

Risk Management for Mold Hazards to Commercial Building Owners and Managers



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Mold-related claims are increasing at an alarming rate all over the country. The problems are becoming more public and the settlement amounts are getting larger. The Alliance of American Insurers estimate there are over 10,000 active lawsuits nationally that involve mold claims filed by homeowners or tenants.

The first mold liability claim to be litigated in Massachusetts ended recently with an award of over \$500,000 to a condominium owner as compensation for health problems she claimed resulted from a mold outbreak in her unit. It is a sign that this is a problem that is now in our own backyard.

Potential Liability

This new public awareness and perceived frequency of mold claims is not just hysteria being played out in the media, but can be attributed to recent changes in building construction. Mold-related claims and litigation are due, in large part, to changes in code requirements and the use of new materials and techniques used over the last 20 years. With this use of more energy-efficient materials, it has been shown to be less likely to allow proper ventilation.

Aside from these reasons, some of the other real issues that are causing the increased number of mold claims are:

- Poor Workmanship
- Improperly designed HVAC
- Improperly installed vapor barriers

So, where does toxic mold come from? According to the EPA, it only takes 48 hours for mold to start to grow, given the right conditions. Therefore, any source of moisture, such as a leaky roof, a burst pipe, flooding, or damp basements, can all be the basis for mold contamination. Add to this any faulty construction or use of new building materials, and there can be no escape for this moisture. In other words, older buildings may be less energy efficient, but typically dry more thoroughly than new construction.

There is still a lack of consensus in the medical community as to whether mold causes the kinds of serious health problems alleged in recent litigation, even the Center for Disease Control has yet to rule on a direct link. However, mold can still give rise to liability issues on behalf of the building owner. Property owners should be aware that the potential for liability exposure is real, and complaints of health issues should be treated seriously and promptly. If air-quality concerns become an issue, the owner should, at the least, consider hiring an industrial hygienist to conduct an inspection of the building, followed by environmental testing, analysis, and a report.

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Ray Roach is a Senior Vice President, and leader of the Environmental Practice at William Gallagher Associates (WGA). WGA is one the country's leading independent brokerage firms providing insurance brokerage, risk management, and employee benefit services to companies with complex risks. WGA has offices in Boston, MA; Princeton, NJ; Columbia, MD; Atlanta, GA; and Paris, France.

Impact

The financial impact of toxic mold on the insurance industry is already significant. Insurers paid more than \$3 billion in 2002 for mold claims. As a result, coverage varies amongst carriers; the best way to avoid any potential problems is to verify the existence of mold claims insurance coverage within your general liability or package policy. If it is not plainly stated, you may be in for a struggle to enforce coverage if you have a problem. **Over the past few years, the majority of homeowner policies have included a specific exclusion for microbial matter, including mold.**

Risk Management

As a property owner, you can take reasonable steps to guard yourself and your property against mold-related liability issues. Moisture prevention is the key to stopping the growth of mold. Any moisture source, such as pipes, HVAC, roofs, windows, or any other opening should be addressed.

The EPA's recommendations for mold prevention include fixing leaky plumbing and leaks in the building envelope as soon as possible; keeping HVAC drip pans clean, flowing properly and unobstructed; venting any moisture-generating appliances, such as dryers, to the outside wherever it is possible; maintaining below 60 percent relative indoor humidity; performing regular building/HVAC inspections and maintenance as scheduled; and cleaning and drying wet or damp spots within 48 hours of any spillage.

When mold is discovered, the clean up to remove it is called **remediation**. Any kind of mold remediation can cost a sizable amount, and if the mold cannot be linked to an actual insurable event, the cost of remediation and testing may fall back on the building owner's or condo association's shoulders. This is why it is critical that property owners familiarize themselves with their insurance policies rather than wait until catastrophic damage occurs only to find that their insurance coverage is inadequate.

Coverage

Some property insurance policies may provide some protection for losses to insured property that result from mold. For example, owners and operators of commercial buildings may obtain an "all-risk" property insurance policy that offers coverage for the cost of repairing physical loss or damage caused by any risk not specifically excluded. Generally, "all-risk" policies broadly cover physical loss or damage to insured property arising out of any peril, unless it is specifically excluded. The policy may provide a sublimit of coverage dedicated to mold, and this sublimit may be inadequate to remediate/repair any damage from mold.

No Coverage

Many insurers deny defense and/or indemnity claims based on various policy exclusions, including pollution, product and/or construction defect or workmanship, prior incident, and the increasingly standard mold exclusions.

With level of awareness of mold claims on the rise, as with any hot issue, insurance companies are modifying standard coverage forms and making revisions that will likely eliminate coverage for mold. However, specific toxic mold coverage may be available at a premium.

Insurance

The insurance coverage specifically designed for mold exposure has moved into the environmental marketplace. Policies for fixed sites have been endorsed to specifically cover mold exposure. These policies will cover bodily injury, remediation expense, business interruption, and the clean up of new conditions. On mold-specific policies, the definition of a pollutant has been modified to include microbial matter, which includes mold.

The environmental insurance market will underwrite each location for their risk management program regarding the control and elimination of mold. The programs must include a documented inspection of the buildings, training on the identification and prevention of mold growth, processes for responding to an outbreak of mold from a maintenance standpoint, complaint handling procedures, leases that require prompt notification in the event of a mold outbreak, HVAC maintenance, and corrective measures for any type of water intrusion. Each location requesting coverage will be evaluated on its own merits and programs for the possible granting of coverage.

A responsible approach includes a full assessment of your buildings' risks, taking any precautionary measures to prevent a claim, and evaluating all your options for possible coverage in the case of a financial loss. Add to that your best defense against the hazards of mold -- to work with your insurance broker on the coverage details, the key to getting a policy that fits your needs. If you want more information on obtaining an insurance policy, contact Ray Roach at William Gallagher Associates.

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