

A Primer on Mold, Mildew and Sick Building Claims

Texas Association of Legal Secretaries
September 21, 2001

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Case Analysis

- Rainbow Babies and Children's Hospital in Cleveland, Ohio
 - 1993-94: ten infants become very sick



Case Analysis



- Center for Disease Control Investigation
 - Focus on *Stachybotrys*
 - 1997 CDC report: infants with pulmonary hemorrhage more likely to live in homes with *Stachybotrys*

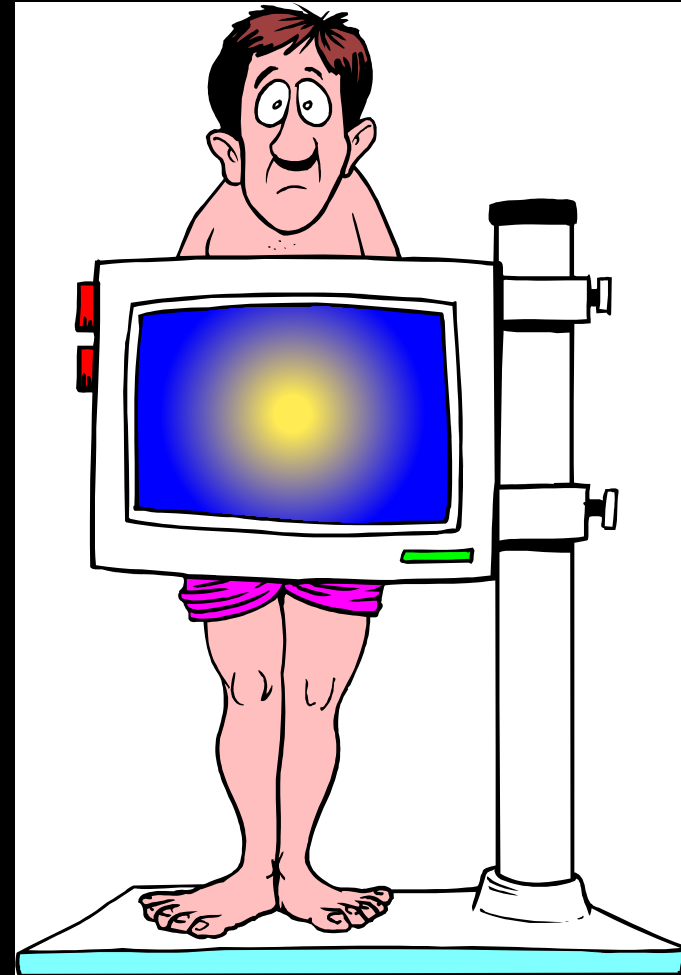
Case Analysis

- 1990: CDC recants study
 - Association between children's illness and black mold not proven



Case Analysis

- CDC's official position today:
 - Causal link between presence of toxic mold and pulmonary hemorrhaging and memory loss has not been proven



