaning...and the clause is ambiguous and must be construed against the defendant [insurer] ... *Mealey's Emerging Insurance Disputes on 11/18/2003*

- **17 Nov 2003 - California Judge expected to receive up to \$457,500 in settlements for injuries allegedly caused by mold exposure**

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A California superior court judge who filed a bodily injury suit against the county and contractors alleging that exposure to mold in the Tulare County courthouse has, to date, received \$277,500 in settlements including \$40,000 from the county. The judge "is expected to settle for an additional \$80,000 to \$180,000 with contractors involved in building the Tulare County courthouse addition" which subsequently became contaminated with mold. The judge was originally seeking in excess of \$1 million. The judge alleged that exposure to the mold led to "painful inflammation and severe rashes to her face, eyes and mouth." Over 150 county employees also sued the county over mold exposure,, but these claims were dismissed by the court. *The Porterville Recorder on 11/17/2003*

- **17 Nov 2003 - Mold remediation at North Carolina University to cost \$29.3M**

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Mold in buildings at North Carolina University campuses will cost \$29.3 million to remediate. The bulk of the money will go toward remediating buildings at the NC Central University where \$25.8 million will be spent on mold remediation. The remaining \$3.5 million will go to mold remediation at NC Universities Pembroke campus. *Fayetteville (NC) Observer on 11/14/2003*

- **10 Nov 2003 - Insurers see triple-digit increases in mold claims against commercial building owners since 2000**

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After seeing triple-digit increases in mold claims filed against commercial building owners over the past 3 years, more insurers are excluding mold claims from CGL policies issued to owners of apartment and office buildings, hotels and municipal buildings. Some building owners are reportedly amending leases to hold tenants responsible for certain damages that lead to mold growth. *The Denver Post on 11/10/2003*

- **10 Nov 2003 - Insurer begins excluding mold claims from auto policies**

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State Farm has begun to exclude mold claims from its auto policies. Other insurers are reportedly considering the move. This comes after a lawsuit, filed in 1999, where an auto owner sued an auto manufacturer alleging faulty weather stripping led to mold contamination and his illnesses. That suit was settled with the amount of the settlement remaining confidential. The lawyer for the plaintiff in that case is reportedly preparing another six similar suits. *The Denver Post on 11/10/2003*

- **18 Nov 2003 - Property insurer pays \$766,000 to settle mold coverage dispute**

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A property insurer settled a mold coverage action by agreeing to pay \$766,000 (Allianz Ins. Co. v. SSR Realtor Advisors and Westtown Apartments). The insured was seeking coverage for mold contamination which appeared after a lightning strike caused a fire in a large luxury apartment complex. The insured was seeking half of \$1.5 million it allegedly spent on mold remediation. Allianz, which provided 50% of \$10 million in primary limits, originally disputed the costs associated for mold remediation. The carrier subsequently agreed to pay \$516,121 for the insured's breach of contract claim and \$250,828 for additional rental losses. *Mealey's Litigation Report Mold on 11/10/2003*

- **7 Nov 2003 - ASSE to develop mold exposure standards to protect mold remediation**

## workers

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The American Society of Safety Engineers (ASSE) will develop a standard aimed at protecting workers from mold exposure during remediation projects. In tis press release, ASSE states that "ASSE recognizes that some forms of mold can cause adverse health effects in some people, including the elderly, children, and persons with reduced or compromised immune systems and/or can aggravate pre-existing health conditions." *American Society of Safety Engineers Press Release on 11/05/2003*

- **3 Nov 2003 - "Licensed" mold remediation contractors**

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Louisiana has passed a law (Act 880) that requires mold remediation contractors to be licensed. These "licensed" contractors will have received 24 hours of training. *HarrisMartin Columns on 11/01/2003*

- **30 Oct 2003 - Missouri Dept. of Insurance may require insurers to cover mold claims in personal lines policies**

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The Missouri Department of Insurance (DOI) is considering issuing a proposed bulletin that would mandate coverage for mold damage under personal lines policies. The DOI currently allows insurers to exclude coverage for mold from personal lines policies and all but some 20% of policies issued in the state have excluded mold. *Insurance Journal on 10/29/2003*

- **20 Oct 2003 - Delaware apartment complex undergoes massive mold remediation**

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A Delaware apartment complex is undergoing a massive mold remediation project. Thirty-nine buildings of the Fenwick Park Apartments are involved. Some 650 people were evicted from their homes due to the mold contamination about one year ago. *CBS KYW-TV on 10/17/2003*

- **20 Oct 2003 - Mold contamination at a Connecticut high school will cost an estimated \$830,000 to remediate**

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The Amity, Connecticut Regional Board of Education is facing an estimated \$830,000 to rid the high school auditorium of mold contamination. Remediation would include roof repairs, modifying the heating and air conditioning system, removing finishing on the auditorium walls and the removal of seats in the auditorium. *The New Haven Register on 10/16/2003*

- **16 Oct 2003 - Realtors & home inspector sued in mold contamination suit**

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After discovering mold contamination in the attic of their Massachusetts home and allegedly contracting pulmonary emphysema due to the mold exposure, a Massachusetts family has filed a lawsuit against two realty companies and a home inspector. Defendants are real estate agents from RE/MAX Colonial, Century 21 and Clayton Home Inspection. The suit also names the former owner of the home as a defendant. *Pepperell Free Press on 10/15/2003*

- **20 Oct 2003 - Massachusetts tenant files toxic mold suit against property managers and building owner**

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A single mother of four children has filed a toxic mold suit against the owner of her rented town home and the property manager alleging her children's illnesses have been caused by exposure to mold contamination. A sewer backup flooded the town home in March 2001. Subsequently there was mold contamination and her children began to experience ailments including asthma, sinus and ear infections, chest pains, vomiting, bloody noses, severe headaches, and memory loss. Independent testing found several types of mold in the home. After numerous complaints, the suit alleges that the defendants failed to properly cleanup after the sewage spill and failed to keep the building in a safe and sanitary condition. *Isanti County News on 10/15/2003*

- **10 Oct 2003 - Mold remediation at North Carolina elementary school to cost \$2.1M**

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Mold remediation at Devers Elementary School in Fort Bragg, North Carolina will cost a projected \$2.1 million. Improper operation of the ventilation and air conditioning system is believed to have contributed to the mold contamination. *Fayetteville (NC) Observer on 10/10/2003*

- **10 Oct 2003 - Mold contamination at an Illinois university to cost \$5M to remediate**

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Mold contamination in three dormitories on the Southern Illinois University-Edwardsville campus will cost \$5 million to remediate. Remediation will include dry wall replacement and modifications to the buildings heating and ventilation system. *St Louis Business Journal on 10/09/2003*

- **9 Oct 2003 - State Farm rates for mold coverage in Florida**

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The Florida Office of Insurance Regulation has approved State Farm's request to exclude pollution from Florida homeowners' policies, however, regulators are requiring the insurer to make mold coverage available to its customers. State Farm has worked up rates for the mold coverage: \$250 per year for a \$15,000 limit, \$350 for a \$25,000 limit, \$450 for \$50,000 limit and \$625 for full policy limits. The rates have yet to be approved by Florida regulators. State Farm is Florida's largest homeowners insurer and has seen its mold claims increase from 35 in 2000 to 950 in 2002. *Knight Ridder Tribune Business News on 10/08/2003*

