

MARSH

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Mould: Insurance Market Update and Dedicated Risk Transfer Solutions

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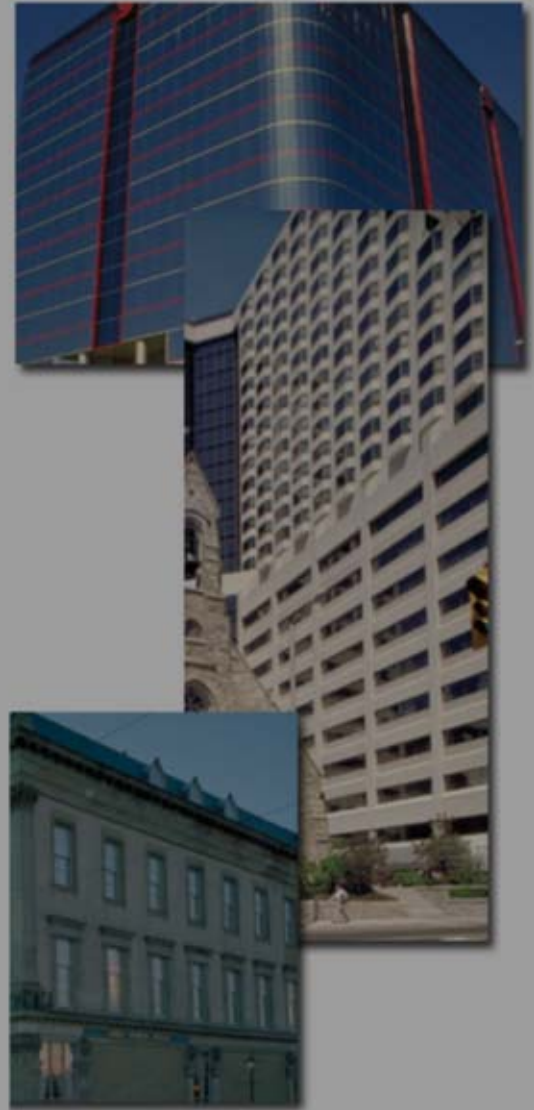
Business Development, Marsh Canada Limited



