

## **Water Damage Claims & Mold**

By Everette Lee Herndon, Jr.

Mold can appear in many types of losses, both first party and liability. Some of these losses are covered; some are not. If the water damage is the result of a covered loss, the resultant mold damage is probably also covered and must be considered by the adjuster in preparing the scope of damages and determining the cost of repairs. The New York City Guidelines on Assessment and Remediation of Fungi in Indoor Environments should be considered by insurance companies and adjusters as the accepted standard on how to deal with mold.

While all insurance claims should be responded to and handled promptly, timeliness on a covered water damage claim is critical. A prompt response by the insurance company and an immediate commencement of clean up and drying is essential. The adjuster should be on-scene and coordinating efforts within 24 to 48 hours.

A visual inspection is the most important step for an adjuster in identifying possible mold contamination. If the water damage is more than a few days old, the adjuster should check for mold as possible hidden damage in wall cavities or other areas damaged by water. An adjuster is expected to detect visible mold, to look for mold in certain areas such as water damaged wall cavities, to include the mold in the scope of damage and to call in the appropriate experts to assist and advise.

While the adjuster is an expert in claims handling and policy coverages, he may not have sufficient expertise in determining hidden damages and may need the assistance of an IAQ expert or mold remediation specialist. It is the responsibility of the adjuster to call in or authorize any expert he needs to determine scope, damages or repairs.

The general rule of thumb is that if the adjuster can see mold, the mold has to be removed. If the contaminated area exceeds 10 sq ft, the adjuster should consider authorizing a properly trained specialist to remove the contaminated material. It is strongly recommended that the adjuster call in an expert for any contaminated area involving 30 to 100 sq ft. If the area exceeds 100 sq ft, a certified professional is necessary, both for the adjuster's safety and for that of the building occupants.

Once the properly trained vendor finds and starts to remove the mold contaminated materials, such as sheetrock, he should be authorized by the adjuster to keep on removing the material until no more mold is found. Authorization may be needed to decontaminate the structure and personal property involved. The adjuster may need to authorize tests to determine if the structure is safe for occupancy.

A quick response to the reported loss will allow the adjuster to determine if the mold was pre-existing or is a result of the covered water damage. If the adjuster inspects the loss within 24 to 48 hours of the initial damage, it is likely that any visible or detected mold may be the result of

a pre-existing water problem, possibly the result of a long term leak, and excluded from coverage. As the expert in claims handling and policy coverages, it is the adjuster's responsibility to seek out and identify any and all covered damage involved in the loss, either on his own or with the assistance of the contractor, and then to extend to the insured any and all benefits available under the policy. Denial of the mold contamination as being excluded under the policy, either subject to the standard mold exclusion or as not being part of the covered loss itself, requires that the adjuster prove and document the basis for the denial.

Insurance companies and adjusters should be taking note of the dangers of mold contamination. However, the Cleveland Plain Dealer, in August 1998, quoted Dan Zielinski of the American Insurance Association as saying "...insurance companies will not take note of [Stachybotrys atra] until they are faced with numerous losses because if it."

Unfortunately, not all companies are training their adjusters how to deal with mold contamination claims. As a result, the insurance industry is now being faced with numerous losses and lawsuits, some of them very expensive. In the last seven years in California, there have been a number of lawsuits involving mold resulting from water damage. Many cases had settlements over \$500,000. In one case, the policyholder recovered over \$2.5 million. In another case, the policyholder recovered over \$9 million.

If the adjuster, because of a lack of expertise or through oversight, does not give proper attention and consideration to the mold contamination, the policyholder or the contractor should not hesitate to point out the problem to the adjuster. While mold does not develop in every water damage loss, the adjuster must be aware of the potential for mold. The adjuster must look for mold when the circumstances warrant. The adjuster must call in the appropriately qualified expert for guidance as needed.

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