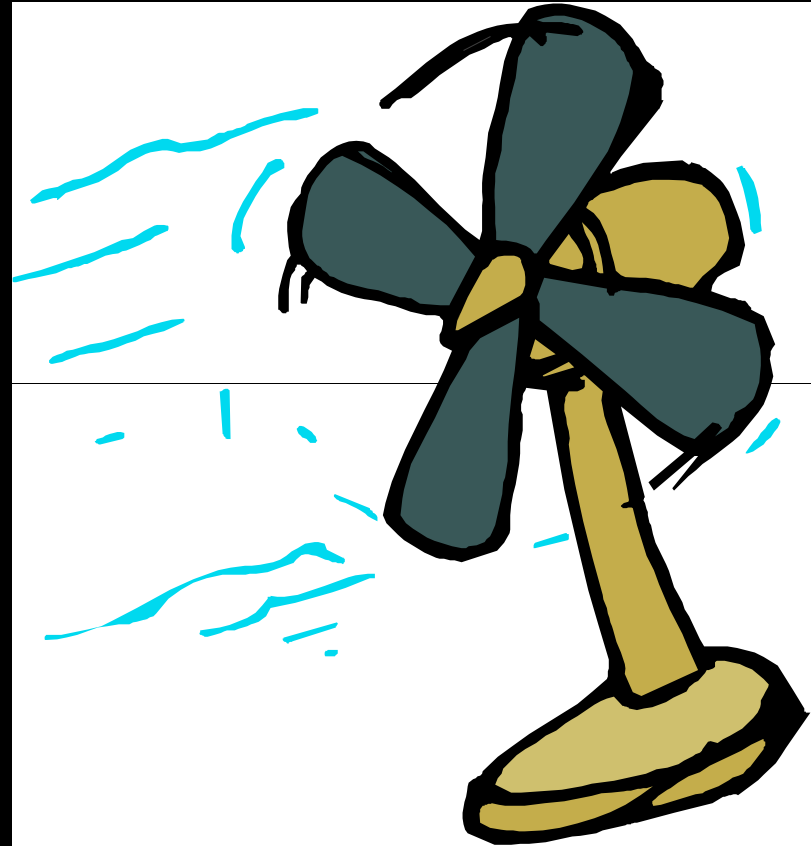
Case Analysis



- Reno, Nevada, suit:
 - 380 homeowners in low lying subdivision
 - homes allegedly built without proper drainage
 - All homes tested positive for mold
 - Crawlspace built below grade, with improper drainage and waterproofing problems

Case Analysis

- Reno case II:
 - Office building landlord attempt to remedy *Stachybotrys*
 - Cut out mold and place fans in the space to dry out the area
 - Fans spread mold throughout the building



Case Analysis

- North Dallas:
 - Saratoga Springs Apartments
 - Residents had to pack and move in March 2001 due to toxic mold
 - Some residents instructed to move out as fast as they could gather necessary belongings, while others had a month

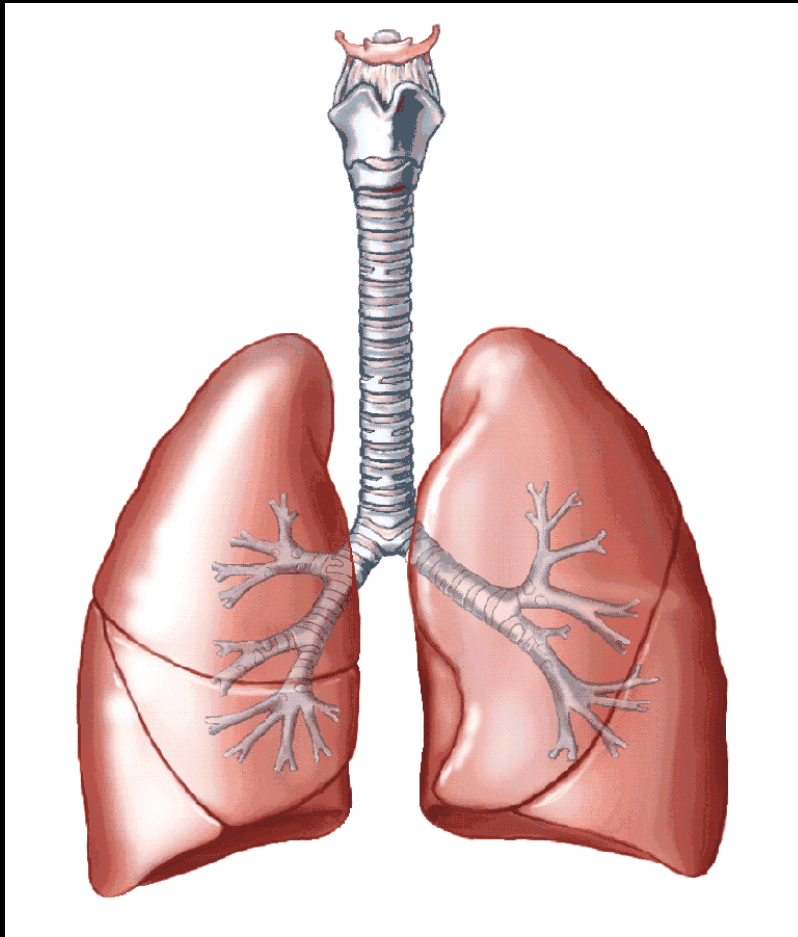


Case Analysis

- Some Saratoga Springs Apartment Residents
 - Unable to find new apartments
 - Blackballed for black mold



Case Analysis



- Newport Beach, CA:
 - Two women sue former landlord
 - Toxic mold in apartment made them ill
 - 11 types of mold growing under carpets and unit closet compromised their immune systems
 - From inhaling the mold and spores, one woman had at least 16 fungal masses, including one of golf ball size in her lungs

