



Mold Under the Microscope:

What are the risks and are you protected against them?

THE RISKS



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"Mold Forces Hilton in Waikiki to Shut Down 453 Rooms"

- New York Times, August 11, 2002

"Its Everywhere...The Mold Rush!"
-The Washington Post, September 16, 2002

**"Abington Couple Demolishes
Mold-Infested Home"**

-Boston Herald, September 15, 2002

"Mold: Is Your Apartment Building Infected?" -USA Weekend July 19-21, 2002

"City condemns 3 buildings housing over 50 students"
-Boston Herald, October 3, 2002

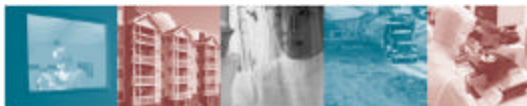
"Employers Face Mold Problems" -USA Today, August 11, 2002

"The MOLD In Your Home May Be Deadly" -USA Weekend, December 3-5, 1998

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ARTICLE

Acute Pulmonary Hemorrhage in Infants Associated With Exposure to *Stachybotrys atra* and Other Fungi

Ruth A. Etzel, MD, PhD; Eduardo Montaña, MD, MPH; W. G. Sorenson, PhD;
Greg J. Kullman, CIH, PhD; Terrance M. Allan, MPH; Dorr G. Dearborn, PhD, MD

Background: A geographic cluster of 10 cases of pulmonary hemorrhage and hemosiderosis in infants occurred in Cleveland, Ohio, between January 1993 and December 1994.

Study Design: This community-based case-control study tested the hypothesis that the 10 infants with pulmonary hemorrhage and hemosiderosis were more likely to live in homes where *Stachybotrys atra* was present than were 30 age- and ZIP code-matched control infants. We investigated the infants' home environments using bio-aerosol sampling methods, with specific attention to *S atra*. Air and surface samples were collected from the room where the infant was reported to have spent the most time.

Results: Mean colony counts for all fungi averaged 29 227 colony-forming units (CFU)/m³ in homes of patients and

707 CFU/m³ in homes of controls. The mean concentration of *S atra* in the air was 43 CFU/m³ in homes of patients and 4 CFU/m³ in homes of controls. Viable *S atra* was detected in filter cassette samples of the air in the homes of 5 of 9 patients and 4 of 27 controls. The matched odds ratio for a change of 10 units in the mean concentration of *S atra* in the air was 9.83 (95% confidence interval, 1.08-3 × 10⁶). The mean concentration of *S atra* on surfaces was 20 × 10⁶ CFU/g and 0.007 × 10⁶ CFU/g in homes of patients and controls, respectively.

Conclusion: Infants with pulmonary hemorrhage and hemosiderosis were more likely than controls to live in homes with toxigenic *S atra* and other fungi in the indoor air.

Arch Pediatr Adolesc Med. 1998;152:757-762

Editor's Note: The epidemiology story is great reading. Rather than "Eleven Blue Men," we have 10 blue infants.

Catherine D. DeAngelis, MD



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“We have 10 blue infants”

*Editor’s Note, Archives of Pediatric
& Adolescent Medicine 757 (1998)*



“It is clear that uncertainty permeates our knowledge of the effects of moulds on human health. ... The cause-effect relationship is very much undetermined.”

McMaster Institute Expert Panel (1999)



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“The investigations did not prove an association”

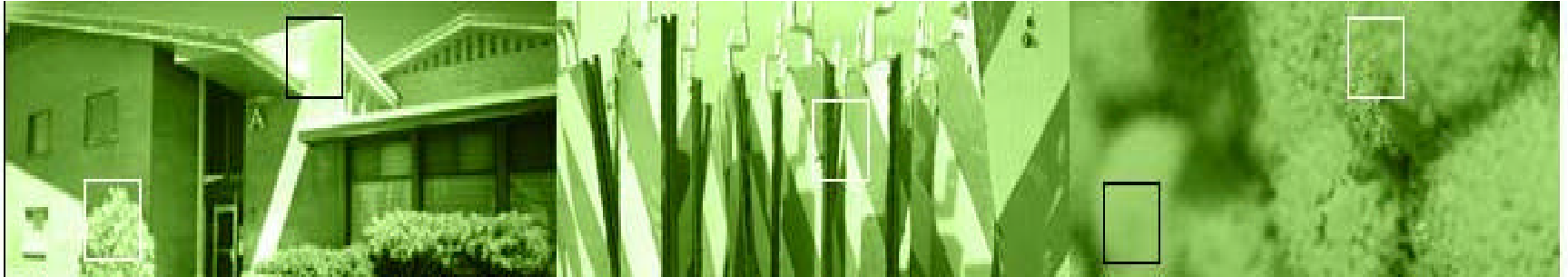
Centers for Disease Control (March 10, 2000)



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WELCOME

A Toxic Mold Attorney For You provides important safety and legal information regarding toxic mold. If you are in need of an Attorney practicing in areas such as [black mold](#), [toxic mold](#), [toxic tort](#), [mold exposure](#), [mold litigation](#), [black mold](#) and [stachybotrys mold](#) you have come to the right place.