- **10 Oct 2003 - Pennsylvania school district files mold/bad faith suit against insurers**

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The Bethlehem Area School District has filed a mold/bad faith suit against its insurers alleging the company mishandled a mold contamination claim ( Bethlehem Area School District v. Zurich Group). Named as defendants in the litigation are Zurich Group, Zurich US, The Maryland Commercial Insurance Group, and Valiant Insurance Co. After mold contamination, caused by roof leaks, was discovered in virtually all areas of the Freemansburg Elementary School, the district filed suit alleging bad faith and breach of contract. The school district has also filed a separate suit against the insurers of White Brothers Corp., the firm hired to replace the roof on another district school. The school district was an additional named insured under the contractor's policies. Insurers named as defendants in this suit were Nautilus Ins. Co. and Scottsdale Ins. Co. *Mealey's Litigation Report Mold on 09/30/2003*

- **29 Sep 2003 - University will spend \$39.5M to cleanup mold contamination in 9 buildings**

New estimates for the costs of mold remediation for 9 North Carolina Central University campus buildings have reached \$39.5 million. The estimate includes the cost to completely gut two dorms built in 1999. *Associated Press on 09/24/2003*

- **19 Sep 2003 - Jagger joins Brockovich, McMahon & Nugent - celebrities who filed mold suits**

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Bianca Jagger has filed a lawsuit against the owner of her New York apartment building, the building's managing agent and former managing agents over mold contamination. The suit seeks \$20 million in damages. Defendants include: Katz Park Avenue Corp., Insignia Residential Group, Prudential Douglas Elliman and AJ Clarke Real Estate Corp. *Associated Press on 09/19/2003*

- **22 Sep 2003 - Contractors and architect settle with Nevada municipality for \$890,000 over mold contamination suit**

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Some of the contractors as well as the architect who worked on a Nye County, Nevada government office building have reached a settlement with the county over allegations that construction defects caused mold contamination. Construction of the building was completed in August 1999 but had to be closed due to mold contamination in September 2001. Mold remediation took until June 2003 to complete. Intermountain Construction Inc., which acted as the general contractor, project consultant and manager, settled its liability for \$625,000. The architect, Leland Dille and project engineer ESA Inc. settled for \$250,000 and the Trane Company, manufacturer, supplier, and distributor of the HVAC system, settled for \$15,000. Trial with the remaining defendants, including Modern Controls and Refrigeration Inc., PCI, Price Industries, Interstate Mechanical, Delta Control, American Standard, Engineered Systems, and Nibco is scheduled to begin in March. *Pahrump Valley Times on 09/19/2003*

- **26 Sep 2003 - Southern Illinois University files mold contamination suit against contractors**

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Southern Illinois University has filed a lawsuit against the contractors who built two dormitories on campus. The dorms are heavily contaminated by mold. Several different species of mold are reportedly growing in ceilings, on doors and walls of the dorms. One of the dorms houses over 500 students. The university is in the process of removing or cleaning drywall and carpets. *KSDK TV on 09/19/2003*

- **19 Sep 2003 - Mold contamination at North Carolina Central University cost over \$20M**

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Mold contamination has been found in 14 buildings at North Carolina Central University. Two of the dorms will have to be gutted and rebuilt as a result of the contamination at a cost of \$9 million. The remaining buildings will cost some \$10.4 million to remediate. Housing about 900 students that can no longer live in affected dorms will cost another \$1 million. *Knight Ridder Tribune Business News on 09/18/2003*

- **17 Sep 2003 - 10% of U.S. homes with enough mold contamination to make occupants ill?**

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According to this article "some environmental inspectors have estimated that at least 10 percent of houses in the United States have enough mold contamination to make their

occupants sick." *Timnes Herald-Record on 09/16/2003*

- **17 Sep 2003 - Homeowners carrier settles Illinois mold claim for \$593,000**

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Amica Mutual has settled an Illinois homeowner's mold claim by agreeing to pay \$593,000 (Henderson v. Amica Mutual). The homeowner has also filed suit against Servicemaster Co., O'Brien Plumbing and Sewer, JC Restoration Inc. and Environmental Diagnostics alleging the defendants negligently repaired her home after a 1998 fire and subsequent water damage resulted in mold contamination. *Mealey's Litigation Report Mold on 09/15/2003*

- **16 Sep 2003 - Mold contamination affecting many New England schools**

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The federal EPA is reporting that many New England schools are experiencing mold contamination and school districts are facing six figure remediation projects. More than 50 Massachusetts schools reported mold contamination to the agency since the beginning of the school year. The Old Rochester School District has recently spent \$400,000 to remediate mold from the walls of an elementary school. The EPA reports getting "hundreds and hundreds of phone calls from New England schools reporting mold contamination. *Associated Press on 09/14/2003*

- **15 Sep 2003 - Mold remediation at university to cost at least \$9M**

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Remediation of mold contamination at dorms at the University of North Carolina will cost at least \$9 million and take up to 18 months to complete. The university is also inspecting 11 other campus buildings for mold contamination. *The Triangle & Fayetteville on 09/12/2003*

- **15 Sep 2003 - EPA hopes to determine whether mold exposure can cause serious illness within the next ten years**

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The government has asked the EPA to determine whether exposure to mold can result in serious adverse health affects. The agency's chief of experimental toxicology has stated she hopes to have answers 10 years from now, she believes "its going to take a while." *Knight Ridder Tribune Business News*

- **4 Sep 2003 - Connecticut school board sued over mold exposure**

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Parents of a seven year old child have filed suit against the Andover (Connecticut) Board of Education alleging that exposure to airborne mold at Andover Elementary in 2001-2002 caused their child's asthma and other health problems. Parents of another child have also filed notice of their intent to sue. The school recently removed mold from crawlspaces beneath the elementary school. *The Chronicle on 09/04/2003*

- **4 Sep 2003 - New Connecticut law requires the state to reimburse municipalities for school mold remediation projects**

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A new law requires the state Department of Education to reimburse municipalities for mold remediation projects if the mold contamination was the result of poor maintenance and the remediation costs are \$100,000 or more. The new law took effect on July 1, 2003.

Municipalities can still seek reimbursement from architects and contractors if the mold contamination arose from design errors or construction defects. *The Valley Gazette on 09/03/2003*

- **3 Sep 2003 - Louisiana appeals court holds a total pollution exclusion no bar to mold bodily injury claims**

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A Louisiana appeals court has ruled that a total pollution exclusion contained in a contractor's CGL policy does not bar claims for bodily injury arising from exposure to mold (State Farm Fire and Casualty Co. v. M.L.T. Construction Co., Bourma v. HH&K Realty). The plaintiff filed suit against several contractors who had performed operations during to replace the roof on the building where she worked. Hermitage Ins. Co. had issued a CGL policy containing a total pollution exclusion to Hibernia Roofing and denied the claim based upon the pollution exclusion. The appellate court held that mold caused by an influx of rainwater was is not precluded from coverage under the pollution exclusion. *HarrisMartin Columns on 09/01/2003*

