



## VIEWPOINT

by Elin Lake Ewald, Ph.D., ASA

### What's the Matter with Mold? Claims and Counterclaims

When a New York Supreme Court judge issued an important decision in September 2006 regarding mold claims, I realized that I had over recent years unwittingly become a mold junkie.

My scattered file drawers coughed up dozens of articles and multiple clippings on the subject, a collection begun about six or seven years ago when this office was hit with a flurry of assignments to determine losses relating to mold damage. These were invariably coupled with health claims cited as being caused by the same environmental problem.

Perhaps the signals about mold damage have been mixed all along. About 2002, a New York Housing Court judge decided to award tenants a rent abatement after finding that they had moved out of their apartment because extensive mold conditions made the place uninhabitable for nearly two years. Then there were a number of news stories about horrendous devastation of several homes, schools and other buildings in Texas that had been overrun by mold, sickening and displacing their occupants.

About this time we had been called in to examine the furnishings in a city apartment where leaking overhead pipes had caused mold damage and allegedly injured the health of the two elderly tenants. The coughing we heard when we entered came from the husband who was sitting on the terrace smoking a cigarette. I was told he had emphysema.

We found traces of mold on furniture in the bedroom, the location closest to the leaking pipes, but none of on the glazed prints and framed paintings in the room, nor was there discernible mold anywhere else. The couple insisted on remaining in the apartment without removing the evidence of mold that did exist because they feared that their claim would not be taken seriously without this proof. Photographs, they insisted, would not suffice. They would not move out of their apartment, although they had the means to do so, and continued to sleep in the only piece of furniture that exhibited mold. They also insisted that although

mold was not evident on all the other furniture it existed everywhere. Besides damage to their personal properties, there were claims of serious physical ailments caused by the mold. When we failed to make a case for extensive (but not visible) mold damage that affected their health and endangered their properties, the couple refused to pay for our time.

We informed their attorney that we could not and would not lay blame on mold for furniture destruction if the owners refused to allow proper disinfecting or a scientific report on mold contamination.

It is my opinion that appraisers should not allow themselves to be caught up in claims that mandate scientific proof on which to base their support of these claims without an environmental expert's analysis.

Subsequent to the situation mentioned above, we have been called in any number of times regarding mold-related claims. A majority involve the elderly whose health problems might possibly be laid to other causes. Appraisers, unless also holding a medical or advanced science degree, cannot make any medical determination. We can, however, see if visible damage has been done as a result of water damage resulting in mold growth.

Not long after 9/11, there seemed to be a flurry of mold-related claims. An article in one of the insurance publications proclaimed that "Mold is Gold!" indicating that mold might be the asbestos of the new millennium. In *Claims Magazine* of August 2002, it was noted that in order to determine what policies are triggered by mold-related claims, it is necessary to figure out whether the claimants actually suffered property damage or bodily injury. One important issue to resolve is determining when the actual harm or injury began.

"For property damage claims, the issue of trigger centers upon when the damage occurred, i.e., when the mold was present," according to Mary P.



McCurdy, in writing about insurance coverage issues for mold litigation. Pinpointing the damage eruption is usually decided on a case-by-case basis since mold damage may be sporadic. It can appear, disappear, and come again.

The viewpoint about mold destruction appears to have altered considerably since 2002 when a Texas jury awarded \$32 million to a woman in a toxic mold lawsuit and a California jury awarded \$18.5 million in a similar claim, both against insurance companies. In the first ten months of 2001 alone, one insurance company had over 10,000 such claims, although only about 9,000 mold-related claims for all insurance companies had been registered in the previous ten years.

By the way, at the end of the year (2002), a state appeals court had reduced the \$32 million award to the Texas woman (above paragraph) to \$4 million for actual damage, but threw out the rest of the claim for mental anguish and punitive damages.

Any structure that has had water leaks or water damage has a good chance of developing mold; high humidity increases the risk. A musty odor or drywall discoloration could be telltale signs of mold growth. And mold needn't be obvious. It can show up as tiny scattered spores, so fine as to be nearly invisible.

Moldy antiques became the subject of a number of newspaper stories in early 2003 when high profile tenants in the world's most expensive condo building (515 Park Avenue) reported frightening stories of contaminated antiques, sculpture and paintings. After that, a plethora of mold horror stories suddenly were being tossed around.

Most molds grow on wood, fiber, or paper that has gotten wet for more than a few days. According to the Environmental Protection Agency, the tiny mold spores waft through the air and land on damp spots, are blown up into ventilation systems and are distributed around the home. To get rid of the mold, get rid of the moisture.

Mold is a fungus that exists, literally everywhere, as spores that can cause illness to humans and destroy property. Modern architecture is particularly vulnerable to mold because leaks and dampness inside sealed buildings with central air conditioning

enable mold to grow at much higher levels than outside. The word "mold" is a layman's term for microscopic filamentous fungi, the microscopic version of the mushroom, according to Barry Zalma in a special issue of *claims Magazine*. While mushrooms can be delicious, and house dust (mold spores) annoying, other types of mold can be deadly. Mold grows on all plants, animal matter and in soil. So, in other words, no matter where you go, you can't get away from it. There are 200,000 species in existence, so you really can't get away from it.

