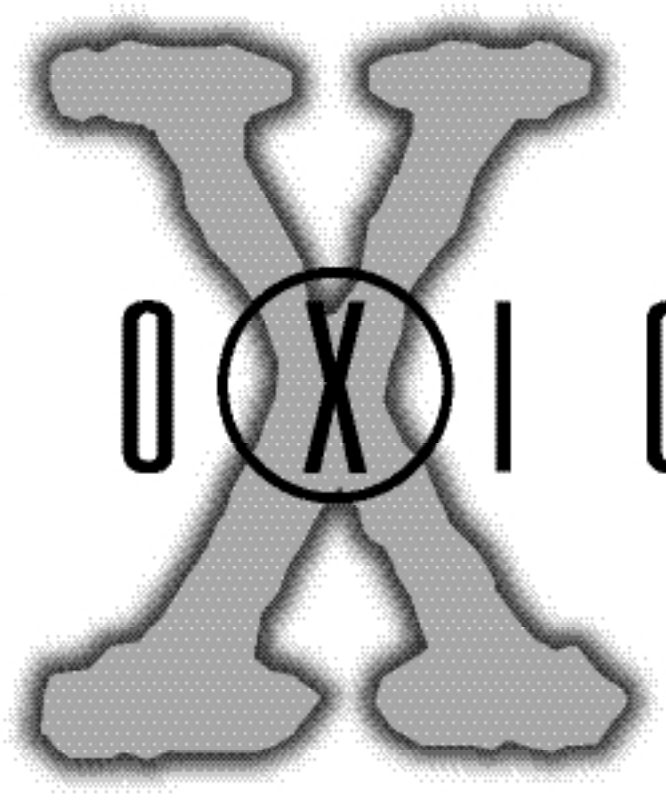


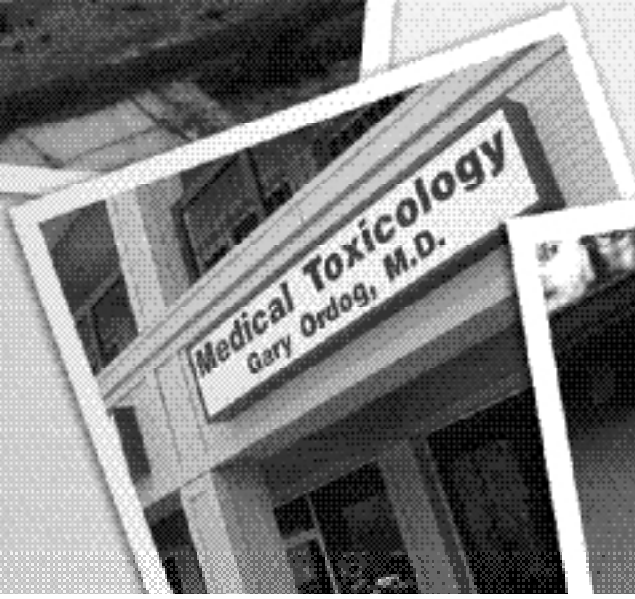
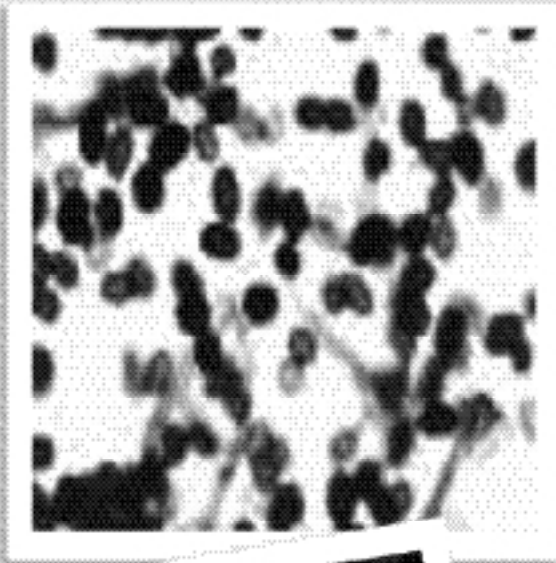
the tragedy of T O X I C



mold-related illnesses

bogus insurance claims

legal representation



# M O L D

## Killing Us All... or Just the Latest Lawsuit Craze? Matt Kettmann Searches for the Truth.

You might be dying and not even know it. That hacking cough you've had, that weird skin rash, those "allergies" that seem to come outta nowhere. Even your recent forgetfulness, your constant fatigue, your headaches. These could all be signs that your house or office is slowly killing you.

