Underwriting TRENDS

Underwriting Section Quarterly

Vol. 14 No. 2
July 2002

CPCU SOCIETY
INSURING YOUR SUCCESS

Chairman's Message

by Frederick R. Parcells, CPCU, ARM, ARe

The Underwriter: An Endangered Species?

Dinosaurs are a fashionable species these days. From stuffed animals to fast-food promotional items to *Jurassic Park* film sequels, we see their caricatures around us frequently. And, although multiple scientific theories exist concerning the reason for their demise, the only certainty we can all agree upon is that they're extinct.

Is today's underwriter facing the same fate as the sauropods and theropods? As anyone who survived it will attest, the 1990s was a decade of widespread consolidation among both insurance companies and producers. In addition to the elimination of many underwriting jobs, artificial intelligence emerged as an alternative means to perform several underwriting tasks traditionally performed by humans. Throw in the discontinuation of many corporate underwriting training programs for good measure and one cannot help but wonder where it's all headed.

None of us has a crystal ball, but in my opinion, consolidation and artificial intelligence appear to be here to stay. And, as the remaining underwriters progress through their career and retire, who will be there to take their place? When was the last time you saw a "Help Wanted" ad for underwriting trainees? As your section chairman, the future of underwriting is not an unimportant issue to me. I'd like to hear from you as to where you think underwriting's future is headed and what suggestions you may have for ensuring that your vision is realized. You can reach me via e-mail at fparcells@apexamerican.com or by mail at:

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Thanks for reading! ■

Tidbits from the Top

by Frederick R. Parcells, CPCU, ARM, ARe

As you enjoy the warm summer days, I'd like to remind you of our upcoming educational activities at the 2002 Annual Meeting and Seminars in Orlando, Florida. Your section is sponsoring two events. The first, co-sponsored with the Claims Section, is entitled "Toxic Mold—Don't Let It Overgrow Your Bottom Line" and will be held on Monday, October 21, 2002, from 10 a.m. to Noon. The second, "The 21st Century Underwriter: Armed and Ready to Make a Profit," is scheduled for Tuesday, October 22, 2002, from 10 a.m. to Noon. I encourage you to take advantage of these opportunities to learn the latest details on addressing the mold problem in the United States and also what's happening with respect to underwriting education and training.

After the Tuesday morning seminar, why not plan on grabbing a bite to eat with your peers (and maybe new-found friends that you haven't met yet)? Join us for the Underwriting Section Lunch from 12:30 - 1:30 p.m. before you head out to play a round of golf or shake hands with Mickey.

Have you checked out the Underwriting Section web site yet? If not, please take a moment to visit www.cpcusociety.org. Click on "Special Interest Sections," and choose "Underwriting Section" from the list on the left side of the page. Do a little browsing, and let us know what you think. We think you'll like what you see.

I hope to see **you** in Orlando. ■

Mold: Five Reasons Why It Is Not the "Next Asbestos"

by Randy J. Maniloff

Editor's notes: *In this quarter's edition of* Underwriting Trends*, we are focusing on "mold," the topic of what should be an exciting and informative seminar "Toxic Mold—Don't Let It Overgrow Your Bottom Line" at the 2002 CPCU Society Annual Meeting and Seminars in Orlando, FL.*

Much has recently been written on the topic as insurers are still reeling from staggering awards, rising numbers of, and costs of mold-related claims. Some would argue that, given the buildings and people potentially exposed, the types of policies affected, the complexity of claims, the potentially high defense costs, and global reach, toxic mold could very well rival asbestos in its impact on the insurance industry.

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This article originally appeared in the Vol. 16 No. 25, May 7, 2002, issue of Mealey's Litigation Report: Insurance *and is reprinted here with permission.*

Mold has been the subject of much discussion lately within the insurance industry, as well as by others affected in their own right, such as lawyers, environmental consultants, and consumer groups. And it seems like every time the subject comes up, it doesn't take long for someone to chime in that *mold is the "next asbestos."* It's not. While mold is certainly a cause for legitimate concern by the insurance industry, there are several reasons why the stars are not aligned for mold to warrant such an ambitious label.

Before examining these reasons, consider what it will take for mold, or any toxic tort, to become the "next asbestos." According to an April 10, 2002 article in *The New York Times*—front page and above the fold—American companies and insurers have spent over $30 billion to defend and settle asbestos lawsuits. Moreover, *The Times* cites industry analyst predictions that the total bill for asbestos could exceed $250 billion.[1] If mold is going to be the "next asbestos," it certainly has big shoes to fill.

