

Loss Control Bulletin

TOXIC MOLD

From Safety & Risk Control Services, Inc.

395 Main Street, Suite 4 • Metuchen, NJ 08840-1806 • 732-906-2244 • 800-466-4025 • 732-906-2045 FAX
email: info@safetyrisk.com • See our Website: www.safetyrisk.com

For The Benefit Of Our Clients, Associates and Friends

INTRODUCTION

A new scourge has emerged in the environmental arena, "TOXIC MOLD". While mold has been around since biblical times it has only now become a major health hazard. Newspapers, magazines TV tabloid shows and Television investigative reporters are swarming over the issue. It has reached serious proportions with Congress opening testimony on the subject July 18,2002. Insurance carriers have been hit hard with mold claims and have paid out record claims including a \$18.7 million claim for water damage in California. Claims are coming in all over the country with Texas and California reaching proportions that have staggered the insurance industry. It is anticipated that in the next year insurance policies will exclude coverage for Mold damage. Congress has proposed a mold damage insurance program similar to the flood program and it too would be under FEMA jurisdiction.

One of the major issues is that while mold has been around for ever and is present in all environments, little is really known on the effects. Congress is asking for more research, but that will not forestall further litigation. What is known is that not all mold is bad, actually its not the mold itself that is the issue but rather the spores and proteins they give off as they grow. These proteins and spores will cause allergies in those people who have a predisposition to molds. Some people are definitely more sensitive. Certain molds are known to be more of a problem then others. The black mold "stachybotrys" and "Aspergillus versicolor" as well as some types of Penicillium have received some notoriety in the papers as of late, but this is not all of them. There is a belief that there is somewhere between 50 to 100 different types of mold that impact humans. Some molds produce "mycotoxins" that can create severe symptoms. Symptoms ranging from asthma, sinus problems, bloody noses, headaches, memory loss, seizures and learning disabilities have all be blamed on mold but definitive research is not in. In fact in a recent paper adopted by the Texas Medical Association's Council on Scientific Affairs, the doctors agreed there is no medical evidence to link toxic disease and mold. This is hotly contested by many groups, but honestly there is little in the way of long term studies of the effects of mold.

Toxic Mold Cont.

ENVIRONMENT FOR MOLD

Mold needs certain things to thrive, the first and key item is moisture. Without moisture mold will not grow. Moisture is also one of the toughest items to control as it like moisture is constantly present in the environment. The moisture can come from leaking pipes or roofs, poorly ventilated bathrooms and kitchens or condensation. Moisture/humidity is enhanced by slow moving air which allows the concentration to increase. Mold likes dark spots that are warm but can live in cool areas as well. They also need a surface to live on preferably porous. Mold is not picky as it lives on a wide range of surfaces from fabric, grout, plaster, gypsum board, wallpaper, ceiling tiles, plastic shades, blind slats, floor tiles and wood just for a few examples. They send thread like fingers through these items so what appears to be a minor problem may actually be heavily infested areas.

It is believed that the mold issue has been helped along by the modern day HVAC systems and their energy efficiency. Facilities have less fresh air flowing which has a tendency to increase the humidity. These systems themselves can breed mold and distribute their spores thru the system. Humidity control is vital as is maintenance of filters.

PREVENTION

The key to controlling this problem is prevention. It is important that problems and potential problems be spotted and quickly addressed. Areas with high humidity, wet areas, leaks or stagnant water need to be immediately addressed. Once water has sat and surfaces have been wet to allow mold to form it becomes a difficult and expensive task to clean it up. This is especially a problem with mold as while you can stop its growth and kill it, the spores left behind are toxic to many.

One of the big issues here is how clean is clean, and even the federal Government hasn't set a standard for that. The only real standard is the NYC Health Dept.'s standards "**Guidelines on Assessment and Remediation of Fungi in Indoor Environments**". This is the standard that is being used by lawyers and state officials currently around the country. A copy is available online at <http://www.ci.nyc.ny.us/html/doh/html/epi/moldrpt1.html#remed>.

In the interim the best advice is to remove the sources of water and moisture, control condensation and maintain good ventilation throughout all areas including closets and behind furniture. Wet areas should be dried promptly and if not the material should be quickly discarded to reduce the mold growth. If small patches are found they should be quickly addressed to reduce the spread. The source of the leak or humidity must be addressed before any remediation can be undertaken.