You may be one of the countless thousands—perhaps even millions—around the world suffering from the wide ranging, unpredictable, frightening, and possibly deadly effects of toxic mold.

From the mansions of Beverly Hills to the studio apartments of the lower Westside, people of all ages and social strata are slowly realizing that toxic mold—aspergillus, stachybotrys, and other less prevalent species—may cause widespread health defects. What's worse, if left untreated, these molds—prevalent wherever water intrudes into a building and then dries out—may eventually lead to cancer, brain damage, and death.

Or maybe not. The insurance industry is scrambling to defend cases—typically settling for confidential amounts out of court—and at the same time rewrite homeowner policies to drastically reduce, or simply eliminate, coverage for mold-related damage to health or home. According to insurance companies, the sensationalist mold cases are merely the latest rage in America's litigious society, the result of imaginative and money-grubbing personal injury attorneys and equally opportunistic doctors who base their opinions on questionable science. And the insurance industry, which paid out \$3 billion in 2002 alone for mold problems, has assembled their own phalanx of attorneys and medical experts to roundly dismiss plaintiffs' claims as toxic mold hysteria. Such vigilance is hardly surprising, as big insurance companies such as Allstate and State Farm are left holding exorbitant bills when tenants sue landlords and homeowners sue construction firms over mold-related health problems.

If mold is such a problem, the industry asks, why has it come to light only recently and, if mold is everywhere, why aren't more people sick? No one denies that mold can cause allergic reactions, but the prevailing argument is that there's simply no reliable evidence linking the mold in your closet to the tumor in your brain.

Today, the debate about toxic mold is one of the liveliest legal topics in the nation. Literally every week, newspapers in big cities and tiny towns feature headlines about the latest mold case. The buzz began a couple years back when Ed McMahon settled for \$2.7 million after his dog died from mold exposure. Recent stories include the Reno Airport's closure of a concourse last month due to mold infestation; a Visalia family's award of more than \$2 million for their infant son's mold-related death in 2002; and a Texas judge's refusal to work in his mold-infested courtroom. From Hawaiian hotels to university dormitories and new single-family tract homes, there's no shortage of toxic mold tales, which almost always end up in the courtroom as judge-and-jury soap operas fit for the big screen.

Plaintiffs' lawyers, who often foot the bill for the diagnosis and treatment of their clients, ask juries to award millions of dollars in damage payments. Defense attorneys attack doctors' credibility and cast doubt on the science behind accusations. Both sides accuse the other of outright lies and blatant distortions of the truth. Each argument is persuasive, making it hard for the public to determine who's really telling the truth.

The official stance of government agencies such as the Centers for Disease Control and the California Department of Health Services is that mold is bad because it causes allergic reactions and should be cleaned up quickly. However, while some public organizations mention the possibility of more drastic ailments related to mold, they all stop short of affirming as much, often falling

back on the phrase "research is ongoing."

Politicians have taken note of the wide discrepancy between accusing doctors and doubting defendants and have set both state and federal governments on the slow bureaucratic path to determine what's true, what's false, and what should be done. The state of California approved the creation of a task force last year to examine toxic mold, but that process is stalled due to a lack of funds. Rep. John Conyers Jr., Michigan Democrat, introduced the Toxic Mold Protection and Safety Act to Congress last session, a bill that would establish a federal task force to separate the hysteria from the health risks. But the bill is on the slow track, so answers from the government aren't expected for years.

Meanwhile, people continue to get sick for no apparent reason, and many of them are renters short on legal protection and money. Despite the growing amount of publicity and high profile cases with multimillion-dollar payoffs, most property owners still see mold as a plumbing problem, fixed and forgotten with a simple call to the pipes guy. Indeed, not all molds are bad, and some, such as penicillin, are vital to human health. However, as more doctors claim mold can kill and attorneys watch jury awards skyrocket, everyone agrees that getting rid of the mold, fast, should be the primary objective. But even for the most responsible landlord or homeowner, it's still a nightmare, because repairs often intensify the problem.

