

Practical Ideas to Limit Exposure in a Litigious, Mildewy World

Presentation to Cavco Industries, Inc.

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Leviticus 14:33-45

Cleansing from Mildew

³⁶ The priest is . . . in to examine the mildew If the mildew has spread on the walls, ⁴⁰ he is to order that the contaminated stones be torn out and thrown into an unclean place outside the town. ⁴³ If the mildew reappears in the house, it is a destructive mildew; the house is unclean. ⁴⁵ It must be torn down – its stones, timbers and all the plaster – and taken out of town to an unclean place.



1347 - Saint Vitus Dance and the Black Death

People often experienced convulsive spasms leading to death after eating moldy rye. The convulsions were caused by “Ergot” - a toxin-producing fungus growing on the rye. The toxin also reduced resistance to the Bubonic Plague.



Saint Vitus



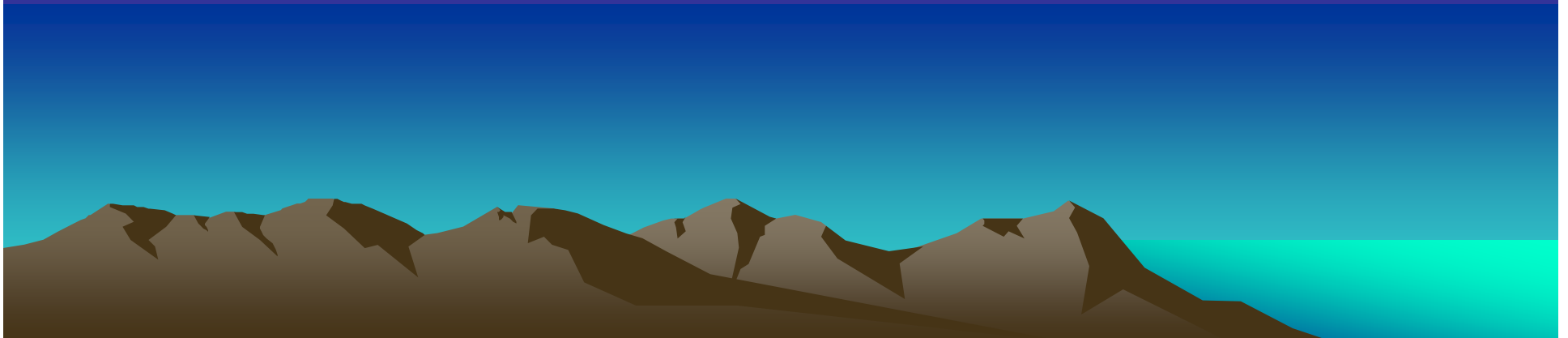
*14th century woodcarving,
"The Dance of Death"*

Mold

➤ What?

➤ How?

➤ Why?



What

- MOLD IS A FUNGUS (*Fungi*)
- More than 100,000 species of fungi
 - Stachybotrys
 - Aspergillus/Penicillium
 - Alternaria
 - Fusarium

