

EPA Undertakes Scientific and Regulatory Evaluation of Formaldehyde in Pressed Wood Products

June 23, 2008

EPA is launching a broad effort to gain a greater scientific understanding of the potential health risks of formaldehydes use in pressed wood products. Through this process, EPA will develop risk assessments on the potential adverse health effects, evaluate the costs and benefits of possible control technologies and approaches, and determine whether EPA action is needed to address any identified

risks.

The agency plans to issue an advance notice of proposed rulemaking (ANPR) in fall 2008. The agency is pursuing this course of action following review of a petition submitted under the Toxic Substances Control Act (TSCA). The petition requested that EPA adopt nationally a California regulation to control formaldehyde emissions from com-

posite wood products and extend the rule to include composite wood products in manufactured homes.

EPA carefully reviewed the TSCA Section 21 citizens' petition, submitted by the Sierra Club, a number of other environmental organizations, as well as a large number of private citizens, and sought comment and additional information on the petition. EPA will work closely with the Department of Housing and Urban Development (HUD) on issues related to manufactured housing.

More information: <http://www.epa.gov/oppt/chemtest/pubs/sect21.htm>

Related News: [FEMA final report on Formaldehyde in trailers.](#)

A House Committee heard testimony on July 9th. The Republican House members sent out a statement that says that we should not blame the manufacturers.

House passes Hastings amendment to protect students from mold in schools

by David Goldenberg, *Westside Gazette*, 6/11/2008

WASHINGTON, DC – The U.S. House of Representatives recently overwhelmingly passed an amendment to H.R. 3021, the 21st Century Green High-Performing Public School Facilities Act authored by U.S. Representative Alcee L. Hastings (D-Miramar) which will protect students in Florida and throughout the nation from the dangers of mold and mildew in schools.

“When your learning environment is the source of your illness, you can’t even begin to think about academics,” remarked Representative Hastings. “Clearly, our students should not have to sacrifice their health and well-being to receive an education. Years of disinvestment in our educational system have led to unmanageable

school sizes and patchwork facilities which disregard the health implications for students. Today, we will fix that oversight.”

Considerable research has shown that exposure to mold and mildew, as well as other contaminants that compromise indoor air quality, can cause adverse health conditions which interrupt the learning process among students. These poor air quality conditions can be particularly pronounced in portable school units often found at overflowing schools throughout Florida and the nation. The Hastings Amendment to H.R. 3021 allows federal funds to be used for mold and mildew abatement in schools.

The 21st Century Green High-Performing Public School Facilities Act directs the Secretary of Education to make grants and low-interest loans to local educational agencies for the modernization and repair of public school facilities, encourages the building of “green schools,” and establishes funding for the repair of schools damaged by Hurricanes Katrina and Rita.

The Hastings Amendment was rolled into the Manager’s Amendment offered by the Chairman of the Early Childhood, Elementary, and Secondary Education Subcommittee, Representative Dale Kildee (D-Mich.). H.R. 3021 is expected to pass the House later week and will then await consideration by the Senate.

Fungi The Cause Of Many Outbreaks Of Disease, But Mostly Ignored

ScienceDaily (July 3, 2008)



Fungi can cause a number of life-threatening diseases but they also are becoming increasingly useful to science and manufacturing every year. However, many people, scientists among them, are largely unaware of the roles fungi play in the world around us.

Research on fungi and fungal diseases are seriously neglected as a result -- a situation with grave negative repercussions for human health, agriculture, and the environment-- according to *The Fungal Kingdom: Diverse and Essential Roles in Earth's Ecosystem*, a new report from the American Academy of Microbiology.

The report is the product of a colloquium convened by the Academy in November, 2007, where experts in mycology, medicine, plant pathogens, and ecology discussed the current state of research in mycology and compiled a list of specific recommendations for future work.

"The average person is at risk for several fungal diseases, from toenail infections to athlete's foot to life threatening systemic infections," says Arturo Casadevall of the Albert Einstein College of Medicine and one of the co-chairs of the colloquium. "Fungi may also predispose people to asthma and allergic diseases," says Casadevall. Despite the frequency of fungal infections, according to the report they are relatively understudied, making fungal infections difficult to diagnose and treat. When faced with an undiagnosed fungal infection, doctors are forced to treat their patient without a firm grasp of which drugs will work and which drugs will only cost the patient valuable time.

But fungi are more than just a medical problem: as the cause of more than half of all plant diseases, fungi are also an expensive drain on agriculture. The economic repercussions of managing fungal pathogens on crops -- the money and effort spent, the numerous pesticide applications, the consequences of these applications for surface water and soil quality, and the impacts on crop yields -- are extraordinary.

In the environment, fungi are not seen as a liability but as an integral part of their ecosystems. They break down dead plants and animals (organic matter) into the building blocks plants need for growth and they engage in beneficial symbiotic relationships with plants, all functions necessary for maintaining healthy ecosystems.

When an ecosystem is disturbed, fungi can behave in unexpected and often destructive ways, as in the case of the black mold that is overrunning the areas surrounding the Chernobyl nuclear power plant in Ukraine and outbreaks of coral bleaching that are destroying coral reefs. Scientists still do not understand fungi well enough to predict how these organisms will behave when their environment is disturbed.

Industry and food manufacturing benefit in many ways from the work fungi do. "Fungi are workhorses for research and biotechnology," according to Joseph Heitman of the Duke University Medical Center, the other co-chair of the colloquium. "Both the hepatitis B vaccine and Gardasil (the vaccine for papilloma virus) are produced in yeast," he notes.

The importance of fungi to

human health, agriculture, the environment, and industry demands that we gain a better understanding of these organisms. Some of the report's key recommendations include:

Evaluate the Impacts of Mold in Homes and Businesses

* There is a serious lack of scientific data to support any stance with respect to indoor mold toxicity or remediation. More effort should be devoted to testing and long-term monitoring of mold contamination and human health in New Orleans and other areas flooded by Hurricane Katrina. Natural disasters like Hurricane Katrina provide natural laboratories for understanding how fungi respond to disturbance and the subsequent impacts they have on human health.

Create a Fungal Genomes Database

* Researchers involved with fungi must focus efforts on developing a comprehensive fungal genomics database in order to make the vast quantities of sequence data more available and to enable the field to fully capitalize on the promise of genomics.

Report and Track Fungal Infections

* Public health agencies should implement formal programs to report cases, track disease progress, and design interventions in outbreaks of fungal disease. The lack of reporting and tracking systems has made it difficult to control the spread of fungal pathogens, because good epidemiological data on the scope of infection is usually not available.

Post-Trial Order Upholds \$4 Million Judgment Against Developer

Harris Martin, July 10, 2008

COLUMBUS, Ohio — A trial court judge has upheld a \$3.2 million jury award and nearly \$700,000 in fees for an Ohio couple who accused a developer of failing to correct major construction defects in their new home. *Cosner v. Maronda Homes of Ohio Inc.*, No. 06 CV 008278 (Ohio Ct. Comm. Pls., Franklin Cty.).

Franklin County (Ohio) Common Pleas Judge Dale A. Crawford on July 2 rejected Maronda Homes Inc's argument that the evidence did not support the verdict or that Ohio' 2006 Consumer Sales Practices Act should be applied retroactively to limit the verdict to \$336,586.47, presumably the breach-of-contract damages.

Judge Crawford issued a final judgment on May 15, awarding Roman and Jennifer Cosner \$3,962,547.16 in their lawsuit against Maronda (See *Harris-Martin's Columns: Mold, May 2008*).

The Cosners sued Maronda for breach of contract and violations of Ohio's Consumer Sales Practices Act, saying they were forced to vacate their home because of window leaks, structural flaws and mold in a home they purchased in 2005.

The jury found that Maronda was in breach of the contract, engaged in unfair, deceptive or unconscionable acts or practices, misrepresented the house's characteristics, failed to honor warranties, failed to perform in a workmanlike manner, and was guilty of malice, supporting an award of punitive damages.

Jurors awarded \$731,586.47 in compensatory damages and \$1 million in punitive damages. In answering interrogatories, the jurors found that Maronda's CSPA violations resulted in damages of \$731,586.47 and the company's breach of contract resulted in damages of \$331,586.47.

In his May 15 judgment, Judge Crawford trebled the compensatory damage award, as allowed under the CSPA, for a total compensatory award of \$2,194,759.41.

The remainder of the judgment was for punitive damages (\$1 million); attorneys' fees and expenses (\$698,944.95); and prejudgment interest on the contract damages (\$68,842.80).

In his July 2 decision, Judge Crawford declined to apply the CSPA's limit on recoveries, saying the Ohio Legislature recognized the constitutional difficulties when it stipulated that the law would take effect on July 1, 2007, "and shall apply to actions commenced on or after that date and, to the extent permitted under the constitutions of this state and the United States to cases pending on that date."