In Santa Barbara, a relatively moist and humid Californian city where a high percentage of citizens are renters and apartment dwellers, mold damage cases are beginning to hit the court system with a vengeance. On January 15, a pretrial conference is scheduled for a case that could prove one of the more expensive toxic mold settlements in state history. It involves a woman whose lung cancer cost her a lobe of

one lung and whose son suffered irreversible liver damage because, they claim, they suffered from toxic mold poisoning over five years living at the El Escorial condo complex down by East Beach. They're seeking close to \$5 million to cover the medical expenses they expect to accrue over the course of their lives—he's in his early twenties, she in her early fifties. And that's but one of many troubling cases.

### The Toxic Avenger

In Santa Barbara, one man has quickly become the go-to guy for victims of toxic mold debate. From his second story office above Victor's Flowers on Anapamu and Santa Barbara streets, a stone's throw from the courthouse, John Richards is juggling a handful of clients who got sick, they believe, from their mold-infested homes. He had seen the newspaper headlines and television exposés and heard about the topic in legal circles, but it wasn't until Richards—who mainly handles medical malpractice cases—met his client Kristin Carter\* that he started on the path to becoming Santa Barbara's frontman for mold.

In her early twenties and blessed with vibrant Santa Barbara beach-beauty looks, Carter was excited to start work as a professional chef for a wealthy family in town, a job that included living in a cottage on the family's estate. Carter had only been working there a few months when her skin began rashing up, her mind became muddled, and she started coughing up blood. Constant insomnia, sinus problems, and headaches only added to her woes. Soon, she noticed a black substance overtaking her stuff, from purses and shoes to books and photo albums.

After doing some online research, she discovered that toxic mold may be the culprit, but her boss didn't believe her and wouldn't pay for

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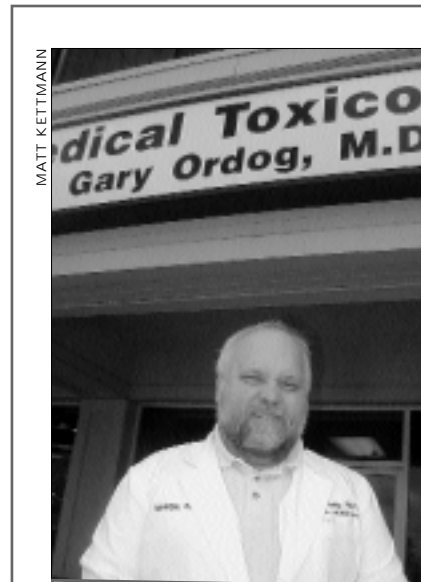
\*The names of the plaintiffs in this story have been changed to protect their privacy.

◀continued her to stay elsewhere. That led to the personal injury practice of John Richards and to the doctor's office of Dr. Gary Ordog, a Santa Clarita-based medical toxicologist who has become the insurance industry's archenemy for testifying — as expert witness in dozens of cases — that certain types of mold are indeed toxic. After moving out of the house, quitting the job, and following Dr. Ordog's treatment, Carter's symptoms gradually subsided.

"It was like I had the plague," Carter said. "My whole house was contaminated." Though she's been getting better every day — and won a healthy settlement from her former employer to pay for the \$20,000-plus in medical bills — no amount of money can replace the cherished items she lost from the ordeal.

Since she developed a super sensitivity to the mold, Carter has had to throw out an estimated \$40,000 worth of mold-infested items, including an original volume of Rimbaud's poetry, her most prized possession.

His success with Carter's case won Richards a reputation in Santa Barbara's tight-knit legal community as the point man for toxic mold cases. He then took on the plight of the Johnsons, a young family living in a rented San Roque home



Wearing his telltale white lab coat, Dr. Gary Ordog stands outside his offices in Santa Clarita. Behind those walls, Ordog treats thousands of people he believes are sick because of the mold in their homes or offices. His controversially sensational stance on toxic mold has made him the bane of the insurance industry.

when toxic mold took over their lives. Soon after moving in, they noticed a musty smell emanating from the master bedroom closet. The furry black and green stuff responsible for the smell soon crept onto a favorite leather jacket and a purse in the corner of the closet. Terry, the mother, known to her family as a "clean freak," attacked the stuff with ruthless abandon, hitting it with bleach and scrubbing until it went away. But it came back, and repeated attacks only stymied the mold for a few days at a time.