Marsh & McLennan Companies



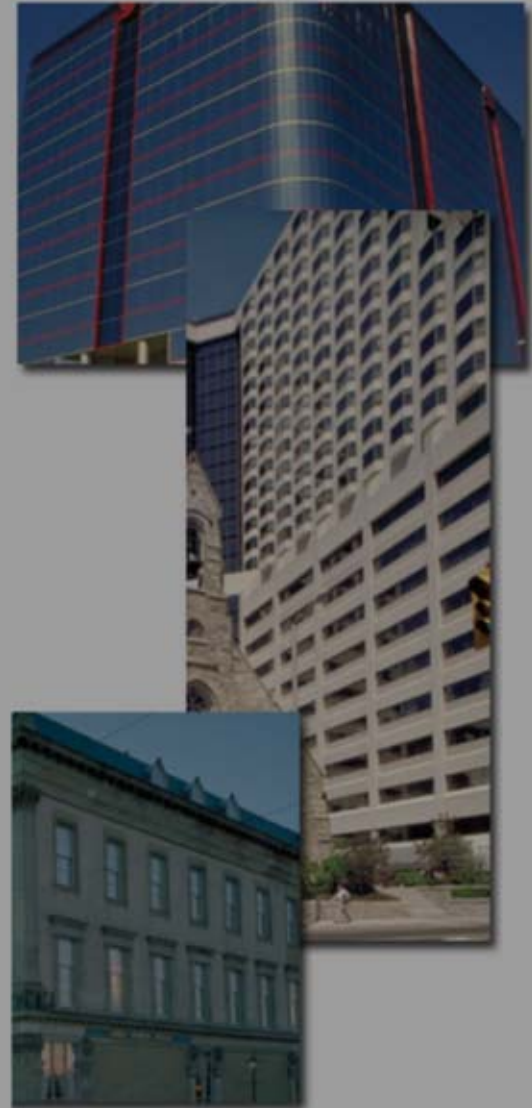
Insurance Solutions



Insurance Solutions

Points of Discussion

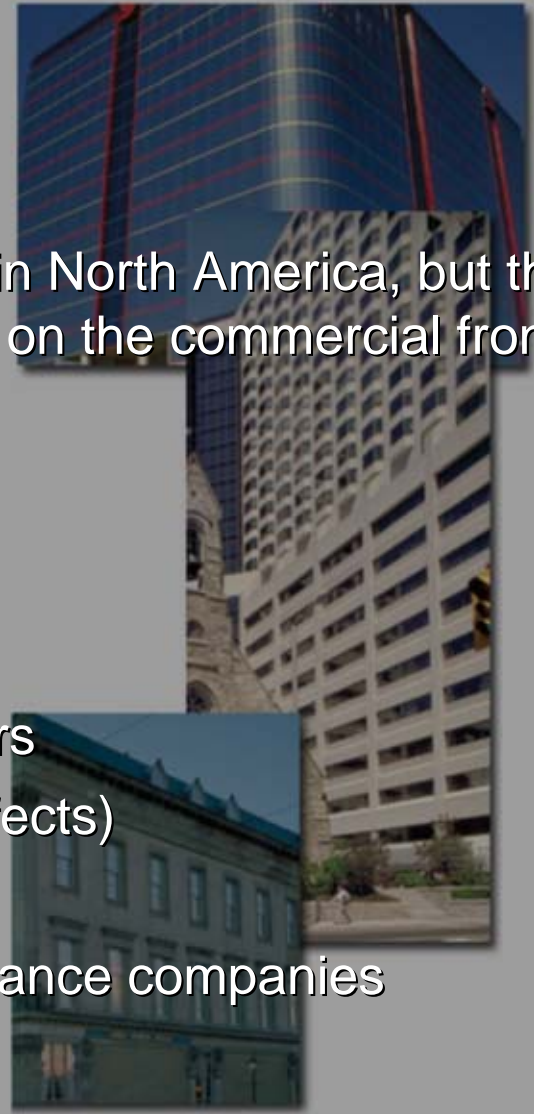
- Coverage in the P & C Marketplace
- Dedicated Environmental Coverage
- Role of Risk Management
- Conclusion



Mould Claims – Current Trends

- Number of claims continues to grow:
 - Increase of over 1,300% since 2000
 - ~20,000 unresolved homeowners claims in North America, but the claims reporting trend is increasing faster on the commercial front than on the private residential side

- Number of lawsuits continues to grow:
 - Estimated at well over 10,000 lawsuits²
 - 10% are against former building owners
 - 20% against builders (construction defects)
 - 20% against homeowner associations
 - 50% are bad faith claims against insurance companies



Source:

¹Policyholders of America, January 5, 2004.

²www.toxlaw.com

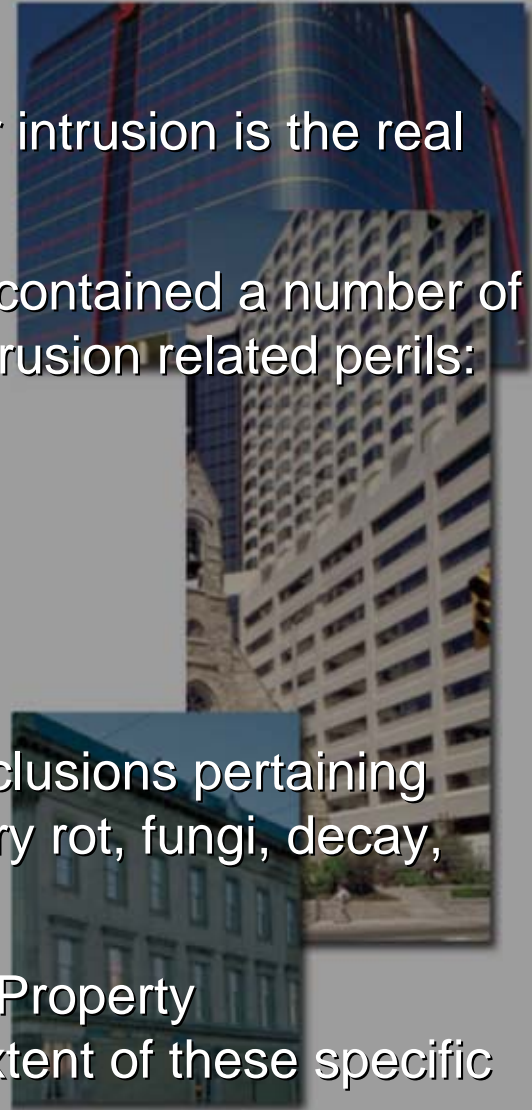
Commercial Insurance & Mould – Availability of Coverage

- Historically mould was not an excluded peril in commercial property or general liability policies;
- Given the influx in mould claims since 1999, insurers have been forced to consider their underwriting positions for insuring/excluding mould loss;
- Result has been the majority of the Property & Casualty insurers taking a firm position to restrict coverage for mould or outright exclude it.



