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INDOOR ENVIRONMENTAL ISSUES AND INFORMATION . . . TODAY

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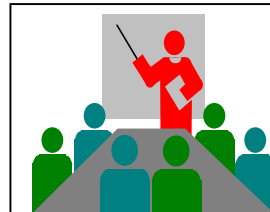
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California Jury Returns Defense Verdict for School District in Student's Mold-Related Personal Injury Lawsuit

A Contra Costa County jury declined to award a former elementary student damages, including \$200,000 in medical bills, for alleged mold exposure in her classroom. Plaintiff's teacher inadvertently left a faucet running in her classroom over a weekend in 1997. Some teachers and students complained that the resultant moldy smell made them temporarily sick.



Plaintiff sued the school district alleging that the moldy condition triggered her existing genetic neurological disorder that causes seizures. Her attorney argued that the only change in plaintiff's environment, at the time her disorder manifested, was the mold in her classroom.

The defense argued that there was only a small amount of mold that resulted from the incident and air tests indicated that the specific molds present were not the "toxic" varieties. Moreover, the defense argued that there is insufficient medical and scientific support to show that inhalation of mold spores can trigger a genetic neurological disorder.

The jury returned a defense verdict on behalf of the school district, finding that plaintiff failed to prove that her genetic disorder was caused by her exposure to a moldy classroom. As a result of the lawsuit, the school has modified and enhanced its response protocol for abating mold in the classroom.

Expert Testimony on Mold-Related Cognitive Defect Permitted at Trial, Jury Rejects Claim

A Pennsylvania court permitted expert testimony concerning the link between plaintiff's mold exposure and his impaired cognitive function because the expert opinion was supported by scientific and medical evidence. This decision marks one of the first cases where a court has failed to grant a defendant's motion to exclude such expert testimony.

Despite hearing the experts' testimony, the jury still determined that plaintiff did not prove his injury was related to the mold in his home. See *Traub v. Crawford & Company, et al.* No. 1995-153-C-153 (Pa. Comm. Pls., Lehigh Cty.)

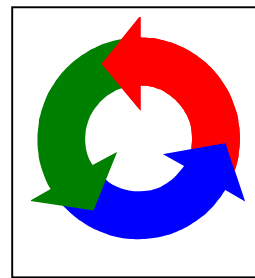
Plaintiff homeowners, Seymour Traub and Susan Traub, sued their storm damage adjuster for negligently advising plaintiffs on repairing the ice and snow damage to their home. The "improper" advice allegedly led to a "total loss" of plaintiffs' home and personal possessions along with permanent health injuries and psychological trauma caused by the resulting mold. Plaintiffs received over a million dollars in property damage settlements, but proceeded to trial on the personal injury claims.

The court found that the testimony of well-known plaintiffs' experts, neuropsychologist, Wayne Gordon, Ph.D. and physician, Eckardt Johanning, M.D., was sufficiently supported by peer reviewed literature. The experts specifically testified that plaintiff Seymour Traub had cognitive impairment and Restrictive Airways Disease Syndrome (RADS) from exposure to *Aspergillus* and *Penicillium*.

Though the jury found the adjuster negligent, the jury did not find a substantial connection between the adjuster's negligence and plaintiff's injuries.

California Studies Potential Health Effects of Airborne Mold in Composting

According to the Environmental Health Investigations Branch of the California Department of Health Services (DHS), there are over 80 operational green-waste composting sites in California. Though such facilities have traditionally considered odor and aesthetics when conducting their operations, DHS has recently released a report addressing concerns over the potential health effects of airborne molds arising during the composting process.



DHS assembled a panel of experts on bioaerosols, risk assessment and composting to consider whether current composting operations endanger the health and welfare of the general public and the environment.

The panel did not find epidemiological evidence to support increased risk of allergic, asthmatic, acute or chronic respiratory disease in the general public at or around the open air composting sites evaluated. The major basis for this conclusion was the fact that workers, regarded as the most exposed part of the community, did not show adverse health effects from their occupational mold exposure.

However, the group concluded that there were subgroups within the population that were potentially more susceptible to injury from the levels of airborne molds released in the composting process such as people in nursing homes or hospitals and people with compromised immune systems.

DHS concluded that risks associated with the inhalation of mold spores could be reduced by containing dust to the maximum extent feasible

through a combination of design, site planning, maintenance and operations decisions. DHS is considering establishing a recommended minimum distance (buffer zone) to any residence, school or hospital following additional study of the issue.

