the tragedy of TOXIC
MOLD
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 out 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 toxic mold effects. 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—aaspergillus, Stachy botrys, 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 the same time rewriting homeowner policies to drastically reduce, or simply eliminate, coverage for mold-related damage to health or home. According to insurance companies, the sensational 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 its 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 closed 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 recently ruled 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 always end up in the courtroom as judges and juries and 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 government 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 repair 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 residents are renters and apartment dwellers, mold damage cases are beginning to hit the courts 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 lobectomy and whose son suffered irreparable liver damage because they claimed 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 floor 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 peeling, 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 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 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 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" lead 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 discovered...
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 the 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.

“The 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 after having difficulty breathing.

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 ➤
Mold cases hinge on which man the jury nemesis, and vice versa, as many California past patients. Slaughter has become Ordog's serious inquiry into Ordog's treatment of last year, the state Attorney General began a of pride, Slaughter also mentioned that late Ordog's credentials. With a certain amount before launching into a lengthy assault on treats mold like it's anthrax, " Slaughter said, the bane of the insurance industry. "Ordog many a California courtroom and, hence, become the voice for toxic mold victims in defense circles as "whore dog" — who has cool when the conversation shifts to Dr. Gary Ordog, the doctor — known in some believe him. But Slaughter nearly loses his with an easy confidence, and it's tempting to he said. "I'm helping people be true to themselves, " doctors are profiting from their misfortune. Slaughter presents his theory sympatheti-
told that they're sick when they're not. "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 ourselves 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 sympatheti-
cally, 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. Ordog's offices are literally a library of articles and scientific papers about toxic mold, a collection he uses to convince patients that — no matter what some
claims in his testimony. Alexander. Ordog has supported their
and caused irreversible liver damage to
leading to the removal of a lobe of her lung,
the Geffckens believe, gave Eva lung cancer,
1995 to 2000 — that they suffered five years
claim by Eva Geffcken and her son
and East Beach. The case centers on the
condo complex situated between the zoo
company, and 13 other defendants involved in
association, property management com-
suit against the El Escorial homeowner's
big role in the upcoming $5 million civil
The testimony of Ordog is expected to play
certification. 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 caused due to mold
exposure" McCarthy said from his Victoria
Street office. He claims that Ordog is not
held in high esteem by the medical commu-
nity 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, McCarthy 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 persua-
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
equalize our own 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 stuffy nose and annoying
whese 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 jurists and equates more to money
awarded than to 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.