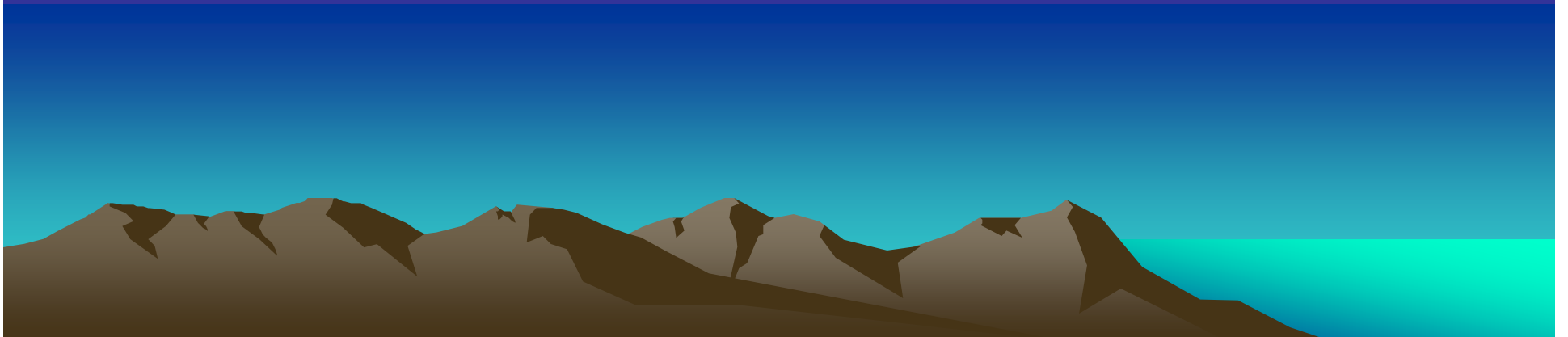


How

➤ Water

➤ Food (cellulose)

➤ Temperature



Why All The Hype

- Media
- Internet
- Celebrities (Brockovich, McMahon)
- Doctors
- Lawyers
- Greed



KIPS BAY TENANTS SAY:

WE'VE GOT KILLER MOLD

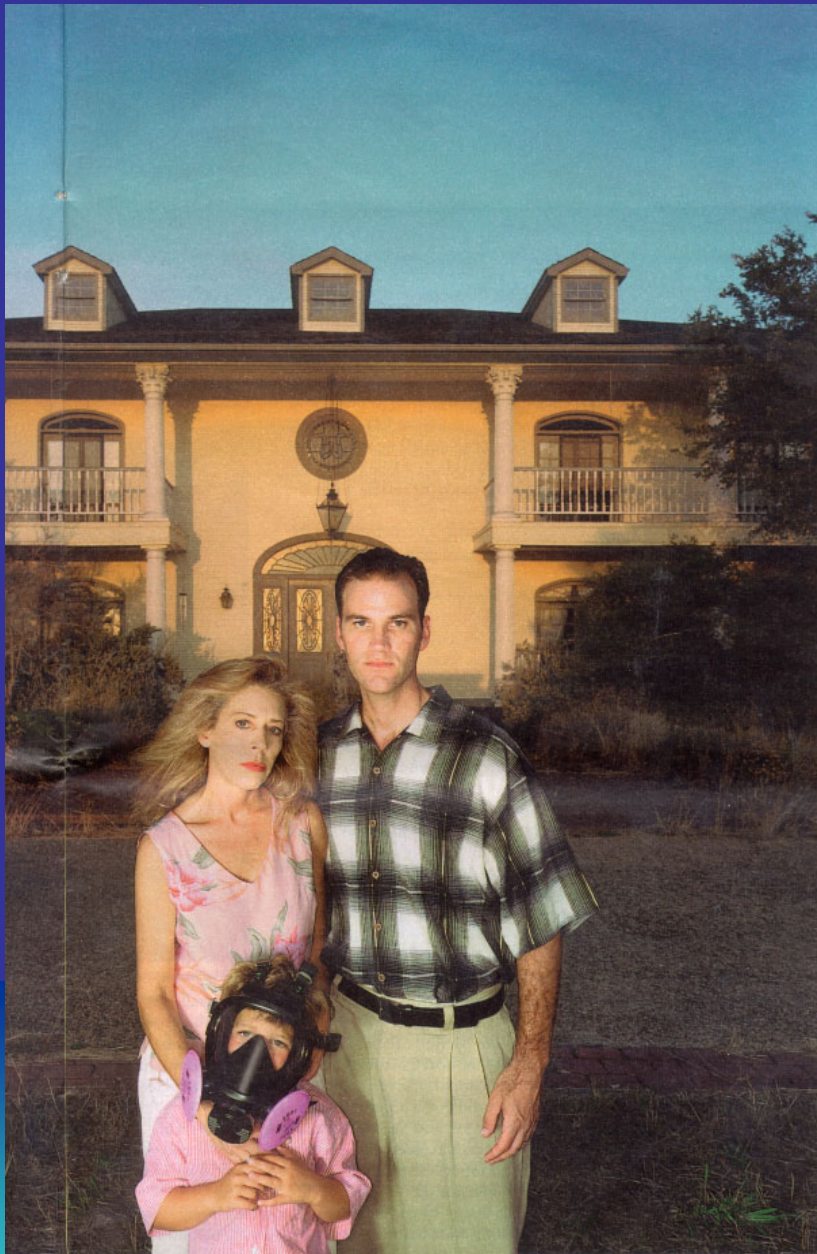
**It comes in through their vents.
They say it makes them sick, even
kills – and now, they're suing.**