This website is a guide to the many aspects of mold. The potentially fatal dangers it poses and mold litigation. We hope to provide important information and assistance for those who have been affected by Black Mold, Toxic Mold or Stachybotrys and wish to learn more about their legal rights. If you or someone you know has suffered from Black Mold, Toxic Mold or Stachybotrys and wish to find out more information about your legal rights, from the drop down menu on the left choose the state in which you live to find a qualified Toxic Mold attorney for you.
Thank You

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TIP OF THE ICEBERG?

September 16, 2002

Washington appeals court affirms default judgment of more than **\$150,000** against general contractor in holding that homeowners satisfied the requirements of the substitute service statute. (*Susan Wright, et al. v. B&L Properties Inc., et al.*, No. 49386-8-I, Wash App., Div. 1)

September 3, 2002

The Ninth Circuit Court of Appeals rules in an unpublished opinion that a compensatory award of more than **\$400,000** was reasonable based on an insurer's bad faith conduct in a mold coverage case. The appeals court reversed a punitive damage award of more than **\$2 million** after finding that the carrier did not act with malice noting that the health hazards of mold were less clear at the time of the claim. A pipe allegedly leaked in the attic for several days, resulting in mold and mildew in all rooms. (*Thomas Anderson v. Allstate Insurance Co.*, Nos. 01-15145, 01-15246, 01-15307 & 01-15330, 9th Cir.)

August 30, 2002

A California judge denies a new trial request after a jury orders a construction company to pay more than **\$200,000** to a family living in a mold-contaminated condominium (*Ghadir Ayaz, et al. v. Fullmer Construction, et al.*, No. 00CC06647, Calif. Super., Orange Co.)

August 18, 2002

Washington appeals court rules product liability class action members eligible for treble damages against paint manufacturer under the Washington Consumer Protection Act (CPA). Awards to class representatives ranged from \$24,454 to \$74,999.99, for a **total award of \$337,620**. The judge also awarded **\$2,172,918 in attorneys' fees**.



Mold Under the Microscope: What are the risks and are you protected against them?

August 9, 2002

A California family reaches a **\$900,000** settlement with apartment owners and property managers. The family maintained that they were forced to move out of their apartment because of dangerous mold growth resulting in respiratory and pulmonary injuries, asthma, pneumonia and fungal infections of the skin. (*Melissa Celmer, et al. v. Village Investments Inc., d/b/a VPM Inc., et al., No. 00CC09178, Calif. Super., Orange Co*)

July 16, 2002

The Second District Court of Appeal reverses a ruling dismissing claims that insurer acted in bad faith by allegedly refusing to pay for destructive testing to assess water and mold damage to interior walls. Culver City Roofing (CR) had already agreed to accept liability for **\$450,000** in damages. (*Daniel Thompson, et al. v. Fireman's Fund Insurance Co., et al., No. B 149380, Calif. App., 2nd Dist.*)

January 28, 2002

In the first verdict against a synthetic stucco manufacturer, a state court judge ordered Dryvit Systems Inc. to pay **\$2.5 million** for construction defects and mold at a condominium complex (*Re: Board of Directors of the Bay Point Condominium Association Inc., et al. v. RML Corp., et al., No. CL99-475, Va. Cir., Norfolk Co.*)

January 7, 2002

A California judge denies requests to order a new trial or issue a judgment notwithstanding the verdict after which apartment residents awarded **\$2.7 million** for injuries allegedly caused by mold exposure. Alleged injuries include breathing problems, severe headaches and gastrointestinal problems. (*Darren Mazza, et al. v. Raymond Schurtz, et al., No. 00AS04795, Calif. Super., Sacramento Co.*)



Mold Under the Microscope: What are the risks and are you protected against them?

December 19, 2001

A Maryland judge denies a motion for remittitur and new trial in a case in which a family was awarded more than **\$219,000** for personal injuries and property damage caused by mold. (*Kathryn Nicholson, et al. v. Metro Property Management Inc., et al.*, No. 03-C-00-005586, Md. Cir., Baltimore Co.)