1. The Volume of Mold Claims Will Not Enable Duplication of the "Asbestos Business Model"

There are numerous factors that have caused asbestos litigation to reach the dollar levels that it has. Most significantly is the unparalleled volume of claims. This has resulted in a fundamental change in the entire approach to litigation—to the tremendous advantage of plaintiffs. The number of mold claims, on the other hand, will not reach the same stratospheric heights as asbestos. Therefore, mold will not provide plaintiffs with the same tactical advantages that they have been able to exploit so successfully in the asbestos arena.

Faced with thousands, and sometimes even hundreds of thousands of asbestos cases pending against an insured, along with dozens of other defendants, not to mention the associated defense costs required to navigate such litigation labyrinths, insurers have been left with little choice but to apply novel approaches to the problem. To avoid becoming suffocated by the volume of asbestos cases, the interested parties, with the complete blessing, if not at the insistence, of courts, have been forced to dispense with some of the traditional requirements of tort law. Enter the "global settlement"—the biggest thing to happen to tort law since Helen Palsgraf decided to take the train to Rockaway Beach.[2]

In a global asbestos settlement, hundreds, if not thousands, of asbestos cases are resolved without strict proof that a plaintiff's asbestos-related injury was caused by exposure to a specific defendant's asbestos or

Randy J. Maniloff, *who is with Philadelphia-based law firm Christie, Pabarue, Mortensen and Young, P.C. and who concentrates his practice in the representation of insurers in coverage disputes, gives his perspective and reasons why it is not the "next asbestos."*

asbestos-containing product. Instead, generally speaking, causation will likely be deemed satisfied as long as there is an overlap between the plaintiff and the defendant's asbestos or asbestos-containing product being present at the same location. Never mind that the asbestos at issue may not have been friable or, if it was, that the plaintiff may not have been in a position to actually inhale the specific settling defendant's asbestos. Never mind that the amount paid by the defendant to settle, compared to other settling defendants, may not be in equal proportion with the extent of exposure by the plaintiff to the two settling defendants' asbestos. And never mind that the plaintiff's decision to smoke a couple of packs of Lucky Strikes a day for more than 30 years might have had something to do with that shadow on the chest x-ray, if there is even a present injury at all.

Provided that a plaintiff's case has enough evidence to defeat the defendant's theoretical motion for summary judgment on lack of causation—which, by the way, will likely be deposition testimony of the plaintiff, recalling the details of specific workplace events from 40 to 50 years ago—it will likely make it into the global settlement. There is a price that must be paid to resolve a backlog of thousands of asbestos actions, and this sleight of hand approach to causation is it.

Herein lies the secret (although it is certainly not a secret) to the success of asbestos for plaintiffs' attorneys—the asbestos business model. Individually, each asbestos case may have several weaknesses that would prevent it from being economically worthwhile to pursue. But when thousands of such cases are filed against a single defendant, it becomes an extremely daunting and expensive task to identify such weaknesses. What's more, if the cases can not be dismissed on motion for summary judgment, then any insurer wishing to take a hard-line position on non-meritorious claims is forced to try each and every case individually (to the probable displeasure of the trial judge, who is likely being judged him or herself on how many cases he or she clears off the docket). The result is the global asbestos settlement.

To be fair, the global asbestos settlement is not without consideration for insurers either. In exchange for settling multiple cases in this manner, insurers are relieved of the tremendous defense costs that would be incurred if each case were to be separately handled, on its own, start to finish. As well, insurers are also relieved of the risks of taking their insured's cases to trial. Time and time again it has been proven that even a defendant with a strong case on both causation and damages is rolling the dice when putting an asbestos case before a jury. Not to mention, if there was an offer to settle before trial that was rejected, the insurer is also risking potential liability for the excess verdict. These are the benefits of the bargain for an insurer that agrees to settle a case for, say, a few thousand dollars, even if the payment feels like extortion.

Additionally, insurers that enter into global settlements typically must be satisfied that they are receiving an adequate discount from the plaintiffs. After all, the insurers are agreeing to settle cases earlier than they would otherwise be scheduled for trial, with significantly reduced effort and expense on the plaintiffs' part and pursuant to this relaxed standard of causation. However, lots of companies achieve success by selling their products cheap and making up the difference in volume. Given the extraordinary number of cases in their "inventory" (yes, this is actually the term that asbestos plaintiffs' attorneys use to describe their clients), asbestos plaintiffs' attorneys can afford to follow this same business model.

