



Insurance Coverage for Mold Claims Past, Present & Future

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Mold is the fastest growing risk management problem in the US

- A rapid increase in mold claims, followed by universal insurance exclusions for mold related claims will create hundreds of thousands of uninsured mold losses within the next 18 months. An army of specialized plaintiffs lawyers will gravitate towards liability lawsuits to seek recovery for injured parties when the property insurance policies deny the loss. Insurance to cover mold is available in the environmental insurance market, but risk management advisors historically ignore environmental insurance. The result is unprecedented E&O exposure for insurance advisors. There will be a separate mold exclusion in the advisors own E&O policies.

Where did all these claims come from?

- Prior to the new science linking mold to adverse health affects in humans, prior to the the lawyers and prior the media attention, mold claims were water damage claims without Bodily Injury and Defense costs.
- There are hundreds of thousands of water damage claims annually, they used to be insured. Today they may not be.

Why are risks associated mold difficult to manage?

- No recognized standards for exposure
- Poor medical cause & affect relationship
- Losses are expensive - multi-million dollar claims are common
- Historical loss costs are irrelevant in predicting the future cost
- Insurance coverage is being eliminated

How much insurance was eliminated

- In 2002, at the peak of mold related insurance claims, on commercial and residential policies;

Incurred mold losses closely resembled all losses incurred from fires in the US.*

Fire losses average about \$12,000,000,000/yr

*Source, ARMR.Net product development research for mold insurance coverage.

Common themes in insurance policy drafting

- There will be no insurance for non-fortuitous causes of loss, business risk and inherent vice are excluded
- There will be no coverage for “pollution” losses – pollution exclusions driven by superfund claims.

Mold claims can fall into each category

A Typical Commercial Insurance Program

Affected by mold exclusions

Builders Risk

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Property Insurances

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General & Umbrella Liability

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Workers Compensation

Automobile Liability

Professional Liability

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Limitations in Property Insurance

- Wear and tear, gradual deterioration, corrosion, rust, rot, mold, inherent vice, latent defect, insects, rodents, birds and other animals are not covered as a proximate cause of loss
- Water damage caused by freezing of water in plumbing, air-conditioning, or other systems, unless proper precautions have been taken
- Pollution, unless the release results from specified perils, subject to limitations

General Liability

Insuring Agreement

- Pays those sums that the insured becomes legally obligated to pay for Bodily Injury & Property Damage
- Cover for Premise , Operations , Products and Completed Operations
- Also provides for Defense Costs and Contractual Liability

Limitations in the GL Policy

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

Umbrella Liability Policies

Insuring Agreement mirrors those in General Liability insurance policies

Limitations

Pollution exclusion offers some coverage for losses that fit certain time elements, usually hours too quick for mold to develop.

Pollution Exclusions in Commercial Insurance Policies

- In theory may not apply to mold
- In theory do not apply to losses from completed operations or products liability
- In theory were not intended to exclude mold claims

Therefore, there may be legacy coverage available in these policies for prior acts.

Troublesome words in the Definition of Pollution 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?

Universal Mold Exclusions

- In an unprecedented move by insurance companies, mold exclusions were added over 18 months to;
 1. Personal Lines Insurance
 2. Commercial Lines Insurance
 3. Professional Liability

3 Basic types of mold exclusions

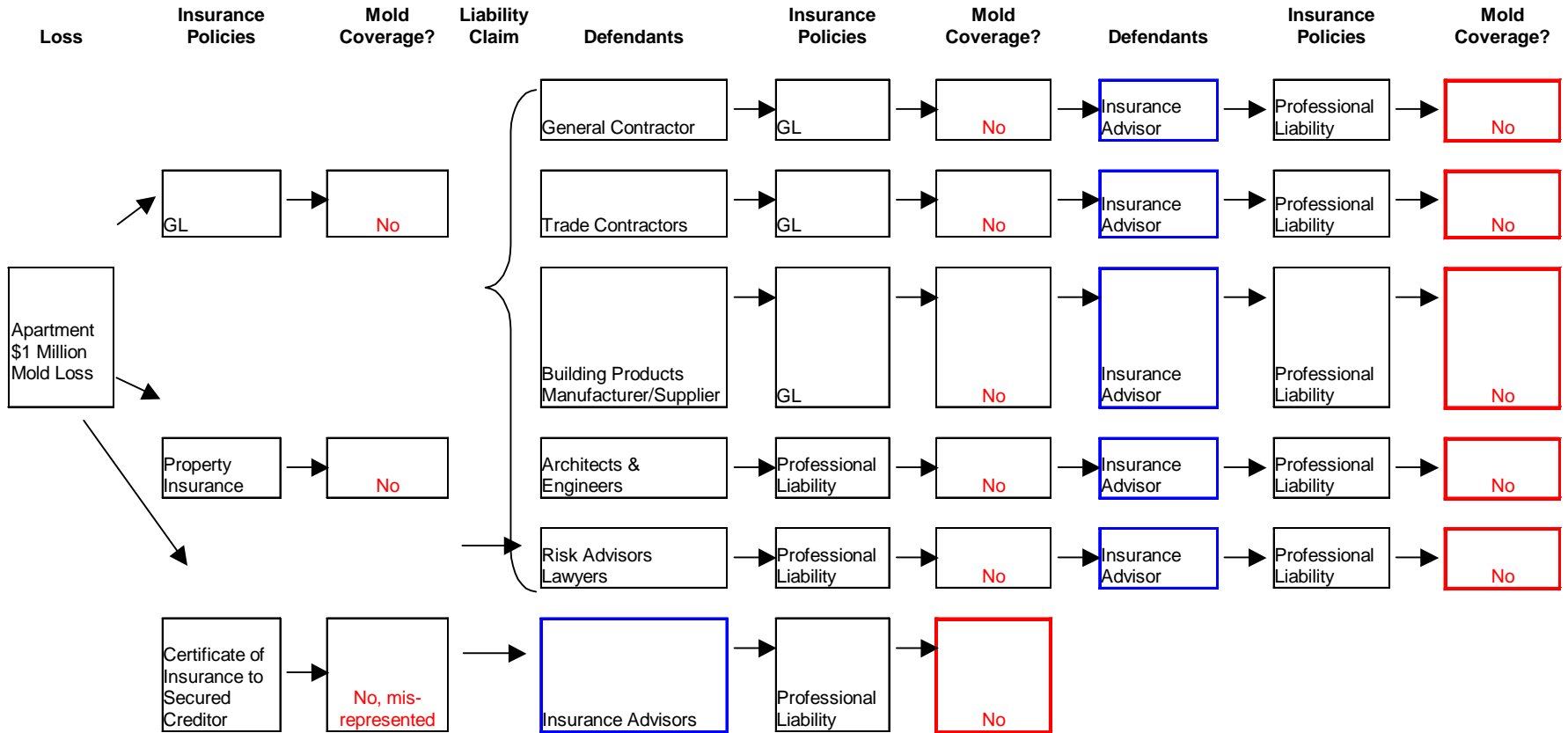
1. Exclusion clarifies existing exclusions in the policy. May eliminate testing/monitoring.
2. Exclusion eliminates all damage resulting from mold, but covers other damages.
3. Exclusion applies to all losses that are mold related.