- **27 Aug 2003 - North Carolina school board settles toxic mold suit**

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The Robson County School Board has agreed to settle a toxic mold suit filed by the parents of a student that allegedly became ill after exposure to mold in his elementary school. The child was 7 at that time. School officials allegedly became aware of the mold contamination in April 2001, but kept students in the building until the end of the school year. The school board settled even after a lower court dismissed the plaintiff's suit finding that a state law prevents government entities from being sued while performing their duties. The plaintiff's appealed and according to school board officials, the school board settled to avoid mounting legal costs. The amount of the settlement has reportedly yet to be determined. The boy's parents have ongoing legal actions against several contractors who performed operations at the school including Home Builders Service Contractors Inc. Construction Control Corp. and Native American Designs. The school board has also launched its own mold lawsuit against several contractors seeking to recover the \$683,000 spent to remediate the mold contamination. *The Fayetteville (N.C.) Observer on 08/27/2003*

- **26 Aug 2003 - Mold remediation at Pennsylvania school to cost \$700,000**

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Mold remediation at the Coatsville Area School District's Ninth and Tenth Grade Center will cost \$700,000. This does not include the costs of mold remediation that took place at the center in December 2002 that ultimately did not eradicate the mold. *The Inquirer on 08/26/2003*

- **27 Aug 2003 - Litigation feared after mold found in 25% of British homes**

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A new study for the Royal Institute of Charter Surveyors, due to be released this fall, found mold contamination in 25% of British homes. The study reportedly found that "discovering the toxic variety [of mold], known as *Stachybotrys chartarum*, was remarkably common." According to this article, "the results of the British study point to the problem becoming a significant reason for litigation and insurance claims in [the UK] in the near future." *Europe Intelligence Wire on 08/26/2003*

- **23 Jul 2003 - Louisiana court finds mold absorption/inhalation and toxic/foreign matter exclusions are ambiguous in mold personal injury coverage litigation**

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Less than two weeks after Louisiana's Civil District Court in the Parish of Orleans found that an organic pathogen exclusion was ambiguous in a mold personal injury coverage dispute, the court ruled that absorption/inhalation and toxic/foreign matter exclusions are also ambiguous in mold personal injury coverage litigation. The underlying case consists of three consolidated mold personal injury suits filed on behalf of over 1,000 employees located in the Plaza Tower office building in New Orleans. Defendants in the litigation include the building owner, managers, their insurers and Louisiana State agencies that maintained offices in the building. Insurers sought summary judgement based upon the exclusions. The court denied the summary judgement motions stating that "the insurance policies do not preclude coverage for claims related to any illness or injury caused by inhalation, ingestion or absorption of toxic or foreign matter, including but not limited to mold and/or by-products of mold and is deemed vague and ambiguous.." *HarrisMartin Columns on 08/01/2003*

- **25 Aug 2003 - Wisconsin appeals court holds that the pollution exclusion contained in an E&O policy does not bar mold claims**

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In an unpublished opinion, the District II Wisconsin Court of Appeals has held that the pollution exclusion contained in a realtor's E&O policy does not bar mold claims (*Droegkamp v. Langdon*). The underlying case involved a strict liability misrepresentation claim filed against the seller of a home. *Mealey's Litigation Report Mold on 08/01/2003*

- **25 Aug 2003 - Illinois judge refuses to certify mold class action**

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An Illinois circuit court judge has refused to certify a class action filed on behalf of students allegedly made ill due to mold exposure while attending school (*Andrejevic v. Board of Education of Wheaton-Warrenville School District*). The suit seeks damages for children who attended the Johnson School who allegedly experienced respiratory and other ailments. The judge found that there were too many "unique, diverse and individual issues in regard to this case" to certify a class action. Plaintiffs may still file individual lawsuits. *Mealey's Litigation Report Mold on 08/01/2003*

- **23 Jul 2003 - New research links breathing difficulties in babies to mold exposure**

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A new study by researcher at Harvard University concludes that exposure to mold in homes can cause respiratory ailments, including pneumonia, in infants. The findings are published in the *American Journal of Respiratory and Critical Care Medicine*. According to the study, exposure to high levels of mold made respiratory ailments much more likely. *Reuters on 07/22/2003*

- **17 Jul 2003 - IBM facing several suits by employees alleging illnesses caused by mold exposure**

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IBM is facing several lawsuits filed on behalf of employees alleging exposure to mold in their North Carolina workplace caused their illnesses. The employees are alleging that after 30,000 gallons of water flooded IBM's office building in Triangle Park, the company failed to protect them from exposure to mold. After the flood, samples of carpet and wallboard taken from within the building tested positive for mold contamination. *Newsobserver.com on 07/11/2003*

- **3 Jul 2003 - Mold remediation at an Illinois school cost \$700,000**

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Mold discovered at Glenbrook North High School reportedly cost \$700,000 to remediate. *The Pioneer Press on 07/03/2003*

- **2 Jul 2003 - Toxic mold class action suit filed against the City of Denver alleging mold contamination at Denver International Airport caused illnesses among employees and travelers**

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A class action suit has been filed against the City of Denver alleging that mold contamination at the Denver International Airport has caused illnesses among airport employees and travelers who frequently used Concourse B at the airport. The two named plaintiffs, alleging respiratory and other ailments, are employees of United Airlines. The city maintains that the Concourse is not contaminated with mold. *The Denver Post on 07/02/2003*

- **2 Jul 2003 - Mold contamination in Florida shopping mall would cost \$1.2 million to remediate**

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Mold contamination at a Florida shopping mall would cost \$1.2 million to remediate. The eight investors, Three Avenues LLC, who bought the mall in August 2001, has filed suit against City National Bank of Florida, alleging that the bank never disclosed the mold contamination to the buyers. Mold contamination is reportedly affecting some 19,000 square feet of the 50,000 square feet of usable space in the mall. *E.W. Scripps Co. on 07/02/2003*

- **23 Jun 2003 - Six Florida homeowners seek class action status in suit against developer over mold contamination**

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Owners of 6 James Island, Florida homes have filed a lawsuit against one of the biggest developers in the state alleging that improperly installed windows caused mold contamination. The developer is Arvida, which has now begun to send out warning letters to other buyers and potential buyers that its window installation and use of stucco "may differ in some ways" from what Florida law requires. The plaintiffs are seeking class action status for hundreds of other homeowners in the area. *News4Jax.com on 06/23/2003*

- **20 Jun 2003 - Building damaged on 9/11 & subsequently infested with mold will cost over \$100M to demolish**

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The 40 story Deutsche Bank building which was damaged in the World Trade Center collapse and subsequently infested with mold will be demolished due to the mold contamination. Deutsche bank has reportedly reached an agreement with the Chub Group which is one of four insurers that reportedly provided coverage for the building. The building was once valued at \$178 million. It is expected to cost over \$100 million to demolish the building. *Associated Press, Daily News on 06/20/2003*

- **23 Jun 2003 - Landlord settles mold bodily injury suit for Homeowners' policy limits**

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A California family will receive \$430,000 to settle their mold bodily injury lawsuit filed against their landlord and a mold remediation contractor (Lester v. Golden). The plaintiffs rented a house from the defendants. After living there several months the plaintiffs notified the

landlord of mold contamination in the house. Some time after treating the visible mold with bleach, the tenants were diagnosed with building related illness, allegedly caused by exposure to mold. The plaintiffs filed a suit against the landlord and the mold remediation contractor, Sky Blue Environmental, hired by the landlord to decontaminate the family's belongings. The plaintiffs alleged the remediation contractor failed to properly decontaminate their possessions causing cross contamination of their new home. The suit was settled prior to trial for \$430,000 with the landlord's homeowners' insurer paying its full policy limits of \$300,000 and the remediation contractor paying \$130,000. *HarrisMartin Columns on 06/20/2003*