Judge Crawford said the Ohio Constitution prohibits retroactive laws, but noted that the Ohio Supreme Court has established a test to determine whether legislation is substantive, in which case retroactive application would be prohibited, or procedural.

"Arguably, the legislature intended the [CSPA] amendments to be applied retroactively," the judge acknowledged. "However, this Court believes that limiting significant non-economic damages to a minimal amount and taking away the opportunity to obtain punitive damages is the divesting of a substantive right and is precluded by Ohio Constitution Article II Sec. 28."

Judge Crawford also ruled that the evidence supported the jury's decision to award punitive damages.

"The Defendant's conduct in dealing with Plaintiffs' house construction problems was egregious and clearly inflamed the conscience of the jurors," the judge said. "Defendant constructed a house that was designed poorly and constructed poorly. When they became aware that problems existed, they either denied that a problem existed (there's no mold in the house) or stonewalled the issue (we'll look into it)."

"Defendant advised the Plaintiffs to move out with a promise to pay their expenses," Judge Crawford added. "The Defendant then reneged on their promise thus forcing the Plaintiffs and their minor child to near bankruptcy while this two year legal battle played out. . . ."

"Construing the evidence most favorably toward the non-moving party the evidence was sufficient to prove that Defendant acted with malice and insult and a conscious disregard for the rights of the Plaintiffs," the judge concluded.

Judge Crawford also rejected Maronda's argument that the verdict was the result of passion or prejudice, and that the court improperly allowed evidence of other leaky Maronda homes.

"The Defendant originally told Plain-

tiffs that it builds houses with dry basements," the judge explained. "When the Defendant was advised by Plaintiffs that the house leaked and had mold, it told Plaintiffs they were wrong. When Defendant was shown all of the water problems it continued to deny there was a problem."

"Defendant builds houses that often leak," Judge Crawford said. "Defendant knew it built houses that often leak. Information regarding other leaky houses was relevant on cross-examination and on direct examination."

The judge also declined to order a new trial based on personal opinions offered by plaintiffs' counsel (and by defense counsel, the judge said) during closing arguments.

"Had the parties objected to personal references, the Court would have sustained the objections," the judge noted. "However, no personal comment by either counsel was objected to nor did it rise to the level of reprehensible or heinous conduct requiring a new trial."

Daniel R. Mordarski and Amy K. Schermer of Law Offices of Daniel R. Mordarski in Columbus, Ohio, and Glen R. Pritchard of Clark, Perdue & List Co. in Columbus represented the Cosners.

Paul Saba and Rebecca Algenio of Finney, Stagnaro, Saba & Patterson in Cincinnati, Paul A. Manion of Manion McDonough & Lucas in Pittsburgh and John W. Zeiger, Stuart G. Parsell and Matthew S. Zeiger of Zeiger, Tigges & Little in Columbus represented Maronda Homes Inc.

\$3M Ohio Mold Decision Kindles Coverage Questions

Christopher J. Boggs, CPCU, ARM, ALCM Insurance Journal May 2008

Insurance professionals took note recently when a Franklin County, Ohio judge [awarded \\$3 million plus legal costs to a family](#) whose central-Ohio home became overrun with toxic mold, presumably caused by the contractor's defective construction techniques and means.

Immediately insurance professionals at [MyNewMarkets.com](#) and elsewhere begin considering the coverage implications involved in: 1) mold claims and 2) construction defect claims. Is there any chance coverage is available in this or any home-builder's/contractor's commercial general liability policy?

Without having the details of this particular case or of the subject builder's insurance policies, it is difficult (actually impossible) to discuss the specific details of this case. However these two general liability "hot topics" can be explored from the information available even without the particulars.

Triggering Coverage in the CGL

Before considering these coverage issues, it is helpful to step back and affirm an understanding of the commercial general liability policy's coverage triggers. For coverage to apply to any Coverage "A" (Bodily Injury" or "Property Damage") claims in the CGL:

- 1) There must be "bodily injury" or "property damage;"
- 2) The bodily injury or property damage must be the result of an "occurrence;"
- 3) The insured must be legally liable; and
- 4) The injury or damage cannot be the result of a specific exclusion, an excluded action (an intentional act for example) or an

excluded cause (i.e. by an automobile); nor can there be any applicable statutory limitations precluding coverage (i.e. statute of limitations).

Half Way There

In the subject case, a successful argument can likely be made that there was some extent of property damage caused by the mold and the poor construction methods, and potentially even long term bodily injury from the inhalation of the toxic mold. Further, a judge has made a bench statement that the builder is legally liable. Two of the four tests have been satisfied, half way to coverage being available. Yet to be satisfied are the questions: was the injury/damage caused by an "occurrence," and are there any applicable exclusions?

Qualifying "Occurrence?"

Was the bodily injury or property damage caused by an "occurrence?" The standard ISO commercial general liability form defines occurrence as: "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

"Accident" carries with it the implied application of definite in time and place, and unintended. The second part of the definition has the potential to lead the reader down several different paths (and has done so in different jurisdictions) because of the word "including."

"Including" within this definition *can* be interpreted to mean injury as a consequence of simply being around a harmful condition. Such as one or a few individuals suffering bodily injury simply from living near a chemical plant. Further,

the injury occurs regardless of the fact that all control systems are working properly and chemical concentrations are well below prescribed levels. The broad view of the term may consider this an "occurrence" simply because the injury resulted from continuous or repeated exposure....

This is a misapplication of the intended meaning of "including." For there to be a true "occurrence," by definition, there must first be an accident leading to injury. Simply being exposed to the chemical plant is not enough to satisfy the definition of an occurrence. A sudden and unexpected incident must take place causing the release of chemicals leading to injury or damage in an unbroken chain of events for there to be a true "occurrence." It's a question of cause and effect, but there must be an initial cause/incident.

How does each potential claim in the subject case measure up to this defined requirement? Is it an "occurrence?"

• **Construction defect claim:** The news account stated that the south side of the house wasn't attached to the foundation, incorrect windows were used, and the waterproofing was done incorrectly. Yet, all these "wrongs" can be considered definite in time and place (the waterproofing was incorrectly installed on Tuesday), and the shoddy work may have even been unintentional (the contractor did not realize the foundation had not been attached).

But still, do these actions individually or even collectively qualify as an "occurrence?" Published point/counterpoint arguments differ as to the answer to this question. But for sake of the overall discussion, if the actions and results were unintentional and if the com-

bined damage can be traced back to a particular incident (not to the work itself) that initiated the process, then these do qualify as "occurrences." Water penetrating the improperly installed waterproofing would be an example of such an incident.

To be clear, the poor quality work (or the defective construction) is not and does not by itself qualify as an occurrence. There must be an accident causing injury or damage. Like the previous example of just living near a chemical plant, the fact that poor work was done does not constitute an accident; some incident must exploit the existing condition for there to be an "occurrence."

• **Mold damage claim:** Short of using a defective product from the building supply company (which would allow for subrogation), the mold growth can almost certainly be traced back to a particular incident or the first in a line of incidents (repeated exposure). For example, it could be that the rain and water seeped through the windows (which were the wrong size) allowing the growth of mold to begin. The occurrence may be considered the initial inclusion of water into the structure AND the continuous exposure to unwanted water - collectively an "occurrence." Again, it must be an unintentional action leading to unintended damage caused by an incident occurring or beginning at a definite time or place. The mold damage appears to meet these criteria.

Both defective construction and mold damage caused by action of the contractor have satisfied three of the four coverage trigger tests. Coverage may yet be available from the CGL to pay for or defend against these claims. The last remaining hurdle: are there

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\$3M Ohio Mold Decision Kindles

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any exclusions that apply to the injury or claim?

Exclusions

To this point I have given my opinion (which includes the opinions of several well-respected insurance professionals, even some with whom I disagree), now I want yours.

Just a few points to remember regarding policy exclusions related to mold damage: mold does not meet the definition of a "pollutant;" and there are at least two general liability exclusionary endorsements specifically dealing with mold. Feel free to make a case for excluding mold damage from the existing standard exclusions, and if your carriers use any non-ISO exclusionary wording, please pass that along (you do not have to use the company name).

For construction defect claims, look at the stan-

dard exclusions found in the CGL. Also, if any of your carriers use their own forms to exclude or limit coverage for this exposure, include that information as it could be important to everyone.

Rules and Conclusion

Your comments and points are a necessary part of this on-going discussion, but there are a few rules to keep in mind in posting your replies:

- 1) Support your point with policy language and/or claims;
- 2) Use examples where you feel it is necessary;
- 3) Don't make personal attacks on anyone else. Their opinion is as valid as yours, and may, in fact, be right;
- 4) Don't take a differing view personally; and
- 5) No advertising.

All the posts will be important and relevant to the entire insurance community as we work to do a better job for our clients. Who knows, you may change your mind or convince another person to change theirs.

After several days, there will be a follow up article recapping the posts and the findings. Regardless of the outcome we will all be better able to analyze these specific liability questions and liability issues in general.

