

AFTER THE STORM: HURRICANES, MOLD AND INSURANCE

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2004 was a watershed year for mold. We saw a Texas remediator licensing bill with enough exemptions and holes to drive a herd of longhorns through. A licensing bill for assessors and remediators passed the Florida Senate but not the House. We saw at least one trial court permit testimony as to the potential neurological effects of mold on human health. Contrarily, the Institute of Medicine released a study confirming what science had already been proven as to adverse health impacts, while adding dampness alone as a respiratory ailment trigger, but finding insufficient studies to yet prove the neurological link.

For short term impact, none of these environmental events can compare to Florida's Summer of 2004. Whether due to global warming or a regular cycle of increased hurricane activity, this summer will long be remembered as the year hurricanes returned to Florida en masse. For those of us who live here, the cyclone of news coverage for days before and during the storms caused severe emotional distress in its own right. The preparation both in the office and at home cost the economy billions in lost revenue (other than for lumber, batteries and assorted concrete screws). But these costs may shrink in comparison to the yet to be discovered costs of the post-hurricane devastation and damage.

We saw that even a Category 2 storm can bulldoze homes, crush trailers like tin cans (well, we knew a strong breeze could do that), and rip roofs off apartment buildings. Even tropical storm force winds proved capable of blowing in windows, ripping chiller units from roofs, and knocking trees into buildings. Once the building envelope was breached, water entered. The combination of water intrusion, elevated humidity levels, and widespread interruptions in power service provided the perfect conditions for fungal growth.

The available insurance adjustors and restoration contractors could not address the huge number of properties rapidly enough. Further, a rapid dry-out necessitates the use of fans and dryers. Without power or a backup generator, a severely soaked property cannot be sufficiently dried. Many business owners, building owners, contractors and developers chose to dry out their buildings and remediate in accordance with recognized industry standards before moving occupants back in. A significant number, however, elected the quick fix in part because of the lack of mold insurance coverage. Knowing that significant water intrusion occurred, coupled with a loss of power should have been a signal to review and investigate the indoor environmental conditions. Further, non-qualified "remediators" may have exposed their unprotected employees to elevated health risks. What all of these actions or inaction mean is that six months after the hurricanes, the potential for lawsuits by occupants, buyers, or employees will appear. As issues are discovered, proper remediation may have to be performed after the fact, at costs far greater than if such had been done promptly after the hurricanes.

The second legal impact being seen is the result of limited or absent mold insurance coverage. Homeowners, limited to \$10,000 in mold coverage, but suffering six figure remediation and replacement bills, have begun looking for "construction defects" that may provide for a recovery from their builder. Building owners with no mold coverage try to find ways to remediate by performing a traditional demolition job, as that may be the only available insurance coverage. Distinguishing between

true water damage from those potential claims that are purely limited to mold is not simple. Often water sufficient to grow mold may have permanently damaged drywall and cabinets. The extent of hurricane damage makes it difficult for an insurer to distinguish defective design or workmanship from wind-driven damage.

Delays in re-opening due to mold remediation may not be covered by business interruption coverage, thereby forcing commercial properties to be opened and occupied prematurely or causing the owner to suffer continuing income shortfalls. Remediators are being leveraged to take shortcuts to either meet insurance industry permitted rate schedules or cut the time to re-opening. Any of these steps risk a greater cost if the health of the occupants is adversely affected.

If nothing else, the hurricanes have caused the business community to gain new awareness of the costs of water intrusion and mold contamination. My prediction is that building owners and developers will place a greater focus on seeking more expansive insurance coverage and protocols for dealing with the post-storm damage. Given that the National Weather Service believes we are in a more active hurricane cycle, we can expect many areas of the Southeast United States to be at risk from this type of extreme water event.

Insurers face risks on several fronts. Often the restoration contractors were either engaged by or referred to the owner by the insurer. If these companies damage the property of the insured, the insured may seek to hold the insurer liable. If there is no mold coverage for a property, but suspected mold growth in significant quantities is present, the restoration contractor may be charged with complying with the relevant industry standards regardless. Again, this may present risk to the insurer if the limits of the insurer's and the contractor's responsibility is not clearly noticed to the property owner. This has become particularly true after the Summer of 2004 given that final adjustments of claims on many properties still remain to be completed.

What can insurers do? Here's a list:

1. Assist important customers in reviewing insurance coverages - as to available mold coverage, amount of deductibles, and impact of a water and mold event on business interruption coverage.
2. After an event – make sure that the chain of responsibility of the restoration contractor is clear and that the insurer is not liable for the contractor's negligence.
3. After an event – look for signs of defects or poor maintenance that may have been the ultimate cause or exacerbated the damage.
4. After an event – keep detailed records as to the extent of water and other structural damage versus resultant mold and microbial contamination.
5. Plan ahead – have designated qualified investigators and contractors to handle post-hurricane impacts. Engage or cause the owner to engage the appropriate restoration personnel rapidly to minimize impact, particularly if mold coverage is included in the owner's insurance policy.
6. Address the impact on business interruption from direct storm-caused impacts with delays in re-opening caused solely by the presence of mold and other microbial contaminants.
7. Assist customers in identifying building components that may be less likely to provide a food source for mold after a water event.
8. Engage counsel with appropriate skill and experience to address indoor environmental concerns.