



On the Level:

Mold Is Gold: A Whole New Way to Get Sued

BY JACK JENSEN

Mold is the new lead paint – the common man's asbestos. At an afternoon mini-session on toxic mold, at the 2003 Neighborhood Reinvestment Training Institute in Atlanta, Claude Limoges of ALC Environmental Inc., said, "This is the second time today I've given this talk. This morning I gave it to a room full of lawyers. At the coffee break, hotel staff had to come squeegee the drool off the carpet."

Limoges told the saga of an entire planned unit community, with hundreds of units all less than five years old, which had to be demolished because of a mold. Click on InjuryBoard.com and they'll brag that the number of toxic mold lawsuits filed in the United States has tripled in the last three years. Then the Web site gives you a convenient button to click on: "Yes, I would like to consult with an attorney now."

We're not talking about the stuff growing on the bottom of your vegetable drawer, either. Toxic mold exposure has been linked to a number of severe and even fatal ailments, including allergic reactions, respiratory disorders, and memory loss. Here's some bad news: It's all over your house. And your kid's daycare center. And your hospital, and your mother's nursing home, and your favorite restaurant. It's there, waiting for just a little moisture to rise to an – ambiguous – level considered dangerous.

Once mold gets wet, you can't treat it. You have to remove it. The worst molds seem to love some pretty common environments: sheetrock, the underside of carpeting, the back side of wall paneling. A little moisture, and voila. Another lawyer rings the cash register big.

Equal-Opportunity Menace

Consumer advocate Kelly Hayes-Raitt of the HomeSafe Campaign notes that toxic mold can be found in low-income apartments and mansions alike. According to an April 15, 2003, Associated Press story, former "Tonight Show" sidekick Ed McMahon settled a \$20 million lawsuit for \$230,000 for toxic mold that allegedly sickened him and his wife, killed his dog, and made his Beverly Hills mansion temporarily unlivable. He claimed that a plumbing pipe in his home ruptured, flooding his den. The company he hired to clean the mess allegedly merely painted over the stachybotrus chartarum. ("It's death mold," his attorney stated.)

Bianca Jagger is suing her Manhattan landlord for \$20 million, too, for mold issues at her luxury apartment. \$20 mill seems to be the basic asking price, although her dog is reportedly still alive.

(She did, however, have a "very inconvenient" summer.)

From the lawyer's point of view, the beauty is that there are several thousand different types of mold spores present in pretty much every cubic inch of air on the planet, and the only thing they need to live is plain water, in remarkably small amounts. So landlords and builders find themselves being sued for providing a fertile environment in which a naturally occurring phenomenon occurs. Fail to prevent even a tiny amount of water infiltration or condensation, fail to clean it up quickly enough, fail to protect your workers, or "fail to foresee unseen circumstances that might lead to propagation," and you're guilty.

Since most homeowners' policies don't cover damage resulting from "rust, mold, or fungi," attorneys nationwide are fielding a high volume of calls regarding toxic mold as victims seek help with mold-related insurance disputes. The Insurance Information Institute reported that 10,000 mold cases were pending in the United States in 2003.

And now lawyers are aggressively going after business. Landlords report finding all the cars in their lots leafletted with flyers giving the details of record awards to plaintiffs in mold cases, and a toll-free number to call. At a recent forum on mold, at the U.S. Chamber of Commerce, opponents of toxic mold litigation argued that current claims lack scientific evidence and have been filed by overzealous lawyers. (Imagine that.) In summary: the word is out, so there's no hiding from the liability.

Is it a real danger? Many of the lawsuits allege toxic mold exposure caused bleeding in the lungs and brain. Although no link between toxic mold and pulmonary hemorrhaging and memory loss has yet been proven, the Centers for Disease Control and Prevention has issued several fact sheets about the problem, and the court rulings have definitely tilted towards the plaintiffs.

The ambiguity in the courtroom is proving damage. But a basic reaction, similar to hay fever, has been established to be a nearly universal response to mold exposure, and, according to a 1999 study by the Mayo Clinic, most patients who have chronic sinus problems probably do so because of mold. People with allergies or immune deficiencies have an increased likelihood of experiencing problems, and an increased likelihood that those problems will become serious.

Abatement Strategies

Who can sort the hype from the real danger? Moot point. Bottom line: Mold isn't good, it will make some people sick, and it'll certainly get you sued. You have to prevent it or react properly to it, that's all there is to it.