Questions of coverage applicability for both types of claims have been debated for some time now; the debate will continue long after this discussion; but maybe this will be a means to better understanding for all parties involved. We all look forward to your responses.

Boggs is associate editor of www.MyNewMarkets.com. He can be reached at cboggs@mynewmarkets.com.



"All in favor of a cap on our liability?"

CGL Extends Coverage for Injury Arising from Defective Construction

Christopher J. Boggs,
CPCU, ARM May 2008, Insurance Journal

Property damage resulting from defective construction is unquestionably excluded in the commercial general liability ("CGL") policy; but what about bodily injury? And is injury or damage caused by the growth and proliferation of mold covered because it is not excluded by the unendorsed CGL?

InsuranceJournal.com recently featured a story about a central-Ohio family whose home was contaminated with toxic mold, making it unfit for continued occupancy. In early May, the judge hearing the case concluded that defective construction practices lead directly to the growth of the injurious mold and handed down a \$3 million judgment against the contractor who built the home.

Prompted by this verdict, the availability of insurance coverage to pay for injury or damage resulting from defective construction and/or mold was explored on this same Website. In last week's first of three commentaries, the four commercial general liability coverage triggers were documented, and three were specifically applied to construction defect and mold claims.

The final coverage trigger question was left unanswered. Open for discussion and debate among readers this past week has been the question: was the injury or damage the result of a specific exclusion, excluded action or an excluded cause? Although three of the four requirements for coverage have been hypothetically satisfied, all four must be met before coverage exists. If the fourth trigger question is answered "yes," then no coverage is available for injury.

This article will focus solely on defective construction and leave the question of coverage for damage caused by mold to the third issue.

Exclusions Applicable to Defective Construction

Poor and shoddy workmanship does not, of itself, qualify as an "occurrence." Previously discussed was the coverage trigger requirement that there must be an incident exploiting the defective construction for there to be any chance of coverage. Two standard exclusions in ISO's commercial general liability policy leave little doubt as to the insurance industry's intent to exclude coverage for any property damage claims resulting from defective construction even if an incident occurs:

- **Damage to Impaired Property or Property not Physically Impaired;** and
- **Damage to "Your Work."**

Damage to Impaired Property or Property not Physically Impaired:

As the name suggests this CGL exclusion removes any coverage for property damage when such damage arises out of a defective, deficient, inadequate or dangerous condition of the insured's work ("Your work"). Further, this exclusion states that no coverage is provided for "impaired property" arising out of the same listed conditions.

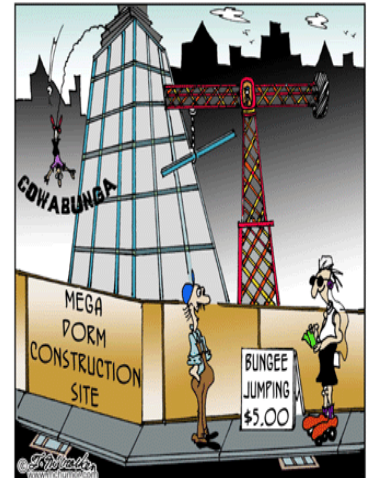
"Impaired property" is property that has not been damaged, but which cannot be used or is made less useful because of the insured's poor workmanship. This definition applies when the work is known, or only thought, to be defective, deficient, inadequate or dangerous. The definition goes on to state that property is considered impaired if it can be fixed or repaired by the removal and replacement of the insured's work.

Failing to attach the structure to the foundation, improper application of the waterproofing and installation of the wrong size windows individually qualify as defective, deficient and inadequate conditions - even before any damage occurs. These conditions in the subject case lead to damage and to the unhealthy conditions within the house.

Even if the structure itself were not damaged, the house would still qualify as "impaired property" because it became useless until it can be repaired; further it is now subject to diminished value (made less useful) both resulting from the contractor's work.

Exception wording in this exclusion does not preclude all claims for property damage resulting from defective construction: "This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use." A second exclusion is necessary to assure that the contractor does not get paid for ANY property damage to his work caused by the poor quality work itself once it has been put to its intended use (a "completed operation").

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"This side line business is what lets us keep our bids so low."

CGL Extends Coverage ... *continued from page 18*

Damage to Your Work:

Property damage to the contractor's work directly arising from or attributable to the work performed by the contractor is excluded. The breadth of the definition of "Your Work" within this exclusion is often overstated and leads to its misapplication, but the full range of such misapplication is outside the scope of this article. In essence, insurance is not intended to be a warranty and this exclusion responds to keep the policy from being used as such.

Installing the wrong size windows can be a good example of the application of this exclusion. The windows leak causing them to warp - they warp because they leak because they are the wrong size. See the circle of events? The windows are damaged due to the poor workmanship of the contractor. Had the contractor just done adequate work, the windows would not have leaked and would not have been damaged. There is an unbroken chain of events from the poor workmanship to the damage; no extraordinary or external incident was required or occurred causing the damage.

Growth of the mold in the subject case can likewise be attributed to the contractor's work, or lack thereof. Individually, the various defective conditions may not have resulted in the development and ultimate growth of the toxic mold. But collectively, all misdeeds combined to allow the growth of the mold ultimately damaging the property. Would the cost to tear out and replace the damage be covered by the CGL? No, because the damage to the work was **caused by** the original work; there is an unbroken chain of events that began with poor construction habits and ended in damage - with no intervening incidents. The damage to the work arose from the work itself.

If the work were done by a subcontractor, an exception to the "Your Work" exclusion would make coverage available. This exception exists because the carrier has a theoretical means of subrogation by which they can recover any payment made to the insured contractor necessary to fix or repair the damage caused by the poor workmanship.

Insurance carriers are undertaking to remove this exception by attachment of the CG 22 94 (Exclusion - Damage to Work by Subcontractors). Its use is growing because of the volatility of the subcontractor market, especially in residential construction. Subcontractors come in and go out of business so quickly that insurers are concerned that there will be no one against whom they can subrogate in cases of poor workmanship and deficient construction, thus they remove the exception; the result is that the entire structure becomes the general contractor's work - effectively excluding coverage for all property damage resulting from defective construction.

The effect of these two exclusions and the exclusionary endorsement - no property damage coverage exists for claims arising from defective construction. But notice, these exclusions only apply to property damage, nothing in any of these exclude bodily injury.

Defective Construction & Bodily Injury

None of the exclusions detailed thus far remove coverage for bodily injury resulting from a contractor's poor work habits. If there is no exclusion within the commercial general liability policy or added by endorsement, there is coverage. Bodily injury to a third party resulting from defective construction techniques is covered by the CGL.

For example, a contractor incorrectly installs a large chandelier, it falls landing on the homeowner. The cost to repair or replace the chandelier is obviously excluded by the exclusionary wording above, but the cost to pay for the injury suffered by the homeowner is not excluded.

Defective construction practices in the Ohio case lead to toxic mold growth; the mold caused breathing problems with the potential for death (thus the term "toxic"), and made the house unlivable. Just like the above example, bodily injury would be covered by the commercial general liability policy, provided there were no contravening endorsements, even though the cost to repair or replace the mold-damaged property is excluded.

There are only a few endorsements that remove coverage for bodily injury and relate to construction and possibly defective construction.

Conclusion

Property damage resulting from defective construction is excluded, but bodily injury is still covered. Traditional insurance is not intended to cover an operation's business risk, and choosing to allow defective construction methods is a business risk. The unintended bodily injury resulting from such choices is covered by insurance.

Still the question of coverage for damage caused by mold apart from any defective construction issues remains to be answered. The next installment in this series will apply the fourth coverage trigger to mold claims.

NEWS BRIEF:

Chin Yang, PhD, resurfaces

Good news... Dr. Chin Yang has come out of retirement and has started a new environ-

mental microbiology testing and consulting company.

Dr. Yang retired two years ago after selling his lab to Aerotech.

Here is the contact information for Dr. Yang's new company:

Prestige EnviroMicrobiology, Inc.
242 Terrace Blvd., Suite B-1
Voorhees, New Jersey 08043
856-767-8300

Mold: Underwriters Endorsing CGL to Remove Coverage

Christopher J. Boggs, CPCU, ARM June 11, 2008 Insurance Journal

Contractors are the target of nearly 2,000 mold-related lawsuits annually according to a 2003 report from toxlaw.com. When accused or sued for injuries and damages resulting from mold, contractors look to their commercial general liability policy to find coverage to finance their defense and pay any judgment levied against them.

This three-part series was triggered by a judgment handed down against a [central Ohio general contractor](#) in early May and reported on InsuranceJournal.com. Specific information about the contractor's insurance coverage is irrelevant; the point of these articles has been and is to debate protection, if any, afforded by the CGL for bodily injury or property damage claims caused by mold or defective construction. Nothing presented in this series is intended to infer anything about coverage in the impetus case.

