



Mold Risk Management and Insurance Strategies

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Mold is the fastest growing risk management problem in the US

- Explosive claims growth in 2001-2002
- Forced universal insurance exclusions
- Effects tens of millions of insurance buyers
- Armies of well educated plaintiffs lawyers
- Frequent seven figure judgments
- Tens of thousands of litigated claims
- Everybody is now uninsured

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What contributed to the increase in mold claims?

- Changes in building materials and techniques
- An emphasis on energy efficient buildings
- Poor craftsmanship in new construction
- New science is making proving damages possible
- Thousands of lawyers attended hundreds of “mold is gold” seminars
- The press increases awareness
- There have been hundreds of thousands of successful claims, for billions of dollars

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Why mold related risks are relatively easy to manage

- Keep water out of buildings and there is no risk.
- Unlike some other famous toxins, you can see and smell mold.
- You do not have to drill a \$5000 ground water monitoring well to see if you have mold.
- Mold does not bio accumulate up the food chain.
- Nobody passed a strict liability Superfund law for mold.
- Compared to other environmental damages, managing mold risks is easy

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Why it is important to actively manage mold related risks

- There are no recognized standards for permissible levels of exposure. Emotions run high.
- Losses are expensive - multi-million dollar claims are common. There are billion dollar mold damage claims working their way through the courts.
- All traditional insurance coverage is being eliminated.
 1. Cascading uninsured mold claims will affect hundreds of thousands of insurance buyers.
 2. Mold claims can be “company busters” and unlike Superfund, they bring down firms fast.

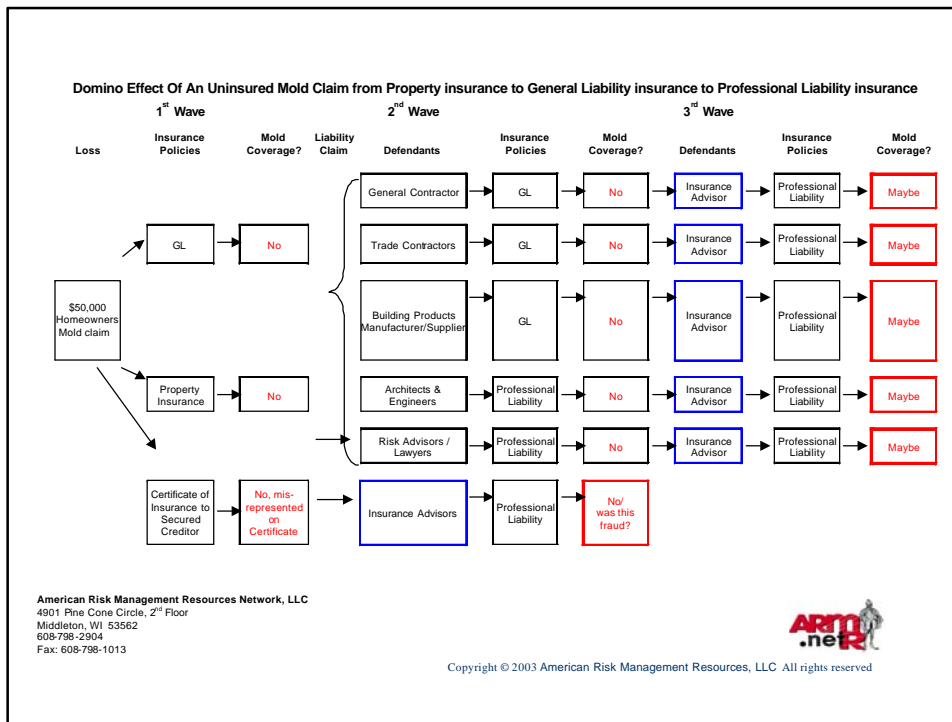
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This is just a homeowners insurance problem in Texas, right?

Wrong!