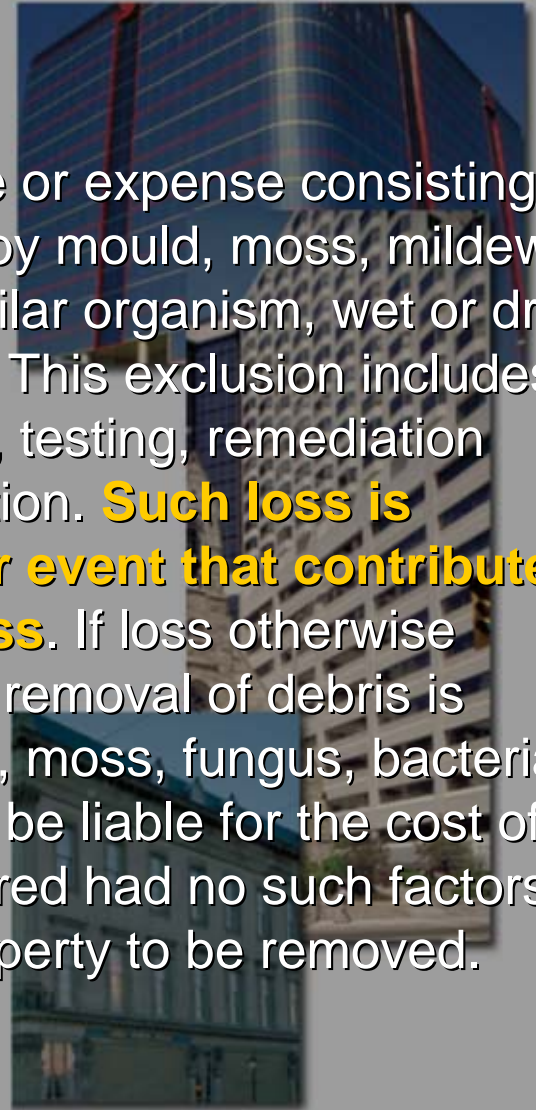
Coverage for Mould Related Claims - Commercial Property Policy

- Mould is a symptom of a greater issue, water intrusion is the real culprit
- Historically, “All Risk” property policies have contained a number of exclusions that restrict coverage for water intrusion related perils:
 - Wear & Tear
 - Gradual Deterioration
 - Faulty Workmanship
 - Contamination
- Currently, Insureds are seeing additional exclusions pertaining specifically to mould, moss, mildew, wet or dry rot, fungi, decay, bacterial infestation etc.
- Consideration of coverage for mould related Property Damage/Business Interruption rests in the extent of these specific mould exclusions



Commercial Property Policy - Sample Broad Mould Exclusion

- This policy does not insure any loss, damage or expense consisting of, caused by, contributed to, or aggravated by mould, moss, mildew, fungi, spores, bacterial infestation or any similar organism, wet or dry rot and extremes of temperature or humidity. This exclusion includes, but is not limited to, the cost for investigation, testing, remediation services, extra expense or business interruption. **Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.** If loss otherwise covered by this policy occurs and the cost of removal of debris is increased due to the presence of rust, mould, moss, fungus, bacterial infestation, wet or dry rot, this policy will only be liable for the cost of debris removal which would have been incurred had no such factors been present in, on, or about the covered property to be removed.

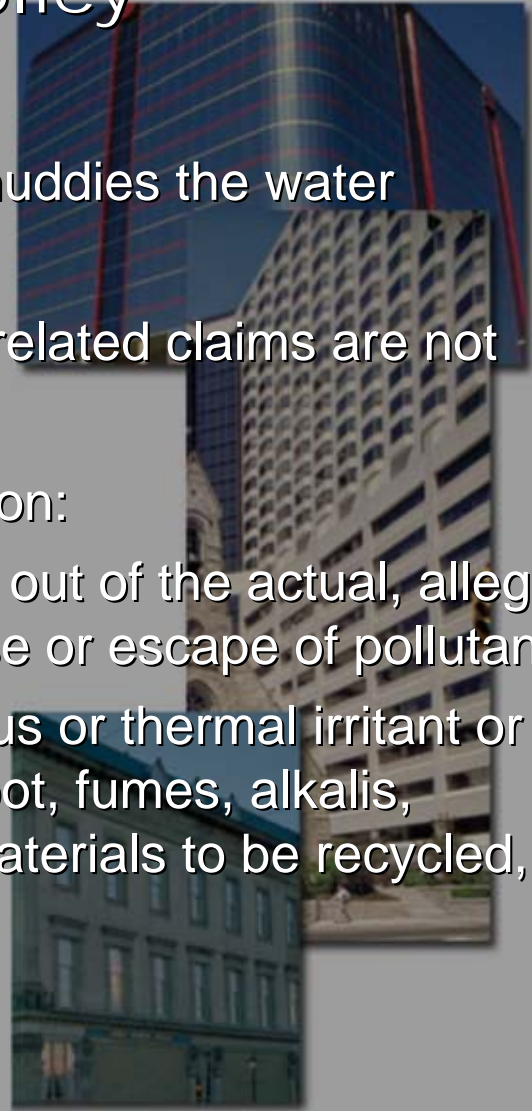


Commercial Property Policy - Sample Resultant Damage Mould Exclusion

- This policy does not insure against any loss, damage, debris removal, or expense consisting of, caused by, contributed to, or aggravated by mould, moss, mildew, fungi, spores, bacterial infestation or any similar organism, and wet or dry rot, or the aforementioned substances caused by changes in temperature and humidity. This exclusion includes, but is not limited to the cost of investigation, testing, remediation services, extra expense, business interruption, debris removal, or imposition of government regulations or by-laws. **Should mould, moss, mildew, fungi, spores, bacterial infestation or similar organism, wet or dry rot cause or result from an insured peril, the direct physical loss or direct physical damage and expense from such insured peril will be covered.**