If conditions are right, mold can invade even non-porous matter such as electronic equipment, but that is another story. This article is focusing on the danger of mold and the treatment of *in situ* paintings and works on paper, a problem that has hardly been touched upon in the myriad articles about mold damage. What has concerned insurance companies most recently is the hurricanes whipping across the southeast and their resultant impact on works of art.

Since the plethora of mold claims began, there have been various attempts to deal with the problem. One includes a process by which personal property is treated onsite. For porous surfaces, textiles, upholstered couches and chairs, toys, it apparently is possible to deal with their mold problems *in situ*, but artwork must be removed from the site for proper restoration and conservation.

According to an assessment of mold damages by James Swope in a recent article in *Claims Magazine*, "there is no question that mold can harm or even destroy a wide variety of artwork...can stain paper and canvas while eating the very molecules they consist of...break down paint films, destroy photographic emulsions, rot textiles, and bloom on furniture finishes." Sometimes it can even grow on, and into, metal and glass.

Although, as we mentioned, mold exists everywhere, when hurricanes strike, so does mold. There is usually more mold danger in the southeastern coastal states with high temperatures and relative humidity, so when air conditioning is interrupted and those conditions exist, it is mold heaven. To forestall this, collectors in these high-risk areas should have backup generators to control the atmosphere surrounding their artwork.



# O'TOOLE-EWALD ART ASSOCIATES, INC.

Although collectors will argue otherwise, if you can't see mold on a work of art you probably don't have a problem. However, we have found that statement is rarely accepted by collectors, so we recommend either a scientific evaluation or a visit by a scientifically-trained conservator. If mold is not visible on the artworks and the conservator finds no mold after examination, the best advice is to treat the environment.

Advise your client to carefully vacuum or clean surfaces while making certain that he or she does not allow humidity in excess of 70 percent. That stops mold growth.

In interviews with two of New York's leading conservators, Charles von Nostitz and Winifred Bendiner, there were several pointers regarding mold damage that could be helpful guides for appraisers. Von Nostitz, an established painting conservator who holds a Ph.D. in conservation and one in art history from New York University, said that mold can often be dusted off with no ill effect when it sits on varnished paintings. It all depends on how wet it had been. Mold goes after the sizing glue and that edible ingredient is protected by varnish. He also believes that the mold affected painting should be treated prior to any valuation process.

Von Nostitz said that mold can be black, brown, yellow or red, and that if it attacks an unvarnished canvas, it can stain the surface. If under glass, the piece must be de-fitted and the work, the glass and the frame cleaned thoroughly. The frame, matting, or backing, can also be assumed to have mold growth, so the matting and backing should be replaced. It is not necessary to replace a frame, particularly a really fine one, but it has to be meticulously cleaned.

"The best cure, of course," said the conservator, "is to place the painting in sunlight for four or five hours. Such short exposure will not affect the painting and will kill any mold growth."

Winifred Bendiner, a leading paper conservator, agrees with her fellow conservator that the best way to avoid mild problems is to keep art in a controlled, cool climate with low relative humidity.

"Depending on color, mold and paper eats up surface pigments, especially if the binder is organic. Any color mold can be alive, and it is not always possible to remove mold when it has burrowed in too deeply, and you sometimes cannot get rid of red mold color even after it has been neutralized." Mold often attacks the organic finish on paper. Bendiner suggests that the owner should release the frame immediately if mold has been spotted, so as to let air in. Unfortunately, unlike paintings, watercolors will fade if exposed to strong sunlight, but wet books should be opened to this light to prevent mold. There are chemicals used by paper conservators to rid works on paper from damaging mold growth. Ms. Bendiner recently took a framed, heavily mold-covered historic letter that had been left untreated for several weeks, and by dusting off the mold, brought it back to good enough condition to treat for actual water damage.

Mold has a very frightening, almost Halloween-ish aspect to its appearance, and it indeed can do great damage if left untreated over an extended period of time. but it can also be highly treatable. Of course, we are speaking of works of art. Now to turn to the human condition.

In September 2006, New York State Supreme Court Justice Shirley Werner Kornreich, after a review of more than 1,000 pages of testimony and more than seventy scientific articles and books, concluded that there was insufficient scientific evidence to support the contention that mold or a damp indoor environment causes illness.

This should come as an enormous relief to insurance companies who may now be more active in fighting mold damage claims, although it is rather early to assess the effect of this decision on other courts in other states.

Since appraisers around the country, particularly in the southeast, are or have probably in the recent past, addressed the mold issue in their reports, it is a problem that seems to require constant revisiting. While a real problem, it is also an issue that may have been overblown in the past and may be underestimated in the present.