

Here's How and When to Do It

ACTION GUIDE

October 2005

Handling Mold Litigation in California

**Karen H. Kahn
Michelle R. Bernard
Stephen J. Henning
Patrick S. Schoenburg
Christopher R. Wagner**



CONTINUING EDUCATION OF THE BAR ■ CALIFORNIA
Oakland, California

Website: ceb.com

Scope of Guide

Whether you are prosecuting or defending a mold exposure action, this Action Guide covers the most important basics of mold litigation. It assists the attorney in investigating relationships of the adverse parties, engaging appropriate litigation experts, and determining the cause of the mold exposure. It also guides the attorney in choosing applicable theories of liability for the complaint, assessing both first and third party insurance coverage, evaluating a broad spectrum of potential damages, and limiting or disqualifying expert witness testimony. An important feature of this Action Guide is that it offers information on the latest mold science studies; numerous cross-references to treatises supplementing the text that explain in greater detail how to litigate a construction defect action or a suit for breach of the implied warranty of habitability; how to choose, retain, prepare, and cross-examine expert witnesses; and how to pursue or defend an insurance bad faith claim for denial of coverage.

Revision Highlights

- ❑ In May 2004, the Institute of Medicine (IOM) of the National Academy of Sciences issued a study entitled “Damp Indoor Spaces And Health,” which may significantly affect several issues in proving mold-related health problems. See step 2.
- ❑ Defendants in mold litigation may seek indemnity (contractual, equitable, or both) from other potentially responsible parties, such as construction participants or providers of repair and abatement services, on a theory that their negligence in performing the work exacerbated the mold conditions. See steps 3–4, 20, 37–38.
- ❑ In *Burnett v Chimney Sweep, LLC* (2004) 123 CA4th 1057, 20 CR3d 562, a tenant action for damages resulting from mold growth, the court of appeal refused to enforce the exculpatory clause in the lease, holding that it did not exclude liability for the landlord’s active negligence. See step 4.
- ❑ In *Coldwell Banker Residential Brokerage Co. v Superior Court* (2004) 117 CA4th 158, 11 CR3d 564, the court held that a home purchaser’s minor son, who suffered bodily injuries as a result of undisclosed microbial contamination, had no cause of action against the broker. See steps 4, 9, 20.
- ❑ California regulations require all employers to provide information to their employees about the hazardous substances to which they may be exposed. See step 4.
- ❑ Some types of diagnostic tests frequently used in mold exposure cases, such as serology (blood) testing, are controversial. See step 10.
- ❑ Several steps explain and identify the experts most appropriate for evaluating various types of damages resulting from mold exposure. See steps 5, 7, 10–11.
- ❑ To avoid potential conflicts of interest, the remediation company that undertakes mold abatement should be separately retained after an independent industrial hygienist prepares a protocol or repair plan. See steps 13–15.
- ❑ A special limitations statute, which incorporates the common law “discovery” rule, applies to “toxic tort” cases, *i.e.*, civil actions for injury or illness arising from exposure to a “hazardous material or toxic substance.” See step 20.
- ❑ A number of alternative strategies exist for limiting or disqualifying expert testimony at trial; the law of medical causation testimony is unsettled. See steps 24–26.
- ❑ Attorneys should consider both first and third party insurance coverage for mold claims. See steps 27–36.
- ❑ The supreme court in *Julian v Hartford Underwriters Ins. Co.* (2005) 35 C4th 747, 27 CR3d 903, clarified the effect of ensuing loss coverage for damage resulting from certain risks on an exclusion that limits the extent of the ensuing loss coverage in the insurance policy. See step 30.
- ❑ Even though a homeowner’s policy clearly excluded coverage for damage caused by “dry rot,” a fungus, and the “dry rot” allegedly caused the home to collapse, the court of appeal ruled that the damage was covered because the policy covered certain types of collapse. *Jordan v Allstate Ins. Co.* (2003) 116 CA4th 1206, 11 CR3d 169. See step 31.
- ❑ An extensive updated directory of online research sites that include valuable scientific and expert witness information is included in the Appendix.