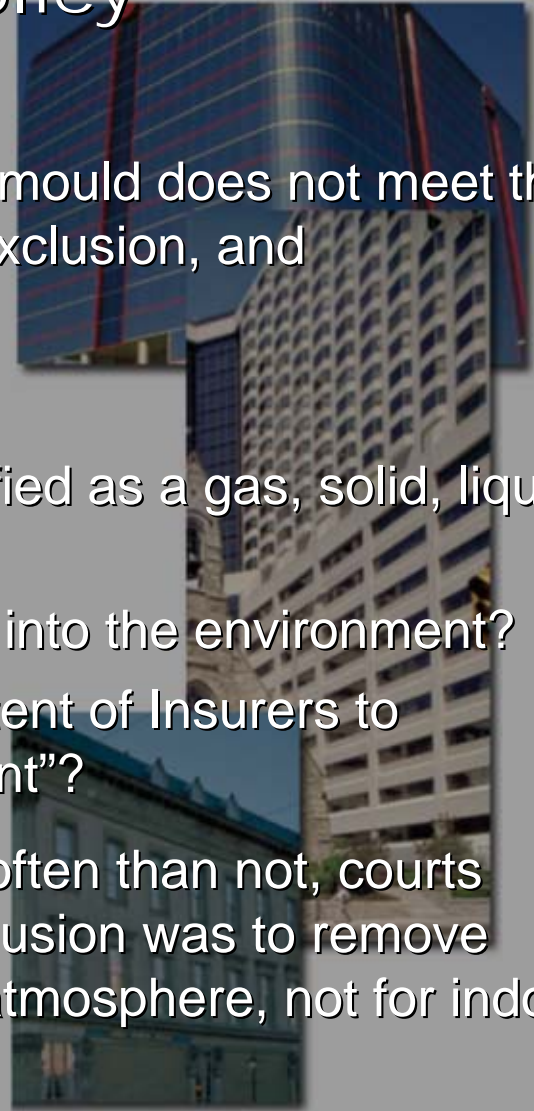
Coverage for Mould Related Claims - Commercial General Liability Policy

- The famous “Absolute Pollution Exclusion” muddies the water once again.
- Insurers have historically argued that mould related claims are not covered due to the pollution exclusion.
- Key elements of a standard Pollution Exclusion:
 - “Bodily Injury or Property Damage arising out of the actual, alleged, or threatened discharge, dispersal, release or escape of pollutants”
 - “Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.”



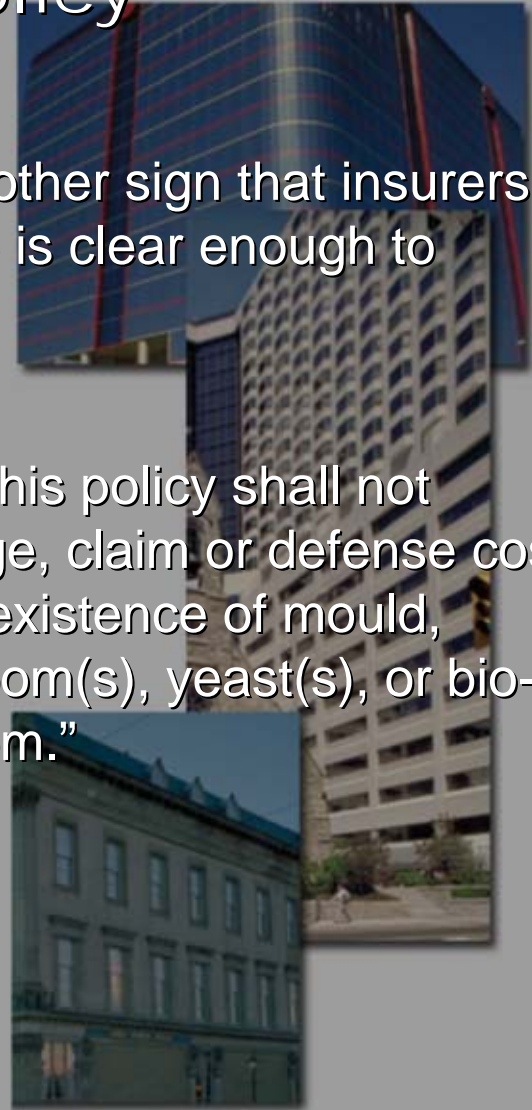
Coverage for Mould Related Claims - Commercial General Liability Policy

- Counter arguments support the position that mould does not meet the criteria imposed under a standard pollution exclusion, and consequently should not be excluded.
- Support for such arguments:
 - Can mould as a living organism be classified as a gas, solid, liquid or thermal irritant?
 - Does mould growth qualify as a “release” into the environment?
 - When drafting the language, was it the intent of Insurers to consider indoor air part of the “environment”?
- Usually comes down to case law, and more often than not, courts have ruled that the intent of the pollution exclusion was to remove coverage for industrial contamination in the atmosphere, not for indoor air quality concerns.



