

CONTENTS

Note: A summary table of contents is provided here. Detailed tables of contents precede each chapter.

About the Author

Glossary

Acronyms

Websites

PART I ABOUT MOLD

Chapter I-1 Identifying Mold

About This Book	I-1.A 1
A. Introduction.....	I-1.A 2
1. The Ubiquitous Problem	I-1.A 2
2. Texas Controls Mold.....	I-1.A 3
3. The <i>Ballard Allison</i> Case	I-1.A 4
B. What Is Mold?.....	I-1.B 1
1. Forms of Mold	I-1.B 2
2. Mold Spores	I-1.B 4
3. Causes of Mold	I-1.B 7
4. Measuring Mold in Humans	I-1.B 9
5. Mold in Humans	I-1.B 10
C. Effects of Mold	I-1.C 1
1. Indicators of Sick Building Syndrome.....	I-1.C 2
2. Indicators of Building Related Illness.....	I-1.C 2
3. Health Effects and Symptoms Associated with Mold Exposure	I-1.C 4
D. Testing for Mold.....	I-1.D 1
1. Visual Inspection	I-1.D 1
2. Expert Analysis.....	I-1.D 2
3. Air Monitoring	I-1.D 3

4.	OSHA Recommendations.....	I-1.D 4
5.	Analysis of Environmental Samples.....	I-1.D 6
6.	Canadian <i>Guidelines</i>	I-1.D 7
E.	Dealing with Mold.....	I-1.E 1
1.	Medical Evaluation	I-1.E 1
2.	Medical Relocation	I-1.E 2
3.	Evaluation of Test Results	I-1.E 2
F.	Mold Remediation.....	I-1.F 1
1.	Emergency Services.....	I-1.F 1
2.	Mold Levels	I-1.F 2
3.	Containment.....	I-1.F 3
4.	Certification	I-1.F 3
5.	Regulation of Fungus Testing.....	I-1.F 4
6.	Mold Myths.....	I-1.F 7

Checklist

Appendices

Chapter I-2 Protecting Against Mold

A.	How to Check for Mold Before You Buy.....	I-2 1
1.	Infrared Detection of Mold	I-2 1
2.	Building Information	I-2 2c
B.	Obligations of a Building Owner	I-2 8b
1.	Duty to the Property	I-2 8b
2.	Duty to the Occupants.....	I-2 12
3.	Duty to Yourself and Your Property.....	I-2 13
4.	Common Claims Against Building Owners Regarding Mold	I-2 15
C.	Obligations of Responsible Parties	I-2 20b
1.	Architects, Engineers, and Building Contractors.....	I-2 20b
2.	Municipalities	I-2 22
3.	Contractors, Construction Managers, and Sureties.....	I-2 24
4.	Property Managers, Manufacturers, and Suppliers of Material	I-2 30
D.	Taking Precautions	I-2 31
1.	Gathering Information about Claims of Injury or Illness	I-2 31
2.	Methods to Avoid Mold Suits.....	I-2 34
3.	Protect Yourself Against Mold	I-2 34

E.	Remediation.....	I-2 35
1.	Institute of Inspection, Cleaning, and Restoration Certification.....	I-2 35
2.	Federal OSHA Requirements	I-2 43
3.	Texas OSHA	I-2 47
4.	Navy Environmental Health Center.....	I-2 48
5.	State of New York	I-2 50
6.	Building Air Quality, A Guide for Building Owners and Facility Managers.....	I-2 52
7.	The Center for Disease Control (CDC)	I-2 53
8.	HEPA-Filtered Vacuums	I-2 55
9.	Environmental Health Directorate Health Canada	I-2 56
10.	Managing the Risk of Mold	I-2 59
11.	United States Government Accountability Office	I-2 64
F.	Litigation for Remediation Failure	I-2 66
G.	Conclusion	I-2 66

Checklist

Appendices

PART II THE INSURED’S CONCERNS REGARDING MOLD

Chapter II-1 Understanding Mold Insurance

A.	Insurance	II-1.A 1
1.	Rules of Contract Interpretation.....	II-1.A 2
2.	How Does Property Insurance Respond to Claims of Mold Damage?	II-1.A 13
3.	Hurricanes and Insurance Coverage	II-1.A 23
B.	The Insured’s Duty to Mitigate Mold Damage	II-1.B 1
1.	Understand Your Coverages.....	II-1.B 6
C.	Conditions, Warranties, and Exclusions.....	II-1.C 1
1.	Conditions	II-1.C 1
2.	Warranties	II-1.C 5
3.	Exclusions	II-1.C 21
D.	Common Exclusions in Insurance Policies That Relate to Mold or Fungi.....	II-1.D 1
1.	Water Damage	II-1.D 4
2.	Pollution.....	II-1.D 7

3.	Professional Services	II-1.D	10
4.	Burden of Proof.....	II-1.D	10
5.	Good Faith	II-1.D	13
6.	Implied Covenant of Good Faith and Fair Dealing	II-1.D	14
7.	Different Types of Insurance Policies and Mold	II-1.D	18
8.	Analysis of Policy Exclusions	II-1.D	22
9.	Defective Construction Resulting in Mold	II-1.D	24
10.	Professional Advice Exclusions and Mold	II-1.D	25
11.	Mold Exclusions—Conflicting Court Decisions	II-1.D	26
E.	Insurance Needs of Restoration and Remediation Contractors	II-1.E	1
1.	The Effects of Mold Exclusions on Restoration Contactors.....	II-1.E	2
2.	The Change in Liability Insurance Needs of Contractors is Permanent	II-1.E	4
3.	Expert Assistance Is Essential to Obtain Appropriate Insurance....	II-1.E	5
Checklist			
Appendices			