November 29, 2001

Nearly 500 New York apartment residents who alleged that mold exposure caused personal injuries settled for **\$1.17 million**. The plaintiffs **sought approximately \$9 billion** in damages from two New York apartment building owners, sources said. Joann Davis and other residents maintained that mold and fungi contamination caused personal injury and property damage. Mold allegedly contaminating the apartments included *Stachybotrys*, *Penicillium* and *Aspergillus*. (*Joann Davis v. Henry Phipps Plaza South, et al.*, No. 116331/98, *Manuel Rosado v. Henry Phipps Plaza South, et al.*, No. 116568/98, *Marisol Guerno v. Henry Phipps Plaza South, et al.*, No. 116959/98, *Gloria Mason v. Henry Phipps Plaza South, et al.*, No. 116895/98, *James Sotomayor v. Henry Phipps Plaza South, et al.*, No. 116800/98, *Marie Alston v. Henry Phipps Plaza South, et al.*, No. 116958/98, *Ilse Bornmann v. Henry Phipps Plaza South, et al.*, No. 115468/00, N.Y. Sup., N.Y. Co.)

March 2001

Litigants reach a **\$1,968,444** settlement in a construction defect case in which leaking roofs, windows balconies led to water intrusion and consequent toxic mold intrusion in a University of Southern California condominium housing faculty members. The plaintiffs claimed the project was defectively designed and constructed resulting in severe damage to the building. (*McCulloch Townhomes Association v. USC Real Estate Development Corporation, Watt Parker, Inc. et al*)

March 1, 2001

Two California families reach a **\$1,140,150** settlement with the Los Verdes Homeowners Association (HOA). Members of both families were displaced from their homes and allegedly suffered acute mold-related injuries. (*Licon Family and Bristol Family v. Los Verdes Homeowners Association, et al.*)



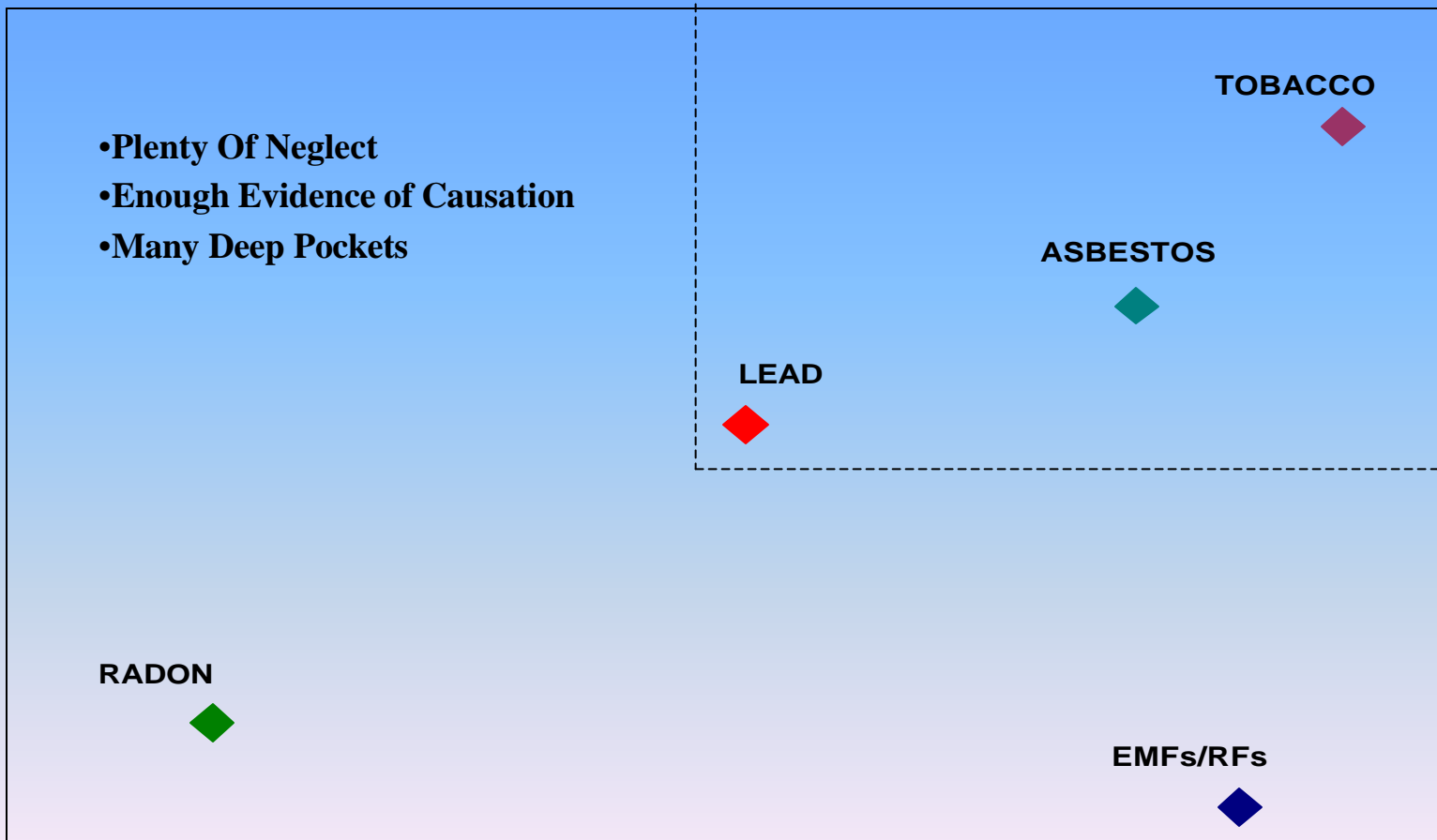
WHERE WILL MOLD BE?