Toxic Mold Cont.

CONTROLS

Building owners and managers must realize that they must first detect the problems before they become an issue. This requires the diligence of maintenance and management personnel. When pipe leaks occur, roof leaks, poor ventilation or condensation is noted, document what is found, when and what is done. Litigation remains a serious issue. Prompt response is needed to control the moisture problem, then remediation.

Where damage is caused to drywall or ceiling tile it should be removed and replaced if it doesn't dry out quickly (usually within 48 hours). Make sure there is good ventilation during the repairs to remove spores released. Employees should be provided with Dust masks, and gloves. Dust should be controlled so disposable coveralls should be used.

If wet materials are found in new construction or materials being used for repairs or replacement make sure the contractor is aware of this and make a note in the work papers. Do not allow the work to be sealed until you are sure it is dried and there is no sign of mold growth.

Monitor the moisture in facilities and try to maintain optimum levels of 30 -50% at all times. Dehumidifiers and air conditioning can help to reduce moisture levels. Maintain good air flow throughout. Check filters in system regularly and if mold growth is noted its source should be identified. Keep drip pans clean and dry.

CONCLUSION

The issue of molds and their dangers are only now being investigated. Lawyers are actively pursuing this as a claims source so everyone should be on the defense. More information will be coming out in the papers and on the news to keep this issue alive for a while. The best approach right now is to be aware of it, take precautions to prevent it and when encountered. All activities and findings related to mold should be documented. Employees should be trained in identification of mold causes, and instructed in its handling including who to notify in your organization.

If there are any questions, you need assistance or training please contact Safety & Risk Control Services, Inc @ 800-466-4025 or email: staple@safetyrisk.com

Sampling of Awards and settlements **

****Subject to appeal**

MOLD SUIT NETS TENANTS 1G

Tenants who contended they were sickened by toxic mold in their Kips Bay apartments will receive an average of \$1,000 each under a settlement reached with the landlord.

The settlement ends 160 lawsuits representing 500 tenants at Henry Phipps Plaza (NY). It calls for \$1.17 million to be paid by the landlord, Henry Phipps Plaza Associates, according to Phipps spokeswoman Colleen Roche. The plaintiffs had sought \$12 billion.

Roche said \$500,000 will go to tenants. Some tenants may receive more or less than \$1,000 depending on their ailments or mold conditions in their apartments.

The rest of the settlement money will go toward legal fees and experts, Roche said. Phipps did not admit any liability. (Daily News (New York) December 16, 2001)**(It should be noted it cost the landlord in excess of \$25 million to clean up the building)**

New Haverford Partnership v. Stroot

A Delaware Supreme Court upheld a \$1.04 Million award to two women whose landlord failed to address leaks and mold problems in their apartment, resulting in asthma attacks and other health problems. (Delaware Lexis 201 May 7 2001: Toxic Mold & Tort News Online)

Mary Melinda Ballard, et al v. Fire Insurance Exchange

A Texas judge on Oct. 30 affirmed a \$32 million verdict in favor of a homeowner who claims that mold property damage was allegedly exacerbated by a carrier's actions. A jury had awarded Ballard \$32 million after finding that the carrier acted in an unfair, deceptive and fraudulent way when evaluating a mold property damage claim. The carrier will appeal the ruling, according to a statement. (Mealey's Litigation Report: Mold November 2001).

Jack Rich, et al. v. Liberty Mutual Insurance Co.

A Louisiana appeals court on October 10 upheld an award to replace a moldy car. Jack Rich owned a 1996 Cadillac Sedan Seville that was damaged in a flood. Rich complained that the car smelled of mold and mildew, and noted he was sensitive to such odors. Liberty Mutual repaired the seats, but Rich maintained he could still smell the mold and became ill as a result. Rich sued Liberty Mutual, and was awarded the difference between the repair and replacement of the seats, rental and towing costs, for a total of \$9,105. The original judgment was later amended to \$8,591. The appeals court upheld the award. (Mealey's Litigation Report: Mold November 2001).

Howard L. Brown, et al, v. Bayview Court Homeowners Association, et al.

