

## Tidbits from the Top

by Frederick R. Parcells, CPCU, ARM, ARE

**I**t's been almost a year now since we co-sponsored the "Toxic Mold—Don't Let It Overgrow Your Bottom Line" seminar at the 2002 Annual Meeting and Seminars. Since then the topic has continued to be in the news and a source of concern for many, not just those who earn their living in the insurance industry.

Have you had any personal experience with mold problems? Did you get sick? Were there large growths or stains in your basement, bathrooms, ceilings, or carpets? Did you try to buy a new home at today's historically low interest rates only to find that the home could not get insurance due to actual or alleged mold problems?

We want to hear if you have any "war" stories (or horror stories) to share regarding mold. We may post your tale on our web site (with names changed to protect the innocent, of course) or compile the most prevalent themes into a future UT article. If you have a story to share, you can contact me at [fparcells@apexamerican.com](mailto:fparcells@apexamerican.com) or Rick Becker at [beckerr@nationwide.com](mailto:beckerr@nationwide.com).

We look forward to hearing from you. Thanks for sharing! ■

## Note from the Editor

by U.K. "Rick" Becker, CPCU, CLU, ChFC



■ **U.K. "Rick" Becker, CPCU, CLU, ChFC,** is underwriting/product director for Nationwide Insurance in Richmond, Virginia. Becker attained the CPCU designation in 1984.

**I**t wasn't too long ago that a homeowners contract was used to take care of big things that happened. If one saw some mold, he or she usually just scrubbed off his or her stalls, walls, or tile grout. Now, you have expensive insurance claims and multi-million-dollar lawsuits.

According to the Centers for Disease Control and Prevention (CDC), molds are formed virtually everywhere, both indoors and outdoors. Since growth is encouraged by warm and humid conditions, mold claims tend to be more common across the warmer climates in the South.

A key question is "Who is responsible?" Most claims are based on inadequate clean up of damaged property. Some of

which is leading to claims that mold is causing serious health problems. Most experts question whether the scientific evidence supports a direct link to covered losses. The CDC and National Academies of Science are both currently studying the effects of mold on human health.

In the meantime, large verdicts and attention on mold has caused a significant increase in lawsuits filed nationwide. Although in some states we are seeing caps on claims or exclusions for mold coverage, high jury awards have led to an increase in premiums.

Best advice . . . clean up any water or mold damage **immediately** with detergent and water. Absorbent materials may need to be replaced.

We want to hear from you regarding experiences and related topics. You can share on the web or e-mail me at [beckerr@nationwide.com](mailto:beckerr@nationwide.com). ■

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# Toxic Mold—Don't Let It Overgrow Your Bottom Line

## Annual Meeting Update

**Editor's note:** The speakers at the 2002 Annual Meeting seminar, "Don't Let Mold Overgrow Your Bottom Line" were kind enough to make available the presentations used. Although the presentations are far too extensive to include in their entirety, I have included a few of the slides. We hope to have the presentations in their entirety posted on our section web site shortly.

## Sudden Impact of Mold on the Insurance Industry

by Michael Burton, SAFECO

### Why Is Mold Having a Large Impact on First-Party Homeowners Claims?

**M**oisture is required for the proliferation of mold. Also, claims involving water and moisture are high-frequency homeowners claims. Some insurers handle more water-related claims in a year than fires or thefts.

### Why Now? . . .

Several reasons, such as, recent attention over alleged adverse health impact of mold on humans; lucrative component for some recent bad-faith jury awards against some insurers; opportunism among attorneys, public adjusters, repair vendors, and homeowners; paranoia by homeowners over adverse health effects; and paranoia by insurers and vendors over being named in a lawsuit.

### Why Was This Not a Problem Three Years Ago?

In the past, most water-related claims were handled on a "routine" basis, focusing on damages without much in-depth investigation into origin or causation. Adjusters would pay for the damages caused by the water and deny the portion of damages that malfunctioned or deteriorated. The adjuster would either write an estimate and cash out the damages and/or arrange for contractors to perform the covered repairs.

Mold was not an issue. Mold that developed from the covered portion of a loss would be treated by a chemical microbial agent and/or absorbed into the

repairs at no extra cost; there was no concern over airborne spores, health effects, etc.