E
V
I
D
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N
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M

- Plenty Of Neglect
- Enough Evidence of Causation
- Many Deep Pockets



DEPTH OF POCKET \$



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Will You Be Next?



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Potential Targets

- Property Owners
 - Residential
 - Office
 - Commercial
- Property Managers
- Contractors
- Manufacturers
- Employers
- Insurers



Potential Claims

- Negligence
- Building/Housing Code Violations
- Breach of Contract/Warranty
- Consumer Protection Statute Violations
- Workers' Compensation Statute Liability



Potential Damages Alleged

- Personal Injury
- Emotional Distress
- Property Damage
- Stigma



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What Can You Do?



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One Historic Solution-

“And he shall break down the house, the stones of it, and the timber thereof, and all the mortar of the house; and he shall carry them forth out of the city into an unclean place.”

-Leviticus 14:46



A More Temperate Proposal For Reducing Your Mold Risk-

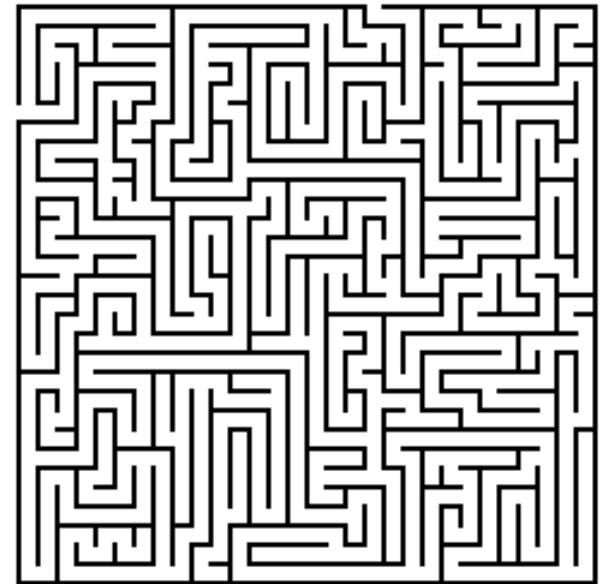
- Improve Due Diligence Protocols
 - Inspections
 - File Reviews
 - Interviews
- Implement Improved Protocols
- Evaluate Insurance Coverage
- Evaluate Leases and Other Contracts