A California condominium owner has settled a mold property damage case for \$219,000. Condo owner Howard Brown maintained that in 1999 a flood in the unit above his caused damage to the walls, floors, ceilings, windows, carpets, structures, fixtures and other personal property. Brown alleged that damage was also caused to common area wall cavities and bearing walls for which the homeowners association had an exclusive duty to maintain, repair and restore. However, Brown alleged that those common areas have not been repaired, remediated or restored by the association. Claims asserted include breach of written covenants, conditions and restrictions, enforcement of equitable servitude, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, negligence per se, negligence, private nuisance and breach of third-party beneficiary contact. (Mealey's Litigation Report: Mold November 2001).

McCulloch Townhomes Association v. USC Real Estate Development Corp, et al.

A California homeowners association has settled construction defect and mold claims for nearly \$2 million. McCulloch Townhomes Association maintains that its 27-unit condominium complex was defectively designed and constructed. The association alleges that the defects include leaking roofs and defective siding, which caused water intrusion and toxic mold contamination. The units were used as faculty housing. According to sources, the following [classes of] defendants paid in the settlement – the concrete company, window company, drywall company, various construction companies and builders, landscape company, sheet metal company, roofing company, weather-stripping company, plaster company, plumbing company, waterproofing company, fireplace company, real estate development company, electric company. (Mealey's Litigation Report: Mold November 2001).

Richard Licon, et al. v. A&H Construction, et al.

Two California families who live in condominiums have reached a partial settlement with a homeowners association, contractors, remediators and real estate brokers for a combined total of \$1.1 million. The families of Richard Licon and Bruce Bristol lived separately in two Los Verdes HOA condos. In 1997, the HOA filed a construction defect suit against the developer and its subcontractors. The HOA settled with the original developer for \$5 million and with the original subcontractors for \$2 million. As part of that settlement, the HOA, developer and subcontractor gave general releases to each other for future and unknown claims. In 1999, the HOA performed a mold investigation. Based on the recommendation of an industrial hygienist hired by the HOA, Licon evacuated his home. Bristol also moved out as a result of mold contamination. Licon maintains that after he returned to his condominium, which was deemed safe, he and his family began experiencing mold-related illnesses. The Bristol family never reoccupied. Licon and Bristol sued the HOA, its mold remediation contractors and the original developer and its subcontractors for personal injuries and displacement. Approximately half of the 70 unit complex residents have since filed complaints for mold-related injuries against the same defendants. Defendants include the Los Verdes HOA, property management company, developer, several builders and construction companies, sheet metal company, roofing company, window manufacturer, plaster contractor, interior mold remediation company, the real estate agents, environmental testing company, and managing agent. Injuries alleged include dizziness, nausea, chronic headaches, respiratory distress, skin rashes and neurocognitive impairment, episodic vertigo, hair loss, skin rash, respiratory problems, cognitive impairment, loss of concentration and short-term memory loss. Claims asserted include negligence, breach of warranty and fraud and concealment. Negligence in microbial testing, sampling and clearance of the property was alleged against the environmental testing company. The environmental testing

company allegedly tested the interior of the building and found heavy contamination of the property by Penicillium and Aspergillus, but failed to inspect the interior of the HVAC system return air plenum, falling “below the industry standards for microbial testing during and after remediation and abatement.” (Mealey’s Litigation Report: Mold November 2001).

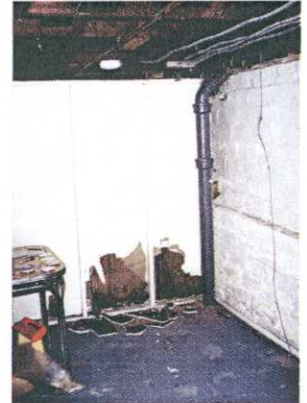
Photos



Mold on closet wallboard



Mold on Wallboard by Hood



Wallboard looks fine on outside but mold inside covers back



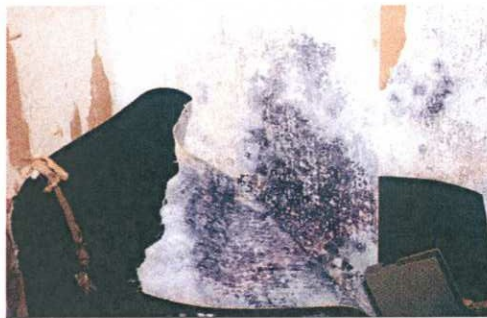
Mold coming thru wall and molding at base of door



Mold on Air Diffuser



Mold on air handler panel



Moldy wallpaper



Mold Behind wallpaper with no sign on front of problem