Previous articles focused on the four [commercial general liability coverage triggers](#), and whether the commercial general liability policy extends coverage for injury or damage arising out of [defective construction](#). Mold and the CGL's response to and coverage for bodily injury or property damage caused by mold is the topic of this final discussion.

Triggering the Need for Coverage

Mold can cause respiratory infections, hypersensitivity in those not normally prone to allergic reaction, infections and possibly death. Additionally mold growth can lead to structural damage, destruction of non-structural real property and the decay of personal property.

Most state statutes hold the general contractor ultimately responsible for the finished product regardless of

who did the work. Agents with contractor and general contractor clients will be called upon to find coverage and a source of funds when bodily injury and/or property damage claims resulting from mold are presented against their clients. A quick lesson on mold is a necessary precursor to the coverage debate to follow.

Mold Basics

A food source, optimal temperatures and water (the mold triangle) must be present for mold to develop, take root and grow. Like the fire triangle, remove any one of these three legs and mold cannot exist or prosper.

Food sources are plentiful in new construction and remodeled structures. Mold thrives on the organic materials present in most building materials including wood (cellulose) and fiberglass insulation. The optimal temperature to incubate and support mold growth is between 60 degrees and 80 degrees Fahrenheit (lower and higher temperatures also allow the establishment and growth of mold). Little can be done to avoid these two sides of the mold triangle on a construction site. Food sources and optimal temperatures common in crawl spaces, basements and vented attics are unavoidably present.

Proximate Cause

Water infiltration may be the only mold growth factor controllable by the contractor. Removing moisture from the mold triangle eliminates the possibility of mold. But at times efforts to block out water fail and mold develops and grows. When mold "takes root," the question of how the water intrusion occurred leads to the proximate cause of the injury or damage.

Proximate cause is the incident or

occurrence (as defined) that leads to the injury or damage in an unbroken chain of events. In short, what lead to the water's presence? The proximate cause of water infiltration can and will have an impact on CGL coverage.

There are essentially four causes for the presence of water in areas where it is not intended once construction is complete: 1) the use of defective construction techniques or materials (i.e. improper flashing, poor sealing methods, use of improper materials, etc.) ; 2) an unintentional error or mistake by the contractor or subcontractor; 3) an occurrence or incident causes damage allowing the introduction of water; or 4) the normal wear and tear of building materials leading to the seepage of water into the structure. Only the first two are "controllable" by the contractor.

Only when the proximate cause is controllable by the contractor can they be held legally liable for bodily injury or property damage caused by mold; but will the CGL be the financing mechanism to defend and pay the claim? The following paragraphs will offer an **opinion** on the availability of coverage in the commercial general liability policy.

Property Damage Coverage

As stated previously, poor and shoddy workmanship does not qualify as an "occurrence." If the proximate cause of the mold is defective construction methods there must be an accident or repeated exposure to the same harmful condition exploiting the poor construction methods or materials to trigger any hope of coverage in the commercial general liability policy.

Mold damage resulting from substandard means of construction MAY be considered an "occurrence," but it is just as likely to be considered the result of an intentional action, or inaction, of the insured contractor. Intentional acts are specifically excluded.

Two exclusions will likely preclude property damage coverage if the mold damage meets the definition of an "occurrence:"

- **Damage to Impaired Property or Property not Physically Impaired; and**
- **Damage to "Your Work."**

Both exclusions were detailed in the construction defect discussion. Effectively, they combine to preclude coverage for any property damage to the insured contractor's completed work resulting from defective construction practices and/or mold damage. But these exclusions don't necessarily remove coverage for damage to personal property owned by the building owner or homeowner, or damage to work done by another contractor.

Personal property of others and the work of another contractor damaged during construction are excluded by the "Impaired Property" and the "j.(4)" care, custody and control exclusionary wording. But neither excludes damage to personal property or other real property once construction is complete.

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Mold: Underwriters Endorsing CGL... continued from page 20

Only damage to the work of the contractor is excluded by the "Your Work" wording. We'll use a plumbing contractor for our example, since it's water that is the main catalyst for mold growth.

Assume the plumbing contractor improperly seals a joint during construction. The joint is adequate when the water line is "charged," and it holds for two months after completion of the house - making it a "completed operation." Two months after the house is completed and is occupied by the new owner, the joint springs a leak that is not immediately noticeable. A week later, the homeowner begins to notice discoloration of the wall and the drywall is spongy and soft to the touch. The water leak is confined. It has damaged the insulation, drywall and flooring. What should the plumbing contractor's policy cover? Everything but the cost to tear out and replace the piping - which is the plumbing contractor's "work." A month later, mold growth becomes evident in the area of the leak and its cause is traced directly back to the plumbing leak. The mold is directly related to the leak and thus the cost to remove and repair any property damage should be covered by the standard commercial general liability policy because there is no specific exclusion for mold damage in the CGL (mold is not considered a "pollutant," so that exclusion does not apply). All property damage resulting from the leaking pipe is covered by the policy (with the exception of the plumbers "work"), including the cost of fixing the mold damage directly related to the leak.

To find any different is nothing more than **torturing** the policy to make it say what you want it to say.

Subcontractors may be extended coverage for property damage in the unendorsed commercial general liability policy. However, the general contractor's coverage may not be as broad depending on the definition of their "work." If the CG 22 94 (Exclusion-Damage to Work by Subcontractors) is attached, the entire structure is their work and no property damage coverage to the structure will be covered.

Damage to personal property of others may be covered under any contractor's commercial general liability policy. Provided all four requirements for coverage are satisfied.

Bodily Injury

There is no bodily injury exclusion related to mold in the commercial general liability policy. The only caveat is that the mold must be the result of an "occurrence" as defined and detailed previously.

In short, bodily injury claims resulting from the growth and proliferation of mold will be covered provided all four coverage triggers are satisfied:

- 1) There is "bodily injury;"
- 2) The bodily injury results from an "occurrence;"
- 3) The insured is held legally liable; and
- 4) The injury or damage is not the result of a specific exclusion, an excluded action or an excluded cause.

Whoa! Not So Fast - Exclusions

ISO has promulgated four endorsements that exclude or severely limit

the coverage for injury or damage caused by mold. Two are intended for use with the commercial general liability policy and two are designed for the Owners & Contractors Protective Liability (OCP) policy form.

Both the CG 21 67 used with the CGL and the CG 31 31 for the OCP entitled "Fungi or Bacteria Exclusion" completely exclude coverage for bodily injury or property damage as follows "... which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage." The policy goes on to exclude any cost to test for, monitor or clean up such fungi or bacteria.

Another two endorsements severely limit the amount of coverage available for mold or fungi damage. Both the CG 24 25 (used with the CGL) and the CG 31 32 (attached to the OCP) are titled "Limited Fungi or Bacteria Coverage." These endorsements specify an annual aggregate limit of coverage applicable to claims resulting from mold or fungi. Limits are usually minimal ranging between \$10,000 and \$100,000 in the aggregate.

Underwriters most often use the total fungi or bacteria exclusions to avoid any exposure to mold. If an agent cannot convince the underwriter to remove the exclusion completely, negotiate the limited form; at least the insured will be granted some coverage.

Conclusion

This series has touched on several exclusions related to mold

and defective construction of which agents should be wary. The following exclusionary endorsements should be removed when possible:

- ◆ CG 22 94 - Exclusion-Damage to Work by Subcontractors;
- ◆ CG 21 67 - Fungi or Bacteria Exclusion (for the CGL);
- ◆ CG 31 31- Fungi or Bacteria Exclusion (when the OCP is used);
- ◆ CG 24 25 - Limited Fungi or Bacteria Coverage (used with the CGL); and the
- ◆ CG 31 32 - Limited Fungi or Bacteria Coverage (attached to the OCP).

The Limited Fungi or Bacteria Coverage endorsements are acceptable if they are the only way the underwriter will agree to provide coverage for damage caused by mold. Otherwise, completely removing the mold exclusions is the preferred direction.

Mold and defective construction claims and litigation ebbs and flows with media reports and high jury awards. But regardless of the external causes, agents must always arm themselves with knowledge of the exposures and coverage provisions. A close review of your contractor client's policies to confirm no unknown or unwanted exclusions exist is required. If the contractor is concerned about mold exclusions, separate mold coverages are available from many specialty markets.



HEALTH: SICK SCHOOLS SYNDROME



'When kids are sitting there scratching and they can't concentrate on their little test, it just breaks your heart'

Teachers are complaining, children are suffering, even Health Canada admits that mould is 'toxic' - but the schools of Lambton Kent District still haven't been able to get anyone to clean up their classrooms.

PETROLIA, ONT. -- The fall of 2005 marked a fresh start for Jackie Pynaert, a veteran teacher beginning a new eighth-grade teaching assignment at Queen Elizabeth II primary school in Petrolia, Ont. Her home-room was P1, a portable classroom across the hall from two friendly teachers who had a long history with the school.