If mold did become an issue, it would be denied because the policy said so, and without much resistance from policyholders. Most claims were resolved and closed in less than 60 days.

### What's Happened the Past Three Years?

There hasn't necessarily been an increase in frequency of water-related claims, only the addition of a mold component. As concern of health issues over "toxic mold" gained more attention and litigation increased, vendors began backing away from repair jobs until the mold issue was addressed for fear of litigation against them. This also became an opportunity for them to perform enhanced post-remediation scopes of repair.

The demand for mold testing and remediation increased, thereby increasing the costs and duration of covered water claims.

Many adjusters were not prepared to handle the investigations. Increased number of inspections and duration of these claims created training and staffing problems.

Claims-handling challenges resulted in payment of claims that were inflated or potentially not covered to avoid the threat of litigation, or resulted in litigation and higher payments over improper handling or decisions to deny.

Several well-publicized jury awards and celebrity lawsuits spawned more claims for mold infestation and associated health concerns.

This has opened the door for advertisements by attorneys, public adjusters, and vendors looking for opportunities to add to their clientele. ■

# Testing for Microbial Growth: Myths, Perceptions, and Solutions

by Robert D. Gilmore, CIH, AMEC Earth & Environmental, Inc.

## Myths

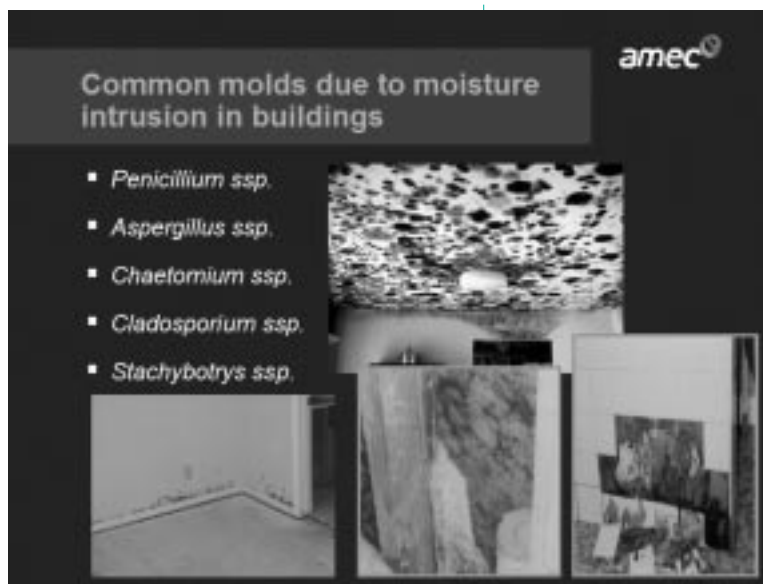
- What I don't know can't hurt me.
- They're responsible for that.
- I have an indemnification clause.
- I am adequately insured.
- Mold is not covered under your policy.
- They didn't tell me they were doing that.
- I'll evict them.
- I saw it on *60 Minutes* and I read it in *Reader's Digest*. I know what I am talking about.
- I didn't know.

## Perceptions

- I have allergies . . . and they are worse at work (home).
- I have an uncle that had San Joaquin Fever, a horrible flu-like respiratory disease that was supposed to have been caused by mold spores. The mold in this building is going to cause the same disease in me.
- She has asthma and it is due to this house.
- I'll sue.
- The landlord is responsible for the building.
- The sewer back-up in this building left all kinds of pathogens behind and I have a right to know what they are.
- The occupancy and use of this building has not changed since lease inception.

## Solutions

- Knowledge.
- The three D's: discover, disclose, and deal with the problem.
- Document conditions, intended use, and occupancy.



- Moisture intrusion is the problem that has to be fixed; testing for mold is not a fix, it is only a part of the assessment and documentation tasks that may be necessary.
- Regularly inspect, observe, and correct.
- Adequately fund maintenance, repair, and replacement programs.