Chapter II-2 Presenting Your Mold Insurance Claim

A.	Presenting Your Mold Insurance Claim.....	II-2	1
1.	Discovery of Mold	II-2	1
2.	The Notice of Loss.....	II-2	3
3.	First Contact with the Adjuster	II-2	7
4.	First Meeting with the Adjuster	II-2	8
5.	Protect All Property from Further Damage	II-2	9
6.	Document the Loss	II-2	9
7.	Understand Your Rights	II-2	10
B.	What May Be Covered by Your Homeowners or Structure Policy	II-2	20
1.	Dwelling.....	II-2	20
2.	Additional Living Expenses.....	II-2	21
3.	Personal Property	II-2	21
C.	Causes Insured Against	II-2.C	1
1.	Water Damage	II-2.C	1
2.	Wind Damage	II-2.C	2
3.	Building Code Upgrades.....	II-2.C	12

4.	Direct Risks of Physical Loss	II-2.C	12
5.	When Mold Damage Is Considered a Covered Direct Loss	II-2.C	13
D.	How the Payment Process Works.....	II-2.D	1
1.	Replacement Cost Versus Actual Cash Value	II-2.D	1
2.	Commercial Claims	II-2.D	3
3.	When You and the Adjuster Do Not Agree	II-2.D	4
4.	What to Do if You Disagree with the Settlement Offer.....	1 II-2.D	2
5.	When Everything Fails	1 II-2.D	14
6.	When You and the Insurer Agree	1 II-2.D	15
7.	Hurricane Claims	1 II-2.D	6

Checklist

Appendices

PART III THE INSURER’S CONCERNS REGARDING MOLD

Chapter III-1 Underwriting Mold Claims

A.	Beginning the Insurance Process.....	III-1	1
1.	Underwriting	III-1	1
2.	Obtaining Information for Underwriting Against Moral Hazards.....	III-1	13
3.	Obtaining Information for Underwriting Against Morale Hazards ...	III-1	19
4.	The Underwriting Presentation	III-1	23
B.	Conclusion	III-1	26

Checklist

Chapter III-2 Investigating Mold Claims

A.	Liability Insurance.....	III-2	1
1.	Liability of Third Parties.....	III-2	4
2.	Bodily Injury and Property Damage Coverage.....	III-2	6a
3.	Personal Injury Liability Coverage	III-2	18
4.	Homeowners Policy Unambiguously Excluded Coverage for Mold...	III-2	23
5.	Flood Insurance.....	III-2	25
B.	Investigation of a First Party Claim where Mold Is Suspected	III-2	28
1.	First Party Property Coverage.....	III-2	32
2.	Claims Handling and Investigation.....	III-2	42

C. Workers’ Compensation and Disability Insurance.....III-2 46

1. Workers’ Compensation III-46

2. Disability..... III-46a

D. Potential for Fraud III-2 46d

1. Red Flags III-2 48

2. Sources of Information to Verify Reports III-2 49

E. How an Insurer Should Handle a Claim.....III-2 50

1. The *Ballard Allison* Case III-2 50

F. ConclusionIII-2 62

Checklist

Appendices

Chapter III-3 Regulating Mold Claims

A. Regulating Mold Claims.....III-3 1

1. United States Regulations III-3 1

B. Case Studies: Courts in Conflict.....III-3 21

1. “No Coverage” Cases III-3 21

2. Anti-concurrent Causation Clauses..... III-3 25

3. The “Rot” Exclusion III-3 31

4. The “Faulty Design/Workmanship” Exclusion III-3 33

5. The “Latent Defect” and “Inherent Vice” Exclusions III-3 35

6. Coverage Exists III-3 38

C. Mould and Fungi in CanadaIII-3.C 1

D. US Government StandardsIII-3.D 1

Checklist

Appendices

PART IV LITIGATION

Chapter IV-1 Litigating Mold Claims

A. InvestigationIV-1 1

1. The Claimant’s Investigation..... IV-1 1

2. The Respondent’s Investigation..... IV-1 2

3. Documentation..... IV-1 3

B. Preparation for Litigation against an Insurer.....IV-1 6a

1. Comply with All Policy Requirements and Conditions..... IV-1 6a

2. Establish a Causal relationship with a Covered Peril IV-1 6a

3. The Use of Publicity IV-1 7

C. Preparation for the Defense of a Policyholder SuitIV-1 9

1. Documentation Collection IV-1 9

2. Enforce Policy Requirements and Conditions IV-1 10

3. The Use of Counter Publicity IV-1 11

4. The Genuine Dispute Doctrine IV-1 13

5. The Statute of Limitations IV-1 16

D. LawsuitsIV-1 24

1. The Declaratory Relief Lawsuit..... IV-1 24

2. The Breach of Contract Lawsuit..... IV-1 26

3. Lawsuit Against Person Responsible..... IV-1 27

4. Types of Torts IV-1 29

E. Presenting Expert Testimony in Mold CasesIV-1 49

1. Preparing the Expert on Cause..... IV-1 49

2. Preparing the Expert to Testify IV-1 50

3. Performing an Environmental Survey IV-1 54

4. Consideration of *Daubert* and *Kumho Tire* IV-1 57

5. Expert Testimony..... IV-1 59

6. Experts Used IV-1 67

7. Causation Required to Prove Injury from Mold IV-1 74

8. Jurisdiction..... IV-1 79

9. Bad Faith and Mold IV-1 80

10. Insurer Fiduciary Duty IV-1 81

F. Statute of LimitationsIV-1 82

G. Workers' CompensationIV-1 85

H. Private Limitations of Action ProvisionIV-1 87

I. Mold, Crime and Parental RightsIV-1 88

J. Disability Claim.....IV-1 88

Checklists

Appendices