On the other hand, mold does not lend itself to hundreds of thousands of plaintiffs suing dozens of defendants through the use of form complaints and other pleadings and cookie-cutter discovery (more on this in reasons 2 and 3). Therefore, mold is not likely to provide the plaintiff's bar with the ability to attempt to settle such claims en masse, based on fictional causation and other corner-cutting of decades of jurisprudence that has attempted to keep the tort playing field level.

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Instead, mold claims are much more likely to have to be litigated in the more traditional manner. In other words, plaintiffs' attorneys will have to incur significant effort and expense to prepare each case for trial or settlement. If each mold suit must be "worked-up" in the traditional manner, then it is unlikely that such claims will achieve the volume levels that would be required to replicate the asbestos business model.

2. Most Mold Claims Are for Property Damage under First-Party Policies

As stated above, mold claims do not lend themselves to hundreds of thousands of plaintiffs suing dozens of defendants. As a result, the plaintiff's bar will not enjoy the tactical litigation advantages that come from the necessity of insurers to resolve such a large number of cases. But if mold is supposedly *everywhere*, why can't it rival asbestos in terms of the number of claims?

There are a few reasons for this. While it may be true that mold is everywhere, not all mold lends itself to a cause of action against parties allegedly responsible for the situation. Case in point. The available data suggests that most mold claims have nothing at all to do with liability and arise under homeowners policies.

As well, even though there is the potential for mold "liability" claims being brought in bulk, say, by large numbers of occupants of a public building, all alleging mold bodily injury on account of its faulty construction, such situation still does not rival asbestos in terms of the number of potential plaintiffs. It is therefore not likely to contribute to replication of the "asbestos business mode." A major contribution to the volume of asbestos plaintiffs has been the fact that a defendant's liability can often times be traced back to a single source, such as its incorporation of asbestos into a product that it manufactured. Mold, of course, is not a product. Therefore, while it may be true that mold is everywhere, it is not the same mold that is everywhere. In other words, the mold in one building likely has absolutely no relationship to the mold in another building. As a result, while mold can result in multiple-plaintiff litigation, the number of potential plaintiffs that will be in a position to trace their injuries to *the same* source is likely to be substantially fewer than is the case with asbestos, where the same product may have been distributed on a national basis and therefore come in contact with millions of people.

Any count of the number of mold insurance claims that have been filed must be qualified by an explanation of the type of policies at issue, the nature of the mold-related damage and its alleged cause. For this reason, any data purporting to offer the number of mold claims at issue, without such an explanation, is of little value to any assessment of the overall size of the problem. As well, without such qualification, any comparison between data from different sources is apples and oranges.

One group that has examined the number of mold insurance claims that have been filed is Policyholders of America, a non-profit organization founded by Melinda Ballard, who was awarded $32.1 million in 2001 in a homeowners coverage action for mold damage.[3] While Policyholders of America acknowledges that its list may not be all-inclusive, it calculates that from 1987 to February 5, 2002, there have been 16,059 first-party mold claims filed (in which the policyholder retained counsel), consisting primarily of homeowners claims. By comparison, Policyholders of America reports that there have been only 10 cases against contractors that have resulted in an award or settlement of $1 million or more, and only six cases where litigation against commercial or municipal building owners resulted in awards or settlements of $1 million or more.[4]

Even if these claims figures are not exact, they clearly illustrate that the vast majority of mold claims arise under homeowners policies,[5] which do not cover bodily injury to the home's residents.[6] Moreover, even claims for property damage under homeowners policies are by no means slam-dunks. Consider that homeowners policies actually contain exclusions for certain types of mold damage,[7] not to mention that attempts are currently underway to broaden such exclusions. This is not to say that mold

exposure for insurers under homeowners policies is anything to sneeze at (no pun intended).[8] However, without the potential for recovery for bodily injury, and its pain and suffering component, as well as the fact that homeowners policy property damage claims will likely have too many unique aspects to lend themselves to Henry Ford-like automation, they are unlikely to become the basis for a high-volume plaintiffs' practice or even pique many plaintiffs' attorneys' interests (unless, of course, the attorney sees a potential bad faith aspect to the claim).[9]

As well, a homeowners property damage claim is only intended to make the insured whole. Many insureds will likely be underwhelmed by the idea of involving a lawyer in their homeowners claim, after discovering that, as a result, they will now only be made about 60 percent whole. A 33 percent to 40 percent contingent fee is much easier for a plaintiff to swallow when it is part of a settlement that has a pain and suffering component, since it is not reducing the plaintiff's recovery for out-of-pocket losses.