There's only one thing you can count on: your property insurance will continue to go up. Some companies are instituting a "three-strikes-and-you're-out" policy on water damage to any dwelling: three instances of water damage to a building, perhaps even before you owned it, and they won't insure it.

In the NeighborWorks® network, for instance, **Kalamazoo Neighborhood Housing Services** had a mold problem in its Roosevelt Hill low-income housing tax credit property. An air conditioner in the apartment above created some condensation. According to Roger Erickson, the KNHS project manager:

"A woman with pre-existing respiratory conditions was living in one of our apartments, and there was some mold. We wanted to be proactive, and it's really expensive to do that, too. We hired an environmental company, which cost us \$450 to do four wipes and send them to a lab. (Which actually charges just \$45 apiece to do the cultures.) The results came back fine: just common mold. Still, we hired a professional company which did a complete mold abatement job, using a blower door and Tyvek suits. Scared the neighbors to death. That cost several thousand dollars."

Of course, this is on top of the job of tearing out the drywall, replacing it, repainting it, etc. All the demo had to be done with Safe Work Practices, to prevent spreading the mold into the rest of the project. To all you rehab coordinators who just got done learning about lead safe work practices, does this sound familiar?

We're now in the fly-by-night phase of the environmental crisis du jour. Roger's advice: "Before you hire a testing or abatement company, you've got to make sure they're well credentialed and well-qualified."

So what do you do, starting right now, to protect yourself and your organization?

First, check your insurance and get the exclusions lifted if you can. Then

waterproof and ventilate and waterproof and ventilate some more.

One of the culprits for an increase in mold issues is energy conservation. In an effort to reduce heat loss, we've tightened up and thus trapped a lot of moisture in our homes. It's time to let a little out. Air-to-air heat exchangers work very well but are expensive, complicated, and require a fair amount of annual maintenance. A low-tech alternative: I recently replaced all the timers on the bathroom exhaust fans in my rental units with humidistats. They are no longer controlled by the tenant, but come on when the humidity in the room is too high and mold may grow.

I won't go into dampproofing. It's too big a subject, and good builders and maintenance crews know **how** to waterproof. The threat of a toxic mold lawsuit merely provides motivation to **use** that extra tube of caulk.

But, we all know, water finds a way. Pipes condense. Basements weep. Water gets on the floor and goes someplace. Dampness abounds. It's how you react once a mold problem is discovered that separates the winners from the losers in the courtroom. Send your people to trainings, or download some of the data provided below, and trot out those Policies and Procedures Manuals and put in a chapter about mold, right next to the ones on asbestos, lead paint, and pressure-treated lumber. Remember, it's no longer enough to dry out the carpet and paint over the wet spot. (Expect a subpoena.)

If a leak occurs, clear the tenant from the apartment and hire a professional environmental cleanup company. In all likelihood, the carpet goes, the drywall goes, the furniture goes, and possibly even some framing may have to exit the building. But once mold is discovered and reported, you're on the hook to remove it and most of what it was touching.

Most molds can be controlled with

household bleach. But I can't reiterate this enough: You have to know what you're doing. You wouldn't eat wild mushrooms you found in the woods just because they look like the mushrooms on your pizza, right? So don't mess with mold without testing. You will need to prove to the lawyers that you removed it properly, which requires sampling that you're not qualified nor insured to do yourself. So hire a pro. Bite the bullet now, or face the specter – not of Ed McMahon showing up at your front door with a big check, but of Ed McMahon's lawyer, wanting one. ■

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Further Information

For more advice on prevention, remediation, and cleanup, the city of New York has published an excellent resource, Guidelines on Assessment and Remediation of Fungi in Indoor Environments <http://www.ci.nyc.ny.us/html/doh/html/epi/moldrpt1.html#remed>

The EPA has published a brochure called A Brief Guide to Mold, Moisture, and Your Home. <http://www.epa.gov/iaq/molds/moldguide.html>.

Trainings, among other resources, are available from the National Environmental Health Association www.neha.org. Contact: Larry Marcum, NEHA, 720 S. Colorado Blvd. #970-S, Denver, CO 80246

Testing and excellent advice are available from Josh Sarett, ALC Environmental Inc. 121 West 27th St. #402, New York, NY 10001 Josh.Sarett@alcentvironmental.com.