Still, it wasn't long before Ms. Pynaert, then 42, found herself having a tough time in class. "I started having flu-like symptoms, chills for two months, and I couldn't shake them," she said. "I was coughing, wheezing, we're talking coughing until you nearly bring up a lung. I had rashes all over my face." The students told her that the teacher who had the room before her coughed the same way.

Puzzled, Ms. Pynaert began to dig into building maintenance records. The school where she worked, a one-storey brick building in the Lambton Kent District School Board, had gone through several additions during its 56 years, including one that resulted in a cluster of eight temporary classrooms (one of which was Ms. Pynaert's) being tacked onto the school's west wing to accommodate an influx of students.

Ms. Pynaert was horrified by what she learned from the records. As far back as 2002, teachers were reporting "squishy" floors and rotting wood in the portables. In 2004, teachers were complaining about headaches and constant colds. The last teacher in her room went to the emergency room twice with symptoms similar to her own: breathing difficulties, chronic fatigue, headaches, nausea. He also had painful sores in his nose.

When class was out, his symptoms would fade or disappear. By December of 2005, Ms. Pynaert's lips were swelling when she entered her classroom, pockets of liquid had begun pouching beneath her eyes and a white, filmy fungus was growing on her face. She also coughed "until I sprayed urine. I was losing bladder control. My bladder muscle was giving out." She couldn't shake the belief that something in the classrooms was making people sick.

Ms. Pynaert is not the first teacher to develop such a hunch. In nearly every province in recent years, educators have raised alarms about strange illnesses they think are caused by mould.

Health Canada says mould is "toxic," and no amount of it indoors is safe, but there are no laws or policies that require school boards to search out hidden moulds. And because the boards fall under provincial jurisdiction - and the provinces have no official policies on what specific tests should be done by boards to ensure schools are mould-free - how mould complaints are handled by school boards can vary considerably.

Many whistle-blowers have been able to muster enough public pressure - often with the help of intense local media coverage - to force school administrators to deal with the problem.

However, no group of mould-battling teachers has succeeded in creating a strong enough precedent for subsequent sufferers to draw on. Often, when teachers' symptoms disappear,

so does the mould issue from public discourse - until the next round of unknowing teachers is struck.

The battle over mould in Lambton Kent, which covers a sprawling rural area with 67 schools, 54 of which house elementary teachers and students, began brewing more than five years ago, when several teachers from across the district independently began making health complaints.

Some had itchy red rashes, constant congestion, phlegm buildup, ear fungus, bloody noses or hives. For others, there was unexplained facial swelling, skin lumps, growths, coughing attacks, bowel problems, stomachaches, searing headaches and chronic fatigue.

"Everybody had to stay drugged to get through work," said Johanne Tranquille, a French teacher who had been working in portable classrooms since 1990 - across the hall from Ms. Pynaert - and coughed constantly, broke out in red facial rashes and suffered bad sinus problems.

Ms. Tranquille said she would drag herself to work in spite of her symptoms out of fears that "nobody would help the kids." But it was tough. "I told my mom one time, 'I think I'll have to quit teaching. I'm too sick.'"

Laurel Liddicoat-Newton, an elementary teacher at Lansdowne Public School in Sarnia, had to have an egg-sized growth, which her doctor said "bloomed" because of something in her environment, surgically removed from her neck. Brimming with frustration at unresolved health problems in her school, she joined a health and safety committee in hopes of spurring a fix.

That's when Ms. Liddicoat-Newton learned that her colleagues and their students were suffering too. From 2002 to 2005, records show, Lansdowne teachers filed more than a dozen official complaints requesting air-quality tests in the school's portables. After an expert tester was finally contracted by the school board to deal with the portables, no less than 84 square metres of mouldy and water-damaged materials were cut out of the structure.

However, upon their return to the classrooms - after air sampling deemed the rooms acceptable - the teachers still felt ill. In the ensuing months, a repetitive cycle began in which mould was found, removed and found again.

Amid that cycle, Ms. Liddicoat-Newton found a "garden of mould" beneath a portable that had supposedly been cleaned.

"It was black earth, covered with orange and white and yellow and green, like cauliflowers, for as far as you can see," she said. Exasperated, she ultimately led a work refusal in March, 2007.

"I'm not a person who stands out and fights. I will avoid conflict at all costs," she said. "I've always been a fixer. I don't like confrontation and arguing, especially in public. But I want it to be safe for the kids. Those little kids are developing immune systems. And they're getting sick."

One of those was Ethan Dickhout, a seven-year-old at a Chatham public school who is literally scarred from reactions he had in the classroom, his mother said.

"He started to get the spots all over his body. First it was on his forehead. Then it was on his stomach, his legs, all over his arms," said Billie Jo Robertson. "It has caused him to have three or four bald spots on the back of his head where hair will not grow back."

When the rash was at its worst, a manager at a Chatham fast-food outlet asked Mrs. Robertson not to bring Ethan into the restaurant. "He asked me to

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leave because it was making the other customers on edge," she said.

Since Ethan switched schools last fall, his problems have cleared up.

Teachers began turning to their union, the Elementary Teachers' Federation of Ontario, for help. At group meetings held to air concerns, Ms. Pynaert was the first to talk about her health problems, which have forced the 45-year-old to take an extended leave from work.

Soon, more teachers began to speak out.

Jodi Mandeno, a Grade 2 teacher from Chatham, said she was taking eight allergy pills a day so that she could go to school without her body breaking out in hives. The 32-year-old had logged official health and safety complaints about her classroom, but also changed her diet, laundry detergents and body wash and even traded in her brand-new car - out of concern she was allergic to the seat coverings - to try stopping the hives. Only on March Break, when she spent a week away from her school, did the huge welts disappear.

Afterward, she began documenting her students' symptoms too. By her count, 14 out of 19 students in the class were suffering, mainly from headaches, red rashes and respiratory problems. One youngster had such bad migraines that his mother was often called to take him home.

"When kids are sitting there scratching and they can't concentrate on their little test, it just breaks your heart," she said.

TEACHERS SILENCED

With the onslaught of complaints showing no signs of abating - by fall, 2007, Ministry of Labour inspectors had made more than 30 visits to district schools and issued stop-work orders for 16 rooms - the school board agreed to start cleaning up the problems in elementary buildings. Their pledge, which will cost about \$1-million a year, was a welcome surprise for teachers. But it came with a condition: The plan would go forward only if the outspoken teachers responsible for drawing attention to mould problems agreed to silence their complaints. Grudgingly, the teachers, via their union, agreed to the deal.

The Globe and Mail's interviews - nearly two dozen teachers and parents from across the school district talked about the ailments they link to time spent in district schools - all took place before the gag order went into effect.

In the months since then, Om Malik, principal of Environmental Consulting and Occupational Health Management Inc., based in Mississauga, was contracted to inspect all of Lambton Kent's elementary schools. He uncovered mould and indoor air-quality problems in most of the nine buildings he has seen, as well as repeated signs of shoddy upkeep: rodent excrement, leaky windows and clogged air exchanges.

For the schools he has seen so far, the inspector has recommended a broad slate of often-expensive remedies. With four dozen more schools left to be inspected, worries persist that the schools will not be fixed.

It's a concern that school board officials have tried to strike down. Gayle Stucke, chair of the Lambton Kent school board, said all the classrooms will be inspected, as per the agreement with the union. But she also said that "the idea of a mould-free building is not realistic."

"Mould in buildings has been an issue forever. ... When you have mould, it's

cleared up and six months later it shows again." Friends of Ms. Pynaert said she has begun considering a second career out of worries that returning to her classroom would make her sick.

Ms. Stucke, who would not discuss the specifics of any teacher's case with The Globe, rejected the possibility, saying: "There's no medical evidence that in fact those symptoms are caused by mould. ... There's no scientific connection."

Mould has been present in the environment since biblical days, but the science around it remains patchy and controversial. And though the term "toxic mould" has become a mainstay in popular vernacular, there is still fierce debate in the medical community over whether it is the sole culprit for illnesses it appears to cause.

"We all agree that there are a number of health issues. We don't understand them all," said Dr. David Miller, an Ottawa-based expert who has helped to develop federal guidelines.

One problem is the sheer number of mould species - there are hundreds of thousands.

Another is that "the constellation of symptoms people can potentially experience are quite varied," according to Karen Bartlett, a microbiologist at the University of British Columbia's School of Environmental Health who has been studying mould issues since the early 1990s.

"This is the crux of why these things are so difficult to sort out. The medical community has no problem with the concept that people in mould-infested places can experience a wide variety of respiratory symptoms," she said.

"There is no consensus in what happens for other kinds of symptoms. We don't have a nice clean test that can be applied that gives us a result."

There is one controversial American doctor who says he does.

Ritchie C. Shoemaker is a Maryland-based family physician who began delving into bacteria and mould

medicine in the mid-1990s, when some of his long-time patients - swimmers and fishermen - began complaining of memory problems, fatigue, coughs, chronic pains, diarrhea and sensitivity to bright light.