Abbreviations

Common Interest Communities	Advising California Common Interest Communities (2d ed Cal CEB 2003)
Attorney Fee Awards	California Attorney Fee Awards (2d ed Cal CEB 1994)
Civ Proc Before Trial	California Civil Procedure Before Trial (4th ed Cal CEB 2004)
Civ Proc During Trial	California Trial Practice: Civil Procedure During Trial (3d ed Cal CEB 1995)
Construction Contracts	California Construction Contracts and Disputes (3d ed Cal CEB 1999)
Eviction Defense Man	California Eviction Defense Manual (2d ed Cal CEB 1993)
Handling Real Property Sales	Handling Real Property Sales Transactions (Cal CEB Action Guide March 2005)
Insurance Claims for Property Loss	Insurance Claims for Property Loss: Determining Coverage and Presenting Claims (Cal CEB Action Guide Winter 2004)
Landlord-Tenant	California Landlord-Tenant Practice (2d ed Cal CEB 1997)
Liability Ins Prac	California Liability Insurance Practice: Claims & Litigation (Cal CEB 1991)
Office Leasing	Office Leasing: Drafting and Negotiating the Lease (Cal CEB 1996)
Real Estate Broker	Approaching an Action Against a Real Estate Broker (Cal CEB Action Guide Spring 2003)
Real Property Remedies	California Real Property Remedies and Damages (2d ed Cal CEB 2002)
Real Property Sales	California Real Property Sales Transactions (3d ed Cal CEB 1998)
3 Witkin, Procedure, <i>Actions</i>	3 Witkin, California Procedure, <i>Actions</i> (4th ed 1996)
5 Witkin, Procedure, <i>Pleading</i>	5 Witkin, California Procedure, <i>Pleading</i> (4th ed 1997)
5 Witkin, Summary, <i>Torts</i>	5 Witkin, Summary of California Law, <i>Torts</i> (9th ed 1987) <i>Enforcement of Judgments</i>
8 Witkin, Procedure, <i>Enforcement of Judgments</i>	8 Witkin, California Procedure, (4th ed 1997)

This publication may be cited as Handling Mold Litigation in California (Cal CEB Action Guide October 2005).

This Action Guide supersedes Handling Mold Litigation in California (Cal CEB Action Guide Summer 2003).

©2005 by The Regents of the University of California .

RE-11211
ISBN 0-7626-1059-X

By agreement between the Board of Governors of the State Bar of California and The Regents of the University of California, Continuing Education of the Bar—California (CEB) offers an educational program for the benefit of practicing lawyers. This program is administered by a Governing Committee whose members include representatives of the State Bar and the University of California.

Authors are given full opportunity to express their individual legal interpretations and opinions; these opinions are not intended to reflect the position of the State Bar of California or of the University of California. Materials written by employees of state or federal agencies are not to be considered statements of governmental policies.

CEB is self-supporting. CEB receives no subsidy from State Bar dues or from any other source. CEB's only financial support comes from the sale of CEB publications, programs, and other products. CEB's publications and programs are intended to provide current and accurate information and are designed to help attorneys maintain their professional competence. Publications are distributed and oral programs presented with the understanding that CEB does not render any legal, accounting, or other professional service. Attorneys using CEB publications or orally conveyed information in dealing with a specific legal matter should also research original sources of authority. CEB's publications and programs are not intended to describe the standard of care for attorneys in any community, but rather to be of assistance to attorneys in providing high quality service to their clients and in protecting their own interests.