- **17 Jun 2003 - Mold claims arising in Texas from Tropical Storm Allison said to cost insurers \$450M**

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Mold claims arising in Texas from widespread flooding due to Tropical Storm Allison have cost insurers \$450 million. Tropical Storm Allison occurred in June 2000. [Editors note: This provides a good illustration of the "tail" on cat claims arising out of mold.] *The Times-Picayune on 06/14/2003*

- **13 Jun 2003 - Florida apartment building owner is seeking \$30M from contractors, architects and engineers**

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Colorado-based real estate investment trust Archstone-Smith has filed a mold/construction defects suit seeking \$30 million in damages against the architect, engineering firm and the Air conditioning contractor that worked on one of its apartment buildings in Florida. Tenants in the company's Harbor House South building have filed numerous individual suits and two class actions suits against Archstone seeking bodily injury and property damages arising from mold contamination. Archstone has spent \$11.3 million to remediate mold contamination in the building as well as \$1.7 million, to date, in legal costs. Defendants include architect Bernard Zyscovich, engineering firm Tilden, Lobnitz & Cooper and Penn Refrigeration & Air Conditioning. *The South Florida Business Journal on 06/12/2003*

- **13 Jun 2003 - Louisiana court holds that "organic pathogen exclusion" does not bar mold bodily injury claims**

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A Louisiana district court has ruled that an out of state surplus lines carrier's "organic pathogen exclusion" does not apply to bar mold bodily injury claims. The Louisiana Department of Insurance (DOI) has allowed carriers to exclude mold property damage claims but has not allowed mold exclusions barring bodily injury claims. The DOI has issued six denials to admitted carriers attempting to file organic pathogen exclusions. In this case, the owners of an office building, Plaza Tower, is seeking \$9.5 million from American Equity Ins. Co. The insured's attorney argued that policies containing such exclusions provided illusory coverage. *The Times-Picayune on 06/12/2003*

- **10 Jun 2003 - Building owner sued by tenants in toxic mold suit files cross complaint against contractors and the county**

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After 24 out of 25 San Benticio County employees file suit against building owner, the building owner filed suits against contractors and the county. The employees are alleging that exposure to the mold has caused health ailments over the past two years including asthma, chronic flu symptoms, sinus infections, chronic fatigue, gastrointestinal ailments and other respiratory illnesses. The building owner is blaming two construction companies and the county for the

mold contamination and may also file suit against the painting contractor. The trial is scheduled to begin in 60 days. *Hollister Free Lance on 06/09/2003*

- **9 Jun 2003 - Mold claims are to blame for a 13% rise in homeowners' rates nationwide**

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According to a survey conducted by the Consumer Federation of America, homeowners insurance rates increased, on average, 13% in 2002 with mold claims being the leading cause of the increase. Texas homeowners experienced a 57% rate increase in 2002. *Associated Press on 06/08/2003*

- **6 Jun 2003 - Indiana builder relocates 150 families due to mold contamination**

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Builder Trinity Homes has relocated some 150 families who discovered mold contamination in their new homes in two upscale subdivisions in Zionsville, Indiana. The cause of the mold contamination has, according to Trinity, been traced to improperly built bricking applied to all some 90% of the 150 affected homes by one mason. Trinity estimates that repairs to the 150 homes will cost \$10.5 million. Repairs on a single home will take about four months. *WISH-TV on 06/05/2003*

- **5 Jun 2003 - Georgia approves mold exclusions**

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The Georgia Insurance Commissioner has approved new guidelines for mold coverage. Property insurers will be allowed to exclude or sublimit coverage for mold if the mold was not caused by fire or lightning. The new guidelines would allow carriers providing General Liability and umbrella or excess policies to exclude or sublimit mold coverage. Personal lines carriers must provide a \$50,000 limit for mold claims. *Bestwire on 06/03/2003*

- **29 May 2003 - California builder reaches a partial settlement of mold liabilities by agreeing to pay \$4.1M**

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A California builder has reached a partial settlement of a lawsuit filed by a homeowners association alleging construction defects led to heavy mold growth by agreeing to pay \$4.1 million (Spectrum Community Association v. Bristol House Partnership). The Spectrum Community Association filed suit against over 125 defendants, contractors and subcontractors, seeking \$23 million in damages for mold contamination caused by various construction defects. Subsequently 505 of the 850 condo residents also filed toxic tort suits seeking \$15 million in damages for personal injuries caused by exposure to the mold. Prestige Homes, which took over the project from Bristol Houses reached a partial settlement by agreeing to pay \$3 million for property damages and \$1.1 million to bodily injury plaintiffs. Prestige will remain a defendant in the case for any damages that occurred prior to June 1, 1996. The trial for the remaining defendants is scheduled to begin in February 2004. *HarrisMartin Columns on 06/01/2003*

- **29 May 2003 - Coatings maker settles nationwide mold growth claims for \$200M**

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Coatings manufacturer Behr Process Corp. has reached a \$200 million nationwide property damages settlement for litigation alleging that several of its wood coatings products caused or promoted mold growth. The company has agreed to pay plaintiffs from 19 Washington counties \$55 million and pay plaintiffs from all other jurisdictions an additional \$107.5

million. In addition, the firm will pay \$37.5 million for plaintiffs' attorneys' fees. The products involved in this litigation include: Behr No.12 Super Liquid Raw-Hyde, Behr No.13 Super Liquid Raw-Hyde, Behr No. 80 Natural Seal Plus, and Behr No. 92 Natural Seal Plus.

*HarrisMartin Columns on 06/01/2003*

- **30 May 2003 - Allstate pays \$16M for Texas homeowners mold claims for the first quarter of 2003**

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Allstate paid \$16 million for Texas homeowners' mold claims in the first quarter of 2003. Last year, Allstate paid out \$326 million for Texas homeowners' mold claims. *Business Wire on 05/29/2003*

- **29 May 2003 - Mold remediation at an Illinois high school cost \$28M;**

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Mold remediation at St. Charles High School cost \$28 million. The school was closed for 18 months during remediation and repairs took place. Exposure to mold has triggered lawsuits filed by students, parents, teachers and other school employees. *Daily Herald on 05/29/2003*

- **23 May 2003 - Class action filed against hotel for not disclosing mold contamination to guests**

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A class action suit has been filed against Hilton Hotels Corp. alleging the firm violated unfair trade and deceptive acts statutes by not disclosing the presence of mold contamination to guests who stayed in one of their Hawaiian hotels (Moffett v. Hilton Hotels Corp.). The class, if certified, seeks to represent some 10,000 guests who stayed at the 453 room Kalia Tower between May 2001 and July 2002. Hilton has spent some \$56 million, to date, to remediate mold contamination from the hotel and has filed suit against nearly 20 defendants, primarily contractors and architects, to recover the remediation costs and the profits lost due to closing all but four floors in the hotel. *HarrisMartin Columns on 05/23/2003*