SEE PAGE 3

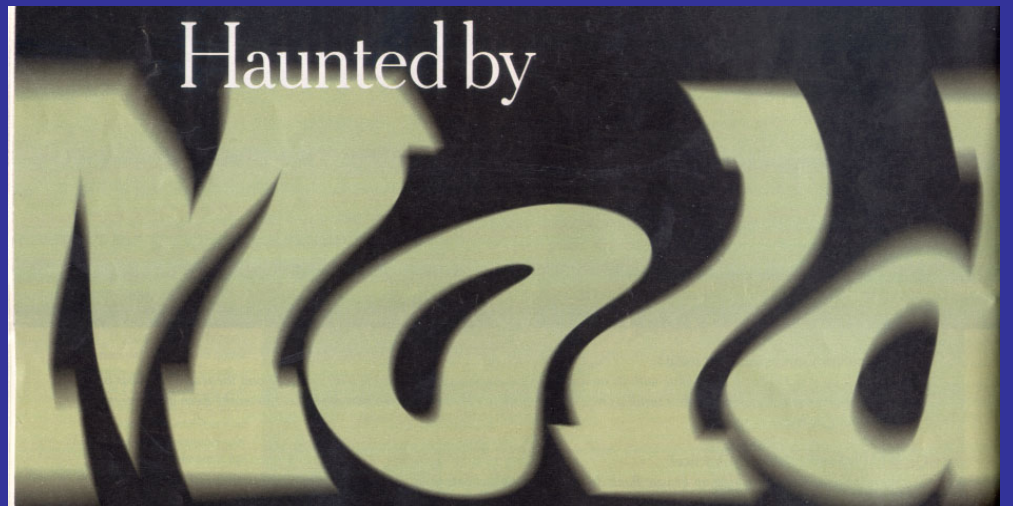
Source: *New York Daily News*, September 10, 2001



