

Insurance Highlights



For Participants in the NRCA/CNA Insurance Program

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New Specialized Policy

With input from NRCA's Insurance Board of Governors, CNA has developed a comprehensive insurance policy format exclusively designed for roofing contractors. If a contractor requests a quote, program coverage offerings now are displayed in an easy-to-read checklist so a roofing contractor can see all the coverages available to him and not leave an exposure uncovered.

New specialized coverages

An endorsement available this year is the roofing contractors' general liability extension endorsement, which provides three new coverages and 16 coverage enhancements. New coverages include the following:

- ✓ **Additional insured—state or political subdivision permits:** Automatically adds state or political subdivisions as additional insureds where state or political subdivisions have issued a permit.
- ✓ **Excess wrap-up coverage:** Provides excess coverage for operations and completed operations under a wrap-up and coverage under commercial general liability (CGL) insurance that could be broader in scope than coverage in the wrap-up (residential wrap-ups are excluded).
- ✓ **Contractual liability—railroads:** Expands coverage for operations performed within 50 feet (15 m) of railroad property and for which a railroad protective liability policy in the railroad's name has been provided.

Coverage enhancements include:

- ✓ **Joint ventures/partnership/limited liability company coverage:** Provides coverage after a joint venture has been dissolved.
- ✓ **Expanded personal and advertising injury coverage:** Provides coverage for unintentional discrimination and humiliation.

- ✓ **Legal liability and borrowed equipment:** Provides a sublimit of coverage for tools or equipment loaned to the insured not in use at the time of loss and for damage other than fire to rented premises.
- ✓ **Expanded bodily injury:** Coverage is expanded to include shock, humiliation, disability, mental injury or anguish.

This is a general overview of the coverages provided and intended for illustrative purposes; only a policy can provide actual descriptions, terms, conditions and coverages.

Industry pricing

Insurance premiums are rising this year because of several factors. The insurance market started hardening last year, and losses from the events of Sept. 11, 2001, have caused most insurers to increase premiums. In addition, exterior insulation finishing systems, toxic-mold litigation and construction defect issues are contributing to increasing premiums for the construction industry.

Typical increases for CNA policyholders will be at least 30 percent, and individual risk characteristics will determine pricing for specific accounts.

Toxic mold – What a roofing contractor should know

Mold is a common organism found in virtually every home and building. Moisture and a food source, such as cellulose building materials, are necessary for mold to grow. Moisture can be caused by broken water lines, leaking plumbing and roof systems, improperly ventilated bathrooms and excessive humidity. Routine maintenance and expeditious leak repairs will help prevent mold growth; cleaning with bleach and water usually will remove growing mold.

Toxic-mold claims previously were not considered in insurance policy pricing; however, toxic mold is fast becoming the biggest cause of construction defect and tort litigation for roofing contractors. The rise in toxic-mold reports may be caused by recent trends toward airtight buildings, which foster mold growth.

Although toxic-mold issues are being compared with previous asbestos abatement and remediation costs, the differences are significant. At this time, there is a lack of scientific understanding about mold's health effects and health standards defining safe levels of mold for indoor-air quality. In addition, there are no generally accepted protocols for assessing mold exposures or established criteria to determine when a mold-contaminated structure should be abandoned. NRCA and CNA will provide you with toxic-mold insurance implications and updates about current litigation in upcoming issues of this newsletter.

Experts at the Center for Disease Control and Prevention (CDC) believe high doses of some molds can cause adverse health effects, including allergic reactions, in susceptible individuals. But other than skin rashes and adverse reactions in people with weak immune systems, CDC has not seen credible evidence connecting mold to other alleged health conditions. Despite no confirmed scientific evidence about mold's health effects, public and court opinions are causing negative implications for the insurance industry.

CNA policyholders

In response to heightened media attention and toxic mold litigation, CNA has adjusted its underwriting strategies to apply mold-exclusion endorsements on its CGL and umbrella policies for the May 1 renewal (subject to state approvals). The exclusion for CNA property policies will be effective July 1 (pending state approvals).

Because water damage and toxic mold are usually dual allegations, it is difficult for the insurance industry to compile meaningful statistics. However, the Texas Department of Insurance has collected data regarding Texas homeowner claims which shows water damage claims doubling to over \$600 million between 1999 and 2001. Each successive quarter shows increased activity. CNA is experiencing similar increases in this type of claim activity. However, CNA still will provide coverage and defense for water damage under its property damage coverage, but the endorsement will exclude coverage for bodily injury and property damage relating to toxic mold.

Litigation

A recent toxic-mold case already has reached legendary proportions. In May 2001, a Texas jury awarded \$32 million to Melinda Ballard and her family in its case against Farmers Insurance Group. The jury found that Farmers Insurance Group improperly handled the Ballard's water damage claim, which allowed toxic mold to ruin the family's \$3 million home. This case is the first one to order an insurance company to pay damages to a homeowner in a toxic-mold case. According to allegations, Farmers Insurance ignored the contractor's warnings to expeditiously repair a water leak that could cause the growth of dangerous molds in the subflooring. The jury award, which was upheld by the judge, included \$6.2 million in actual damages, \$12 million in punitive damages, \$5 million for mental anguish and \$8.9 million for attorneys fees. At this point, the house is uninhabitable and needs to be leveled and rebuilt. The family does not have access to the monetary jury award until the case goes through the court system. In this case, a contractor was not sued, but the

case illustrates the ramifications of not handling repairs quickly and reasonably.

Texas presently is the hot spot for toxic-mold litigation because of its humid climate and soil chemicals that deteriorate foundation slabs. However, Texas is not the only area where claims and litigation are growing. There also is heavy activity in California, Florida, Illinois and the Pacific Northwest.

Contractors and subcontractors easily can become the target of toxic-mold-related lawsuits. Damages may include the costs of mold remediation, property loss and health problems. Consider the following cases:

Spectrum Community Association vs. Bristol House Partnership
The Spectrum Community Association sued the developers and contractors in June 2000 alleging that construction defects caused the growth of toxic mold in walls and ceilings of the housing units. The homeowners claimed exposure to toxic mold resulted in a variety of adverse health effects.

Charles Blum et al. vs. Chubb Custom Insurance Co. et al.
Texas homeowners sued Chubb Custom Insurance Co. and Texas Windstorm Insurance Association claiming that the insurer denied, delayed or failed to pay or properly investigate toxic-mold claims stemming from plumbing and roof system leaks. The case went to trial and was settled for \$1.5 million on Dec. 18, 2000.

Mielke vs. Riverside School District
Teachers and students at Riverside High School in Washington filed suit against the Riverside School District and superintendent of schools, various contractors and the architect of a school addition. The plaintiffs alleged construction defects and faulty design of the ventilation system and windows led to toxic mold in the building and resulted in adverse health effects. The plaintiffs also maintained that the school district violated civil rights by failing to "exercise reasonable care in insuring a safe school environment." The defendants have countersued each other and have sued subcontractors as third-party defendants.

Excessively large awards for toxic-mold damages are on the rise. Attorneys are blaming insurance companies for not taking quick action and contractors for faulty construction. Many states now are considering legislation and/or regulation for toxic-mold issues. Roofing contractors should monitor this situation because they easily can be pulled into litigation.

In this newsletter, we offer basic information about pertinent insurance issues that concern roofing professionals. If you have any questions regarding the information contained here, please contact Leslie Kazmierowski, NRCA's insurance programs manager at:

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Additionally, please send NRCA questions or comments about insurance that you would like addressed in this newsletter. NRCA always welcomes your ideas for future topics.