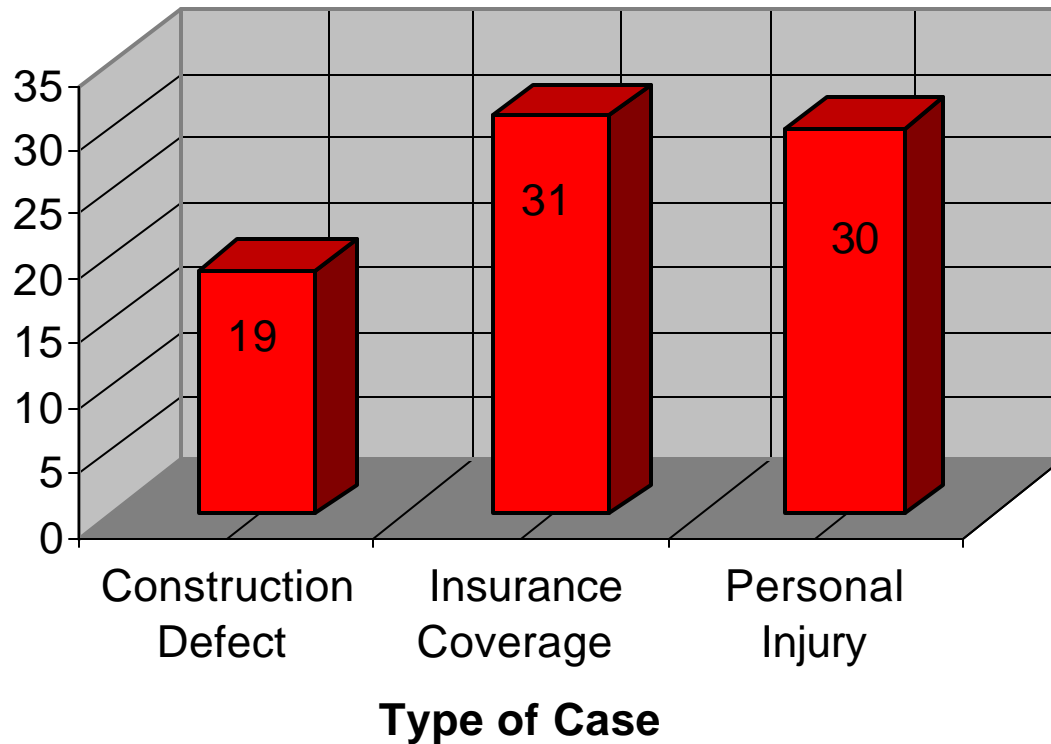
Insurance Issues

- Triggering Event
 - Occurrence?
 - Claim?
- Potentially Applicable Exclusions
 - Pollution Exclusion
 - Fungus Exclusion
- Timely Notice and Cooperation



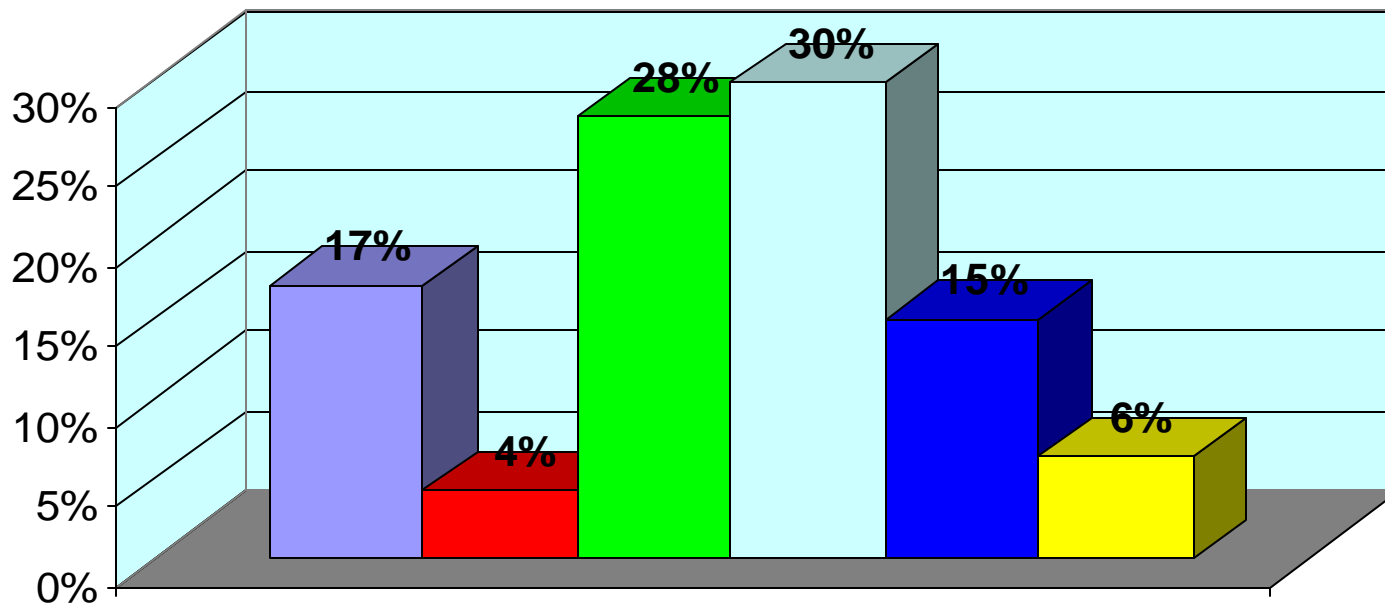


Breakdown of 80 Mold Related Cases (1997-2002) By Type of Case





Distribution of Personal Injury Mold-Related Outcomes (1997-2002)