Source: *New York Times Magazine*,
August 12, 2001

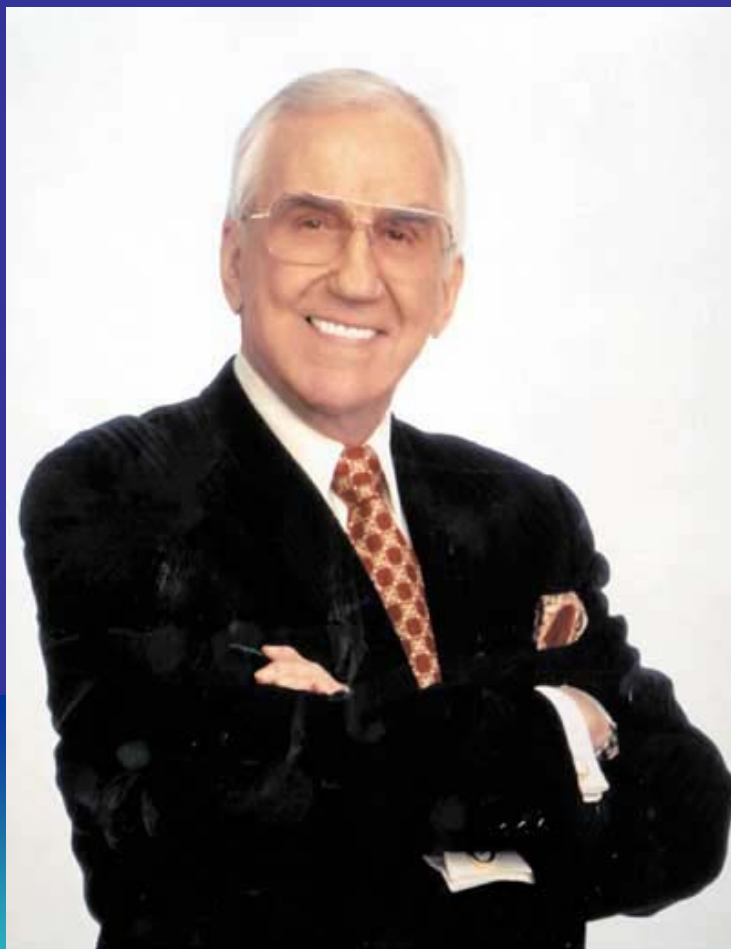


Ballard, her family and the dream they had to evict themselves from.



Source: *New York Times Magazine*, August 12, 2001



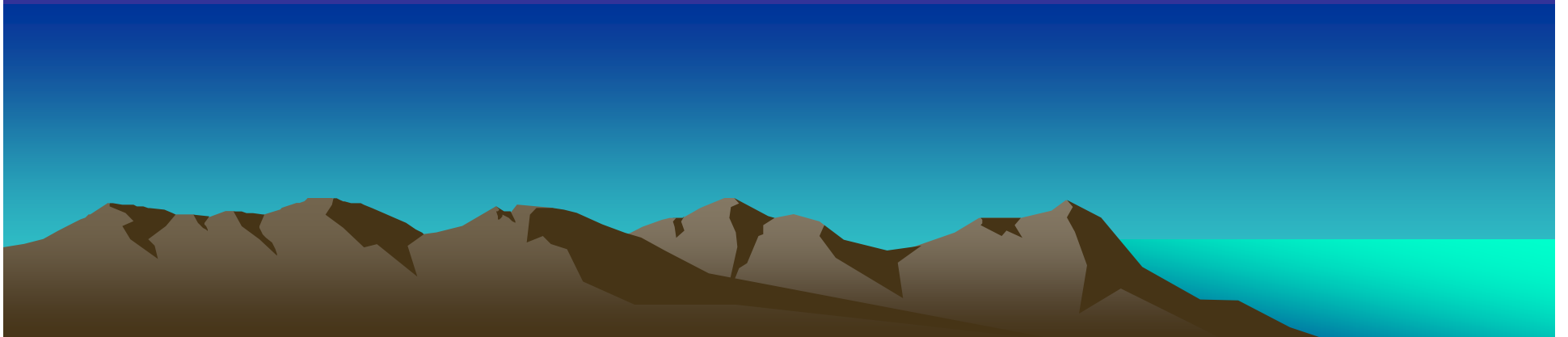


People take better care
of their cars.



