

## ENVIRONMENTAL

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# Address issues at the outset and prevent mold disasters

A recent discussion with an insurance executive conveyed two major areas of dramatic coverage concerns in volatility, run a way cost and unpredictability: terrorism insurance and mold coverage.

Although terrorism insurance risks are highlighted in "trophy" high rise properties, all buildings are susceptible to mold risks due to water leaks from roofs or piping.

Astronomical risk relating to mold can be significantly alleviated by setting practical legal, design and construction management protocols to control the construction or renovation project. Basic legal, insurance and contract document issues must be addressed as a preliminary matter. As water intrusion is always a possibility, the contractual responsibilities of each trade contractor, the design professionals and construction manager must be clearly defined and coordinated. Examination must be made into the



effectiveness of general liability coverage and consideration of a special mold endorsement.

The key to protecting against potential lawsuits over mold is to prevent water intrusion and mold growth in the first place.

### Practical Steps

- Obligate the trade contractor to sequence, coordinate and protect the work. The clause in the trade contract should obligate the contractor to sequence and coordinate its work with that of other contractors and subcontractors on the project to prevent weather damage and water intrusion.
- Make trade contractors responsible for remediation costs. If water intrusion occurs because a trade contractor failed in its obligation to sequence, coordinate, and protect the work, the trade contract clause should provide that the contractor is responsible for the cost of removing any mold or wet materials and redoing the work.
- If mold does occur, require the trade contractor to pay for mold testing, before and after remediation.
- Require trade contractors, such as roofers or plumbers

who are directly involved, to indemnify the owner, contractor and design professionals. A trade contractor who is responsible for a water intrusion or mold issue should be held to a contractual obligation to defend and indemnify which includes the damages and legal costs that are the consequence of the water intrusion.

The bottom line is that you must anticipate mold, and it must be addressed in the contract. There must be procedures for emergency troubleshooting if water intrusion occurs, and you must build the emergency trouble shooting right into the project at the outset. If it means paying an environmental consultant from day number one, do it.

As a recent university experience demonstrates, when it comes to mold contamination, putting students in a new building before eliminating mold from the HVAC system can be an expensive mistake. Allowing mold remediation to yield to practical expediency is a prescription for disaster.

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