CEB Governing Committee

M.R.C. Greenwood, Oakland, Chairperson

James E. Towery, San Jose, Vice-Chairperson

Marilyn D. Anticouni, Santa Barbara

The Honorable David B. Flinn, Martinez

Sidney K. Kanazawa, Santa Monica

Dean Mary Kay Kane, San Francisco

John Plotts, Oakland

Victor C. Rowley, San Francisco

Julius M. Zelmanowitz, Oakland

CONTENTS

ABOUT THE AUTHORS	xii
ACKNOWLEDGMENTS	xv
CUTOFF DATES	xvii
When Conducting Initial Investigation	1
1. REVIEW SCIENTIFIC CONCEPTS ABOUT MOLD	1
2. REVIEW STUDIES ON HEALTH EFFECTS OF MOLD EXPOSURE	2
3. REVIEW BASIC ELEMENTS OF MOLD CASE.....	5
When Assessing Causation and Liability Issues	7
4. IDENTIFY STATUS OF PLAINTIFF AND BASES FOR LIABILITY	7
Residential Tenant.....	7
Commercial Tenant	9
Homebuyer; New Construction	10
Homeowner; Older Home	12
Owners in Common Interest Communities	13
Employee; Workplace Exposure	14
Teachers and Students; School Exposure.....	15
5. INTERVIEW CLIENT AND ESTABLISH SCHEDULE FOR SITE INSPECTION AND TESTING	15
6. ESTABLISH WRITTEN FEE ARRANGEMENT WITH CLIENT	18
7. HIRE EXPERTS TO DETERMINE SOURCES OF WATER INTRUSION	19
8. OBTAIN TRANSACTION DOCUMENTS AND OTHER RECORDS.....	20
From Client	20
Potential Defendant's Documents.....	21
Other Parties' Documents.....	22
9. IF SUIT STEMS FROM PROPERTY SALE, ASSESS BROKER'S AND SELLER'S CONDUCT.....	22
10. RETAIN MEDICAL EXPERTS TO EVALUATE PERSONAL INJURIES.....	23
11. GATHER AND PRESERVE EVIDENCE OF MOLD GROWTH AND PROPERTY DAMAGE	25
12. PRELITIGATION NEGOTIATING STRATEGIES	28
When Evaluating Economics of Pursuing Mold Action.....	31
13. ESTIMATE ECONOMIC DAMAGES	31
14. IDENTIFY ALL POTENTIALLY LIABLE PARTIES	32
15. WEIGH COSTS AGAINST POTENTIAL BENEFITS OF SUIT	33
When Evaluating Contract-Based Claims	36
16. DETERMINE WHETHER YOU CAN PLEAD BREACH OF CONTRACT	36
17. EVALUATE PLAINTIFF'S REMEDIES UNDER A CONTRACT THEORY.....	38
Rescission	38
Contract Damages (Benefit of the Bargain)	39
Attorney Fees	39
Prejudgment Interest.....	40

When Evaluating Tort-Based Claims	40
18. DETERMINE WHETHER YOU CAN PLEAD BREACH OF FIDUCIARY DUTY	40
19. DETERMINE WHETHER YOU CAN PLEAD FRAUD	41
Actual Fraud (Including Negligent Misrepresentation)	42
Deceit (Including Negligent Misrepresentation)	43
Constructive Fraud	44
20. DETERMINE WHETHER YOU CAN PLEAD NEGLIGENCE	45
21. DETERMINE WHETHER YOU CAN PLEAD OTHER TORT THEORIES	46
22. COMPARE PLAINTIFF’S REMEDIES UNDER TORT THEORIES	47
Basic Tort Damages	47
Fraud Damages When Suing Fiduciary	47
Fraud Damages When Suing Other Principals or Their Agents	48
Emotional Distress Damages.....	49
Punitive Damages.....	49
Attorney Fees	50
Prejudgment Interest.....	51
When Evaluating Statutory Claims	51
23. DETERMINE WHETHER TO PURSUE A CLAIM BASED ON BREACH OF STATUTE	51
Derivative Torts; Statutory Duties	51
Residential Landlord-Tenant.....	53
Construction Defects.....	53
Residential Sale Transactions	54
When Determining and Challenging Expert Qualifications	55
24. INVESTIGATE EXPERT’S FIELD AND QUALIFICATIONS	55
25. DETERMINE BASIS FOR EXPERT’S OPINION	56
26. SELECT PROCEDURE FOR CHALLENGING OPPOSING EXPERT	57
When Evaluating First Party Insurance Coverage	59
27. VERIFY POLICY INFORMATION AND TENDER OF CLAIM.....	59
28. DETERMINE WHICH COVERAGE PARTS ARE AT ISSUE.....	60
29. ESTABLISH CAUSE OF WATER LOSS TO DETERMINE COVERAGE	61
30. DETERMINE WHETHER POLICY COVERS WATER INTRUSION LOSS THAT TRIGGERED MOLD DAMAGE.....	61
31. EVALUATE OTHER COVERAGE AND CLAIMS ISSUES	64
32. EXHAUST CONTRACTUAL APPRAISAL REMEDY BEFORE FILING COVERAGE ACTION	66
33. OTHER INSURANCE-RELATED PRELITIGATION CONSIDERATIONS	67
34. EVALUATE FIRST PARTY CLAIMS HANDLING FOR POTENTIAL “BAD FAITH”: A SUMMARY	67
When Evaluating Third Party Insurance Coverage	69
35. ANALYZE THIRD PARTY POLICY COVERAGE AND EXCLUSIONS.....	69
36. EVALUATE THIRD PARTY CLAIMS HANDLING FOR POTENTIAL “BAD FAITH”: A SUMMARY	76
When Evaluating Indemnification Issues	77
37. DETERMINE WHETHER YOU CAN PURSUE EXPRESS INDEMNITY.....	77
38. DETERMINE WHETHER YOU CAN PURSUE EQUITABLE INDEMNITY	78