Insurance Companies Are Dropping Mold Coverage Due to Skyrocketing Claims and Costs

Insurance companies paid in excess of \$1.3 billion last year to remove mold and repair mold-damage to homes, according to Bob Hartwig of the Insurance Information Institute, a trade group. The state of Texas accounted for 70% of all mold claims in 2001, but these claims are increasing nationwide. In response, most insurance companies are moving to exclude mold coverage from home owner's insurance.



State Farm, the largest home insurer has eliminated coverage for mold in 33 states. Allstate, the second largest home insurer, has limited clean-up costs to \$5,000 in many of its policies and added language to clarify it does not cover "mold, fungus, dry or wet rot or bacteria" unless the problems arise from events already covered by the policy.

Hartford, Travelers, Chubb and American International seek to drop mold coverage in dozens of states. The Automobile Club of Southern California, like a few regional insurers, currently have no plans to file for mold-exclusions.

California alone has approved 247 mold-exclusion filings that will allow insurers to drop or limit coverage on new policies. There are another 115 filings pending.

U.S. Representative John Conyers (D., Mich), the

same Congressman proposing a federal law akin to the California's Toxic Mold Protection Act (see June/July Mold Matters), is now proposing a bill to create a federal insurance fund for homeowners whose insurance policies do not cover mold claims.

Hit by dwindling investment returns and big claims from a series of major storms and September 11th losses, the insurance industry says the moves are necessary to stem losses.

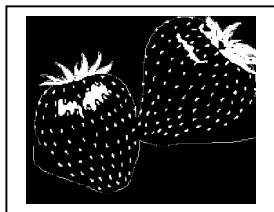
\$2.9 Million Jury Verdict Against Insurer Results in Settlement of Remaining Punitive Damages

A jury awarded two Sacramento apartment complex owners \$2.9 million in damages against their insurance company, Republic Western, for refusing to cover water intrusion and mold damages. After receiving the first phase of the verdict, the insurance company reached a confidential settlement as the jury deliberated on the punitive damages award.

Plaintiffs were in the midst of scheduled renovations to their apartment complex when the El Nino rainstorms of 1996 caused substantial damage to many units. The insurance company allegedly refused to fund installation of temporary roofing. Plaintiffs' sued Republic Western for inaction on their claim and the company's failure to timely pay the arbitration panel award of \$1.4 million.

Plaintiffs alleged that the insurance company knew that they were on the brink of bankruptcy and anticipated being able to avoid paying for the scope of the damage by their delaying tactics. The insurance company contended it satisfied its obligations under the policy by paying \$200,000 in advance. The insurance company cross-complained against plaintiffs alleging they committed insurance fraud during the claims process and the policy should be voided. See *Katayama International, Inc v. Republic Western Insurance Company*, No. 98AS00946.

Strawberry Farmers Use Honey Bees to Apply Helpful Mold



Strawberry farmers have enlisted unlikely allies in the fight to eliminate grey mold, a fungus harmful to strawberries – honeybees and more mold. Grey mold attacks strawberries, starting with the strawberry flower. Ohio State University researcher, Joe Kovach applied his knowledge of another fungus, Trichoderma, to attack the grey mold before it takes hold of the strawberry plant. To get the Trichoderma onto the strawberry flowers, Kovach put a petri dish of it in front of a bee hive. As the bees exit the hive, they walk through a foot bath of Trichoderma mold spores and carry the mold directly to the strawberry flower. This strategic smart bomb delivers the Trichoderma to the source of the problem without the cost or potential environmental effects that full scale spraying would entail.

Ironically, Trichoderma, one of the most widespread soil fungi, can sometimes also be an unwanted guest. It has been found growing indoors in carpet, on unglazed ceramics and on paper in damp homes. Some species of Trichoderma can even produce metabolites related to trichothecenes, which can be potentially toxic to humans in sufficient dose.

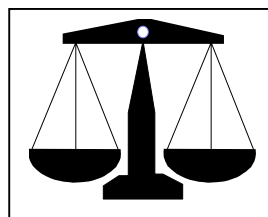
Massachusetts Legislation To Set Exposure Standards And Mandatory Disclosure Requirements

Massachusetts, following California's lead, is considering Senate Bill No. 2353, which would require its State Department of Health (DHS) to set permissible exposure limits in indoor environments, set standards for remediations and call for disclosure of known or suspected mold presence in real estate sales.