3. Mold Exclusions Will Likely Be Far More Effective than Asbestos Exclusions in Limiting Insurers' Financial Exposure

Even if the vast majority of mold claims will likely arise under homeowners policies, the potential for claims being brought in bulk, by large numbers of occupants of a public building, all alleging bodily injury caused by mold, is very real. Such claims would likely be brought against the building owner and those responsible for its construction, such as the general contractor, its numerous subcontractors, the manufacturers of the construction materials, and a host of other potential defendants. The theory of liability here will likely be that the building was constructed in a defective manner, allowing for the penetration of water, and, as a result, the growth of mold.

Thus, there exists the potential for numerous bodily injury plaintiffs, each of whom can easily prove their extended presence in a building (for example, because they went to work there everyday), bringing actions against defendants who will each tender the claim to their commercial general liability insurer(s). Such insurers issued policies that provide coverage for third-party bodily injury. Even if this situation will not likely result in a replication of the "asbestos business model," doesn't it at least resemble the model, and therefore present an attractive case to the plaintiff's bar? Of course. But the insurance industry has begun to respond to the mold epidemic by incorporating mold exclusions and mold sublimits into commercial general liability policies.[10]

Insurance Services Office, Inc. has recently promulgated endorsements for use on CGL and various other types of liability policies to exclude or reduce (through the use of a sublimit) the coverage available for mold claims to commercial insureds. These endorsements are expected to be implemented in various states between April and June 2002.[11]

The precise extent to which mold exclusions and sublimits take hold in CGL policies will likely vary from state to state. However, the effect will be the same—to severely limit or preclude insurance coverage to defendants in a multiple-plaintiff mold bodily injury action. While the loss of the availability of insurance coverage is not a bar to the prosecution of the underlying action, the likely reality is that without insurance dollars to pay any settlement or judgment, the plaintiff's bar's motivation to bring the case (and especially on a contingent fee) will be lost.

While the insurance industry responded to the asbestos crisis by making an asbestos exclusion a part of CGL policies, the nature of asbestos bodily injuries are such that this solution came too late to prevent most of the damage. Asbestos exclusions were generally incorporated into CGL policies between the mid-1980s to the mid-1990s. However, the typical asbestos plaintiff alleges exposure to asbestos starting from the 1950s and going straight through to the present. Based on any trigger theory other than manifestation, numerous years of pre-asbestos exclusion policies will likely be obligated to respond to the claim. In

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addition, for allocation purposes, the adoption of "joint and several liability" has avoided leaving plaintiffs with the prospect of having to collect a share of their recovery directly from the insured, which may not be feasible. Indeed, even some courts that have rejected joint and several liability in favor of pro-rata time on the risk do not require allocation to the insured for periods when coverage is "not available," on account of asbestos exclusions.[12]

Accordingly, notwithstanding the adoption of asbestos exclusions, the latent nature of asbestos injuries, in conjunction with various trigger theories that have been adopted by courts, has still left billions of insurance dollars on the table for the payment of such claims. Mold bodily injuries, however, may not lend themselves to a latent injury period, thereby enabling pre-mold exclusion CGL policies to be triggered. Thus, mold exclusions will likely be far more effective than asbestos exclusions in limiting insurers' financial exposure.

4. Mold Is Likely to Have a Much Shorter Trigger Period than Asbestos

Mold exclusions and sublimits in homeowners and liability policies are politically charged issues. Thus, it is possible that these exclusions and sublimits will not achieve the same level of across-the-board incorporation as asbestos exclusions. However, even if this occurs, the nature of mold injuries, both bodily injury and property damage, does not likely lend itself to long trigger periods. Simply put, the nature of mold claims is not likely to offer plaintiffs the annualization of the policy limits of decades of coverage that has served to create the asbestos trough.

The trigger of coverage for mold bodily injury will be directly tied to the medical etiology of the injury. Just as with asbestos and property damage caused by hazardous waste, the courts will be guided by the science behind the injury in crafting a trigger theory. For mold, however, this presents an interesting situation, considering that there is an ongoing debate concerning whether exposure to mold even causes bodily injury.

