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### Three Years Later, Industry Puts Toxic Mold into Perspective

Whatever became of mold? Only three years ago, newspaper headlines, fueled by overzealous trial attorneys and misguided scientific information, trumpeted mold as “the next asbestos.”

Since then, however, mold has reverted back to what it has been for centuries: a naturally occurring organism, easily prevented and eradicated in most cases, posing little or no threat to healthy people. That such a simple organism could lead to such a complex issue is a testament of what hype, hysteria and junk science can do.

What kept mold from becoming “the next asbestos?” In retrospect, insurers’ aggressive public policy response to the brewing crisis—combined with a dose of common sense from the medical community and state regulators—helped restrict what could have been a runaway problem.

Prior to 2001, insurers viewed mold as primarily a maintenance issue. They traditionally excluded it on property forms, providing coverage only for mold that was part of an otherwise covered claim. Covering mold in its own right would make insurance prohibitively expensive for policyholders. It was less expensive for property owners to budget for the proper maintenance that would keep buildings dry and prevent mold from growing in the first place.

In recent years, mold began showing up as an alleged health concern within liability claims stemming from water damage. Plaintiff attorneys found some traction in courtrooms where they could introduce spurious information as if it was fact. This gave the pioneers of the mold economy—including plaintiff attorneys, mold “remediators” and professional expert medical witnesses—useful experience they could apply when opportunity was thrust upon them.

This finally happened in 2001, when a \$32 million judgment in a Texas claim handling case that included mold, made the topic a national issue. The dollar amount got a lot of attention, especially from plaintiff attorneys and businesses that make their living from insurance claim dollars. Ironically, this mega-judgment came in what was actually a homeowners policy claims handling case where mold was present—an important distinction in light of what happened next.

As fate would have it, a tropical storm hit Texas just days after the big judgment, giving creative opportunists the perfect opportunity to foment hysteria over what they were now calling “toxic” mold. The news media, always searching for colorful visuals, seized upon the rare worst-case scenarios provided by these opportunists to transform a ubiquitous, naturally occurring organism into a major health threat.

Spurred by the media and the trial lawyers, and assisted by the Internet, an entire mold industry burst into being. Plaintiff attorney firms created “mold information” Web sites. Self-styled mold remediation “experts” advertised on the Internet and linked with the attorney sites. Both groups descended on the area of Texas where the tropical storm struck. The situation became so bad that the Texas insurance commissioner asked the attorney general to investigate claim fraud in the area.

The insurance industry faced a decision: allow mold to become like silicone breast implants, where true science arrived too late to save a number of companies from bankruptcy through litigation; or help mold become another radon, where science overcame hysteria in time to eliminate the fear and the threat. While the hypesters predicted that mold would turn into another asbestos, insurers went to work gathering facts and educating regulators, legislators and the public.

Aside from one discredited study that the Centers for Disease Control (CDC) retracted shortly after its 1994 publication, scientific studies consistently reinforced the fact that beyond acting as an allergen or irritant, mold did not cause problems in normally healthy people. Official publications from such creditable sources as the Environmental Protection Agency (EPA), the Occupational Safety and Health Agency (OSHA), the Center for Disease Control, the Texas Medical Association and the Texas Health Department showed again and again that mold was just mold. It was not a monster that threatened man’s existence, but a necessary part of the ecosystem whose purpose was to break down dead organic materials. Most importantly, it was easily prevented and handled in most cases.

The insurance industry helped disseminate this information, which helped defuse the “toxic” mold hype. Gradually the media feeding frenzy began to die down and the number of “toxic” mold headlines—and court cases—lessened.

However, politics would not be as simple to handle. California, always one of the most environmentally conscious states in the country, passed a law in 2001 instructing health officials to develop exposure standards for mold. This law was written in such a way that the pulmonary-compromised individuals covered by the law would require a zero tolerance standard for mold. In essence, the state passed a law requiring eradication of a living organism that exists everywhere.

Citing budget shortfalls, the California Health Department has yet to begin the study, which would be redundant in light of the scientific literature published in the last three years.

Eventually, however, some common sense returned to the public policy process. The growing body of scientific evidence presented by insurers and others convinced policy makers in other states that the California example did not make sense. Other states concentrated on gaining scientific knowledge without predetermining the outcome, disclosure requirements in real estate transactions and regulating mold assessors and remediators.

Using factual statistics from the early mold claim experience in Texas, insurers helped most state insurance regulators see the need to allow reasonable limitations on mold following a covered loss. Claim data showed that mold alone would add 40 percent to homeowners insurance rates if insurers covered mold claims arising from a covered loss at the full value of the policy. Regulators realized when something became as predictable as mold, homeowners and commercial property owners would not be able to afford the coverage. While market-based solutions would have been the best approach to take, politics often resulted in regulators requiring some minimum level of coverage. Yet, insurers found room to develop competitive options and allow consumers to decide which options they preferred. At the same time, they made it harder for the profiteers to feed at the insurance trough.

State legislators and regulators also worked to rein in the profiteers. Again, Texas took the lead, successfully prosecuting several “remediators” for insurance fraud in the aftermath of the 2001 tropical storm. The Texas legislature enacted licensing, training and professional requirements for mold contractors. Other states continue to consider such requirements to protect consumers.

Mold profiteers also are running into better-educated consumers. Respected governmental agencies such as EPA, OSHA, the Texas Department of Health and the Texas Office of Attorney General have published common-sense guides for preventing the water damage that is always the root cause of mold growth. These publications stress the importance of quickly dealing with water problems to prevent mold growth, handling mold before it becomes a major problem, and choosing qualified professionals to clean up the rare cases that are too big for property owners to handle.

Finally, mold profiteers are running into better-trained insurance professionals who know what tools are required to handle each unique mold situation. Claim adjusters know which mold contractors are professional and when to use them. Insurance claim professionals work to minimize disruption for their insureds and keep costs down.

The insurance industry’s proactive stance on mold helped prevent it from becoming “the next asbestos” that opportunists hoped for. For homeowners insurers, mold is headed toward becoming a controllable exposure. For insurance consumers, mold is an exposure they can cover for an appropriate price, depending on which insurance products they choose to buy.

However, mold is still attractive as an income source, especially in the commercial liability arena, where it continues to play a significant part in class action litigation against building owners and builders.

Moving forward, insurers must continue to use the tried and true methods of public policy advocates—gather all the facts, build strong coalitions of organizations and individuals that may be damaged by these unfounded claims, and speak with one clear and unambiguous voice to legislators, regulators, the news media and consumers.

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