The biggest impact of the exclusion is on GL Policies

- Mold exclusions are Total Pollution Exclusions for the specific pollutant mold.
- Pollution exclusions are the most litigated words in the history of insurance.
- Total Pollution exclusions blow out Products and Completed Operations coverage!

Plumbers and lumber yards are now uninsured just to name two of hundreds of newly uninsured entities.

Domino Effect Of An Uninsured Mold Claim from Property insurance to General Liability insurance to Professional Liability insurance



The Case Study, Insurance issues

- Tenant
- Land Lord
- Plumber
- Building Maintenance Contractor
- Building Product Supplier
- Building Product Manufacture

The loss from the event includes:

- Replacing dry wall, flooring and ceiling tile
- Loss of Rents

- Bodily injury claims from tenants
- Additional living expenses
- Damage to personal property

- Legal defense costs

Insurance coverage issues

For the water events prior to exclusions

1. Look to the old policies where there are relatively few restrictions for mold losses.
2. There will be pollution exclusions.
3. Beware of late reporting of claims.
4. Expect a coverage fight, it is not clear how these policies will respond.

How to insure against Mold losses

- Get appropriate prospective insurance
- Make sure the policy specifically addresses mold as a covered loss.
- 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 140 different policies .

Environmental Insurance policies can address liability claims from mold

Contractors Pollution Liability Insurance
Professional Liability
Environmental Impairment Liability

See the library on environmental insurance at
www.erraonline.org

The web site of the Environmental Risk Resources Association

Contractors Pollution Liability

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

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
- Policies are usually only sold to degreed “Professionals”

Environmental Impairment Liability

- Site Specific Pollution Insurance
- Covers third party claims for Bodily Injury, Property Damage, Clean Up and Defense
- Can cover, Contractual Liability, Business Interruption, Extra Expense, and Non Owned Sites

Expect the development of customized insurance products

- The Real Estate Environmental Liability with Mold wrap-up. (A proprietary product of ARMR.Net)
- Combines building science engineering with insurance on new commercial construction.
- Insures the developer, contractor and owner for 10 years.
- Annual engineering/loss control built in.
- Cost about \$1/\$2/sq ft for the 10 year policy.

How to get the insurance.

1. Find a specialized agent. Only 200 are proficient in environmental insurance. (See resources section of ERRA at www.erraonline.org)
2. Present a controlled loss story as part of the insurance application.
3. Have a water intrusion/mold risk management protocol in place.

What will the future bring?

- Hundreds of thousands of new mold claims
- Mold exclusions on all types of insurance
- An unprecedented separate mold exclusion on Insurance Agents E&O insurance
- Uninsured Mold claims on property policies will transform into liability claims against contractors, building products suppliers/manufactures, and advisors

What will the future bring?

- New microbial matter insurance policies will be introduced by environmental insurance underwriters.
- Appropriate environmental insurance is available today, but it takes work and \$\$\$\$ to get it.
- Lenders will become concerned about uninsured losses.
- Hundreds of thousands of insurance agents will be forced to deal with environmental insurance for the first time.

Conclusion, Coverage Past, Present and Future

- Look to old policies for historical losses.
- The new mold exclusions are stripping coverage away fast.
- Get appropriate prospective environmental insurance to fill the coverage gap created by mold exclusions.
- Get specialized help to do this.