Recognizing that many involved in the mold-bodily injury debate have a bias, here is what the Center for Disease Control has to say about the issue in its publication *Questions and Answers on Stachybotrys Chartarum and Other Molds:*

Q. 1. I heard about toxic molds that grow in homes and other buildings. Should I be concerned about a serious health risk to me and my family?

A. The hazards presented by molds that may contain mycotoxins should be considered the same as other molds, which can grow in your house. There is always a little mold everywhere—in the air and on many surfaces. There are very few case reports that toxic molds (those containing certain mycotoxins) inside homes can cause unique or rare, health conditions such as pulmonary hemorrhage or memory loss. These case reports are rare, and a causal link between the presence of the toxic mold and these conditions has not been proven.

Q. 10. What are the potential health effects of mold in buildings and homes?

A. Mold exposure does not always present a health problem indoors. However, some people are sensitive to molds. These people may experience symptoms such as nasal stuffiness, eye irritation, or wheezing when exposed to molds. Some people may have more severe reactions to molds. Severe reactions may occur among workers exposed to large amounts of molds in occupational settings, such as farmers working around moldy hay. Severe reactions may include fever and shortness of breath. People with chronic illnesses, such as obstructive lung disease, may develop mold infections in their lungs.[13]

The debate concerning the causal connection between exposure to mold and various injuries is not going to be resolved here.[14] However, assuming that the link is

established, it may be the case that the injury manifests itself shortly after a person's initial exposure to the mold, and not significantly later, as is commonly the case with asbestos. If so, then there are likely to be short trigger periods for coverage purposes. Therefore, even if coverage is not precluded for a multiple-plaintiff mold claim brought against a building owner and those responsible for its allegedly defective construction, the amount of coverage available for such a claim will likely be limited to one or maybe two years' worth.[15]

The trigger of coverage for mold property damage may be an easier issue to evaluate because it may not contain a controversial causation component, as in the case with bodily injury. In general, numerous courts have adopted a manifestation trigger in the context of construction defect claims, even in states that have adopted continuous triggers for purposes of asbestos bodily injury and environmental property damage.[16] In addition, mold requires moisture to grow and can begin growing within 24 to 48 hours of a water event.[17] Thus, it is likely that a manifestation trigger will apply to mold property damage claims. If so, then, by definition, mold property damage claims will only trigger a single year of coverage.

Herein lies the insurance industry's most important safeguard against mold reaching the same dollar levels as asbestos. Unlike asbestos, the likely short trigger periods for mold bodily injury and property damage will limit the amount of insurance dollars available (even without the benefit of mold exclusions and sublimits). Since construction defect cases oftentimes involve multiple defendants and are therefore labor intensive, a diminished amount of available insurance dollars—while certainly not preventing mold litigation—will surely make the litigation less attractive for a plaintiff's attorney deciding how best to use the finite number of hours in his or her work day.

5. The Present Financial State of the Insurance Industry Does Not Bode Well for Mold

While the insurance industry is not known for engendering sympathy, the fact is that the industry is presently going through a rough financial period. According to information released on April 15, 2002, by Insurance Services Office, Inc. and the National Association of Independent Insurers, the property and casualty industry suffered a $7.9 billion net loss after taxes in 2001, its first ever net loss for a full year. Compare this with 2000, in which the industry had net income of $20.6 billion. The combined ratio—which measures losses and underwriting expenses per dollar of premium—rose to a staggering 116 percent in 2001. According to ISO and the NAII, factors contributing to these results are September 11 claims and sharply lower gains on investments, as a result of declining interest rates and stock markets. The insurance industry is also facing significant potential exposure from the collapse of Enron (and possibly other companies that are waiting to implode in accounting scandals).

The media has been full of reports recently concerning enormous increases in premiums being charged for various lines of coverage, including property and liability insurance. The reason, in part, is the P&C industry's financial woes, as well as the practice during the 1990s when insurers fought for customers by aggressive price cutting. There have also been many reports of businesses that are suffering, and even laying off employees as a result of the financial stress being caused by the increases in their insurance premiums.[18]

But what does this have to do with mold? It is likely that the proliferation of asbestos was helped by the fact that it arose at the same time as the longest bull market in history, which began in August 1982. Surely courts are more receptive to pro-plaintiff and pro-coverage arguments during a period when insurers are flush with cash. Indeed, with the bull market over, arguments are now being made to Congress that it is time for it to step in with a solution to the asbestos crisis. Such arguments are based mainly on the economic havoc that asbestos is wreaking on American businesses.