## Remember . . .

- Testing **is not a fix**, it is a tool.
- Mold is simply the manifestation of another problem; **if there is a problem that needs a fix, it is probably moisture intrusion.**
- Ask **nine little questions** before you start.
- Risk  $\neq$  Hazard.
- Seek expertise **when warranted.**
- Discover, Disclose, deal **with issue(s).**
- Document. ■

## Yeeecch Mold!

by Eric C. Nordman, CPCU, NAIC

### Mold: Ancient Enemy or Fact of Life?

- Existed for at least 400 million years (remediation is described in the Bible . . . Leviticus Ch.14).
- 100,000+ species identified; 1,000 in the United States.
- Minimal Growth Requirements:
  - water (humidity/damp OK)
  - food (any organic substance)
  - appropriate temp (wide range)
  - lack of ventilation

### Believing the Hype

#### Early News Trends:

**"Haunted by Mold"** *New York Times Magazine*, August 12, 2001

**"Beware: Toxic Mold"**  
*Time Magazine*, July 2, 2001

**"Insurers, Builders Criticized Over Mold"** *Austin American Statesman*, June 27, 2001

**"Mold Problems Spur Hearings Across Texas"** *Corpus Christi Caller Times*, June 17, 2001

**"Insurers Blanch at Proliferation of Mold Claims"**  
*Wall Street Journal*, June 3, 2001

**"Insurer Must Pay Family \$32 Million"** *San Antonio Express-News*, June 11, 2001

#### In the News Today:

**"Hit With Big Losses, Insurers Put Squeeze on Homeowners"**  
*The Wall Street Journal*, May 14, 2002

**"Mold-Based Lawsuits on the Rise"**  
*Associated Press*, July 27, 2003

**"Insurance Companies Resist Paying Mold Claims"** NBC 10.com, August 6, 2003

**"Insurers Seek to Cap Mold Payouts"**  
*Stuart News, FL*, Aug 11, 2003

**"Mold Is Summer's Revenge"**  
*Virginia Gazette*, August 13, 2003

### "What's Behind Recent Explosive Growth in Mold Claims . . ."

*PRNewswire*, August 19, 2003

### What's So Different about Mold Claims these Days?

- Dramatic increase in the number of claims since late 1990s.
- Escalating losses and loss adjustment costs.
- Health coverage under property policies not considered in ratemaking.
- Large settlements awarded against insurance policies with wording designed to address mold due to negligence.

### Why?

- New construction methods trap moisture, prevent ventilation.
- Costly remediation methods.

- New claims of health risks based on recent studies.
- Increased lawsuits based on court interpretation of standard policy language.
- Material misrepresentation/fraud.

### What Can We Do to Save Ourselves?

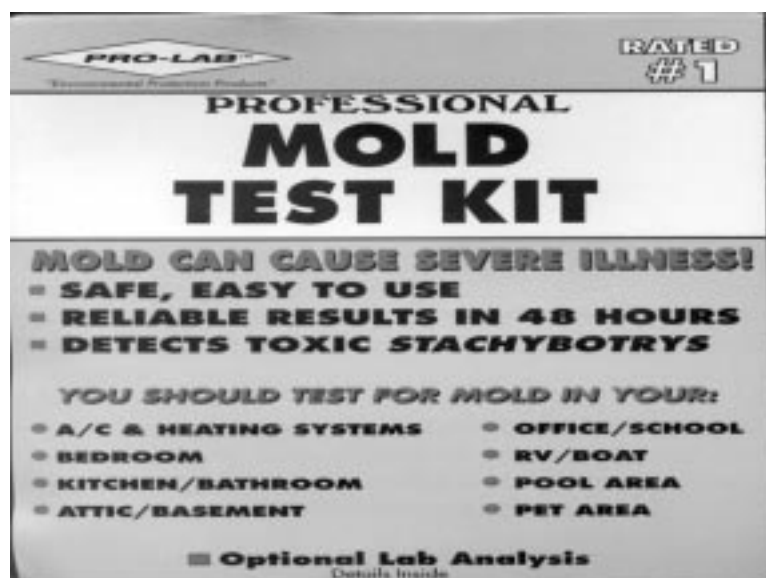
- Government can continue definitive studies on frequency, severity, health risks; address fraud issues, tort abuse.
- Consumers can stop believing "the hype"; take sensible precautions to prevent moisture from creating a breeding ground for mold.
- Insurers and agents can fully and clearly explain any changes in the coverage and premium to their customers.
- Builders can improve new structure design and construction. ■



# We Wonder Why Mold Is an Issue?

by Bill Stewart, Cozen O'Connor

One doesn't have to go far to see ads and web sites to see why mold has become an issue. ■





# New Mold Exclusions = Unanticipated Coverage Gaps + E&O Exposures!

by David J. Dybdahl, CPCU, ARM

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views and observations  
contained in this article  
are his own.