Before Pursuing Litigation	79
39. CONSIDER ALTERNATIVE DISPUTE RESOLUTION (ADR) OR ADMINISTRATIVE REMEDIES	79
Appendix	81
ONLINE RESEARCH DIRECTORY	81
Tables	85
TABLE OF STATUTES, REGULATIONS, AND RULES	85
TABLE OF CASES	87

About the Authors

Karen H. Kahn

Karen H. Kahn is the principal at the Law Offices of Karen H. Kahn in Emeryville. She represented plaintiffs in asbestos litigation for 11 years and was a partner in the firm of Kazan, McClain, Edises & Simon. She handled her first mold exposure case in 1995 and since that time has primarily handled mold exposure cases on behalf of homeowners, tenants, and plaintiffs in first party bad faith cases. Ms. Kahn is a sustaining member of Consumer Attorneys of California (COAC), for which she served as a speaker on the topic, "Evaluating and Litigating a Mold Property Damage and Personal Injury Case." She also presents programs concerning mold litigation for CEB and NBI. Ms. Kahn received her J.D. from the University of British Columbia and is admitted to practice in the Province of British Columbia and in California.

Michelle R. Bernard

Michelle R. Bernard is senior counsel in the San Diego office of Gordon & Rees, LLP, a major defense firm with offices in both Northern and Southern California. The firm specializes in complex defense and related insurance litigation matters, including claims involving mold-related personal injuries and property damage. Ms. Bernard specializes in representing property and casualty insurers in coverage and related bad faith litigation. She has extensive experience in defending first and third party mold bad faith actions and is actively involved in providing claims training seminars for insurance industry professionals. She also presents programs concerning mold litigation for CEB. Ms. Bernard received her B.A. from Stanford University in 1986, and her J.D. from Santa Clara University School of Law in 1989.

Patrick S. Schoenburg

Patrick S. Schoenburg is a partner with the firm of Wood, Smith, Henning & Berman, LLP, and manages its Central California office. Patrick received his undergraduate degree with High Honors from the University of California, Santa Barbara, and his law degree from the University of Southern California, where he was a member of the Southern California Law Review. Following graduation, Patrick served as a law clerk to United States District Judge A. Andrew Hauk. His current practice focuses on the areas of occupational exposure, mold exposure, and mass torts. Mr. Schoenburg has written a number of articles on the subject of mold litigation and has served as a consultant to clients across the nation who are faced with mold claims.

Stephen J. Henning

Stephen J. Henning is a founding partner and is located in the Los Angeles office of the law firm of Wood, Smith, Henning & Berman. The firm is a leader in defending mold claims in California. Mr. Henning serves as national coordinating counsel for mold claims for many clients, and frequently presents seminars for avoiding and defending mold claims to lawyers and construction professionals. He has litigated all aspects of construction and mold matters. His primer, "Defending the Mold Claim," is used nationally by risk managers and claims professionals. Mr. Henning received both his B.S. and his J.D. from the University of Nebraska, where he competed on the National Trial Advocacy Team.

Christopher R. Wagner

Christopher R. Wagner is a partner in the Los Angeles office of Gordon & Rees. He is a member of the firm's Insurance Group and focuses his practice on counseling clients on insurance coverage, and litigating coverage and "bad faith" issues. He has presented seminars and authored articles on a variety of insurance coverage topics, including *False Alarm? Effect of MacKinnon v Truck Insurance Exchange on Mold Exposure Claims*, 28 CEB Real Prop Law Rep 11 (Jan. 2005). Mr. Wagner received both his B.S. in political science and his J.D. from Santa Clara University. He is a member of the Los Angeles County Bar Association.

Acknowledgments

CEB gratefully acknowledges the valuable contributions of the authors who worked with great interest and dedication on this updated Action Guide. CEB also acknowledges with appreciation the contributions of John C. Miller, Jr., of Folsom, a litigating attorney in the area of mold and toxic torts, who assisted as a contributing writer and consultant on the first edition of this action guide in 2003.