Mold, on the other hand, has arrived at a time when the industry can ill afford the financial consequences of another asbestos. Thus, courts that reach decisions that are designed to overcome some of the coverage-limiting arguments raised herein will only be passing the industry's losses back onto the insurance consumer, in the form of even higher premiums. Knowing this, courts may be unwilling to contribute to the economic hardship to businesses that comes from the lack of affordable insurance.

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Conclusion

While mold is not the "next asbestos," its potential exposure for the insurance industry is nonetheless very real. Even if mold does not result in litigation factories, there is still much damage that can be done to insurers by those cases that can justify being handled by plaintiffs in the traditional litigation format. For example, mold bodily injury cases brought by multiple plaintiffs against building owners and contractors for alleged defective construction are surely attractive cases for plaintiffs. Even if they only trigger one year of coverage, they can still present significant exposure for insurers. As well, the defense costs associated with these types of construction defect cases can be astronomical. Additionally, even if homeowners policy property damage claims are not appealing on their face to the plaintiff's bar, attempts are being made to raise the profitability of such cases by turning them into bad faith claims. So while mold is not the "next asbestos," it would be short-sighted to dismiss it and call it the next Electromagnetic Fields (power lines).

If the insurance industry's total exposure to date for asbestos is $30 billion, and projected by some analysts to reach $250 billion, then perhaps the strongest argument why mold is not the "next asbestos" is the simplest of them all—there is presently no need for it to be. ■

Endnotes

1. Alex Berenson, "A Surge in Asbestos Suits, Many by Healthy Plaintiffs," *The New York Times*, April 10, 2002, at A1.
2. In *Palsgraf v. The Long Island Railroad Company*, 162 N.E. 99 (N.Y. 1928), the most famous tort case of them all, Judge Cardozo, writing for the Court of Appeals of New York, addressed negligence under the following facts. A man was running to catch a train after it began to move. He jumped on, but was about to fall. The conductor, who had held the door open, reached forward to help. In doing so, a newspaper-wrapped package that the man was carrying fell upon the tracks. The package contained fireworks, which exploded. The shock of the explosion knocked down some scales at the other end of the platform, many feet away, causing injury to Helen Palsgraf, who was waiting for her train to Rockaway Beach. Judge Cardozo held that there was no liability on the part of the conductor for Mrs. Palsgraf's injuries because there was no duty owed to her, as an unforeseeable plaintiff.
3. On June 1, 2001, a Texas jury awarded Mary Melinda Ballard in excess of $32,000,000 after finding that her homeowners insurer acted in an unfair, deceptive and fraudulent manner when evaluating a mold property damage claim. "Jury Awards $32 Million to Texas Homeowner in Mold Coverage Action," *Mealey's Emerging Insurance Disputes*, Vol. 6, Iss. 12 (6/20/01) at p. 11.
4. "Burgeoning Mold Claims," *Hazardous Times* (GeneralCologne Re), February 2002. In addition, in an April 24, 2002 article, *The Wall Street Journal* reported that there are between 8,000 and 10,000 mold lawsuits pending nationwide. See Ray A. Smith, "Apartment Owners Face Growing Liability," *The Wall. St. Journal*, April 24, 2002 at B8. However, *The Wall. St. Journal* article does not state how many of these lawsuits are bodily injury and how many are property damage.
5. For further support of the proposition that, at present, the majority of mold claims are for property damage, see Christopher Oster, "Insurers Blanch at Proliferation of Mold Claims," *Wall St. J.*, June 3, 2001. As well, an October 9, 2001 presentation by Robert P. Hartwig, Ph. D., Vice President and Chief Economist of the Insurance Information Institute titled "Mold and the Insurance Industry: Truth and Consequences," is nearly exclusively related to the effect of mold on homeowners insurers. Available at http://iiisrv.thing.net/yy_obj_data/binary/580622_1_0/mold.ppt.
6. The fact that homeowners policies do not cover bodily injury to the home's residents did not deter one policyholder from filing a homeowners coverage action for mold property damage and also alleging an entitlement to coverage for medical expenses. See *Gallop, et al. v. State Farm Insurance Companies, et al.*, New York Supreme Court, County of Onondaga, Index no. 2001-8259, reported in *Mealey's Litigation Report: Insurance*, Vol. 16, Iss. 24 (4/30/02).