Meanwhile, the family's three young children were getting "cold after cold, flu after flu after flu." The entire family, including Terry's young brother Mark, was constantly sick, suffering not only respiratory problems but psychological concerns as well. Mark slipped into depression for the first time in his life; the kids cried and fought like never before; their once-peppy first-grader was barely able to stay awake for lessons, and Terry stopped cleaning and instead began sleeping all day. In an act of desperation, her husband, Danny, got down on his hands and knees to try and wipe out the problem for good. For four days he scrubbed the mold away until his eyes burned, his nose clogged, and horrendous coughing ensued. Then, one week later, he hit a never-before-felt emotional low, and checked himself into Cottage Hospital's voluntary psych ward while harboring suicidal thoughts.

When Terry developed some spots on her tongue and doctors couldn't figure out why, an Internet search for "metallic taste" led to a toxic mold site. She read with horror that mold could be responsible for the declining mental health of the family, so she contacted the landlord about getting out. After getting an air quality sample, the landlord was generally unhelpful and would not provide the Johnsons with the air-quality results — which is illegal, by the way. Unfortunately, this is a common reaction of property owners who usually see mold as a problem more about aesthetics and construction than life and death.

Such inactivity by landlords is where the legal problems begin, according to Richards, who offered free advice to landlords everywhere. "Get your tenants out of the house," he said, explaining that it's not only the right thing to do for the tenant's health, but that if the matter does go to court, a jury would likely have more sympathy for a fast-acting, responsible landlord. Indeed, while downplaying the severity of mold-related illness, insurance industry insiders also recommend acting prudently. One article on an insurance industry Web site notes that the most striking similarity in cases with big settlements is an "uncaring defendant," a landlord, developer, or property management firm that acted callously instead of cautiously.

But even if a landlord tries to do the right thing, the results may prove unhappy. The tale of the Peters family shows just that. As if re-enacting a scene from *The X-Files*, George and Nancy describe the day they donned



When claims of toxic mold poisoning hit his desk with unexpected force a couple years ago, attorney John Richards began investigating. Now he's Santa Barbara's legal expert on the topic, getting as many as 10 new calls per month from people who believe they may be sick because of mold.

gloves, grabbed flashlights, and took a garbage bag into the crawlspace beneath their rented Summerland house to haul out what they believed was a dead and rotting skunk. The smell had permeated their home, and beneath the floor that day, their eyes burned from the stench. But instead of finding a carcass, they found themselves surrounded by an eerie black substance on the walls, a growth they later learned was mold.

The declining water pressure they'd complained about for months to their landlord turned out to be a slow leak, a leak that had fueled the growth of the smelly black mold. As with the Johnsons' case, the Peters' landlord ordered an air quality sample to be taken, but also refused to provide the results to the family. However, the Peters overheard one of the technicians who took the sample say that the estimated levels of mold spores were unbelievably high and that the Peters should move out immediately. After such news was relayed to the landlord, a construction company was called in to tear out the infected walls, which only managed to scatter the mold into the air. The landlord would not pay for relocating the family, however, which, especially in the outrageously expensive housing market as Santa Barbara, made it impossible for the family to move.

Soon, Nancy began bleeding internally and doctors did not know why. Her skin became so sensitive that even the lightest touch of her robe was painful, as if her entire body was covered in bruises. And as protective plastic sheets went up around the inside of house—evoking the sci-fi paranoia of the movie *ET*—the daughter Rita began experiencing unexplained fatigue and symptoms of depression. Always a hard worker, Rita lost the will to help out at the family business.

"These people were coming into our house with space suits, there were skull and crossbones signs saying do not enter, and there were plastic sheets everywhere—but we were told to eat and sleep there. It was like a bad joke," explained Rita, who got better when she moved up north to live with her father for a while. After returning to the "repaired" house last year, Rita began showing symptoms again and told her parents that the mold was still there. After enduring some ridicule, they agreed to check it out. Sure enough, the Peters' mold is back, and their nightmare continues.

For others the nightmare has just begun, and at least two new mold sufferers are referred to Richards each week. One of them is Iris Gifford, his newest client. Gifford lives in an apartment on the lower Eastside. The apartment's previous tenant had complained about water damage—damage so bad the upstairs neighbor's bathtub literally fell through the ceiling—but Gifford, who lives on a fixed income, jumped at the fair price after being told the problem had been taken care of. But soon after moving in, rashes began breaking out on Gifford's arms and legs, and a few weeks later, Gifford's hepatitis C—previously in a state of remission—kicked into full

gear. Nasty rashes appeared on her arms and legs, while her daughters, 11 and 13, complained they were having difficulty breathing.