Media Comparison

➤ Late 90s vs. 2005



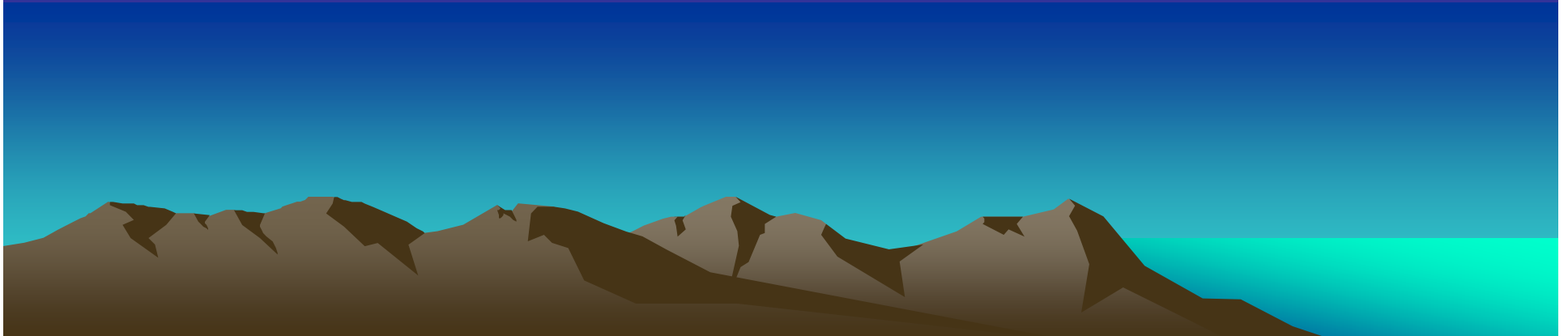
Early Mold Cases

- Largely against insurers
- Insurers began to exclude coverage
- Plaintiffs looked elsewhere to:
 - Builders
 - Generals
 - Subs
 - Brokers
 - Inspectors



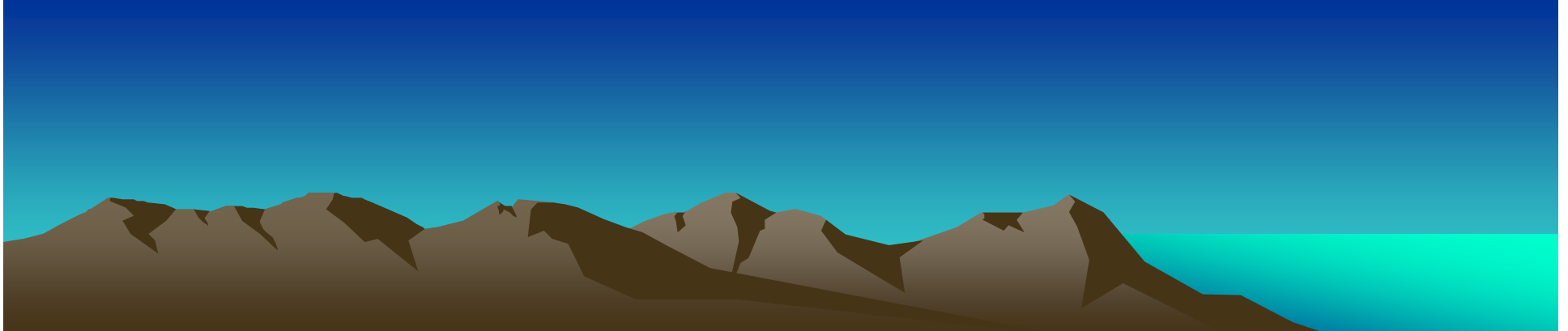
Typical Plaintiffs

- Property Owners/Homeowners
- Homeowners/Condominium Owners Associations
- Employees
- Customers/Invitees



High-Risk Groups

- Immune-compromised individuals
- Elderly
- Respiratory compromised
- Infants
- The homeowner you knew you never should have sold to