Coverage for Mould Related Claims - Commercial General Liability Policy

- Introduction of mould specific exclusions (another sign that insurers may not believe the pollution exclusion alone is clear enough to preclude coverage for mould related claims).
- Standard CGL Mould Exclusion:
 - “It is hereby understood and agreed that this policy shall not indemnify the insured for any loss, damage, claim or defense costs arising out, alleging or attributable to the existence of mould, fungus/fungi, spore(s), mildew(s), mushroom(s), yeast(s), or bio-contaminant(s) or any by-product therefrom.”



How have the P & C Insurers reacted?

“We’re not, under any circumstances, in no way, shape or form, covering mould. Period. Finite’. End of story!!”



Carrier

Insured



Where Are You Going to Turn? New Exposure / New Marketplace



Environmental Specialty Marketplace

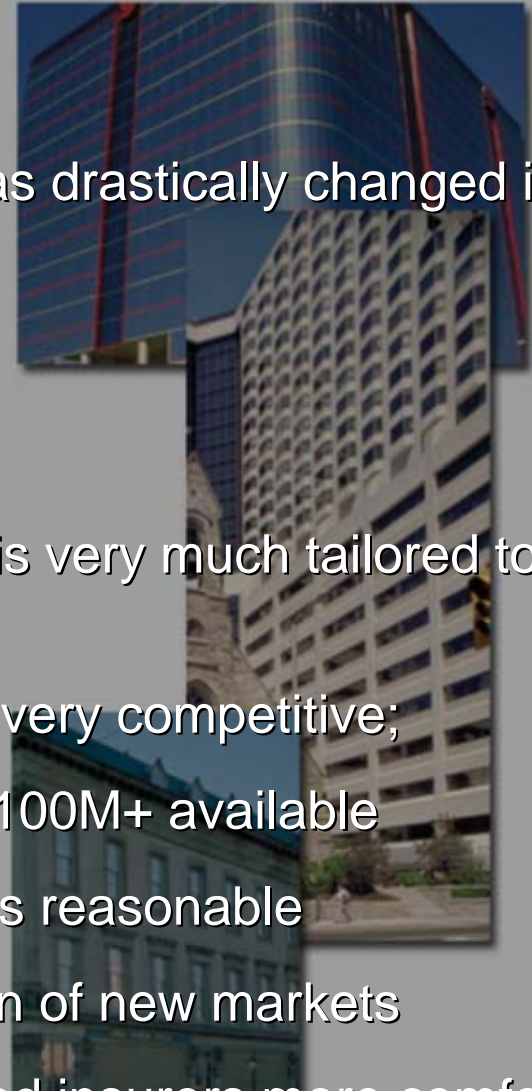
- The environmental insurance marketplace has drastically changed in recent years

5-7 Years Ago

- Coverage narrow
- Premiums high
- Capacity low
- Deductibles high
- Few dedicated markets
- Onerous underwriting process

Today

- Coverage is very much tailored to fit the risk
- Premiums very competitive;
- Limits of \$100M+ available
- Deductibles reasonable
- Introduction of new markets
- Experienced insurers more comfortable with underwriting process



Providers of Environmental Insurance – Who are the Players?

- AIG Environmental
- XL Environmental
- Zurich Canada
- ACE Environmental Risk
- Chubb Environmental Solutions
- Liberty International Underwriters
- Elliott Special Risks
- ENCON
- Quanta



Environmental Insurance 101 - Pollution Legal Liability

- Policies designed to protect the property owner/manager for claims arising out of pollution conditions associated with insured sites.
- Provides coverage for:
 - On-site and Off-site Clean-up costs for Pre-existing and New Conditions (Known conditions above actionable levels and not being managed are excluded);
 - Restoration Costs
 - Third Party claims for Property Damage (including reduction in property value, loss of use) and Bodily Injury
 - First Party Business Interruption and Diminution in Value
 - Defense Expense costs