■ ZERO

■ \$1-\$20,000

■ \$20,001-\$100,000

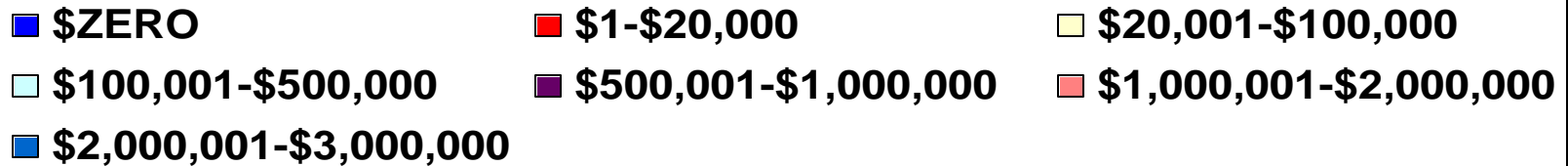
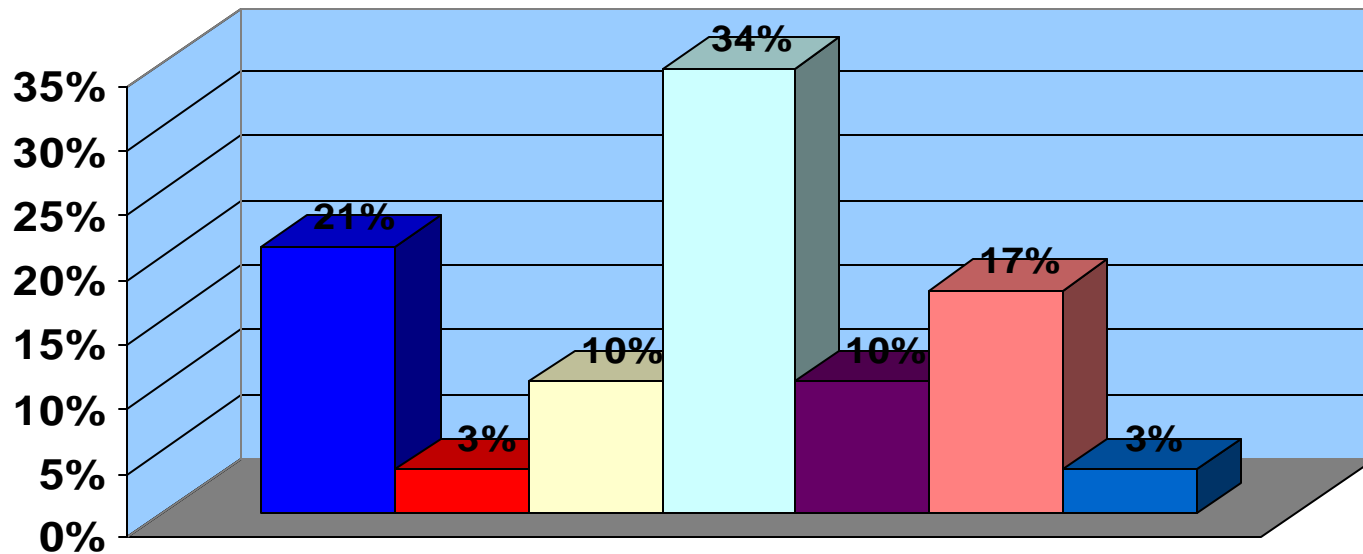
■ \$100,001-\$500,000

■ \$500,001-\$1,000,000

■ \$1,000,001-\$2,000,000

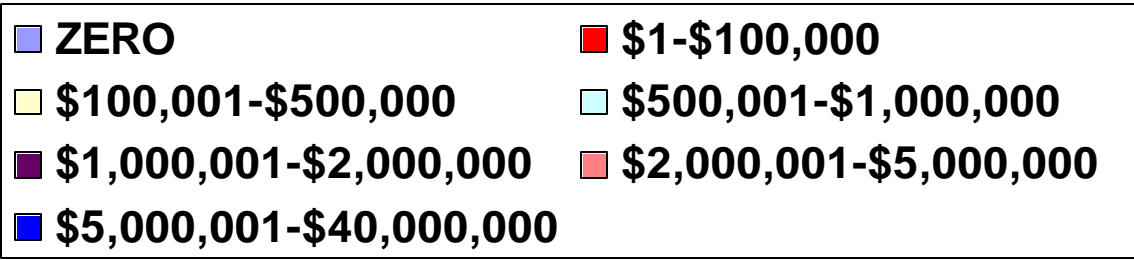
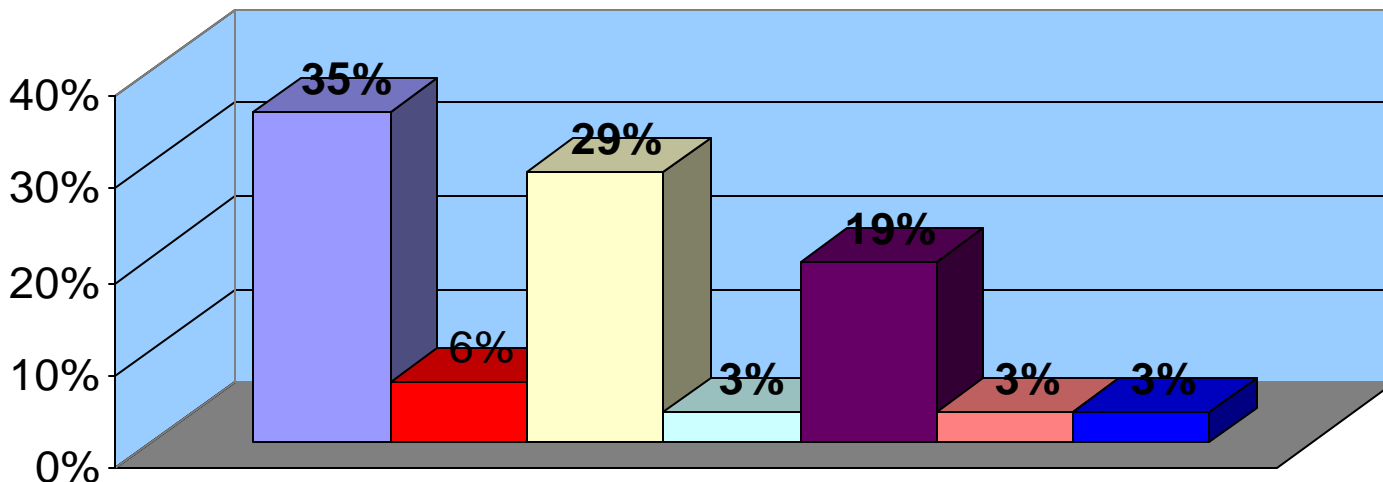