- **23 May 2003 - University facing \$20M of mold remediation costs**

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North Carolina Central University has discovered mold contamination in six of their buildings. Eight types of mold were discovered including *Stachybotrys*, which was found in two of the buildings. One dormitory has been permanently closed after it was discovered that mold remediation would disturb asbestos within the building. Remediation of the mold is expected to cost \$20 million. *Knight Ridder Tribune Business News on 05/22/2003*

- **23 May 2003 - Suits being filed against Connecticut school boards alleging injuries caused by exposure to mold**

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Four families are filing suit against two Connecticut school boards alleging negligence in their handling of mold contamination and remediation which resulted in the illnesses of students at the schools. Illnesses alleged include acute asthma attacks and upper respiratory ailments. The students attended Torrington Middle School in Torrington, and Joseph Melillo Middle School in East Haven. Lawyers representing the plaintiffs report that four or five additional notices of intent to sue may be filed by parents of students who attended Deer Run Elementary School in East Haven and schools in Massachusetts. Mold contamination tested in the Torrington Middle School found *Stachybotrys*, *Cladosporium*, *Aspergillus*, *Penicillium Acremonium* and

Altamaria. *HarrisMartin Columns on 05/22/2003*

- **23 May 2003 - Another Hawaiian hotel found to have mold contamination**

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The owners, property manager and former owner of the Aston Hotel Kai are now all involved in litigation over the costs of mold contamination discovered at the hotel. The hotel owner, LaeRoc Partners has filed suit against the former owner, Japanese firm Kenchiku Shiryo Kenkyusha Co. and property manager Aston Hotels and Resorts after discovering mold growing on chilled water pipes and inside guest rooms. The hotel is currently closed for renovation and remediation. *Star Bulletin on 05/21/2003*

- **23 May 2003 - Texas homeowners' mold claims cost insurers \$4B between January 2000 and December 2002**

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Texas homeowners' mold claims cost insurers \$4B over the past three years. The Insurance Council of Texas found that insurers paid \$420 million in 2000, \$1 billion in 2001 and over \$2.5 billion in 2002. The council believes the peak for Texas homeowners mold claims has past. The Consumer Federation of America suggests that mold claims drove homeowners rates up an average of 13% in 2002. *Bestwire on 05/21/2003*

- **17 Jun 2003 - Florida school board receives over \$6M in settlements for mold/construction defects suits filed against contractors and other defendants**

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The Osceola County School Board has received \$6 million in settlements from the architect and contractors who built Poinciana High School. The school board filed suit after construction defects resulted in mold contamination at the school. The school board also received a settlement from Trane Co., the manufacturer of the air conditioning units at the school. Trane is a unit of American Standard. The school district has spent over \$9 million on mold remediation and repairing defects at the school. *Osceola News-Gazette on 05/09/2003*

- **7 May 2003 - Ed McMahon receives \$7.03M in settlements, to date, in mold suit**

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So far, Ed McMahon has received \$7.03 million in settlements from defendants in his mold/bad faith suit. The suit alleged that their homeowners carrier and its adjuster failed to hire qualified mold testing and remediation firms. The McMahons alleged that they suffered severe mold-related injuries as a result of the defendants negligent handling of the claim and that the mold infestation contributed to the death of their dog. All but two defendants have so far settled. Mr. McMahon's insurers, including Travelers, American Equity Ins. Co. and "other related insurance entities" settled for over \$5 million. Benchmark MPE Ltd. settled for \$750,000, Alliance Environmental Group Inc. settled for \$500,000, two insurance adjusters settled for \$250,000, Public Health and Safety settled for \$250,000, Controlled Environmental Solutions settled for \$230,000 and California Power Vac settled for \$3,000. *HarrisMartin Columns, PR Newswire on 05/07/2003*

- **1 May 2003 - Former apartment tenants seek over \$13M ion mold suit**

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Some 138 former residents of the Saratoga Springs Apartments in Dallas have filed suit against the building owner seeking \$13 million in property damages plus unspecified damages for illnesses caused by exposure to mold. The plaintiffs are alleging that water leaks resulted in

mold contamination within the building. *Mealey's Litigation Report Mold on 05/01/2003*

- **30 Apr 2003 - State Farm sees increasing homeowners' mold claims in Florida**

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State Farm is seeing increasing homeowners' mold claims in Florida. The company had 30 homeowners' mold claims in Florida in 2000, but the number increased to 900 for last year. State Farm has still not received approval from state regulators to exclude mold claims from homeowners' policies. *Knight Ridder Tribune Business News on 04/30/2003*

- **24 Apr 2003 - Mold claims blamed for driving up homeowners rates up by 13% last year**

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According to the 24 states with data available for 2002, homeowners insurance rates increased by 13% in 2002. The responding insurance departments blamed mold claims and catastrophes for the increase. Texas homeowners saw the biggest jump in rates, 57%, Iowa homeowners saw a 33% increase which was the second highest jump. *Bestwire on 04/24/2003*

- **22 Apr 2003 - Hilton sues 18 companies over mold remediation costs at a Hawaiian hotel**

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Hilton Hotels Corp. has filed a lawsuit against 18 contractors, architects, engineers, inspection companies and at least one product manufacturer and one building material supplier. The suit is seeking to recover \$55 million in mold remediation costs as well as business interruption costs after mold contamination forced the 453 room hotel to close in July 2002. The suit alleges various construction and design defects contributed to mold growth including defects in the exterior finish, air intake and exhaust systems, door framing, fireproofing, linen chutes, drywall joints, lanai doors and orienting the building towards the prevailing winds. Defendants include: Wimberly Allison Tong & Goo (architect), Group Builders Inc., Brewer Environmental Industries LLC., Ferris & Hamig Hawaii Inc. (mechanical engineer), Frank Lum (mechanical engineer), Notkin Hawaii Inc. (mechanical engineer), Douglas V. McMahon (electrical engineering consultant), Dorvin D. Leis Co. Inc. (subcontractor), Air Balance Hawaii Inc. (air testing firm), Caulking Hawaii Inc. (performed sealing work), Dryvit Systems Inc. (exterior wall finish), The Erection Co. (steel stairways), A-1-A Electricians Inc. (electrical installations), International Environmental Corp. (manufacturer of fan coil units), HVAC Hawaii (worked on fan coil units and chilled water valves) and Kawneer Co. Inc., (supplier of glass doors). *Honolulu Advisor on 04/22/2003*

- **7 Apr 2003 - What is believed to be the first class action suit certified against a building owner has been certified by a Florida court**

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What is believed to be the first class action suit certified against a building owner has been certified by a Florida court. Tenants are suing Charles E. Smith Residential, a division of Archstone-Smith real estate trust, the country's largest apartment owner. In the suit tenants in 37 units are alleging exposure to mold caused their health ailments. Ongoing mold remediation at the Harbor House South apartment complex has already cost the defendant over \$11 million. *The Miami Herald on 04/07/2003*

- **3 Apr 2003 - Mold remediation of the Galt, California Boys and Girls Club will cost between \$875,000 and \$1.4 million**

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Mold remediation of the Galt, California Boys and Girls Club will cost between \$875,000 and

\$1.4 million. The facility has been closed since November 6th after mold contamination was discovered in the heating and air conditioning system. *Lodi News-Sentinel on 04/03/2003*