Mould Coverage Under a PLL

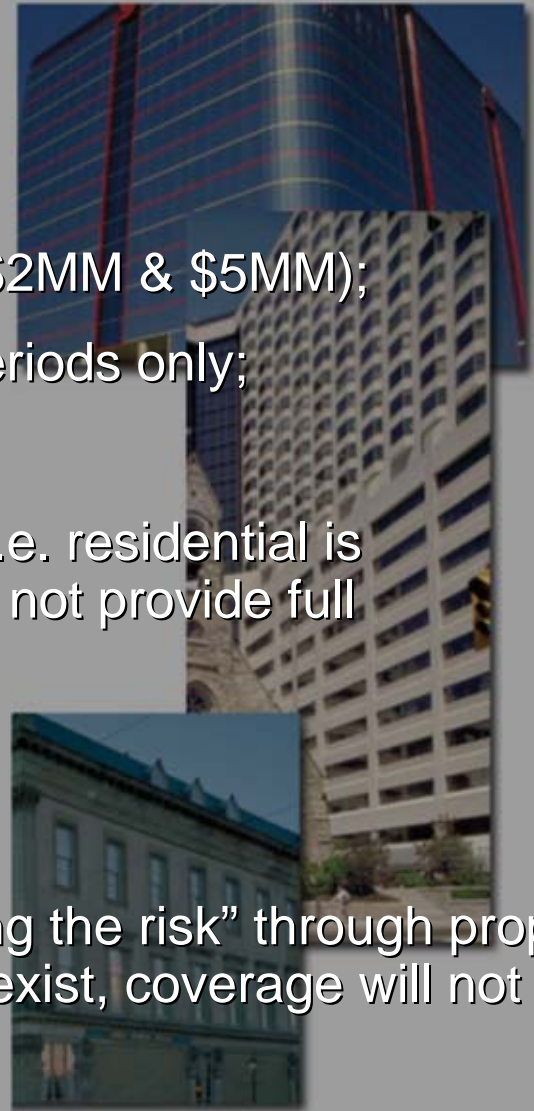
- Coverage for mould, moss, mildew, fungi is specifically endorsed onto the policy. There is currently no standalone mould policy available.
- There are key differences between mould endorsements offered by the various insurers including:
 - Removal of First Party Discovery Trigger (which restricts clean-up costs to those required by law or a Third Party claim);
 - Removal of Third Party claims for Property Damage;
 - EFIS Exclusions;
 - Building Maintenance Exclusions;
 - Improper structure/system design Exclusions;



Underwriting Process – Appetite for Writing Mould Related Loss

Underwriters still being very cautious:

- Offering limited capacity (often sub-limits of \$2MM & \$5MM);
- Some markets are limited to annual policy periods only;
- Requiring higher deductibles/SIRs;
- Only available on certain class of business (i.e. residential is considered “high risk” and many insurers will not provide full coverage)
- Greater underwriting scrutiny;
- Requiring written “Best Practices” Plan;
- Insured must demonstrate they are “managing the risk” through proper prevention and mitigation plans. If no plans exist, coverage will not be adequately provided.



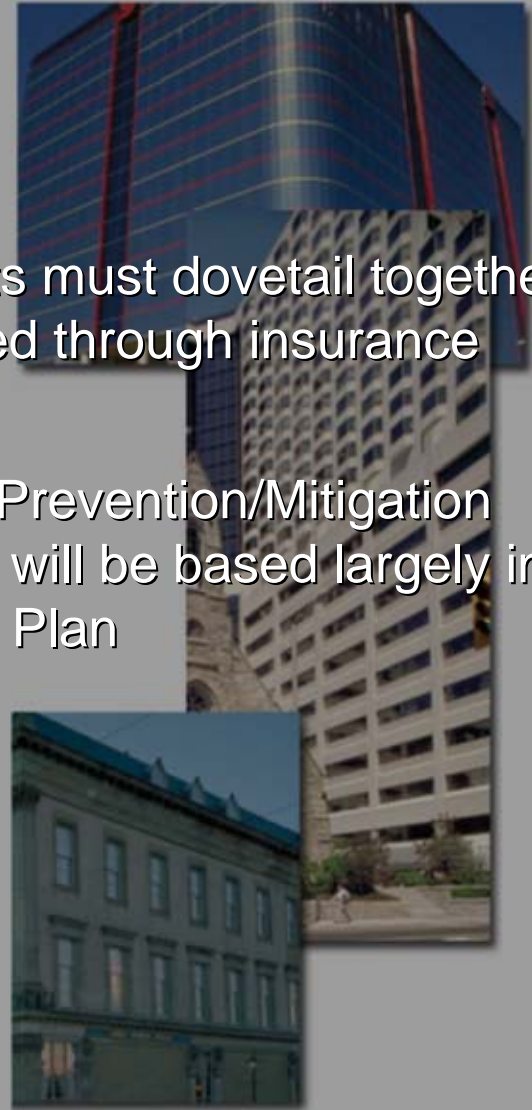
Underwriting Information Required

- PPL application
 - Supplementary Indoor Air Quality Questionnaire
- Full Description of Operations
- Financials
- Disclosure of Known Conditions/Past claims
- Mould a/o Water Intrusion O&M Plans
 - Written “Best Practices” Guideline for:
 - Maintenance and inspection protocols for **preventing** water and moisture incursion
 - Procedures for **mitigating** water and moisture incursion
 - Define roles and responsibilities at all levels
 - Proper communication with interested parties



Mould/Water Intrusion Management Plans

- Risk Management and Risk Transfer products must dovetail together. Mould is an exposure that cannot be managed through insurance alone;
- Insurers have been specific in what a Mould Prevention/Mitigation Plan should include. Availability of coverage will be based largely in part on engineering acceptance of the Mould Plan