Some portions of this Action Guide were based on a companion Action Guide, *Approaching an Action Against a Real Estate Broker* (Cal CEB Action Guide Spring 2003). CEB appreciates the work of the current authors and of those who contributed to previous editions of that Guide.

Bonnie C. Maly, CEB attorney, was responsible for this Action Guide and contributed portions of original text. Nancy Yuenger, CEB attorney, assisted with legal editing on the first edition. Holly Kraemer, CEB attorney in the program department, gave creative and administrative support for this project.

Leslie Tenney copyedited and handled production. Kenneth Marr, Carolyn Valley, and Alice Kostin provided legal research analysis. This publication may be cited as *Handling Mold Litigation in California* (Cal CEB Action Guide October 2005).

Cutoff Dates

We completed legal editing of this Action Guide at the end of April 2005.

We reviewed case citations through these cutoffs:

Shepard's California Citations at 34 C4th 1039, 126 CA4th 1180, 160 L Ed 2d 841, 393 F3d 1315, 353 F Supp 2d 1072;

Shepard's United States Citations at 160 L Ed 2d 841, 393 F3d 1315, 353 F Supp 2d 1072;

Shepard's Federal Citations at 160 L Ed 2d 841, 393 F3d 1315, 353 F Supp 2d 1072.

We reviewed California and federal statute citations for amendments and repeals through these cutoffs:

California statutes through Stats 2005, ch 9.

Federal statutes through 119 Stat 4.

We try to add significant statutory and judicial developments, subsequent histories of cases, and other matters such as new forms and regulations after legal editing is done, but you should not assume that all developments after the listed cutoff dates have been included.

Handling Mold Litigation in California

by Karen H. Kahn, Michelle R. Bernard, Stephen J. Henning,
Patrick S. Schoenburg, and Christopher R. Wagner

When Conducting Initial Investigation

STEP 1. REVIEW SCIENTIFIC CONCEPTS ABOUT MOLD

DEFINITION OF FUNGI

- a. Fungi are organisms distinct from plant life. Fungi lack chlorophyll, leaves, and roots, reproduce by spores, and live as parasites, obtaining nutrients by composting dead organisms. The fungal group includes molds, mildew, yeasts, and mushrooms.
- b. Fungi are ubiquitous in the environment and exist naturally in indoor environments as a result of air exchange with the outdoors. Fungi are also tracked into the indoor environment as a result of outdoor activity by occupants and domestic animals.

Indoor Fungal Growth

Fungi become a structural problem when growth occurs on wet building materials in an indoor environment. Personal contents that also become wet are subject to fungal growth. Once established, fungi can disperse throughout a building.

- a. Modern energy-efficient buildings present a particular problem because they do not breathe, and fresh air exchange depends on the design and maintenance of the HVAC system. All too often, these buildings become a breeding ground for fungi and bacteria due to insufficient outside air entering the system; outside air is important because it dilutes indoor pollutant concentrations.
- b. Poor filtration is also a common problem: Dirty air-handling units and contaminated duct work have been identified as causes of “sick building syndrome” and “building related illness.”

Significance of Indoor Growth

Fungal growth in an indoor environment can degrade air quality and disperse spores throughout a structure. If the surfaces on which spores settle are moist or wet, fungal growth can occur within 24 to 48 hours. In such an environment, occupant health may also be impacted.

EFFECT OF MOLD EXPOSURE ON HEALTH

Fungi are allergens, irritants, and pathogens. Fungi also produce mycotoxins, which are poisons. Health effects of exposure to fungi include hay-fever-type symptoms, usually reported as seasonal, but by occupants of a water-damaged building they are experienced as perennial.

Symptoms

Symptoms include: dry or watery, itchy and/or red eyes; sneezing; productive cough; dry cough; congestion; runny nose; headaches; rashes; fatigue; sore

throat; swollen glands; difficulty breathing or shortness of breath; sinus pressure; ear pressure; ear popping; fatigue; gastrointestinal problems.

Diagnoses

Diagnoses include: allergic rhinitis; bronchitis; pneumonia; asthma; sinusitis (fungal or bacterial); allergic broncho-pulmonary aspergilliosis; hypersensitivity pneumonitis; fungal sinusitis; and/or urticaria. Chronic sinusitis and severe allergic exacerbations of allergic rhinitis can cause or contribute to anosmia or hyposmia, the loss or diminution of ability to smell odors. Many individuals with these conditions have compromised or no ability to taste.