Distribution of Construction Defect Mold-Related Outcomes (1997-2002)





Distribution of Insurance Coverage Mold-Related Outcomes (1997-2002)





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Reducing Mold Risks



Governmental Guidelines

- No Definitive EPA or Other Regulatory Standard
- U.S. Center for Disease Control and Prevention (CDC):
 - Remediation should not await testing and analysis because of the time and uncertainty involved
 - Assume molds are toxin producing



- Proposed United States Toxic Mold Safety and Protection Act

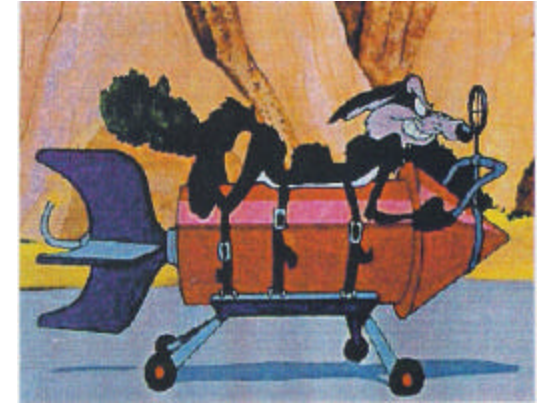
- EPA and HUD to establish guidelines for mold inspection, testing and remediation and for certification of mold inspectors and remediators
- Annual inspections required for multi family properties and prior to sale or lease of properties using federal guaranties
- Grants for public buildings and tax credits for inspection and remediation are authorized
- FEMA is to establish an insurance program protecting against catastrophic losses to homeowners

Does the Absence of a Regulatory Standard Help or Hurt?



Improving Due Diligence Protocols

- Address Water/Mold in Due Diligence Checklist
- Understand and Address Lenders' Requirements
- Find Clues During Initial Inspections
 - Leaks, wet spots, condensation and stains
 - Musty Odors
- Ask Property Managers, Engineers and Occupants
- Obtain and Review Operations and Maintenance Files
 - Tenant Complaints
 - Historic Inspections
 - Indoor Air/Mold Testing
- Ensure Ability to Conduct Appropriate Analyses





Addressing Due Diligence Results

- Silence is not golden!
- Do you understand risks?
- Is more investigation necessary before or after contract executed?
 - If so, have you obtained right to conduct those investigations?
 - If not, have you identified necessary response actions?
- What is the cost of actions identified?
- Have you established an appropriate contingency?
- Can you obtain appropriate representations and commitments to contain and allocate risk?
- Evaluate property and casualty insurance including potential mold exclusions
- Consider purchasing specialized mold insurance (more to follow later)





Issues for Sellers and Landlords

- Anticipate likely questions
- Consider your own inspections
- Confirm operations and maintenance files are in order
- Evaluate potential representations and commitments
- Consider purchasing specialized mold insurance (more to follow later)



Property Managers Issues

- To control mold, must control moisture
- Preventive maintenance and rapid response are essential
- Leases and management contracts must reflect this reality
 - Regular inspections for leaks, condensation and odors
 - Comprehensive maintenance
 - Rapid response to physical warning signs and tenant complaints





Consultant and Contractor Issues



- Is the engineer qualified?
- Do they have errors and omissions insurance?
- Are they on lender and institutional owner approved lists?



Communicating With Building Occupants

- Do you have a Communication Plan?

Who?

How?

When?



- Are appropriate controls in place?