Case Analysis

- Woodlands, Texas, November 1993
 - Larry and Alda Brunson's dream house
 - EIFS construction led to *Stachybotrys*
 - Daughter almost died



Texas Case Law

- Very little exists
 - *Pena v. State Farm Lloyds*, 980 S.W.2d 949 (Tex.App. — Corpus Christi 1998, no writ)
 - Insurance coverage for fungal growth on underside of wooden planks and flooring from plumbing leak



Texas Case Law

- *Home Insurance Co. v. McClain*, 2000 WL 144115 (Tex.App. — Dallas, Feb. 10, 2000)
 - coverage found for mold and fungi growing from accidental discharge of water



Texas Case Law

- *Balandran v. Safeco Insurance Company of America*, 972 S.W.2d 738 (Tex. 1998)
 - Plumbing leaks may damage foundations
 - Foundation damage covered under standard form homeowner's policy



Texas Case Law



- Ensuing Loss:
 - *McKool v. Reliance Insurance Co.*, 386 S.W.2d 344, 345-46 (Tex.Civ.App. — Dallas 1965, writ dism'd)
 - Freeze damage to swimming pool tiles not covered as ensuing loss

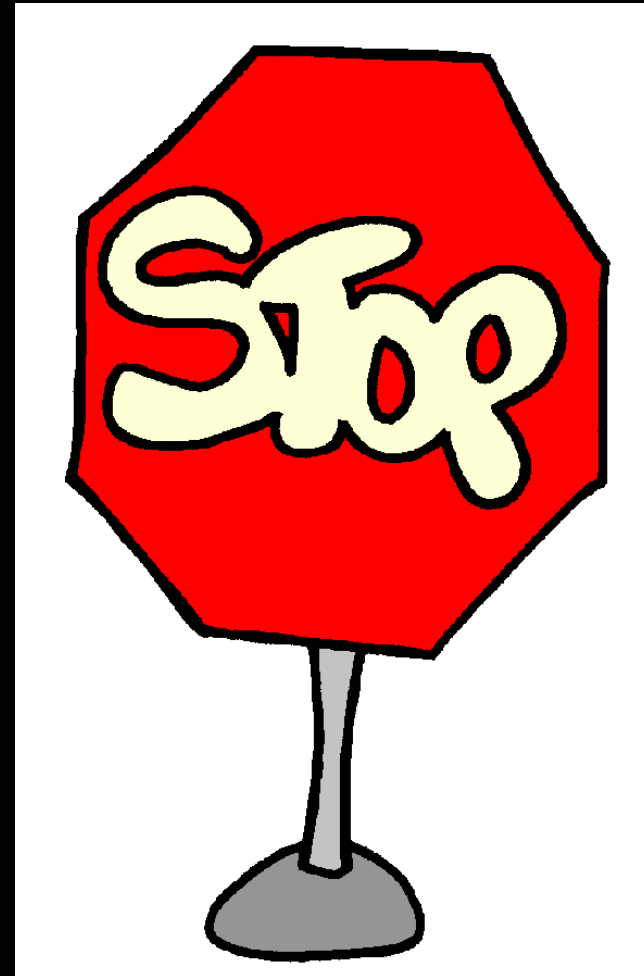
Texas Case Law

- Ensuing Loss:
 - *Merrimack Mutual Fire Insurance Co. v. McCaffree*, 486 S.W.2d 616 (Tex.Civ.App. — Dallas 1972, writ ref'd n.r.e.)
 - Damage to property directly caused by fungi excluded due to improper building construction



Texas Case Law

- Ensuing Loss:
 - *Aetna Casualty & Surety Co. v. Yates*, 344 F.2d 939, 941 (5th Cir. 1965)
 - Ensuing losses caused by water damage are covered losses, but rot is excluded



Texas Case Law

- Sewer Backup
 - State Farm Lloyds v. Marchetti, 962 S.W.2d 58 (Tex.App. — Houston [1st Dist.] 1997, writ denied)
 - Court: when loss from invasion of insured premises by non-flood water, even though invasion may be proximately caused by flood water, the “flood or surface water” exclusion does not apply



Texas Case Law

- Plumbing Leaks
 - Oram v. State Farm Lloyds, 977 S.W.2d 163 (Tex.App. — Austin 1998, no writ)
 - Damages from plumbing leak are covered losses under homeowner's policy



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