- **1 Apr 2003 - Over 30 nurses working at the dialysis unit of Foothills Hospital in Calgary complained for months of respiratory difficulties, nose bleeds chest pain and headaches a two foot square area of mold contamination was discovered in a washroom adjacent to the nurses station**

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Over 30 nurses working at the dialysis unit of Foothills Hospital in Calgary complained for months of respiratory difficulties, nose bleeds chest pain and headaches a two foot square area of mold contamination was discovered in a washroom adjacent to the nurses station. *Canadian Broadcasting Corp on 04/01/2003*

- **1 Apr 2003 - Homeowners' carrier American Equity Insurance Co. has settled a mold/bad faith suit filed by Ed McMahon**

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Homeowners' carrier American Equity Insurance Co. has settled a mold/bad faith suit filed by Ed McMahon. The settlement, which remains confidential, was reached two months before trial was scheduled to begin. McMahon is proceeding with his suit against the contractor hired by American Equity to remediate the mold in his home. The suit alleges that the contractor failed to evacuate the family during remediation operations and negligently used improper and unacceptable abatement techniques which exposed him and his family to mold resulting in physical injuries. *HarrisMartin Columns on 04/01/2003*

- **1 Apr 2003 - The Texas appellate court refused to rehear its decision to reverse the majority of a \$32 million award in a homeowner's mold/bad faith suit**

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After the Texas appellate court refused to rehear its decision to reverse the majority of a \$32 million award in a homeowner's mold/bad faith suit, Melinda Ballard intends to file a motion to have her case heard by the Texas Supreme Court - and defense costs in this homeowners' case, which have already run into the millions, continue to mount. *HarrisMartin Columns on 04/01/2003*

- **21 Mar 2003 - The Maryland Insurance Commissioner issues rules for mold exclusion use**

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The Maryland Insurance Commissioner has decided that insurers may not exclude mold claims from Personal or Commercial lines policies but may limit mold liability stemming from mold to \$50,000 and may have a minimum aggregate of \$15,000 for mold remediation which arises from a covered peril. *Insurance Journal on 03/25/2003*

- **21 Mar 2003**

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The Maryland Insurance Commissioner has decided that insurers may not exclude mold claims from Personal or Commercial lines policies but may limit mold liability stemming from mold to \$50,000 and may have a minimum aggregate of \$15,000 for mold remediation which arises from a covered peril. *Insurance Journal on 03/25/2003*

- **12 Mar 2003**

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Three Bozeman, Montana families have filed suit against the owners of their apartment complex alleging exposure to mold made family members sick. The 64 unit complex, owned by Gallatin Manor Inc., was built in the early 1970s and tenants allege that the owners "failed to use reasonable care in the design, construction and maintenance of the apartment complex resulting in mold contamination. Ailment allegedly caused by exposure to the mold include Swollen adenoids, diarrhea, vomiting, migraine headaches and pneumonia. The complex owners reportedly settled a filed toxic mold suit in 2000 which was filed by a tenant complaining of ailments caused by exposure to mold. *Bozeman Daily Chronicle on 03/12/2003*

- **11 Mar 2003**

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According to the American Alliance of Insurers, 30 mold bills have been introduced in 14 states, most mandating studies to determine acceptable exposure limits. There are two, however, in California and Nevada, which would mandate coverage for mold claims if passed. *Insurance Journal on 03/11/2003*

- **7 Mar 2003**

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A toxic mold lawsuit filed by 50 Tulare County (California) courthouse employees against 20 contractors who built a wing of the courthouse has been scheduled to begin in August 2004. Mold contamination, including *Stachybotrys*, has been found in at least three different places within the courthouse. *Visalia Times-Delta on 03/07/2003*

- **5 Mar 2003**

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A California appeals court ruled that "workers' compensation is the exclusive remedy available to an employee claiming injuries caused by toxic mold in the workplace" (Jensen v. Amgen). Several months after the plaintiff complained of headaches, rashes and fatigue, mold was found inside the building where she worked. The California Court of Appeal, Second District determined that the plaintiff failed to show any elements of a fraudulent concealment claim, which would be the only tort law alternative to worker's compensation for occupational injuries under state law. *BNA Toxics Law Daily on 03/05/2003*

- **27 Feb 2003**

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Texas homeowners mold claims totaled \$1.9 billion for the first nine months of 2002, more than double the \$802.7 million in the first nine months of the previous year. Much of the increase was caused by an increased severity in claims stemming from higher remediation costs. While the number of claims for the first nine months increased by 28%, the dollar value of those claims doubled. Some believe that Texas homeowners mold claims may have peaked and point to coverage restrictions taking effect and reduced claims activity during the second half of 2002. *Knight Ridder Tribune Business News on 02/27/2003*

- **20 Feb 2003**

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A North Florida church has filed suit against contractors who built outbuildings now

contaminated with mold. The Berean Baptist Church of Orange Park alleges that the use of EIFS, or synthetic stucco, and other construction defects resulted in mold contamination in an 80 room dormitory. According to the church, students living in the dormitory experienced dizziness, asthma-like symptoms, migraines and nausea. The students were evacuated and the dormitory is now uninhabitable. The church filed suit against Williams Scotsman Inc, Jaguar Builders Inc. Southeast Modular Manufacturing and EIFS maker Plecko Southeast Corp. The suit seeks mold remediation and restoration of the building as well as compensation for property damages and personal injuries suffered by the students, loss of profits, loss of reputation, mental anguish and pain and suffering. *HarrisMartin Columns on 02/20/2003*

- **20 Feb 2003**

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A second South Carolina teacher has filed a lawsuit against a mold remediation contractor hired to remediate mold contamination at Battery Creek High School. The plaintiff alleges that exposure to chemicals applied to ventilation ducts by Tech Clean Industries caused her illness. The teacher has been diagnosed with reactive airways dysfunction syndrome and alleges she has suffered symptoms including respiratory difficulties, coughing up blood, fever, nausea, rapid heart rate and headaches. *Island Packet on 02/20/2003*

- **19 Feb 2003**

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A class action suit has been filed against a window manufacturer alleging defects in the windows allow water intrusion and promoted mold growth (Pappas v. Pella Corp.). The plaintiff alleges that they have suffered property damages and that they as well as their son have suffered personal injuries due to mold exposure. The proposed class could consist of hundreds of individuals or entities in Illinois who have installed defective Pella windows in their property. The windows at issue are the company's line of commercial products sold to architects and builders. *HarrisMartin Columns on 02/19/2003*

- **19 Feb 2003**

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A manufacturer of synthetic stucco exterior insulation finish systems (EIFS) has reached a settlement with plaintiffs who alleged that the EIFS system trapped water behind it and caused mold growth which damaged their homes. The settlement reached by Dryvit Systems will compensate all plaintiffs owning one or two family dwellings and owners of townhouses in all states except North Carolina where the EIFS was installed after January 1, 1989. Under the settlement, Dryvit will pay for the inspections of all dwellings allegedly damaged by mold growth and pay to remediate mold contamination found on any exterior building component as well as pay a portion of any necessary repair work. For restoration work costing less than \$15,000, the company will pay 40% of those costs. If fewer than 7,000 claims fall into this category an additional payment of 10% could be made. Lesser additional payments may be made if between 7,000 and 10,000 claims are filed. Separate payment provisions exist for repairs estimated to cost more than \$15,000. The plaintiffs also retain the right to pursue personal injury actions. If 7,000 claimants were to receive \$15,000, Dryvit would pay out \$42 million plus the costs of inspections. *BNA Toxics Law Daily on 02/19/2003*

