

MPSS Environmental....

Providing Building Professionals with Pro-Active Solutions for MOLD

Mold Litigation

There are two general types of mold litigation that have developed over the last few years. Originally, mold litigation was an offshoot of construction defect litigation. A home or building owner would have water intrusion and resulting mold growth due to some defect in the construction or design of the building. The owner would file a lawsuit against the architect/engineer and builders of the home or building for repair/remediation damages plus any relocation costs involved. Mold would simply be another component of that litigation. Additional costs would be required to properly remediate mold-contaminated materials, but the damages were quantifiable in the sense that repair/remediation costs can be estimated to determine the risk of proceeding to trial. Personal injury claims were not part of this type of litigation.

The second type of claim, which is fueling the current explosion in mold litigation, involves personal injury. A building owner/occupant (typically a homeowner, apartment tenant or employee) claims medical injuries, plus pain and suffering damages that are not as quantifiable and certainly are more emotional (and more media worthy) than the repair/remediation type of damages in the construction defect litigation.

Example:

The legendary Bollard case - a \$32-million mold verdict in Texas - started an avalanche of litigation and fear-based settlement starting in 2001. The Ballard case was an insurance dispute involving claims of bad faith denial of coverage relating to mold in a 7,400-square-foot house. The fact that the \$32-million verdict was later reduced to \$4 million never received the media attention necessary to offset the avalanche of litigation it had already spurred across the country.