Dr. Shoemaker ultimately connected their illnesses to an outbreak of Pfiesteria, a toxin-forming micro-organism responsible for large fish kills in North Carolina and Maryland. His work with those patients led him to another network that was complaining of similar symptoms. However, theirs were due to exposures to mould and water-damaged buildings.

Dr. Shoemaker has since developed a reputation as something of a mould-science cowboy; he theorizes that people who fall ill after contact with mould are actually having reactions to the toxins contained in the fungus's microscopic spores. Among some individuals, particularly those who he says are genetically vulnerable, biotoxins can cause immune-system impairment or inflammation.

"Mould exposure initiates a series of illness generators, hurting immune-system responses and altering blood flow to many small blood vessels," Dr. Shoemaker wrote in his 2005 book, *Mold Warriors: Fighting America's Hidden Health Threat*. He said the effects of biotoxin exposures are often mistaken as influenza, chronic fatigue syndrome or other common ailments.

He claims that he is able to diagnose biotoxin-related illnesses by analyzing a patient's medical history, blood tests, physical exam and performance on a visual contrast sensitivity test, which a colleague developed. That test measures whether toxins have disrupted neural function. Although his work has been peer-reviewed, he acknowledges that his theories remain controversial.

"Indoor growth of toxin-forming moulds make people sick in ways most physicians don't yet fully understand," he wrote in his book. "Proving that mould causes common illnesses that are rarely recognized by physicians has been a challenge."

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Schools are particularly susceptible to mould - the problems in Lambton Kent have been seen in nearly every province, as well as across the United States.

In San Diego, a former school-teacher named Susan Brinchman has set up the Center for School Mold Help, a website that serves as a continent-wide clearing house for information about mould science, policy and media coverage. Ms. Brinchman, who taught for 25 years before being transferred to a mouldy school where she became too sick to work, said her website gets 120,000 hits per year, with an endless stream of requests from teachers looking for help in the mould "war."

WHY SCHOOLS?

Because schools are often built with flat roofs, they are vulnerable to water pooling and leakages. In this era of stretched budgets, expensive maintenance jobs - such as adequately repairing water damage - are often deferred in favour of spending in the classroom. Schools in the past have tried to fix water seepage by permanently sealing windows, which has the effect of trapping moisture in the schools (which helps mould to grow), said Mr. Malik, of the firm now inspecting the Lambton Kent schools.

Poor ventilation is another common factor abetting mould growth in schools, he said.

In Newfoundland last year, severe mould problems were discovered in at least eight schools, seven of which were closed. Since last September, mould and water problems have been discovered in at least two Ontario school districts aside from Lambton Kent: Ottawa-Carleton and nearby Renfrew.

Kathleen Wynne, Ontario's Education Minister, said last fall that problems in Lambton Kent schools got out of hand. "This particular situation is one that we will rely on for some pretty serious lessons," she said.

Still, individual teachers, including

Ms. Pynaert and Ms. Liddicoat-Newton, who appealed to the minister for help when Labour Ministry processes seemed unable to stimulate an end to the mould, say she never responded.

Asked why she did not intervene to help with the issue, Ms. Wynne said: "There isn't a direct way for me to be involved."

However, lessons drawn from other provinces suggest that there could be.

Canada's most notorious school-mould problem broke out in Nova Scotia in the late 1990s; more than a dozen schools were closed. In one case, several million dollars was spent trying to remediate a school before it was finally torn down; in another, contractors were forced to peel back the building materials to the rafters to get at all of the mould.

The problem was so bad the Education Minister created a dedicated team of staffers to travel around the province helping school boards tackle the mould - and the politics the fungus seems to carry with it.

"My biggest job was to show that I was impartial and that I believed that if you said the child was sick, the child was sick," said Gerald Muise, who headed the department's team. "It was critical to have the province involved. ...

"This health and safety business is used and abused," he said, adding: "We had some of the best medical people around. All they could agree on what not to agree on."

Also born out of that era was the Halifax-based environmental advocacy group called Citizens for a Safe Learning Environment.

The group, now a registered charity, was formed in the early 1990s. "I personally went through two years of being blasted in my community," said the group's head, Karen Robinson. "Teachers would stop me in stairwells and whisper to me, 'Please don't stop, Mrs. Robinson.'"

By 1997, however, after seeking out national experts on mould and indoor air-quality problems, members of the group ended up working frequently

as advisers to the Education Department and the following year were asked to work with the province on the design of new "healthy" schools.

Ms. Robinson even received a commendation in the provincial legislature for her efforts.

"We started by pledging that our way of operating was going to be a respectful one, that we'd get more with honey than vinegar," she said. "We worked with solid information ... [and pledged] to be respectful of any of those who were harming our children. No one really wants to harm children," she said.

In most cases, Ms. Robinson said, the events that led to the discovery of serious mould problems unfolded in a similar manner to those in Lambton Kent, where sick teachers, at first, hesitated to speak out.

"I hazard to say that it's happening right across North America," she said. "It's amazing how much people can be suffering ... and they're afraid to speak up. They're afraid there will be repercussions and things will get worse. Teachers can be harmed in insidious ways. They can quietly find a little glass ceiling placed over them, or they can be shipped off to a school in the far reaches of the school board, or you miss out on your principalship. You become a troublemaker when you speak out against your employer."

MENTAL HEALTH QUESTIONED

For Ms. Pynaert, the Lambton teacher who had been the most outspoken on the mould issue, the full price tag of the ordeal has yet to be tallied. When she last met with The Globe, her health was still waning despite being out of the classroom for months.

She was hoarse-voiced, tired easily and was suffering gastrointestinal issues. Also waning was her reputation in the community. Her outspokenness, penchant for taking after-hours pictures of mouldy schoolrooms to add to her cache of files and to challenge the school board -

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"Proving that mould causes common illnesses that are rarely recognized by physicians has been a challenge."

Ritchie C. Shoemaker, MD

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particularly in the pages of local newspapers - worried other teachers and ostracized her from colleagues.

Even her own sister, also a school-teacher, had grown wary of being in public with her.

When the school board began to take a hard line against her allegations, Ms. Pynaert said, she was "made out to be a liar and a nut." Her mental health was publicly questioned.

"In the beginning, we thought we would tell the board and they would save us. They would say, 'This is horrible, and the children are in there and we've got to get them out,'" Ms. Pynaert said.

"What should have been a surefire health and safety issue has become a political nightmare," she said.

Because of the agreement with the school board brokered by her union, Ms. Pynaert was not able to describe her current situation. Friends said she has not been able to return to work since leaving in 2006 and faces a growing risk of losing her job if she continues to refuse to go back to her classroom without being able to prove conclusively that something in the room is causing her illness.

So far, Ms. Pynaert has gone to extreme lengths to try to validate her claims. Along with some of the other Lambton Kent teachers, she paid about \$600 in April, 2007, to send blood samples for testing by a California-based mould-allergy specialist. All of them said they had tested positive for antibodies related to mould exposures.

Ms. Pynaert's results were so alarming that she spent several more thousand dollars to take the test results to Dr. Shoemaker for his analysis. In a long report on his diagnosis, the doctor wrote that he believes her illness is without a doubt due to mould exposures at work.

"The syndrome that affects Ms. Pynaert is a biotoxin-associated illness that has been given many names, including Sick Building Syndrome," he wrote. "To a reasonable degree of medical certainty, exposure to the interior environment of the water-damaged building is the sole cause of her illness." Water damage, he said in an interview, is a precursor to mould.

"Ms. Pynaert is no different from my thousands of cases of mould illness: She is primed for subsequent illness solely caused by exposure to the indoor air environment in her workplace. ... She will become ill following re-exposure to any other environ-

ment with presence of biotoxin-producing organisms growing in buildings with water damage."

Dr. Shoemaker went on to say that out of the 4,400 cases he has seen, Ms. Pynaert's is "one of the most flagrant examples of disregard of an employer's responsibility to provide a safe workplace I have evaluated.

"What this means is that because of the illness Ms. Pynaert acquired from her workplace, her life will be forever changed."

FUNGI FUNDAMENTALS

Moulds are a form of fungi that help to break down organic material and can grow indoors or out on nearly any surface, from food in the fridge to building materials left out in the rain.

When mouldy material is disturbed, spores are dispersed into the air and can be inhaled. The worst offender is *stachybotrys chartarum*, a greenish-black mould that grows easily on drywall, drop-ceiling tiles and wood, and which is known to have health effects.

Health Canada guidelines endorse a ban on indoor moulds, noting that "exposure to fungi in occupational environments causes allergic and toxic diseases," but there is no official policy on testing for mould in schools or workplaces.

Even when tests are carried out, they can be inconclusive: Most tests begin with air quality, which is problematic for a number of reasons, including the fact that the indoor environmental and air-quality industry is unregulated in Canada. Consultants can pick and choose from a patchwork of standards set by industry groups, which do little to scrutinize members' quality of work, said Bruce Stewart, senior vice-president at Pinchin Environmental Ltd., a Mississauga-based national environmental-consulting company.

