

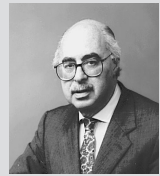
# Real Estate Journal

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## Rust, rot, mold and mildew: Causing measurable damage in buildings

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It seems that every decade produces its own unique set of perils and exposures that generate controversy as to whether or not they are covered by property insurance or liability policies. We have recently witnessed the prolonged clash of views between policyholders and insurers over coverage for pollution and contamination releases and even more recently, over Y2K problems. These confrontations induced insurers to introduce focused policy endorsements excluding these events from coverage.

Now comes an onslaught of claims for mold and mildew growth and the consequent damages emanating from the emerging – and measurable – toxins that they spin off (in other words, sick building syndrome). Mold spores are everywhere and

remain in relatively harmless suspension until they encounter some “water event” like a discharge from a broken or frozen pipe or accidental release or overflow of a toilet or appliance containing fluids.

Once a water event occurs, there only need be a concurrence of a couple of other conditions before the process goes on a roll. The mold spores which are ever present in the environment encounter the area of moisture and then start feeding off the cellulose building components to grow and prosper. Cellulose is relatively easy to find in a building: drywall, particleboard and adhesives contain cellulose.

The mold growth may then spawn mycotoxins, the agents that can cause harm to humans and animals when they ingest and inhale the airborne particulates. The results are respiratory problems, coughing, itchy eyes and even neurological symptoms.

To eradicate the mold and mildew, quick and thorough action is required to eliminate the water source and remediate and repair the building. At present,

there is only one set of published guidelines, New York City’s Guidelines on Assessment and Remediation of Fungi in Indoor Environments.

Are the mold and mildew problems encountered after an accidental discharge of water covered under the usual “all risk” insurance policy? Most “all risk” insurance policies contain an exclusion for “...rust, rot, mold or other fungi...” However, under the rules of construction interpreting the mold growth process – the accidental discharge of water from a plumbing, heating or fire protective system – is a covered peril, then it becomes the proximate cause of the loss and overcomes the exclusion for mold. Thus, all of the damages are covered including the remediation of the building components and the costs to eradicate the mold.

As far as subsuming mold and mildew growth under the pollution and contamination exclusions of the policy, most contemporary courts would not do so since mold and mildew are not commonly understood

to be pollutants which are generally classified to be widespread environmental releases. As a matter of fact, Massachusetts courts have held that the release of carbon monoxide and the presence of lead paint in the interior of a building are not subject to the pollution and contamination exclusion.

However, that is not to say that the going will be easy. The most effective response to the growth of mold and mildew is the rapid elimination of the water and extensive and quick remediation of the building components. Insurance companies are not adept or pliant in making a rapid response especially in novel loss scenarios. Persistence and expert claim assistance are the order of the day for these types of claims.

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