## Editor's note:

This article originally appeared in the July 2003 issue of *Agent & Broker Solutions* as Part 1 of a three-part series. Since most of the past information focused on first-party claims, this article gives a great perspective of how damages will tend to transform to third-party claims in 2003.

Many thanks to the author and the Agent & Broker section for allowing us to share this information with the Underwriting Section members.

**M**old damages will transform from first-party claims to third-party claims in 2003. As tens of thousands of property owners seek funds to pay for expensive mold remediation work, universal "mold" exclusions are destined to transform many insurance claims on homeowners and "all-risk" property insurance policies into toxic tort liability claims against contractors, engineers, architects, building products suppliers, real estate professionals, and landlords.

By fact, history, and circumstance, risk advisors have already been positioned to be the "insurers of last resort" for their clients' unintentionally uninsured environmental and toxic mold claims. In many cases, there is prospective insurance available to cover mold and environmental losses. This insurance is either in the form of a buy back on homeowners policies or environmental insurance on commercial accounts.

Nevertheless, based on the current sales of the specialty insurance products covering mold damages, risk advisors are not utilizing them. The combination of an explosive growth in newly uninsured mold-related damages claims and insurance product availability has subjected risk advisors to unprecedented levels of professional liability exposure.

The progression of an uninsured mold claim from the property insurer to the liability insurer, and ultimately to the risk advisor, is shown in Figure 1.

Risk advisors can easily avoid professional liability claims for uninsured mold damages by advising their clients of the mold hazard and offering to procure the appropriate insurance. Simply pointing out the new mold exclusion will not keep risk advisors out of the professional liability soup if their client suffers an unexpectedly uninsured mold loss when coverage was available but not offered to the client.

## A New Perspective on Mold Claims

The frequency and severity of mold-related damage claims on a national basis are somewhat of a mystery, although some estimates are available. One such estimate can be derived from insurance company testimony to the Maryland Insurance Administration on November 7, 2002. That testimony estimates the total property damage claims as a result of mold to be roughly \$8.5 billion.