Operational Risk Management Process Model

Quality Assurance

Investigation

Prevention

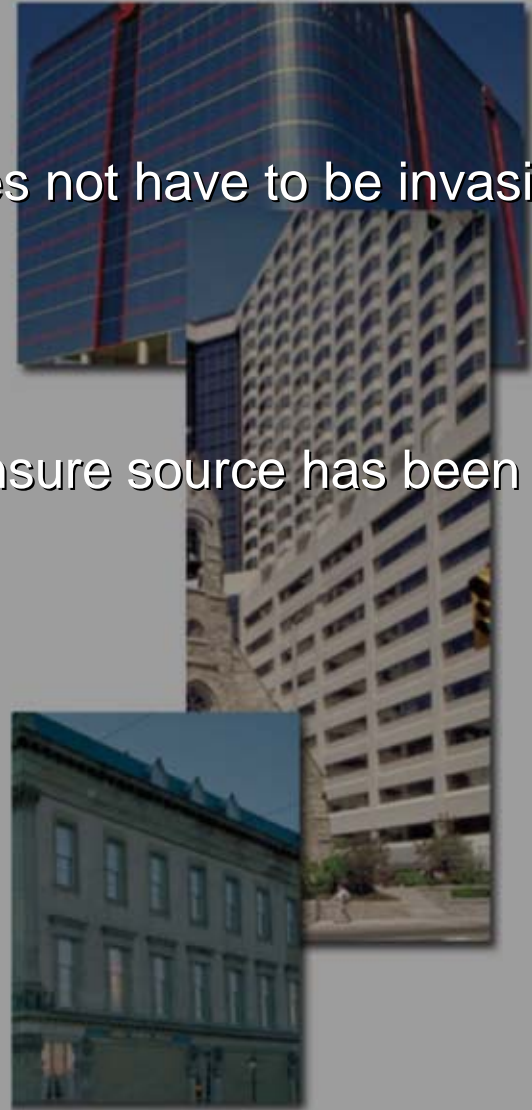
Response

Organizational commitment
Responsibilities
Monitoring & Validation



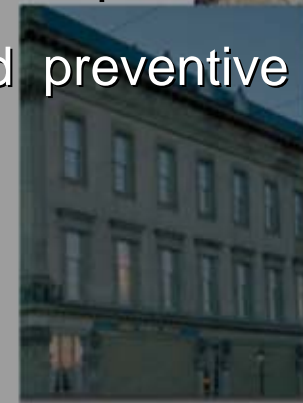
Investigation

- Conduct mould inspection/assessment – does not have to be invasive;
- Document/remediate evidence of mould;
- Explore health complaints;
- Look at past water/moisture problems and ensure source has been controlled;



Prevention

- Moisture is the “controllable”
 - leaks
 - drainage
 - condensation
 - relative humidity
 - water line ruptures
- Consider mold prevention in design / renovation process
- Integrate moisture control into inspection and preventive maintenance systems.



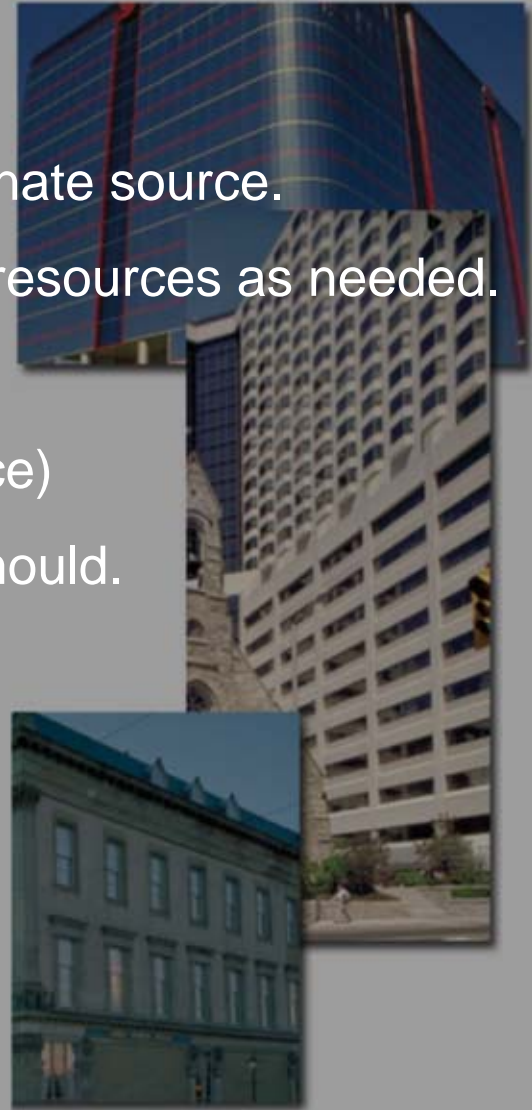
Prevention

- Risk Awareness and training for front line workers
- Regular Inspections and Maintenance audits
- Documentation
- Establish proper communication channels for reporting water/mould issues



