

# Mold Worries Creep Into Property Deals

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From *The Wall Street Journal Online*

Mold has become a huge legal and financial problem for homeowners and insurers, not to mention a significant health concern. Now it is turning into a big headache at commercial properties -- from apartments to hotels to shopping centers.

Archstone-Smith, a major owner of apartments in 22 states, recently said it will have to spend close to \$20 million to contend with a mold outbreak at one of its high-rise properties in southeast Florida.

Hilton Hotels Corp. in July shut one of six towers that comprise the Hilton Hawaiian Village in Waikiki after investigators discovered mold. Hilton so far has taken charges totaling \$20 million for the cleanup. A spokesman says the 453 guest rooms in the 25-story tower would remain closed for at least six more months.

Mold is even affecting big real-estate transactions. Last summer, a buyer at the last minute abandoned a \$30 million deal to purchase a 250-unit apartment complex in the Southwest because it had mold, according to Jones Lang LaSalle Inc., a Chicago real-estate services firm that represented the apartments' owner. Real-estate attorneys say mold inspections are increasingly becoming part of the industry's due-diligence process before taking on a transaction.

The fungal growth, found in damp or wet conditions, has been blamed for a number of health problems, including breathing difficulties, headaches, nausea, gastrointestinal ailments, skin rashes, severe allergic reactions and neurological damage. Mold-related expenses cost companies that underwrite homeowners' insurance \$1.3 billion in 2001, a number that is expected to grow this year, says the Insurance Information Institute, a New York-based trade group. The problem has been most severe in California and Texas.

Insurers and real-estate professionals contend the recent attention about mold has been stoked in part by trial lawyers. Jones Lang LaSalle estimates that more than 9,000 claims of personal injury, property damage or other loss caused by mold are pending in the nation's courts, and awards for property damage alone typically range from \$200,000 to \$400,000. Most of the cases involve single-family homes.

But the fact that mold problems are creeping into bigger properties is spooking commercial real-estate owners and insurers. Some of them fear mold may become an issue as big, contentious and costly as asbestos.

In August, an Orange County, Calif., mother and her three children won a \$900,000 settlement after claiming that their mold-infested rental apartment made them sick. The family won the settlement from the apartment complex's owner, KDF North Hills of Orange County, as well as a contractor who made repairs there, the property manager and the former owner, according to the attorneys for the family. KDF declined to comment.

The owner of a shopping center in Mission Viejo, Calif., was sued last year by its insurer, which claimed the mold found at the property wasn't covered under its policy. A judge sided with the insurer; the owner, the estate of James Campbell, is appealing that decision.

Robert P. Hartwig, chief economist at the Insurance Information Institute, says most insurers have reported triple-digit increases in the frequency of mold-related claims in commercial buildings over the past year. The cost of these claims is difficult to quantify, he says, because mold is lumped into categories such as construction defects or water damage, not broken out separately.

"It's an area of concern because you want tenants and occupants to be healthy in your buildings, but it's also one of the drivers for extremely high insurance costs," says Roger Platt, senior vice president at the Real Estate Roundtable, a Washington-based lobbying group whose 200 members include real-estate owners,

developers and managers. "And it's a concern because there is a rash of litigation. The fact that courts have become more open to mold-related claims has resulted in a lot more activity in that area."

Taking their cues from insurers that provide homeowner coverage, commercial insurers have begun excluding mold coverage in some of their liability policies when customers renew. American International Group Inc. began eliminating mold coverage for commercial real-estate owners within the past 12 months. CNA Financial Corp.'s CNA Insurance Cos. also started excluding mold this year in part "because of the change in the legal environment and in the plaintiff environment," says Dave Toombs, senior vice president, casualty underwriting. Chubb Corp. is examining its policy on mold, says a spokesman.

Some insurers have even started excluding mold from their property-damage policies as well, says the Insurance Information Institute. Previously, mold claims were allowed when they arose from the accidental discharge or overflow of water or steam, or due to a windstorm, according to the Insurance Services Office Inc., a Jersey City, N.J., provider of statistical data for the property-casualty insurance industry.

Others are considering excluding mold coverage in their traditional policies but offering it under separate environmental policies. The cost of such environmental premiums rose 5% to 10% in 2002, according to insurance broker Marsh, a unit of Marsh & McLennan Cos. of New York. Insurers expect these premiums to increase 10% to 15% in 2003, but the increases could expand over time. "Increases will be nominal until insurance underwriters begin to pay claims," says Eric T. Schake, a managing director at Marsh. "When they start to pay claims, increases will be substantial."

Meanwhile, legislators across the country are calling for more research into mold. States including California, Texas, New Jersey, Indiana and Maryland have established task forces or proposed legislation that will develop guidelines and regulations on the problem.

Earlier this year, Rep. John Conyers Jr., a Michigan Democrat, introduced a bill that calls for standardized licensing of mold remediators and inspectors as well as joint research between the Environmental Protection Agency, the National Institutes of Health and the Centers for Disease Control and Prevention to set standards on acceptable levels of mold. The bill also calls for a federal toxic mold insurance program and a tax credit for anyone who wants his home, apartment or business inspected. A similar bill is scheduled to be introduced in the Senate in January.

The CDC, meanwhile, commissioned the Institute of Medicine, a division of the National Academy of Sciences, to study the health effects from exposure to mold in damp indoor spaces. The study began in January and is expected to be completed late summer or early fall of next year, says Stephen Redd, the chief of the air pollution and respiratory health branch of the CDC's National Center for Environmental Health.

In the meantime, some building owners and managers say they have been increasing the frequency of building inspections for mold. Industry groups and trade associations ranging from the Building Owners and Managers Association International to the National Multi Housing Council have been supplying their members with guidelines and question-and-answer fact sheets, and hosting symposiums with health and environmental experts.

Boston law firm Mintz Levin Cohn Ferris Glovsky and Popeo PC recently held two symposiums on mold for real-estate professionals. "There's confusion and fear" in the commercial real-estate industry, says Jeffrey R. Porter, manager of Mintz Levin's environmental law section. "The real-estate community is most concerned that they might be subject to lawsuits whether they have merits or not that will result in the incurrence of a lot of defense costs that weren't anticipated."

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