7. A lot has been written about the availability of coverage for mold damage under homeowners policies, especially concerning the treatment of the mold exclusion. It is not the intent of this article to examine this issue. For an excellent article on this subject, and others, see Bill Wilson, "Toxic Mold Claims," available at http://vu.iiaa.net/Lib/Ins/PL/Homeowners/WilsonToxicMold.htm.
8. According to the Texas Department of Insurance, between January 1, 2000 and June 30, 2001, insurers incurred $276,548,402 on account of loss and loss adjustment expenses associated with mold claims in the state. However, this amount includes costs directly related to mold (remediation, testing), as well as costs not related to mold, such as non-mold water damage, slab damage, and other repairs not associated with mold. Texas Department of Insurance, "Mold Data—All Claims," September 18, 2001, available at www.tdi.state.tx.us/commish/molddata2.html.
9. A lot has been written about the insurance industry's handling of mold claims, especially since the lion's share of the damages awarded in the *Ballard* case were extra-contractual. While it is not the intent of this article to examine this issue, not enough can be said about the importance of handling mold claims in such a manner to prevent a straightforward property damage claim under a homeowners policy from mushrooming into a *Ballard*-type situation.
10. Another potential source of numerous mold claims are by owners of new homes that bring bodily injury and property damage claims against their builders for mold-caused damages. Here as well, mold exclusions and sublimits on CGL policies would operate to preclude or severely limit coverage.
11. Patrick J. Wielinski, "Policy Modifications and Endorsements Relating to Liability Insurance Coverage for Mold," International Risk Management Institute, Expert Commentary, March 2002, available at http://www.irmi.com/expert/articles/wielinski008.asp.
12. See *Owens-Illinois, Inc. v. United Ins. Co.*, 650 A. 2d 974 (N.J. 1994); *Stonewall Insurance Company v. Asbestos Claims Management Corporation*, 73 F. 3d 1178 (2d Cir. 1995).
13. Center for Disease Control, "Questions and Answers on Stachybotrys Chartarum and Other Molds," available at www.cdc.gov/nceh/airpollution/mold/stachy.htm.
14. It is possible that a sixth reason why mold is not the "next asbestos" is because the nature of mold injuries are generally not as serious as asbestos, which oftentimes involve cancers. However, given the lack of agreement in the scientific community concerning causation between exposure to mold and bodily injury, this reason was not included herein. However, it can not be ignored that a sixth reason why mold is not the "next asbestos" may be that the plaintiff's bar will lack the motivation to bring cases for injuries that frequently resemble allergy symptoms.
15. In *Liberty Mutual Insurance Company v. Ravannack*, 2002 U.S. Dist. LEXIS 5167, the United States District Court for the Eastern District of Louisiana denied summary judgment for an insurer that had issued an occurrence-based CGL policy to an exterior insulation and finish system ("EIFS") installer from January 18, 2000 to January 18, 2001. The underlying action giving rise to the coverage issues involved property damage to a home that had manifested in 1999. Construction of the home had been completed in 1992. While the court seemed prepared to find for the insurer for the property damage claims on the basis that its policy was not on the risk at the time of manifestation, the court applied an exposure trigger to the claims for bodily injury to the children living in the home, who had alleged continuous exposure to mold while living in the home. Thus, because the children had been allegedly exposed to mold during the policy period, coverage was possible. Therefore, summary judgment for the insurer was inappropriate. It would be an overstatement to read *Ravannack* as standing for the proposition that mold bodily injury claims have a long trigger period. The Motion for Summary Judgment was decided under Louisiana's "exposure" trigger and the court did not address the link between exposure to mold and manifestation of the injury. Just as in the case of asbestos, once a mold bodily injury manifests, coverage is likely precluded under all subsequently issued policies by the "known loss" or "loss in progress" doctrine.
16. See *Assumption of the Blessed, et al. v. Formost Insurance Group*, 764 A. 2d 1116 (Pa. Super. 2000) (unpublished opinion); *Aetna Cas. & Sur. Co. v. Ply Gem Industries, Inc., et al.*, 778 A. 2d 1132 (N.J. Super. App. Div. 2001).
17. Texas Department of Insurance, "Effectively Handling Water Damage and Mold Claims," April 2002, available at www.tdi.state.tx.us/consumer/moldpub.html.
18. Christopher Oster, "Businesses' Insurance Costs Surge, But They Shouldn't Blame September 11," *The Wall. St. J.*, April 11, 2002, at A1.