One day, after learning that her neighbors in the building also had respiratory problems, Gifford came to the apartment for a quick pick-up of clothes (at that point she knew something was wrong and had started sleeping in motels and at relatives' houses). While Gifford packed a few things, her 11-year-old daughter lay down on a bed; the girl's face suddenly turned bright red and her breathing became labored. That was the final straw. Gifford had seen toxic mold in the news, so she decided to call an indoor air quality expert.

Because Gifford didn't have enough money for the pricey work-up on the air sample, the expert held off on providing the results. When Richards got involved, Gifford managed to come up with the dough for the testing, and the results were shocking—in her bathroom were extremely high levels of stachybotrys, one of the most potentially dangerous molds, and problematic levels were creeping into the closet in her daughters' room. Gifford no longer sleeps in the apartment; meanwhile, Richards is trying to get her medical work-up paid for.

Whether Richards will eventually take Gifford's case remains to be seen. He ends up taking only about 10 to 20 percent of the people who call him about toxic mold. Since he often has to pay for his lower-income clients' medical expenses, hotel stays, and air quality tests with his own money, Richards has to hedge his bets when it comes to toxic mold cases because he only gets paid and reimbursed if he wins. If there are too many pre-existing conditions or if a landlord did indeed act with care and concern, Richards usually has to turn the case down. But he's quick to offer basic advice to anyone and always recommends getting out of a moldy home as soon as possible.

### Watching the Detectives

But that's not quite the advice you'd get from Bill Slaughter, an equally persuasive attorney who defends insurance companies against toxic mold claims throughout central and southern California. Like Richards, Slaughter is a laid-back, straight-talking sort of guy who wears dirt-covered work boots, blue jeans, and loose-fitting shirts in his upstairs office near Highway 101 in Ventura. Throughout California's big-money insurance law circles, Slaughter is known for getting the job done.

Slaughter admitted that mold can produce allergic reactions, much like the sort of respiratory problems caused by cat dander. Slaughter chalked up the bulk of the dilemma to a few attorneys who seemed to be taking the money and running on the heels of this "flavor of the month." Slaughter said that existing research has failed to reveal peer-reviewed studies—reports which have been vetted and continued ►

◀continued accepted by the established medical community—which link toxic mold to the type of illnesses people are experiencing. He cites the American College of Occupational and Environmental Medicine's stance against the linking of mold to chronic illness as resounding evidence to support his claims.

Slaughter is quick to point out that even if mold could cause the sorts of neurological problems and life-threatening illnesses being claimed, there is still no technology to test for airborne poisons related to mold. The air quality tests used in most mold lawsuits count the number and type of mold spores floating around, but these tests cannot determine whether or not those spores are carrying mycotoxins, the poisonous substances ejected as a natural defense when a mold begins to dry up and die. Scientists agree that the evidence of spores does not necessarily mean mycotoxins are present and also agree that there is a lack of knowledge about what situations cause molds to produce mycotoxins. Slaughter charges that there's no hard science behind how many mycotoxins must be present to do major harm, explaining that, based on existing science, "The amount of mycotoxins needed to kill you would require so many spores that you wouldn't be able to see across the room."

Over the course of defending these lawsuits, which he does well, having been involved in at least three successful defense verdicts last year, Slaughter has learned that mold is everywhere. And that alone is the answer, he says, as to why the hysteria is based on false pretenses. He continually asks the question: If mold is everywhere, why aren't more people sick?

Slaughter's theory? "These people are walking around depressed, looking for an answer. Told by a doctor they've been poisoned by toxic mold, people convince themselves that they have these uniquely subjective symptoms.

I've found that there's a lot of people being told that they're sick when they're not." Slaughter presents his theory sympathetically, suggesting that he does indeed care about these people, but that attorneys and doctors are profiting from their misfortune. "I'm helping people be true to themselves," he said.