- There are litigated mold claims in every state.
- Mold grows well in places humans find comfortable.
- This is an indoor air quality issue and can happen anywhere.
- Mold claims combine property insurance claims frequency with toxic tort severity, there is no history of this combination.
- Subsequent claims will fall like dominos from personal lines to commercial insurance

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Risk of Mold Litigation varies by State

(source, Madison Mold Hazard Ranking model)

- | | |
|---------------------------------|----------------------------|
| ● Highest Relative Risk | ● Lowest Relative Risk |
| – Texas 2.95 | – Wisconsin .06 |

Interpreting the Madison Mold Hazard Ranking system:

Other factors remaining equal, based on the amount of P&C insurance written in the state, there is a 49 times greater chance of becoming involved in a litigated mold damages claim in Texas than in Wisconsin.

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The states with the most risk and least risk related to mold damages

- Top 10

- Texas	2.95
- Florida	2.50
- Oklahoma	2.45
- South Carolina	1.91
- Nevada	1.90
- Arizona	1.90
- California	1.73
- South Dakota	1.47
- Tennessee	1.33
- Kansas	1.25

- Bottom 5

- Wisconsin	.06
- West Virginia	.07
- Alabama	.13
- Massachusetts	.18
- Minnesota	.19
- None are zero	

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Relative impact on commercial insurance buyers

	<u>Asbestos</u>	<u>Superfund</u>	<u>Mold</u>
# of firms* affected	4000	6000	10,000,000**
# of Claims	Hundreds of thousands in total	Less than 100,000 in total	300,000 claims in 2002
\$ Exposure	\$ 20 Billion paid to date \$200 Billion next 20 years	\$26 Billion paid to date	\$15 Billion paid to date \$9 Billion paid in 2002, \$12 incurred

* More than \$100,000 in loss exposure

** with mold exclusions on their insurance policies

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What types of businesses have the highest risk ? (Highest to lowest)

1. Uninsured businesses (today)
2. Insurance agents and brokers for leaving their clients unintentionally uninsured for mold damages. (2004)
3. Contractors and architects (today)
4. Banks who get left holding the keys (2004)+trusts+owned property
5. Building managers (today)
6. Building products manufactures and suppliers (2004)
7. Insurance companies (2002)

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In relative terms - how big of a problem is this?

- In 2000, there were 505,000 fire insurance claims in the US, there were about 300,000 mold claims in 2002.
- Fire insurance claims totaled \$12.6 billion in 2000, Incurred mold related claims were about \$12 billion.
- Only \$50 million was paid for mold liability claims in 2002, compared to \$20 billion in liability claims over all.
- 100,000 mold damage claims were under \$2,000
- There were 2500 mold caused foreclosures in 2002 (estimate by Policy Holders of America)

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A typical contractors insurance program

Affected by mold exclusions

Builders Risk	*
Property Insurances	*
General & Umbrella Liability	*
Workers Compensation	
Automobile Liability	
Professional Liability	*

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Where is the mold risk management issue headed?

- Science is moving towards proving bodily injury damages.
- Total insurance exclusions for mold will trigger tens of thousands of new liability law suits.
- Foreclosures will increase dramatically, at least by 4 fold in 2004 because there is no longer property insurance to pay for the loss in 2003.
- Mold exclusions on property policies should shift \$3 billion of mold damage costs onto the banks in 2004.

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Mold coverage in builders risk insurance and property insurance policies

Insuring Agreement in the policies

Pays for direct Physical Loss of,
or Damage to;

Covered Property

Arising from a covered peril

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Standard exclusions in builders risk and property policies

- Losses caused by wear and tear, gradual deterioration, corrosion, rust, rot, mold, inherent vice, latent defect, insects, rodents, birds and other animals are not covered if these are the proximate cause of loss
- Establishing Proximate Cause.... the “but for” rule. Mold damages resulting from a covered perils were covered.