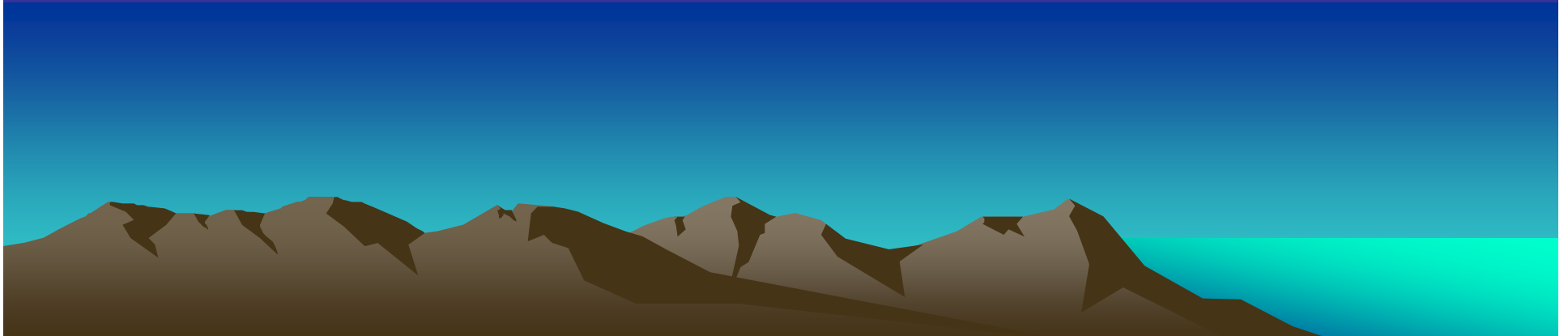
Potential Defendants

- Original Contractors/Subcontractors
- Original Designers
- Developers
- Realtors
- Prior Property Owners
- Property/Home/Termite Inspectors
- Homeowners/Condominium Owners Associations
- Remediation Contractors
- Environmental Consultants
- Attorneys



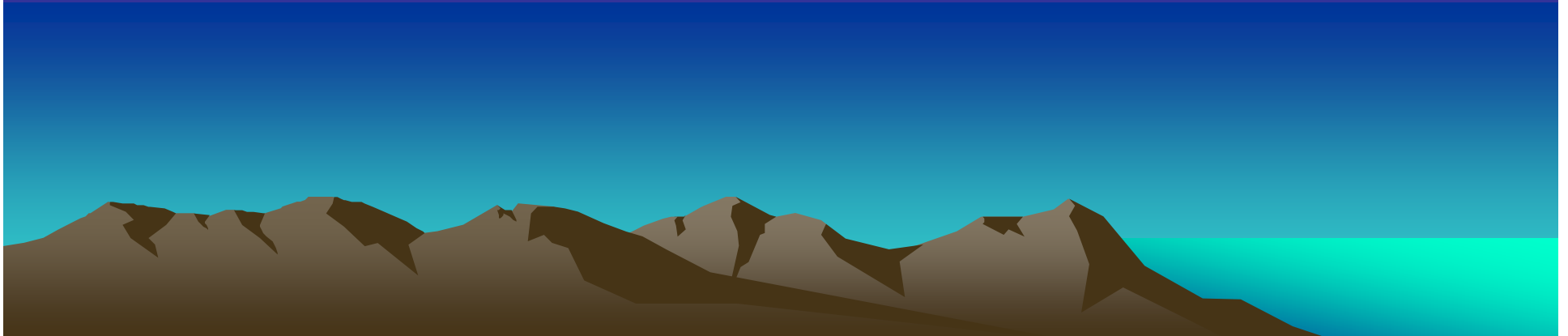
Modern Building Materials

- Plasterboard, gypsum board
 - High in cellulose
 - Low in Nitrogen
 - Ideal environment for mold growth



Modern Building Materials

- Exterior insulation and finishing systems
 - Designed to keep water out, but if water gets in, it's trapped, causing rot, mold



The Developing Science

Medical

10/27/02

American College of Occupational &
Environmental Medicine (“ACOEM”):

“Adverse Human Health Effects
Associated with Mold in the Indoor
Environment”



Medical

ACOEM

10/27/02

Conclusion:

Current scientific evidence does not support the proposition that human health has been adversely impacted by inhaled mycotoxins in home, school, or office environments.