- **18 Feb 2003**

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A Detroit doctor has filed a toxic mold suit against the owner of the medical building where he worked alleging that his illness was caused by exposure to mold in the building. His symptoms

include Fatigue, frequent nosebleeds, respiratory difficulties and skin rashes. The suit charges that once notified of the mold in the Detroit Medical Center, building owner, American Realty Corp., failed to adequately remediate the mold contamination. ***Knight Ridder Tribune Business News on 02/18/2003***

- **18 Feb 2003**

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Employees of the Iowa Department of Corrections have filed a class action suit against the a building owner who leased office space and inmate facilities to the department alleging that they became ill because of exposure to mold contamination in the building (Carey v. Community Resources Corp.). The suit, filed against nonprofit corporation Community Resources Corp. alleges that there was long-standing evidence of water intrusion and visible mold growth in the building. The proposed class would represent employees and/or other building occupants. ***HarrisMartin Columns on 02/18/2003***

- **17 Feb 2003**

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According this week's Crain's New York Business report, mold claims are on the rise for New York residential buildings. The article states that "in 2001, New York ranked ninth in the country for mold-related claims. Last year, the state jumped to fourth as claims tripled to 1,023." ***The Daily News on 02/17/2003***

- **13 Feb 2003**

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During 2002, an estimated 150,000 mold claims were filed nationwide. The article also states that insurers have paid more than \$4 billion in mold claims to date and total future mold claims may cost insurers \$76 billion. The article was written by a senior consultant for the American Risk Management Resources Network in collaboration with a private law firm and will be published in the Winter 2003 edition of the Environmental Claims Journal. [For comparative purposes, another recent estimate put the industry's potential total mold claims at \$13 billion and according to A.M. Best's most recent estimates, asbestos will cost U.S. insurers \$65 billion and pollution claims will cost insurers \$56 billion ***Environmental Risk Resources Association on 02/13/2003***

To access their website, click: [Environmental Risk Resources Association](#)

- **5 Feb 2003**

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A teacher has filed suit against a mold remediation firm alleging that exposure to chemicals applied to the schools HVAC system during a mold remediation project caused her illnesses (Callahan v. Tech Clean Industries). Battery Creek High School in Beaufort, South Carolina discovered "a fairly significant mold problem" and hired the defendant to remediate the mold. During the project, several students and teachers became ill. The plaintiff, who had taught at the school for 8 years, began having convulsions, respiratory difficulties and was subsequently diagnosed with neuropathic tremor, which resembles the tremors experienced with Parkinson's disease. The suit alleges that the combination of chemicals applied to the school's ventilation system caused her illnesses. The remediation contractor applied a product called Anabec Surface Prep Cleaning Solution which has not been approved by the EPA for application to duct work. They also applied Portersept which contains a fungistat and bacteriostat that have

been approved by the EPA for use in HVAC systems. *HarrisMartin Columns on 02/05/2003*

- **27 Jan 2003**

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Mold remediation at the Hilton Hawaiian Village hotel has cost the company a total of \$55 million, including \$35 million in 2002 and \$20 million the prior year. In July 2002, initial estimates put the cost of mold remediation for the hotel at \$10 million. By October, the estimate was increased to \$20 million. The hotel remains closed for ongoing mold remediation and is not scheduled to reopen until the second quarter of 2003, nearly a year after it was closed for mold remediation. The company has stated that it is unclear as to how much of the remediation costs will be covered by insurance. Mold contamination has also been discovered in a second Hilton Hawaiian property, the time-share Lagoon Tower. Mold remediation at the Lagoon Tower is expected to cost \$7 million. *Associated Press, Business Wire, Honolulu Star Bulletin on 01/27/2003*

- **22 Jan 2003**

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Policyholders of America's (POA) data base of homeowners insurance toxic mold-related claims, there have been 23,738 claims reported to the POA. Of those 23,738 homeowners mold claims, 88% were filed since 1/1/00. According to POA figures, the ten states with the most reported homeowners mold insurance claims filed through 12/31/02 are: California (4,974), Texas (4,811), Florida (3,906), New York (1,023), Arizona (722), South Carolina (663), Oklahoma (633), North Carolina (563), Tennessee (563) and Ohio (492). In the most recent year (after 2/5/02), the POA received notification of an additional 2,521 mold claims filed from Florida homeowners, while 1,887 additional mold claims were reported from California homeowners, and 714 from Texas homeowners. In addition to homeowners insurance mold claims, 5,016 commercial mold claims were reported to the POA in 2002, compared to none in 2001. [It's important to note that not all mold claims are reported into the POA. According to the Texas Department of Insurance, homeowners in that state had filed nearly 42,000 mold claims against insurers between the first quarter of 2000 and the fourth quarter of 2001. The trend of 5,016 commercial claims and the increase in Florida homeowners' claims should be the main takeaways. *HarrisMartin Columns on 01/22/2003*

- **19 Jan 2003**

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Mold remediation of Hamilton, New Jersey's town hall will cost an estimated \$541,000 and take some six months to complete. Employees will have to be relocated during the remediation process. Several types of mold, including stachybotrys, were found in the 10 year old building's 88 individual air conditioners, heating ventilators and the basement. *Press of Atlantic City on 01/19/2003*

- **15 Jan 2003**

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Dozens of teachers and students at a Greenwich, Connecticut elementary school have become "chronically ill" since the beginning of the school year possibly due to exposure to mold. Mold contamination was discovered in the dark room of the Hamilton Avenue School near the art and music rooms. Mold test found over 5,000 mold spores per cubic meter of air in the dark room compared to 267 mold spores per cubic meter of air elsewhere in the school.

*www.WSFB.com on 01/15/2003*

To access their website, click: [WSFB](http://www.WSFB.com)

- **14 Jan 2003**

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Employees working in the San Benito County (California) Department of Child Support Services building have filed 18 separate lawsuits against the building's owner alleging illnesses caused by exposure to mold in the building. Stachybotrys has been found in the building and is believed to be the result of "chronic water intrusion." The suit states that despite complaints about the mold to the landlord repairs were not made. Illnesses alleged in the complaints include: respiratory ailments, gastrointestinal ailments, skin rashes and neurological damage. The building owner and defendant in the suits is Lawrence Family LLC. *Business Wire on 01/14/2003*

- **8 Jan 2003**

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Three developers and a municipality will pay \$14 million to settle a class action suit filed by 369 homeowners who alleged that construction defects lead to mold contamination and illnesses caused by exposure to mold. The suit alleged that the homes, built in Carson City, Nevada between 1992 and 1998 were built on in a low lying area which was a former wetland with crawl spaces below the surrounding land. The crawl spaces would periodically fill with water causing mold growth and resulting in illnesses in some of the plaintiffs. Defendants included: Stanton Park Development Co., Millard Realty and Construction Co., Garreston-Furgerson Construction Co. and Carson City. The municipality was sued for allegedly approving the development project. Carson City will pay \$100,000 of the settlement. The contractors will pay the remaining \$13.9 million the bulk of which will pay to repair defects and cleanup mold contamination. The settlement also includes \$570,000 for illnesses allegedly suffered by 57 of the plaintiffs. The complaint alleged the residents experienced sore throats, dizziness, headaches and rashes. According to statements made by the attorney representing the builders, the settlement was made because it would have cost more to defend the case than the settlement amount. *Reno Gazette Journal on 01/08/2003*