According to Mr. Stewart, 80 per cent of indoor mould grows in wall cavities and other hidden places. Buildings that have had water leaks, a fire or poor air quality are the most susceptible.

"When it starts growing inside, mould is a symptom of a building system that is failing," said Om Malik, an industrial hygienist and indoor-air-quality expert who heads the Mississauga-based firm Environmental Consulting and Occupational Health Management Inc.

One thing known for certain is that water is a major factor.

"Mould and moisture are interchangeable," Mr. Malik said. "You have to find the cause of the moisture."

Dealing With Landlords and Insurance Companies About Mold

Layton Avenue

Whether you rent an apartment or own your own home, mold can be a huge problem to have to deal with. Insurance claims adjusters will usually deny your claim simply because the vast majority of homeowner's insurance policies simply do not cover the cost to remove mold from the home. Landlords presented with a mold problem in one of their units or in the home that they are renting out are sometimes quick to blame the problem on the tenant rather than admit that the problem is structural or was there before the tenant moved in.

There are a few insurance adjusters that will try to trick you into saying that mold has been around for millennia and that it is not the health threat that people are saying that it is or that the mold contamination in the home is somehow your own fault. If the infestation is obviously not your fault, do not say anything that suggests that it might be. If he/she claims that mold is not a problem like people say, point at the Bible. The scriptures in Leviticus 14:39-49 clearly tell how dangerous mold was considered to be in the time of ancient Judaism and tell how the homes

were considered to be "diseased" or "plagued" by mold. It also tells just how these contaminated homes and belongings were dealt with. The rabbi inspected these buildings and determined what was to happen to them and the basic procedure was to remove all belongings from the home and take them far away from the village and people, to shut up the house for a week, and to examine the home again. If it was still not free of contamination, it was torn down and a new one built.



Madison Chamber fires its director; she blames mold

President says it's time to move in a 'different direction'

The Huntsville Times June 12, 1008, WENDY REEVES

MADISON - The Madison Chamber of Commerce is looking for a new managing director following Monday's firing of Sallie Wagner.

On Tuesday, Wagner, who helped start the Madison Business Association in 1993 which eventually became the city's chamber, said she was numb over her dismissal and referred all questions to her Huntsville attorney, Daniel F. Aldridge.

"For them to throw her under the bus like this is shocking," Aldridge said Wednesday. He represents Wagner and other chamber employees who became sick from mold that was found last year in the chamber's former Main Street office.

"We're exploring their legal rights at this time," said Aldridge, who is also looking at Wagner's legal rights over the termination.

Aldridge said he believes the mold issue is at the root of Wagner's termination.

Chamber President Brett Posey said the board recognizes Wagner's years of service.

"But with the growth of the city and the chamber the board feels like it's time for us to take a different direction," Posey said.

He said the board will be looking for a new director and the office, which has been closed since Monday, will reopen at 8 a.m. today.

Posey said he's been to the office each afternoon to return any calls left for the chamber.

In June 2007, the chamber

closed its office on Main Street after mold was discovered there. Employees worked out of their homes until the office was moved to its current location at the Madison West Office Park on Lime Quarry Road.

Mold has also been found at the new office, Aldridge said.

He said the mold issue has resulted in ongoing health problems for Wagner and chamber employees Robin Henagar, Sandra Payne and Brittany Wagner, Wagner's daughter.

Payne resigned from her chamber position Wednesday, Posey said.

The chamber leased the Main Street building from the city for a small annual amount that was deducted from the city's annual appropriations to the agency.

When notified last year about a potential mold problem, the city paid mold removal specialists EnviroSafe \$19,695 to inspect and clean the building to be safe for occupancy. The city also spent \$4,688 for a new air conditioning system for the building.

Aldridge said he hired independent toxicologist Dr. Richard Lipsey of Jacksonville, Fla., to inspect the building. After an inspection last August, Lipsey's report said unsafe levels of mold and bacteria were found in the building.

City Councilman Larry Vannoy, the council's liaison to the chamber, also requested another inspection of the building after the chamber moved out.

Mayor Sandy Kirkindall said Wednesday he received the most recent inspection report Tuesday. He said he hasn't yet gone through the report in detail, but it appears the report indicates the building is still safe for occupancy. The city is looking to have the building appraised for sale or lease.

Aldridge said Wagner, her daughter, Henagar and Payne have all undergone specialized treatment in Dallas, Texas, for the mold exposure. The employees have continued to work while dealing with their illnesses.



Panel Hears Testimony on Toxic Mold

by COLIN MOYNIHAN - cityroom.blogs.nytimes.com

The New York State Toxic Mold Task Force, which [first met in December](#), convened in an office building in Lower Manhattan on Tuesday for a daylong meeting on the health and economic impacts associated with [mold](#).

The task force, which was formally established in 2005 but did not [begin work](#) until last year, is to prepare a report for the governor and the Legislature.

One task force member, Christopher D'Andrea, a research scientist at the New York City Department of Health and Mental Hygiene, presented the panel with an update on guidelines that his department was preparing to advise residents on how to find mold and get rid of it.

He said that the city received about 20,000 mold complaints each year and issued about 14,000 citations. But not all mold problems rise to the same level. Mr. D'Andrea projected a slide of a shower stall, three feet long by three feet wide, to illustrate the type of potential mold environment that people ought to feel comfortable taking a brush or sponge to on their own.

In contrast, in places where mold has spread over 100 square feet, Mr. D'Andrea said, professional mediators are appropriate, along with workers wearing respirators, coveralls and gloves. In some situations, he said, mold removers might even want to consider using an airlock to separate mold-infested zones from other areas.

Just before noon, the task force took a break for lunch. Downstairs, on Broadway, several dozen demonstrators were gathered, holding aloft banners and a jumbo model of an asthma inhaler. They said that they were concerned about adverse health effects connected to mold, but that they had been blocked from attending the meeting.

(Officials said that the meeting was open to the public but that participants had to register their names in advance; the demonstrators said they had indeed



registered, only to be told there was no record of their having done so.)

"Neither New York City or New York State has strong regulations around mold," said Irene Tung, the director of organizing for [Make the Road New York](#), an advocacy group that organized the demonstration. Ms. Tung said that she arrived with about 40 people.

In the afternoon session, other witnesses described their experiences, both professional and personal, with mold.

Lourdes Rodriguez, a resident of Bushwick, Brooklyn, told the task force that many people in her neighborhood suffered from asthma exacerbated by mold.

Continued on page 28

Panel Hears Testimony... continued from page 27



Guy Keith Vann, a lawyer who has represented plaintiffs in mold-related cases, submitted 15 academic papers to the task force that he said illustrated the dangers of mold in construction, particularly in walls and ceilings that become waterlogged.

He noted that mold was one of only several environmental hazards. "Mold has gotten a lot of attention because it is visible," he said. "Bacteria can grow and grow, but you're never going to see it."

Another witness was Dr. Eckardt Johanning, who specializes in occupational and environmental medicine and for 15 years has treated people affected by mold. He works with the [Fungal Research Group](#), a nonprofit group based in Albany that promotes the study of the health effects of airborne exposure to mold in workplaces and other group settings.

While it is widely known that mold can worsen allergies, Dr. Johanning said, new research has associated mold with other disorders, including depression and neurological conditions.

"These toxins that are produced by the mold are very potent chemicals," he said.

Cheryl Borden, who lives in Huntington, N.Y., told the panel that she was exposed to mold for 16 months in 1999 and 2000 while living in Woodbury, N.Y. She said she had suffered from upper-respiratory infections and yeast in

her lungs and become acutely sensitive to changes in environmental conditions.

Ms. Borden, who said she favors strict laws controlling mold, said she had attended all of the task force's meetings. "I want them to see my face every time," she said. "I want them to remember me."

Anticancer drug developed from *Aspergillus fumigatus*

<http://www.aspergillus.org.uk/>

[Fumagillin](#) is a secondary metabolite of *Aspergillus fumigatus* and belongs to that much-feared and maligned group of substances associated with fungi - mycotoxins.

[This report](#) follows the story of the discovery that this toxin might be useful.

First came a stroke of luck (and the ability to take advantage of that luck) reminiscent of the story of Fleming's [discovery of penicillin](#).

"The fungus was discovered by Harvard's Donald Ingber by accident while trying to grow cells that line blood vessels, or endothelial cells. The cells were affected by the mold in a way that prevented the growth of small blood vessels called capillaries."

The 'mycotoxin' was found to 'toxic' towards cancerous tumours as it prevented the growth of blood vessels in tumours, thus limiting their ability to grow (an activity referred to as anti-angiogenesis).

Having recognised this tremendously useful property a man-made version of the metabolite ([TNP-470](#)) was [developed in the early 1990's](#) by a company in Japan in an attempt to develop an anticancer drug. Unfortunately it was not successful:

"the drug would not stay in the body for very long and required continual infusions. It also affected the patients' brain causing dizziness, depression, and other side-effects. Takeda Chemical Industries dropped it."