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Insurance as a Solution

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Menu of Available Coverages

- On-Site Clean-Up of Pre-existing Conditions
- On-Site Clean-Up of New Conditions
- Third-Party Claims for Off-Site Clean-Up Resulting from Pre-existing Conditions
- Third-Party Claims for Off-Site Clean-Up Resulting from New Conditions
- Third-Party Claims for On-Site Bodily Injury and Property Damage
- Third-Party Claims for Off-Site Bodily Injury and Property Damage



Menu of Available Coverages (cont'd)

- Third-Party Claims for On-Site Bodily Injury, Property Damage or Clean-Up Costs – Non-owned Locations
- Third-Party Claims for Off-Site Bodily Injury, Property Damage or Clean-Up Costs – Non-owned Locations
- Pollution Conditions resulting from Transported Cargo
- Business Interruption Coverage – Actual Loss or Rental Value (available only if Clean-Up coverage is purchased)



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Mold is specifically Included or Excluded by Microbial Matter Endorsement

Microbial Matter means fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including but not limited to, mold, mildew and viruses, whether or not such **Microbial Matter** is living.



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Microbial Matter Exclusion Endorsement

- Adds the following to the definition of Pollution Conditions/Pollution Incidents:

“Pollution conditions shall not include Microbial Matter.”



Microbial Matter Coverage Endorsement

- Adds the following to the definition of Pollution Conditions/Pollution Incidents:
“Pollution conditions shall include Microbial Matter in any structure on land and the atmosphere contained within that structure.”
- Provides a specific Sublimit for Loss and Clean-Up Costs associated or in connection with Microbial Matters.



Microbial Matter Coverage Endorsement (cont'd)

- Adds the following Exclusion for Failure to Maintain and Construction Defects:
“arising out of the Insured’s failure to properly maintain or the improper design and construction of any structure erected upon the Insured Property or any system contained therein which leads to the growth of Microbial Matter.”



What type of Limits are Available?

- Throw-In (limited underwriting) - \$25,000 aggregate
- Case-by-Case (detailed underwriting) - up to \$150 million aggregate

Basis for Underwriting

- Indoor Air Quality and Mold Questionnaire

AIG ENVIRONMENTAL
POLLUTION LEGAL LIABILITY APPLICATION ADDENDUM - INDOOR AIR QUALITY AND MOLD QUESTIONNAIRE (forms a part of the Pollution Legal Liability Application)

Named Insured: _____

Insured Property: _____

Completed by (Name/Title): _____ Date: _____

The applicant represents that the following statements and facts are true and that no material facts have been suppressed or misstated.

1. What is the use of the building?
2. What is the total square footage of the building?
3. What is the building age and what is the age and type of roof (flat or sloped)?
4. Have any water or indoor air quality related construction/maintenance defects been encountered (including but not limited to HVAC system problems, leaks in the roof, windows or siding, as well as broken plumbing and sewer backups)?
 Yes, No If yes, what are they and how have they been rectified?
5. Is the building located in a 100-year flood plain or an area subject to periodic ponding or flooding?
 Yes, No If yes, when was the last time the building was impacted by such ponding or flooding and to what extent? What precautions are in place to mitigate future damage?
6. Are bathrooms and dryers vented to the exterior? Yes, No
7. Are the exterior walls of the building exposed to wetness from man made sources such as fountains or lawn sprinkler systems? Yes, No If yes, please describe.
8. Do any of the exterior walls have an Exterior Insulation Finish System (EIFS)? Yes, No If yes, what is the age of the system, when was it last inspected and is there any evidence of water intrusion?
9. Does the building currently contain, or has it ever contained, any visible areas of mold growth in excess of 4 sq. ft. (e.g., more than 2 ft. by 2 ft. patch)? If yes, provide the location, the approximate size of the growth in sq. ft. and what is being done/was done to correct and abate the problem.
10. Have any indoor air quality/mold studies or inspections been done? Yes, No If yes, please provide a copy.
11. Does the building have a full-time maintenance staff? Yes, No If no, who is responsible for building maintenance (subcontractors, tenants)?
12. If a complaint is received regarding either water damage or indoor air quality how quickly do you typically respond? What response is taken? How is the complaint documented?
13. Do you respond in writing to the individual who issued the complaint explaining the corrective actions being taken? Yes, No
14. Do tenant leases require prompt landlord notification in the event of water damage and/or mold growth?
 Yes, No If yes, please provide a copy of the lease language.
15. Is a water/mold operation and maintenance plan in place? Yes, No If yes, please provide a copy.
16. At the time of the completion of this questionnaire, do you know of any facts or circumstances which may reasonably be expected to result in a Claim or Claims being asserted against your company arising from indoor air quality/mold at the Insured Property? Yes, No If yes, describe in detail.



Current Case Study

- A Commercial real estate portfolio, inquires regarding Mold coverage
 - Portfolio consists of several separate funds and separate accounts
 - Portfolio includes industrial, office, retail and residential properties
- ML Insurance structures a submission seeking:
 - Separate policies for each fund and account
 - Policy terms of 4 to 10 years
 - Policy limits in excess of \$100 million
- Insurer responded with favorable indication
 - Options for Aggregate Limits of \$50 million , \$100 million and \$150 million
 - Reasonable Self Insured Retentions



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