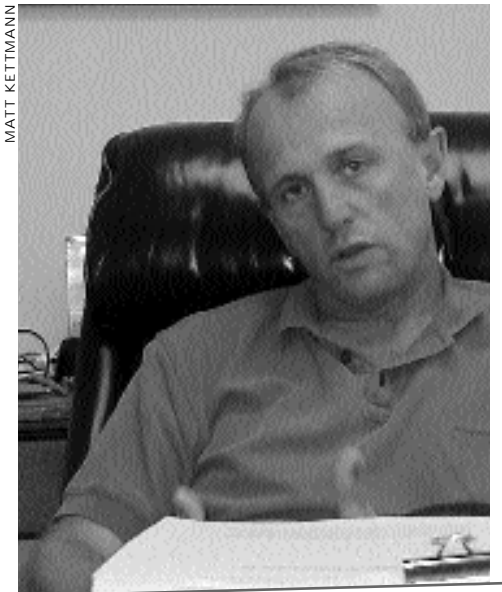
When Slaughter talks mold, he does so with an easy confidence, and it's tempting to believe him. But Slaughter nearly loses his cool when the conversation shifts to Dr. Gary Ordog, the doctor—known in some defense circles as "whore dog"—who has become the voice for toxic mold victims in many a California courtroom and, hence, the bane of the insurance industry. "Ordog treats mold like it's anthrax," Slaughter said, before launching into a lengthy assault on Ordog's credentials. With a certain amount of pride, Slaughter also mentioned that late last year, the state Attorney General began a serious inquiry into Ordog's treatment of past patients. Slaughter has become Ordog's nemesis, and vice versa, as many California mold cases hinge on which man the jury

believes: the smooth-talking, down-to-earth defense attorney or the calm, fatherly doctor.

### What's Up, Doc?

Dr. Gary Ordog's office in the middle of strip mall-happy Santa Clarita is about as nondescript as the white lab coats he wears. A big teddy-bear kind of guy, Ordog's favorite place to eat lunch is right across the street from his office, a little deli called Cathy's. One sunny day last spring, Ordog waxed at length about the history and science of mold with the same nonchalant manners he used to order Cathy's famed matzo ball soup. The information Ordog provided was enlightening, both in what he claimed toxic mold had been proven to cause—everything from childhood asthma and skin rashes to irreversible brain damage and lethal cancer—and in the lengthy legacy that toxic mold boasted.

According to Ordog, toxic mold is nothing new. The Bible mentions it in the Book of Leviticus and prescribes burning



MATT KETTMANN

From his Ventura office, Bill Slaughter is leading the charge against doctors and lawyers who claim that mold is toxic. As the insurance industry's top defense attorney, Slaughter has been successful refuting evidence and discrediting doctors who say that mold can kill.

down all houses infested by mold. Mold has been cited as the cause of such historic events as St. Anthony's Fire, a documented syndrome in the Middle Ages involving people who went mad after eating moldy rye. Ordog believes that ingested or inhaled molds also accounted for the 10th plague of the Old Testament—the deaths of the first-born sons. Toxic mold, Ordog will tell you, lay behind the mysterious curse of King Tut's tomb and the witch-hunts of Salem, and that mold has been used since the Trojan Wars as a biological weapon, a tradition carried on by Saddam Hussein's "yellow rain" attacks on the Kurds in the late 1980s. Ordog, who claims he was the one of the few doctors able to successfully treat Gulf War syndrome, believes that mold may have been used on American soldiers as well and has heard that the United States may have used mold as a weapon during the Vietnam War.

Ordog's office is literally a library of articles and scientific papers about toxic mold, a collection he uses to convince patients that—no matter what some

attorneys say — Ordog is not the only one concerned about the dangers posed by molds and mycotoxins, the poisons they can create.

In nature, mold typically feeds on the undergrowth of forests, digesting fallen trees until there's no more moisture to sustain their growth. Then, as a defense mechanism to fend off competing molds, insects, or even large mammals, the mold ejects reproductive spores that carry mycotoxins. According to the available research, mycotoxic poisons range drastically in severity, but in some cases, mycotoxins such as the aflatoxins produced by aspergillus or the trichothecenes produced by stachybotrys, can cause death if just a milligram is inhaled.

"Do you know how much a milligram is?" Ordog asked, during the lunchtime interview. He answered himself by holding up a single grain of salt. "This could kill you," he said.

If you're prone to paranoia, you should avoid a talk with Ordog. He went on to explain that the more than 2,000 known mycotoxins — which theoretically are everywhere at any given moment — can cause any one of 28 symptoms, ranging from relatively mild allergic symptoms such as bloody noses, rashes, and asthma to major effects such as Alzheimer-like forgetfulness, myriad cancers, or the fatigue-related symptoms of depression, lupus, fibromyalgia, and multiple sclerosis. Mold and mycotoxins affect everyone differently, and their effects are difficult to diagnose because of wide-ranging, occasionally subjective, and often amorphous symptoms.

