



## **Toxic Mold Can Infect Your Bottom Line**

Toxic mold and asbestos have nothing in common from a biochemical viewpoint. But from a business perspective, they share one big thing. Both cause expensive legal problems for insurers, construction companies, property developers, building owners and managers, landlords, contractors and subcontractors, school districts, suppliers, investors, lenders and employers.

### ***Understand the Surge***

In the past few years, insurers have spent billions of dollars paying toxic-mold claims. Meanwhile, toxic mold litigation has surged — triggering lawsuits for personal injury, property damage, construction defects, business interruption and lease terminations. The most prominent of these lawsuits was a \$32 million bad-faith award to a Texas homeowner in 2002 against Fire Insurance Exchange (a subsidiary of Farmers Insurance). The carrier failed to cover damage from mold resulting from a plumbing leak. That case — as well as high-profile lawsuits brought by Ed McMahon with Erin Brockovich — has spawned lots of media attention.

As a result of this surge in toxic-mold cases — some call it a crisis — more and more insurers are reducing mold coverage, increasing premiums or both.

### ***Learn the Health Effects***

Scientists and health officials don't dispute that toxic molds can damage property and affect human health. The EPA has stated that the ability of molds to cause allergic reactions and flu-like symptoms is "well documented."

Whether mold can cause more serious health problems, though, is a matter of contention, often played out in courtroom battles between expert witnesses. Some researchers contend — while others dispute — that some molds can cause or contribute to respiratory infections; asthma; immune-system disorders; cognitive disorders; cardiovascular illness; cancer; and damage to the lungs, brain, kidneys and liver. But unlike asbestos litigation over the past few decades, expert toxic-mold witnesses haven't firmly established a strong causal relationship between serious health problems and toxic-mold exposure.

### ***Limit Your Liability***

The lack of scientific causation proof doesn't scare off all plaintiffs and the potential damage awards can be enormous. It just complicates toxic-mold litigation. Lack of federal rules or standards on indoor toxic molds creates even more uncertainty. This leaves many property owners and managers unprepared for the growth in mold litigation.

To limit your liability and avoid litigation over toxic-mold damage, here are some steps you can take, depending on your position:



***Investors and buyers of existing property.*** Perform thorough due diligence before investing in property by, among other things:

- o Investigating past occurrences of moisture infiltration, mold contamination and remediation by checking old property records and maintenance files,
- o Being a stickler about physical inspections and seller-disclosure forms,
- o Asking for warranties and interviewing maintenance personnel who have worked on the premises, and
- o Conducting further testing behind ceiling panels, wall cavities, floor coverings, base moldings and the like — if you find evidence of water damage.

***Building managers and landlords.*** Attack mold problems as soon as you become aware of them:

- o Develop inspection and maintenance programs to identify and remedy all water-infiltration problems. Attack water leaks and moisture accumulations quickly and aggressively. For example, actively remove moisture and apply disinfectant or biocide if appropriate. Don't wait for ventilation and evaporation to solve the problem.
- o Hire experienced, trained professionals for remediation projects. Don't rely on in-house maintenance workers unless they're specifically trained to handle mold — especially with extensive contamination of porous surfaces.
- o If you're a landlord, add a provision to your leases requiring tenants to promptly report all water leaks, moisture accumulation or mold growth to your office.

***Builders and HVAC contractors.*** You must try to serve as “gatekeepers,” preventing problems before they occur:

- o Use high-quality materials. Cheap materials — such as low-quality cutoff valves — might save you a few dollars now, but a malfunction could cost tens of thousands of dollars later.
- o Install tight seals around windows, doors and roofs to prevent water leaks that can cause mold to grow. Treat foundations with impermeable water barriers.
- o Monitor construction work to prevent excessive moisture levels. For example, check on moisture from curing paint, plaster and concrete.
  - o Inspect all newly installed systems until you're sure no moisture problems arise. If they do, fix them immediately.



- o Review your general liability policy to make sure it covers mold-related claims. Even if your installations and repairs are faultless, you may have cut into a wall or floor and released mold spores into the air.
- o Ask us to review your contracts to assure they address potential liability for mold claims arising from construction methods or materials.

**Real estate sellers.** Include mold-disclosure statements in your offerings and sales agreements. The disclosure should include monitoring and testing procedures and results, action taken to control and prevent excess moisture and mold growth, and remediation efforts and follow-up testing.

### ***Invest in Prevention***

The costs of ongoing inspection, testing, remediation and prevention are miniscule compared to the potential liability that could result if you're sued. At the very least, determine your liability exposure and whether your insurance is adequate. We can help you assess liability, develop a remediation plan or settle a claim.

### ***Sidebar: Mold Ecology***

Molds thrive in energy-efficient, airtight buildings with temperatures staying between 40 and 75 degrees Fahrenheit. Molds feast on — and thereby weaken — cellulose-rich materials, such as wood, drywall, ceiling tiles, insulation, drapery and carpeting. They emit spores that can drift into air ducts and propagate throughout a building via the ventilation system.

Most types of mold are nearly harmless. The most common toxic molds are those that contain mycotoxins, including stachybotrys, spergillus and penicillium.