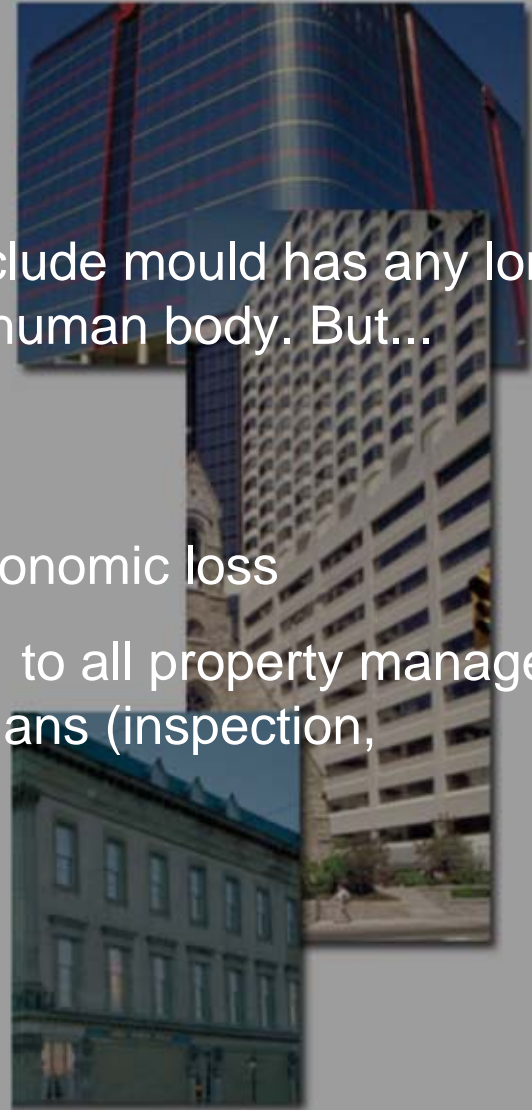
Response

- Emergency response - investigate and eliminate source.
- Restoration, drying and salvage - specialist resources as needed.
- Communicate with key stakeholders.
- Prevent recurrences (preventive maintenance)
- Follow-up... check for return of moisture / mould.



Response

- Risk communication strategy
 - To date, no known scientific study to conclude mould has any long-lasting disease like causal effects on the human body. But...
 - Mould makes good copy!
 - You have disclosure obligations
 - Perception / stigma translates into real economic loss
- Develop and distribute a concise information to all property managers and building operators with required action plans (inspection, response)
- Include claims handling procedures



Mould Plan – General Overview

- A comprehensive, integrated and proactive risk management system is the best weapon in the war against mould.

Administrative
Physical
Procedural



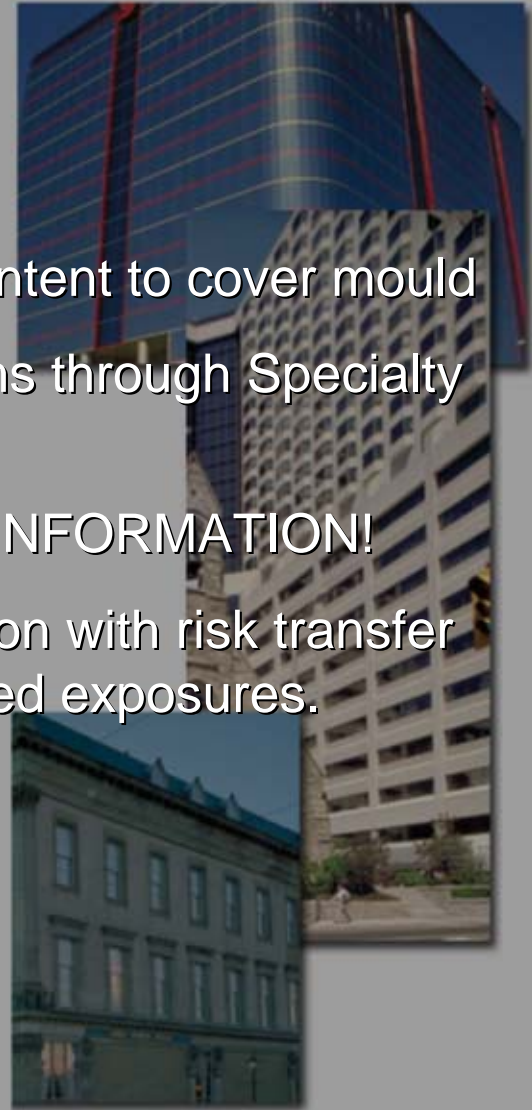
Prevent
Detect
Respond

- While a proactive risk management system requires commitment and investment, the cost of ignoring the issue will be greater in the long run.



Conclusions

- Insurance claims are on the increase
- Many policies exclude, or are vague in their intent to cover mould
- Insurance is available for mould related claims through Specialty Environmental Insurers.
- Insurer's require lots of information - **GOOD INFORMATION!**
- Solid risk management practices in association with risk transfer solutions is vital when managing mould related exposures.



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