He cites the 20-plus texts authored by the World Health Organization that link mycotoxins to 67 various forms of cancer as well as a lengthy list of international studies and historical records to toxic mold, usually related to aspergillus and stachybotrys spores. "Ten years from now," Ordog predicted, "doctors everywhere will be more knowledgeable about mycotoxins."

By no means is Ordog alone. In a legal conference scheduled for March in Irvine, more than a dozen doctors and medical experts are slated to speak about health problems related to mold and mycotoxins, including a San Francisco doctor who was reprimanded by the state medical board for prescribing unorthodox treatments to mold patients. Toxic mold critics charge the same thing about Ordog, who, after making sure people move out of their moldy residences and destroy all infested possessions, puts patients on an internal cleansing process that involves vitamins, saunas, and antifungal medicines.

### Santa Barbara Story

The testimony of Ordog is expected to play a big role in the upcoming \$5 million civil suit against the El Escorial homeowner's association, property management company, and 13 other defendants involved in the construction and operation of the ritzy condo complex situated between the zoo and East Beach. The case centers on the claim by Eva Geffcken and her son Alexander — who lived at El Escorial from 1995 to 2000 — that they suffered five years of toxic mold exposure. And that exposure, the Geffckens believe, gave Eva lung cancer, leading to the removal of a lobe of her lung, and caused irreversible liver damage to Alexander. Ordog has supported their claims in his testimony.

But attorney Pat McCarthy, the lead defense attorney, doesn't agree. McCarthy has been researching the topic for months and has also deposed Ordog in preparation. "Dr. Ordog will say that the pimples on your face, the lint in your belly button, and the dirt under your toenails are due to mold exposure," McCarthy said from his Victoria Street office. He claims that Ordog is not held in high esteem by the medical community at large and said that Eva Geffcken's surgeon, oncologist, and pulmonologist have all testified that her lung cancer bore no relation to toxic mold. "Ordog is cashing in on the hysteria," McCarthy continued, criticizing his exorbitant expert testimony fees. "I don't know of any expert who charges \$975 an hour and, when a judge orders the fee reduced, turns around and charges his patient for the remainder," as Ordog has done in the Geffcken matter. McCarthy also pointed to three cases from 2003 where Ordog was an expert, but the plaintiffs lost the jury verdict.

(For his part, Ordog said his pricey rates are due to "high overhead" and that those cases were lost because the plaintiffs' attorneys failed to prove liability of the defendants. Ordog assured that his scientific opinion was accepted in all three cases.)

Representing the Geffckens is Nicolas Weimer, a Los Angeles trial attorney. Weimer said he watched as the defense attorneys tried to refute Ordog's evidence during the deposition, an attack to which Ordog responded by producing "not just a little documentation." In explaining why he agreed to represent the Geffckens in what may prove a landmark toxic mold trial, Weimer offered, "There's a certain amount of objective evidence in this case. The patients can't fake it and the doctors can't make it up."

The case is expected to begin by the end of the month.

### Who's Telling the Truth?

As long as the toxic mold debate is decided in the courtroom — where persuasion and advocacy reign supreme over facts and figures — instead of in the laboratory, the American public will be hard-pressed to determine just how toxic that mold in the bathroom is. There seems to be a very clear connection between moldy homes and sick people, but whether that stuffy nose will equate to ovarian cancer down the road remains a connection not yet accepted by the mainstream medical and legal community.

Most troubling, however, is the possibility that both sides of the debate are correct. What if, as Ordog asserts, the various manifestations of mold — nature's dedicated and determined garbageman — do cause myriad health problems, ranging from the occasional stuffed nose and annoying wheeze to life-threatening cancers and debilitating brain disorders? And what if, as Slaughter and other defense attorneys suggest, mold is all around us? Could countless baffling ailments endured daily by humans worldwide be explained by the wet spot under the sink, the funky odor in the closet, the black goo beneath the floor?

For now, that answer remains in the hands of juries and equates more to money awarded than facts discerned. But at least one thing is clear — if there's mold in your house or apartment, deal with the problem soon, before the fate of your home and your health winds up before judge and jury. ■