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General Liability

Insuring Agreement

Pay those sums that the insured becomes legally obligated to pay for Bodily Injury & Property Damage

Also provides for Defense Costs and Contractual Liability

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Limitations in the GL Policy for mold damages

- Pollution exclusion plus a mold exclusion
- Damage to your work once completed
- A defect or dangerous condition in your work
- A delay to perform on a contract

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Umbrella Liability Policies

Insuring Agreements mirrors those in General Liability Insurance Policies

Limitations

The Pollution Exclusion offers some coverage for losses that fit certain time elements, usually measured in hours, this coverage will be a little or no value for a mold claim.

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Pollution Exclusions in traditional insurance policies

- In theory may not apply to mold
- In theory do not apply to losses from completed operations or products liability
- In theory should not eliminate mold coverage from a covered peril loss in property insurance policies

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Troublesome words in the standard definition of “pollutants” in insurance policies

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, Waste Includes materials to be recycled, reconditioned or reclaimed

Does mold fall into this definition? Nobody Knows!

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The affect of the new mold exclusions on coverage

- The part of the loss caused by mold, fungus and microbial matter is now excluded.
- Products and completed operations liability coverage is eliminated for mold related damages.
- On property policies, the resulting damage from mold will be eliminated from coverage. This overrides proximate cause coverage.
- Mold Exclusions = Pollution Exclusions =
The most litigated words in the history of insurance

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How to insure against Mold losses

- Three options, buy backs, environmental insurance on commercial accounts only, mortgage insurance.
- Make sure the policy specifically addresses mold as a covered loss. (Except with mortgage insurance.)
- As a general rule, if you are reading the exclusion section of any insurance policy looking for the mold coverage, there will be trouble if there is a claim.
- There are no “standard” environmental insurance policies, there are many different policies available .

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Modified environmental insurance can insure mold damages

Contractors Pollution Liability Insurance
Professional Liability
Environmental Impairment Liability

For information on environmental insurance visit
www.erraonline.org

The web site of the Environmental Risk Resources Association

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Contractors Pollution Liability

- Insures Bodily Injury, Property Damage, Clean Up and Defense, from a release of Pollutants, arising from the insured's described operations
 - Appropriate for general contractors, home builders, remediation contractors, roofers, plumbers, trades, fire restoration, ect.
- Also covers Contractual Liability, providing coverage to the owner.
- Training in mold prevention is usually required.

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Professional Liability

- Insures a negligent Professional Error Act or Omission
- Coverage is provided by eliminating the pollution exclusion and adding clean up to definition of damages. There should not be a mold exclusion either.
- Policies are usually only sold to degreed "Professionals"

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Environmental Impairment Liability

- Site Specific Pollution Insurance, appropriate for owners, lessees, lenders.
- Covers third party claims for Bodily Injury, Property Damage, Remediation Expenses and Defense
- Can cover, Contractual Liability, Business Interruption, Extra Expense, and Non Owned Disposal Sites
- Underwriters are requiring mold risk management plans from applicants.

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Advice for the future (today)

- Change all lease, sale and purchase contracts to reflect mold exclusions in traditional insurance policies.
- Change all vendor contracts to ask for appropriate mold coverage.
- Lenders need to enforce loan covenants to really get all-risk insurance from borrowers.
- Just like general liability and property insurance, everybody needs their own insurance coverage for mold related damages.

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Insurance agents survival guide to mold exclusions

- A fiduciary duty is owed to the client to;
 1. Advise of the risk
 2. Advise on coverage deficiencies
 3. Offer coverage if it is available from any source.
 4. Document the file that steps 1-3 are complete

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Managing mold related risks is easy.

- Create protocols to avoid or quickly respond to water intrusion in buildings.
- Quickly eliminate human exposure to indoor mold at high concentrations.
- Address mold in all risk financing protocols.
- Get multi disciplined help in the process!

Managing mold risks is easy, but a lot of work!

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