- **8 Jan 2003 - Florida residents file mold class action against building owner**

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A Florida court has certified a mold class action suit filed by 17 current and former residents of a 452 unit apartment building (Henriques v. Archstone-Smith Operating Trust). The suit is seeking damages for negligence, breach of lease agreements, breach of statutory warranty of habitability and violations of Florida's unfair or deceptive trade practices law. The plaintiffs are also proposing a second class seeking damages for bodily injuries and property damages for all tenants or guests that resided in the building after August 27, 2000. The defendant's industrial hygienist has reportedly discovered visible mold growing on walls and/of ceilings in excess of 10 square feet in 69 units; mold on walls and ceilings in less than 10 square feet in another 31 units; visible mold growing on resident's personal belongings in 150 units and mold growing on or near air-conditioning grilles in 7 units. The plaintiffs' industrial hygienist has identified "excessively high levels" of Aspergillus, Cladosporium, Penicillium and Trichoderma. *HarrisMartin Columns on 01/08/2003*

- **7 Jan 2003**

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Mold remediation costs at the Moss Side Elementary School in Monroeville, Pennsylvania cost \$500,000. The school was shut down last winter after tests, prompted by student complaints of

respiratory ailments, discovered mold contamination caused by leaks in the roof.

[www.KDKA.com](http://www.KDKA.com) on 01/07/2003

To access their website, click: [KDKA](#)

- **7 Jan 2003**

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An Iowa workers' compensation court ruled that a laboratory worker inspecting raw spices was made ill from workplace exposures to mold and is eligible for permanent partial disability benefits (Mitchell v. Burns Philp Food). Three physicians diagnosed the plaintiff as having various sinus disorders. Two of the three physicians attributed the condition to workplace exposures to mold. The court determined that the plaintiffs had an industrial disability of 45% and set the commencement date for the disability on September 27, 2000, the day the plaintiff's doctor recommended she leave work. *HarrisMartin Columns* on 01/07/2003

- **29 Jan 2003**

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Plaintiffs in a toxic mold/construction defects suit have filed suit against Goldman Sachs Group. Goldman Sachs reportedly financed the construction of the apartment building. According to the plaintiffs, Goldman Sachs overlooked shoddy construction practices that violated building codes and led to mold growth. Earlier this month, two separate lawsuits were filed against the building owner, contractors and architect seeking damages for mold contamination at the 43 story condominium tower in New York City where units sell for \$10 million each. The building, 515 Park Ave., is owned by Zeckendorf Realty and was completed in 1999. One suit filed by the building's board seeks damages after finding mold contamination in seven units. Mold contamination was reportedly so severe in two of the units that the owners had to immediately evacuate the premises. A second suit filed by one condo owner alleges personal injuries suffered by his wife and daughter caused by exposure to the mold. A quarter of the residents have reportedly moved out of the building within the past two weeks. *Associated Press, New York Post* on 01/06/2003

- **6 Jan 2003**

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Two separate lawsuits have been filed against the building owner, contractors and architect seeking damages for mold contamination at a 43 story condominium tower in New York City where units sell for \$10 million each. The building, 515 Park Ave. is owned by Zeckendorf Realty and was completed in 1999. One suit filed by the building's board seeks damages after finding mold contamination in seven units. Mold contamination was reportedly so severe in two of the units that the owners had to immediately evacuate the premises. A second suit filed by one condo owner alleges personal injuries suffered by his wife and daughter caused by exposure to the mold. *Associated Press* on 01/06/2003

- **3 Jan 2003 - Arizona Appeals court rules mold caused by covered peril cannot be excluded**

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An Arizona appeals court reversed and remanded a lower court ruling which held that an insurer could deny a homeowner's mold claim under standard for exclusions even if the mold was caused by a covered event (Liristis v. American Family Mutual Ins. Co.). The appellate court held that if the homeowner can prove a causal connection between the mold damage and the covered event the damage is covered. The insurer had argued that the mold claim was

barred by language stating that the policy excludes loss that results "directly from or caused by" mold. The mold arose after the fire department extinguished a fire at the plaintiff's home in 1996. *HarrisMartin Columns on 01/03/2003*

- **2 Jan 2003**

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A California homeowner who filed a mold/construction defects suit against the developer and contractor of his home received \$1,238,494 in settlements and awards (*Dilello v. Katnik Corp.*). The suit alleged that construction defects arising from window leaks, deck leaks and plumbing leaks in the plaintiff's home caused mold growth throughout the home. Molds found in the home included *Penicillium*, *Aspergillus* and *Cladosporium*. The plaintiff allegedly became ill and was forced to move into alternative housing. The developer, *Avenida Andra L.P.*, settled its liability by agreeing to pay \$350,000. The general contractor, *Katnik*, went to court and was ordered by a jury to pay \$1,532,500. The award was broken out as follows: \$676,000 for repairs and remediation, \$206,000 of economic damages, \$700,000 for noneconomic damages, \$0 for property diminution and \$37,994 in prejudgment interest. Under the threat of facing a new trial, the plaintiff agreed to reduce the noneconomic damages portion of the award from \$700,000 to \$18,000 leaving a total of \$1,238,494 in awards and settlements. *HarrisMartin Columns on 01/02/2003*

- **1 Jan 2003**

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A Minnesota court found the absolute pollution exclusion ambiguous in a mold personal injury coverage action. After the court held that the carrier owed a duty to defend a municipality in underlying mold personal injury litigation, *Landmark American Ins. Co.* agreed to pay the City of *Maplewood* \$900,000 in past defense costs and will pay defense costs going forward (*Ramsey County v. Landmark Amer. Ins. Co.*). The underlying case was filed by residents living adjacent to a municipal composting site who allege illnesses caused by exposure to molds, including *Aspergillus*, emanating from the compost pile. *Landmark* issued GL and OL&T policies to the municipality but denied the claim based upon an absolute pollution exclusion contained in the policies. The court found the "catch all" language of the absolute pollution exclusion "ambiguous." *Mealey's Litigation Report Mold on 01/01/2003*

- **1 Jan 2003**

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Owners of a California apartment complex have filed a mold/bad faith suit against *Travelers Property and Casualty Co.*, for failing to cover mold damage (*Barcelona Housing Partners LLP v. Travelers Property and Casualty Co.*). The mold allegedly arose after storm damage in October 2000. *Travelers* reportedly denied the claim based upon a fungus exclusion contained in the policy. *Mealey's Litigation Report Mold on 01/01/2003*

- **1 Jan 2003**

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Parents of students have filed three separate toxic mold class action suits against a North Carolina school district (*Zizzo v. Pender County Board of Education*; *Hairr v. Pender County Board of Education*; and *Spearman v. Pender County Board of Education*). The suits allege that their children have been made ill by exposure to mold. Ailments allegedly caused by the mold include ear infections, asthma, severe headaches, severe nausea, fatigue and upper respiratory ailments. The students attend *North Topsail Elementary School*, *South Topsail*



Elementary and Topsail High School. *Mealey's Litigation Report Mold on 01/01/2003*