NOTE

Other medical conditions have been causally associated with fungal exposure, including immune suppression and neurological disorders, cognitive dysfunction, mycotoxicosis, and pleural aspergilliosis. Mold science, however, is controversial; see step 2, below.

Further Research: Internet websites with up-to-date information on mold science, experts, remediation, and litigation are: www.themoldsource.com/starter.html and www.moldupdate.com. The California Department of Health Services' factsheet has information about health effects, remediation measures, a bibliography, and links to other websites. See dhs.ca.gov/ps/deodc/ehib/EHIB2/topics/Moldhome%20Eng.html.

STEP 2. REVIEW STUDIES ON HEALTH EFFECTS OF MOLD EXPOSURE

HEALTH EFFECTS INITIALLY NOT LITIGATED

The legal landscape in the early 1990s did not include “mold cases” as we know them now. Litigation involving water intrusion and fungal growth were litigated as “construction defect” or “habitability” cases against developers, architects, engineers, landlords, and the like, and did not usually have a personal injury or mold exposure component.

EARLY STUDIES ON HEALTH EFFECTS OF TOXIC MOLD

- a. In the mid-1990s, attorneys started to evaluate the relationship between fungal exposure and personal injury. The Centers for Disease Control, around the same time, was evaluating a cluster of cases involving the relationship between infant death due to pulmonary hemosiderosis and infant exposure in the home to *stachybotrys*, a toxic mold. (On March 10, 2000, the CDC issued a follow-up report stating that an association between the infants' deaths and mold exposure “was not proven.”)
- b. Publication of the results of a study involving New York Museum workers by Eckardt Johanning, M.D., entitled *Health and Immunology Study Following Exposure to Toxicogenic Fungi (Stachybotrys Chartarum) in a Water-Damaged Office Environment*, Int'l Archives of Occ & Env'tl Health 68(4):207 (1996), the drafting of the New York City Guidelines for the remediation of *stachybotrys* in water-damaged buildings (1993), and other research and publications from private and government sectors triggered interest in the legal community.

INSTITUTE OF MEDICINE (IOM) 2004 REPORT

Effects of Damp Spaces on Health

In 2002, the Institute of Medicine (IOM) was directed by the Centers for Disease Control to convene a panel to research and review literature about damp indoor spaces, mold, and their adverse health effects. (The IOM is part of the National Academies of Science, which was granted a charter by Congress in 1863 mandating that it serve as an independent advisor to the federal government on scientific and technical matters.) The panel performed its evaluations in closed sessions. In May 2004, the IOM published its report, “Damp Indoor Spaces and Health.” Because of the length of the report and the prestige of the issuing organization, it must be considered in evaluating a mold claim.

In the opinion of plaintiffs’ counsel, the methodology of the panel suggests that the IOM report may be scientifically unreliable. Plaintiffs’ counsel assert that the two physicians on the panel did not have experience evaluating significant patient populations with mold exposure in clinical settings. The other panelists were not physicians, but were involved in Public Health, Epidemiology, Environmental Health, and Toxicology. Plaintiff’s counsel also criticize the panel for not giving public access to information being considered by the panel for its 2004 report.

IOM Health Effects’ Findings

The IOM report sets forth causal connections and findings related to damp buildings and mold exposure:

- a. Sufficient evidence of an association exists between damp indoor environments and:
 - (1) Upper respiratory symptoms (nasal and throat);
 - (2) Cough;
 - (3) Wheeze; and
 - (4) Asthma symptoms in sensitized individuals.
 - b. Sufficient evidence of an association exists between damp indoor environments, with mold and other agents, and:
 - (1) (1) through (4) above; and
 - (2) Hypersensitivity pneumonitis.
- “Sufficient Evidence of an Association” is defined in the IOM Report. It is that “an association between the agent and the outcome has been observed in studies in which chance, bias, and confounding could be ruled out with reasonable confidence.”
- c. Limited or suggestive evidence of an association exists between damp indoor environments and:
 - (1) Dyspnea (shortness of breath);
 - (2) Lower respiratory illness in otherwise healthy children; and
 - (3) Asthma development.

NOTE →