"Homeowner's Alert"

Jeff Opdyke and Christopher Oste recently published an article in *The Wall Street Journal* (5/14/2002) "You're Canceled: How to Hang On to Your Homeowner's Insurance." They write, "Warning: Filing Home-insurance claims may be hazardous to your coverage." If you deal with homeowner's, this is a good perspective of how the industry is handling past claims history.

Also, catch the related article "Hit with Big Losses, Insurers Put Squeeze on Homeowner's Policies." ■

NAIC Accepts Credit Correlation

The National Association of Insurance Commissioners, at a public hearing in Chicago in December 2001, generally accepted the correlation between credit information and personal auto and homeowner loss potential. However, the NAIC continues to study the use of credit information and scores in the insurance industry. This remains a hot topic with consumers and state legislatures, especially as they try to balance the facts with emotional concerns surrounding the issue. ■

Brand New CPCU Society Web Site Debuts in June!

In the first week in June, the CPCU Society launched its brand new web site, **www.cpcusociety.org.** The new site has been created to focus on the Society's new strategic plan for "Insuring Your Success" and offers members a number of additional benefits, as well as more continuing education and visibility resources than ever before!

Highlights include:

- Insurance News Headlines for the most current insurance news.
- The latest issue of the new *CPCU eJournal.*
- New career opportunities and resources through Career Management Online.
- An educational Calendar of Events that can be searched by the month, week, or year.
- New "Spread the Word" visibility campaign tools and information.
- Online payment for the Annual Meeting and Seminars and your CPCU Society dues.
- National CPCU Society News about the National Leadership Institute, 2002 Leadership Summit, and the 58th Annual Meeting and Seminars.

New Capabilities for Chapters and Sections

In addition to all the new member benefits, the CPCU Society site provides a number of new capabilities for chapters and sections, which allow them to develop their own subportals with features that were never available before. With these new capabilities, chapters and sections can create discussion boards and polls, link to national CPCU Society news, post pictures, create their own event calendars, and more.

Haven't Seen the New Site?

Log on to **www.cpcusociety.org** today and see what's new! First-time users—log in where you see "Members: Please Log In." ■

Underwriting Section Announces Seminars for Annual Meeting in Orlando!

The Underwriting Section Committee is hard at work on bringing you these informative seminars at the Annual Meeting and Seminars in Orlando in October. We hope to see you there!

October 21, 2002, 10 a.m. - Noon

- **Toxic Mold—Don't Let it Overgrow Your Bottom Line**
  What is toxic mold and why has it suddenly become the hottest topic in the industry? Learn these answers from a panel of experts in the areas of industrial hygiene, law, underwriting, and claims. You'll learn about first- and third-party coverage issues, mold remediation and abatement, what mold plaintiffs will assert, and defending mold lawsuits.

  Moderator
  Keith Lessner
  Alliance of American Insurers

  Panelists
  Michael S. Burton, CPCU
  SAFECO Insurance Companies

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

  William F. Stewart
  Cozen O'Connor

October 22, 2002, 10 a.m. - Noon

- **The 21st Century Underwriter: Armed and Ready to Make a Profit!**
  Underwriters, prepare yourselves for the 21st century! As more and more insurance companies are moving functions to the Internet, the role of the underwriter is continuously changing. Hear what our panel of industry experts has to say about changes in underwriting and training for today's and tomorrow's underwriters. You'll also learn how underwriting is affected by market conditions and management philosophy, what factors determine whether risk is underwritten "electronically" or "humanly," what underwriting tools are available today and into the future, and how underwriters can work smarter.

  Moderator
  Kenneth J. Swymer, Ed.D., CPCU, CFP, CLU
  Liberty Regional Agency Markets

  Panelists
  Robert M. Fishman, J.D., CPCU
  Zurich North America

  Barbara Reardon
  Educating Underwriters

  David A. Ueeck, CPCU
  State Farm Group

CPCU Society • Annual Meeting & Seminars
October 19 - 22, 2002 • Orlando, Florida

For registration information, visit www.cpcusociety.org or call (800) 932-2728, option 4.

In the Next Issue of *UT*:

There will be an update on responses to the Underwriting Section survey published in the April edition of *Underwriting Trends.* If you have not submitted your survey, please do so today.

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

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720 Providence Road
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Underwriting Section Quarterly

Vol. 14 No. 2
July 2002