Years later we have developed the technology to encase drugs in molecular capsules that prevent them being broken down via stomach acid. An encapsulated version of TNP-470 was developed (now called to as Lodamin) and now it was found to be absorbed by the intestines and then go straight to the liver with no sign of side effects in mice.

Tests on mice show good activity against aggressive liver tumours but there are no reported results in humans yet. [READ MORE](#)

Promising Cancer Drug Developed From Accidental Fungus

<http://www.aspergillus.org.uk/> (June 2008)

According to a group of U.S. researchers, a drug created from both a fungus that contaminated a lab experiment, and nanotechnology could be effective in fighting a broad range of cancers.

The drug, called lodamin was improved in one of the final experiments overseen by recently deceased Dr. Judah Folkman, a pioneer of angiogenesis therapy – a process that starves tumors by keeping them from growing blood supplies.

Folkman's team has been working to perfect the angiogenesis drug for 20 years. According to the journal *Nature Biotechnology*, his associates developed a formula that works as a pill, without side effects.

SynDevRx, Inc, a privately held Cambridge, Massachusetts biotechnology company, has licensed lodamin.

The drug worked against a variety of tumors, including neuroblastoma, ovarian cancer, brain tumors known as glioblastomas, uterine tumors, and breast cancer when tested in mice.

Ofra Benny of Children's Hospital Boston and Harvard Medical School reported that lodamin helped stop primary tumors and also prevented their spread.

"Using the oral route of administration, it first

reaches the liver, making it especially efficient in preventing the development of liver metastasis in mice," colleagues reported. "Liver metastasis is very common in many tumor types and is often associated with a poor prognosis and survival rate," they added.

"When I looked at the livers of the mice, the treated group was almost clean," Benny said in a statement. "In the control group you couldn't recognize the livers -- they were a mass of tumors."

The drug was originally isolated from a fungus called *Aspergillus fumigatus* fresenius and was known experimentally as TNP-470.

The fungus was discovered by Harvard's Donald Ingber by accident while trying to grow cells that line blood vessels, or endothelial cells. The cells were affected by the mold in a way that prevented the growth of small blood vessels called capillaries.

TNP-470 was developed by Ingber and Folkman with the help of Takeda Chemical Industries in Japan in 1990.

But the drug would not stay in the body for very long and required continual infusions. It also affected the patients' brain causing dizziness, depression, and other side-effects. Takeda Chemical Industries dropped it.

Efforts to improve the drug were unsuccessful until Benny tried using nanotechnology and attached two polymers to TNP-470 to protect it from stomach acid.

The altered drug, now called lodamin, went straight to tumor cells and suppressed lung cancer and melanoma in mice, without side effects, Benny said.

According to researchers, untreated mice had tumor covered livers, while mice treated with lodamin had normal livers and spleens.

Benny's team reported that after twenty days, four out of seven untreated mice died, while all the mice treated with lodamin were still alive.

"I had never expected such a strong effect on these aggressive tumor models," Benny said.

Researchers believe lodamin may also be useful in age-related macular degeneration and other diseases marked by abnormal blood vessel growth.

Water used to put out Texas Governor's Mansion fire causes mold problem

JOHN MORITZ *Star-Telegram*

AUSTIN (June 19)— Not long after the arson fire at the Governor's Mansion was brought under control, authorities encountered a second threat to the 152-year-old building that's registered as a national landmark: mold.

John Braun, the construction manager overseeing the early phases of how to restore the mansion, said the water that had collected in the basement from efforts to save the building from the June 9 blaze became a breeding ground that allowed mold to advance to the sections of the upper two floors that officials hope can be salvaged.

Even though the state fire marshal's office and agents from the U.S. Bureau of Alcohol, Tobacco and Firearms still considered the burned-out hull a crime scene early last week, Braun's crew was allowed on the premises to start eradicating the mold. Braun does not expect the remediation to slow the restoration.

"It just means we'll have to work harder," Braun said in a briefing for reporters to discuss the condition of the 10,000-square-foot white mansion across from the Capitol.

The damage

Historical architect Tere McConnell said the most severe damage was done to the mansion's front door, its transom and the front porch. That's understandable because surveillance video shows that the fire was started by someone hurling a Molotov cocktail onto the porch. The impact sent a ball of flame from the porch to well past the second story.

McConnell said that because the state keeps an extensive collection of photographs and other archives on file, she's confident that the unique design of the door and transom can be replicated with historical accuracy.

The cleanup

Braun said the biggest immediate challenge is to clear the massive amount

of debris, especially from the top floor, and to brace the top of the outer walls so the roof can be removed and replaced. The floors and outer walls remain reasonably sound, he said.

It's too soon to say when crews can transition from cleaning up to rebuilding or how much the whole project is likely to cost, Braun and others have said.

"I can safely say that we have never had this kind of challenge before," he said.

The investigation

Though there is video surveillance of the person setting the predawn fire, officials have not been able to identify the arsonist. The state has posted a \$50,000 reward for information that solves the crime. Tipsters can call 1-877-434-7345.



Arson suspected in the blaze that destroyed the moldy Texas Governor's Mansion

LITTLE KNOWN FACT ABOUT THE TEXAS GOVERNOR'S MANSION AND MOLD

Did you know?

When George W. Bush was the Governor of Texas, the Texas Governor's Mansion had a mold problem and was "remediated" in early 1999 at the taxpayer's expense.

Laura Bush reportedly complained of health symptoms which is what prompted testing the mansion for mold.

Not surprisingly, however, given the source of much of "W's" campaign funds (i.e. insurance company execs and PACS, builders, and

other stakeholders who would be adversely impacted by the liability issues) the seriousness of the mold problem was downplayed.

Remediation often fails when building materials containing mold are accidentally left in place. All one needs to do is "Just Add Water" and wham, you've got another serious mold problem.



The Texas Governor's Mansion

WORKERS BECOME ILL: County officials want to relocate several employees to a safer, temporary site.

MIKE MORRISON, Times-Union correspondent



CHRIS VIOLA/The Times-Union
McIntosh County Chief Appraiser
John Barnes stands next to the side
door of a mold-infested building.

It may be a little while before employees of the McIntosh County Tax Assessor's Office can breathe easier.

Their Darien office is infested with mold and, with no other county building to relocate the workers, County Manager Luther Smart is scrambling in search of a building to rent.

"We have nothing that can accommodate seven desks," Smart said, "so we'll have to find something to rent on a temporary basis."

Smart and Chief Appraiser John Barnes toured one vacant building this week and plan to visit several more.

"We'll have to look around some more and see what else is out there," Smart said. "We've already had to rent one building for Emergency Medical Services because their building was destroyed by the Mother's Day tornado."

Barnes said several of his employees have been stricken with illnesses possibly linked to the mold.

"I've got staff dropping like flies," he said. "We have an extremely high count of mold in the air."

Two workers missed work Monday with upper respiratory infections, Barnes said, one despite working while wearing a respirator. Another has a thyroid problem, and yet another a kidney infection.

"The type of mold we have, all of these things can be attributed to it," Barnes said.

A certified mold inspector documented the problem after being called in by the county. He discovered a laundry list of molds, Barnes said, including cladosporium and aspergillus.

According to a report compiled by mold specialist Russell Gladding of Townsend, the molds, while not toxic, produce microtoxins and are known allergen irritants.

"In these quantities inside, they are capable of sensitizing humans and causing them to have allergic reactions," Gladding wrote. "Persons with allergies, asthma or immune-compromised systems may be subject to respiratory problems or other related symptoms, including wheezing, sneezing, coughing, watery eyes, headaches or other health problems."

Barnes said the mold is visible in bathrooms, closets and the attic crawl space. He theorized that it got started after water pipes in the wall and under the floor burst in January 2006.

"There was two to three inches of water on the floor," he said.

Workers vacuumed up the water and removed the 1960s-era shag carpet, but still "it stunk of mildew in here for months and months after that," Barnes said.

Barnes said his staff is continuing to work on the tax digest despite the mold problem. But he wants out of the building, which once served as the sheriff's residence.

"The county's got to do something or we're going to be between a rock and a hard place," he said.

Smart said he'll move as fast

as he can to relocate the office.

"We're going to do it in an expedited manner," he said.

Then, he'll have to deal with the cleanup.

"I can't estimate how much that's going to cost right now," he said, "but it's going to be expensive."

SPEAKING OF TAX ASSESSORS...

Did you know that mold damage, or for that matter, any needed repairs, may allow you to lower your property taxes?

It's true.

Property taxes are based on fair market value of a property. If the property is in need of repairs, or is uninhabitable because of environmental problems, you should appeal (challenge) the assessed value by the amount of money required to properly repair the structure.

Email info@policyholdersofamerica.org for more info and free help appealing your assessed value.