



## Current Articles 2003 – January

### Mould and the new Mould Exclusion

A year ago insurers introduced the Terrorism and Data Problem exclusions to property policies. Effective January 1, 2003, another new exclusion applying to damage caused by mould will become part of the list of exclusions for many property policies.

Mould in many cases may be toxic and as the mould may be linked to water damage or water extinguishing a fire, resultant claims started to "flood", (excuse the pun), property and casualty insurers. In the United States and particularly the southern, moist, warm, humid States, one insurer reported an increase from 499 claims in 2000 to 10,000 claims in 2001. The U.S.A. claims revealed an increase in the average cost per claim from US\$2,800 in 2001 to US\$8,000 in 2002.

In Ontario the Province of Ontario paid out \$40 million in grants to correct mould contamination problems in Ontario schools in 2000.

The actual exclusion is titled **Fungi and Fungal Derivatives Exclusion** and excludes; (a) loss or damage consisting of or caused by directly or indirectly, in whole or in part, by any "fungi" or "spores" unless such "fungi" or "spores" are directly caused by or directly result from a peril otherwise insured and not otherwise excluded in the policy;

(b) the cost or expense for any testing, monitoring, evaluating or assessing of "fungi" or "spores." The wordings will define "fungi" and "spore(s)" as follows:

Fungi includes, but is not limited to, any form or type of mould, yeast, mushroom or mildew whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of fungi or spore(s) or resultant mycotoxins, allergens, or pathogens. Spore(s) includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any fungi.

For mould to grow it requires moisture (humidity) heat and nutrients. The nutrients may well be building materials such as drywall, paneling, carpet under pad, insulation, wallpaper, drains, upholstery and the list goes on. An engineer friend advised that mould in the right condition such as following water damage can start to grow in 24 to 48 hours!

From a broker's perspective, it should be obvious that the broker must advise the clients of the introduction and application of this new exclusion. But there may be a hidden exposure to a broker. Consider an example where a broker takes a call after hours for a water or fire claim and the broker directs a restoration contractor to the client. If a mould claim develops as a result of the inferior removal by the contractor of the moisture which has caused the mould, can the broker become vicariously liable for hiring the contractor? It is necessary for the broker to use certified restoration firms who are certified by the Institute of Inspection, Cleaning and Restoration with emphasis on the water and mould protocol.

Many of the current mould claims in the USA have been presented many years after the remedial work was performed. The mould commences to grow in areas that cannot be seen, such as behind walls, in sub-flooring, closets etc. Again this may come back to haunt the contractor and perhaps the broker.

The endorsements that I have seen are only applicable to property policies, both personal and commercial. It is my opinion that we will also see some similar exclusions being introduced to liability policies. At this time this is just an experienced guess!! Now if you are insuring plumbers, restoration contractors, roofers or any trade that could create a water loss, you may find the market become even more limited or new exclusions appearing.

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