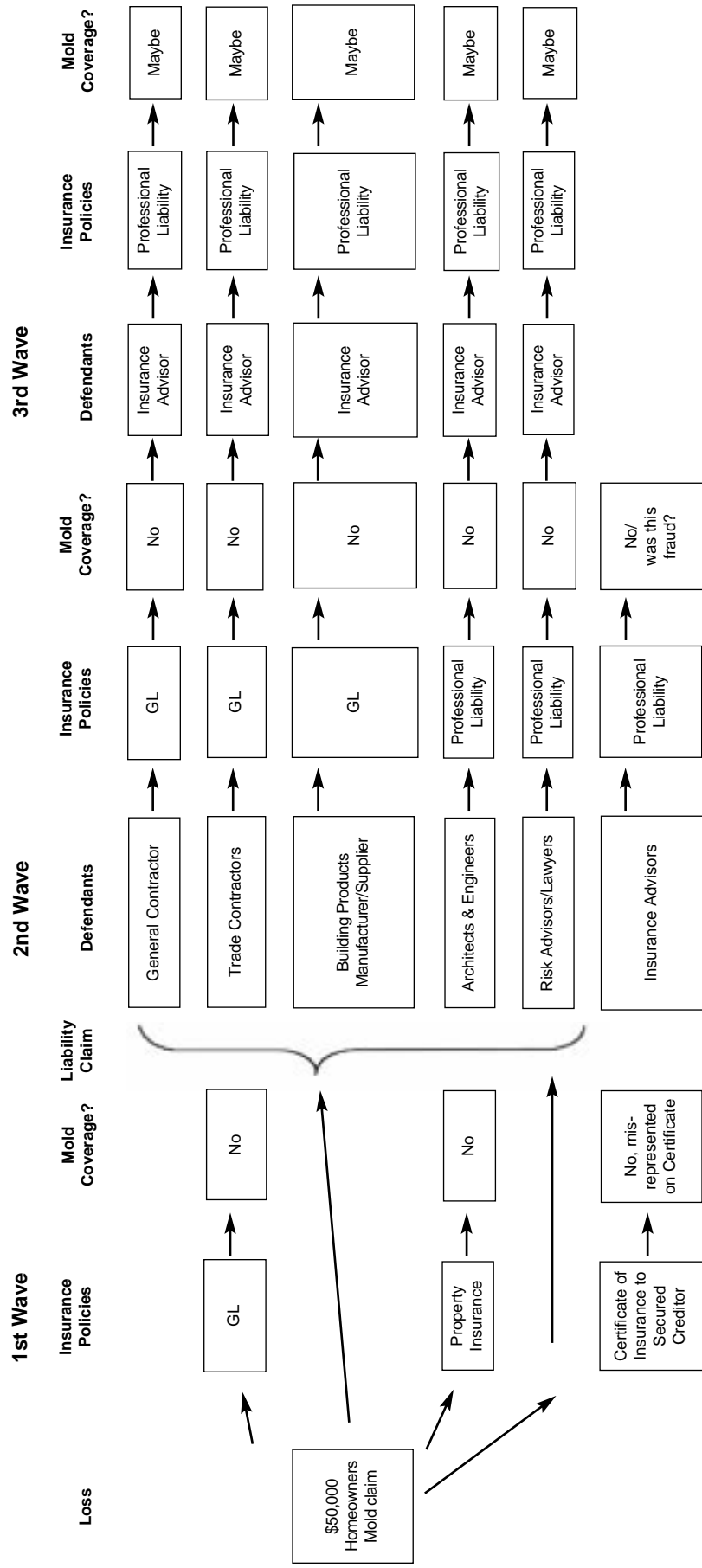
Prior to the new wave of mold exclusions, the average mold remediation claim was costing \$20,000 under homeowners' insurance policies, and in the \$200,000 range under commercial property policies. Annualizing the first six-months claims figures for 2002, there were approximately 350,000 property insurance losses for mold-related damages in the year. To contrast mold losses to fire losses, there were 505,000 insured fire losses with an average loss of \$25,000. There were \$12.6 billion in total fire claims in 2000.

Measuring mold losses based on property damage alone underestimates the total loss content. Unlike fire losses, mold introduces a toxic tort element into property insurance claims. By adding a conservative estimate for toxic tort liability damages to the mold-related property losses, total mold-related damages produce claims frequency and severity that mirrors fire claims in the United States.

The big difference between mold and fire claims is that fire is universally covered as a cause of loss on all prospective insurance policies and mold is universally excluded. Leaving clients bare for an exposure similar to fire claims is the unanticipated and under appreciated result of mold exclusions for risk advisors. ■

Figure 1

# Domino Effect of an Uninsured Mold Claim from Property Insurance to General Liability Insurance to Professional Liability Insurance



One uninsured homeowners claim can turn into seven professional liability claims against insurance agents.

# Are You Ready to Deal with Mold?

Learn all about mold with the CPCU Society's interactive CD-ROM, **MoldMania**.

Developed specifically for insurance professionals by insurance professionals, this 6-module, 2½-hour, self-study CD presents comprehensive information on:

- The basics of mold—what it is, how it grows, and how it affects human health
- How mold can be prevented and tested for
- Remediation—basics, goals, and upfront considerations
- How to address mold-related claim adjustment and investigation, as well as coverage and legal issues
- Other useful resources

The self-study program features video and audio clips from mold experts, photos identifying mold, design considerations for prevention, a policyholder's checklist, as well as a quiz at the end of each module to test your knowledge.

For more information, go to [www.cpcusociety.org/?p=21788](http://www.cpcusociety.org/?p=21788).

## Order Your Copy of MoldMania Today!

It's just \$79.95 for CPCU Society members (\$89.95 for nonmembers).

Plus \$5 for standard shipping & handling (or \$10 for overnight delivery).

To order, call **(800) 932-CPCU, option 4**.

**moldmania**

### Underwriting Trends

is published four times a year by and for the members of the Underwriting Section of the CPCU Society.

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Printed on Recycled Paper



## Underwriting Trends

Volume 15

Number 2

September 2003

# UT

CPCU Society  
720 Providence Road  
Malvern, PA 19355-0709  
[www.cpcusociety.org](http://www.cpcusociety.org)

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