California passed a similar bill in 2002, however, the California DHS is taking no action to determine the feasibility of permissible exposure limits for indoor molds, claiming a lack of adequate funds to conduct the necessary research.

Sonoma District Attorney Considering Criminal Charges Against Landlord's Law Firm For Knowingly Concealing A Dangerous Condition – Mold

Sonoma County District Attorney, Michael Mullins, is investigating charges that a Honolulu law firm that handled evictions of hundreds of families in Sacramento and Santa Rosa was trying to avoid addressing mold problems in the residences. "There could be civil liability for knowingly concealing a dangerous condition," said Mullins.



The law firm allegedly began the evictions shortly after residents complained of indoor mold in homes build a decade ago. The landlord, responded that he simply wanted to sell the properties and reinvest his money elsewhere. Approximately 420 renters in Sacramento and 149 renters in Santa Rosa received 30-day eviction notices within one week from each other. Several tenants have filed lawsuits for mold related injuries and retaliatory evictions.

Texas Attorney General Investigating Mold Scam Bilking Insurers

The rapid proliferation of mold-related lawsuits has spawned a new type of insurance fraud called "cooking the house." The Attorney General in Texas is looking into allegations that some restoration companies are involved in a scam

whereby they convince customers that they have a terrible mold problem and need to vacate the house right away, then put wet towels around in the home, spray draperies and furniture with water, turn up the heat and shut the windows.

So far no mold removal firms have been indicted but search warrants have been issued and documents in the office of a Portland company were confiscated. The owner denied the allegations of improprieties and responded that this was simply a tactic of the insurance companies to find justification for not paying on legitimate claims.

Recent Mold Presentations:



In June 2002, Gordon & Rees partner Mike Pietrykowski was a featured speaker at the Building Owners Management Association (BOMA) Mold Seminar in San Diego.

Continuing Education Of The Bar (CEB)

September 12, 2002 6:00 p.m.-9:15p.m.
Toxic Mold: The New Asbestos?
Featured Speaker: Mike Pietrykowski

Mealey's Toxic Tort Seminar

November 18-19, 2002
Mealey's Toxic Tort Seminar
Boston, MA
Conference Co-Chair: Mike Pietrykowski

Mr. Pietrykowski's expertise includes litigating mold-related personal injury and/or property damage claims in both residential and commercial property settings.

Gordon & Rees partner, Sara M. Thorpe, was a featured speaker at DRI's Mold and Related Toxin Litigation and Claims Handling conference in San Diego in April 2002.



Ms. Thorpe's expertise includes litigating and providing advice on insurance coverage issues related to mold.

Not all fungus is "toxic", here is a delicious fungus recipe to enjoy. Bon Appetite!

Mushroom Bread Ring

- 500g Baking flour
75g Butter - melted
10ml Yeast, dried
250ml Milk - warm
1 Egg yolk
10ml Salt
5ml Sugar



Filling 500g Assorted Wild Mushrooms - cleaned & finely chopped

(Can use the leftover trimmings from other recipes)

- 75g Butter
100g Parmesan cheese - grated
10ml Thyme, fresh - chopped
Salt
Black pepper - freshly ground

To 100ml of milk, mix the yeast and sugar and stand for 10 minutes. Mix flour, salt, melted butter, yeast mixture and enough milk to make a soft dough. Knead the dough for 10 minutes then leave to double in volume in a covered warm greased bowl.

Sauté the mushrooms in butter until the liquid has evaporated. Remove from the heat and stir in the cheese and thyme adding salt and pepper to taste.

Once the dough has risen:

On a lightly floured surface, knead for a minute to flatten the dough, then roll into a large rectangle. Cover the surface with the mushroom mixture. Take the long edge, roll the dough into a (French bread shaped) cylinder, so that the mushroom layer becomes an enclosed spiral. Place onto a baking tray, bending round the ends so that it fits. Cover with damp cloth for 40 minutes whilst it rises a 2nd time.

Bake for 20 minutes at 200C, then for another 20 at 180C

Serve when almost cool

Contributions to Mold Matters made by Mike Pietrykowski, Sara Thorpe and Molly McKay.

Disclaimer: This information is provided courtesy of Gordon & Rees LLP. The information should be considered general in nature and does not constitute legal advice.