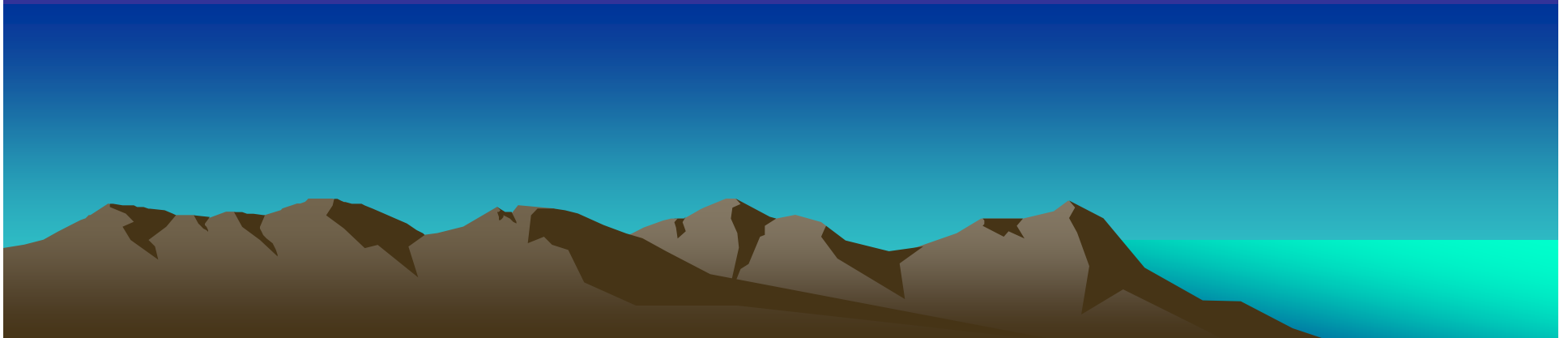


Medical ...cont'd

Harvard Health Letter

January 1, 2003

“Perhaps fear of toxic mold is overblown, but that doesn’t mean you should ignore the significance of the other health consequences.”



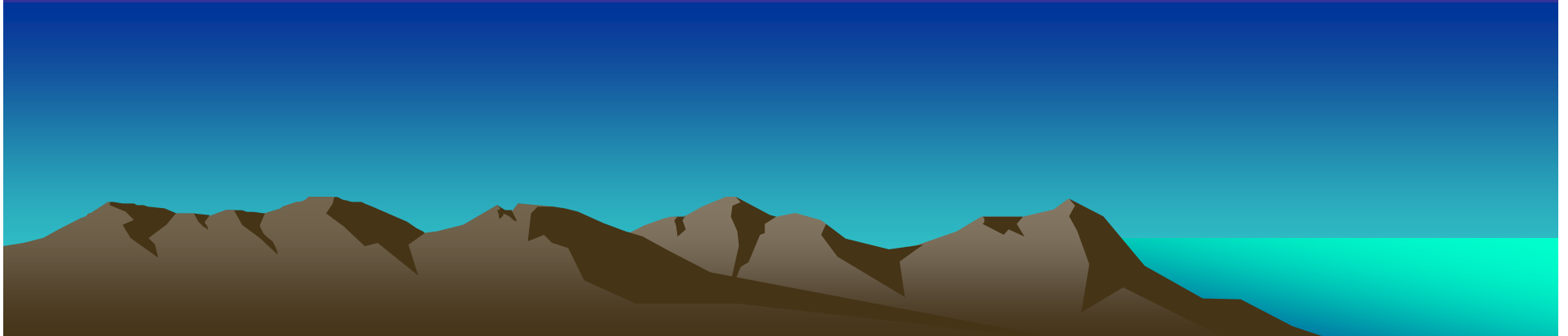
Medical ...cont'd

- Clinical Microbiology Reviews – Jan. 2003
- *Indoor Mold, Toxigenic Fungi and Stachybotrys Chartarum: Infectious Disease Perspective*
 - Valid concerns exist regarding the relationship between indoor air, mold exposure, mycotoxins, and human disease.
 - We have not found supportive evidence for serious illness due to Stachybotrys exposure in the contemporary environment.



EPA Initiative Re: Pollutants of the Elderly and Children 3/12/03

- New guidelines tying permissible exposure limits to affected population.



Medical ...cont'd

- Institute of Medicine and CDC Review of Science Literature entitled “Damp Indoor Spaces and Health,” May 2004
 - This committee has conducted a comprehensive review of the scientific literature regarding the relationship between damp or moldy indoor environments and the manifestation of advance health effects, particularly respiratory and allergic symptoms



Insurance – How Can I Get It?

Develop programs that address risks specific to each subcontractor working above you.

Create and implement a water intrusion management plan (“WIMP”) specific to manufactured/factory built home and an organization that is trained to respond.



Insurance

- Carriers increasingly will not provide coverage to builders who:
 - have no documentation establishing conditions at the time of construction,
 - have no programs in place during the design phase to stop water intrusion or appropriately respond to it,
 - have no organization or training in place when they occur and have little or no training for water intrusion issues,
AND
 - have no controls to prevent residents from creating increased liability



Is Insurance Available?

- Enhance options for coverage via:
 1. WIMPs and other response actions
 2. Response protocols
 3. Company organization
 4. Trained personnel
 5. Risk transfer language
 6. Documentation



Prevention Tips

➤ Design Phase

- Design for the climate. Things that work in Dallas may not necessarily work in Arizona.
- Prevent infiltration of moisture AND allow home to dry.
- Review contracts to confirm protection from ensuing mold caused by the negligence of others.



Prevention Tips

➤ Design Phase

- Verify/require all subcontractors have training for mold/water intrusion issues.
- Review Risk Transfer provisions for homebuyers.
- Require and document that subcontractors have installed materials in accordance with manufacturer's instructions.



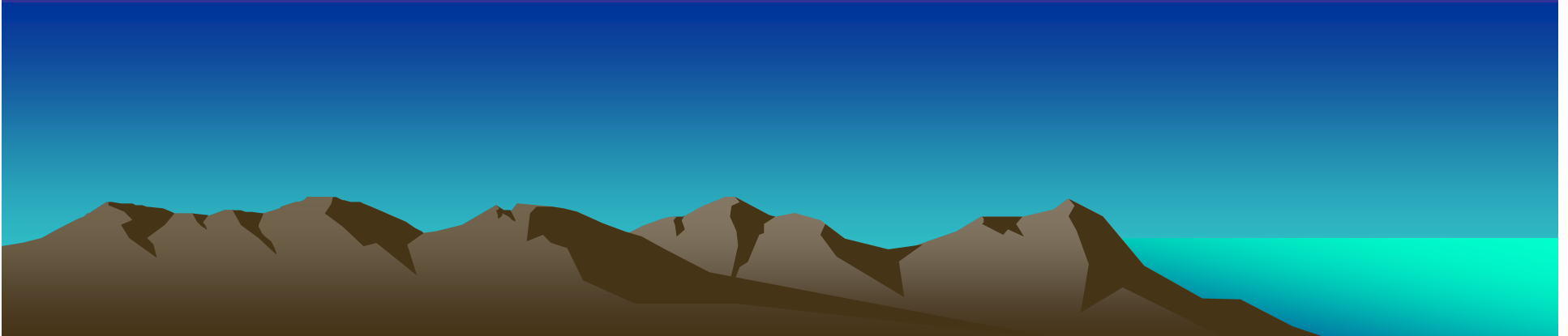
Should We Test for Mold?

- No requirement to test, but helpful:
 1. if homeowner/occupant has health complaints or is a high-risk occupant,
 2. to confirm what you are seeing is mold,
 3. to determine cause/extent of problem,
 4. if litigation is threatened,
 5. identify/confirm species of mold present,
 6. to assist in developing a remediation protocol,
 7. to apportion damages – multiple causes of loss,
 8. to make the occupants feel better.



Response Protocol

No federal, state, or local entity has yet regulated the disposal of mold contaminated materials and they can therefore be disposed of along with ordinary trash.



Risk Transfer

Include contractual provisions that transfer risk of loss to homeowners and subcontractors based upon subsequent acts, omissions, etc. that result in water damage, such as failure to maintain HVAC system/roof/ventilation, maintain appropriate temperature.



Risk Transfer

Homebuyer Responsibilities

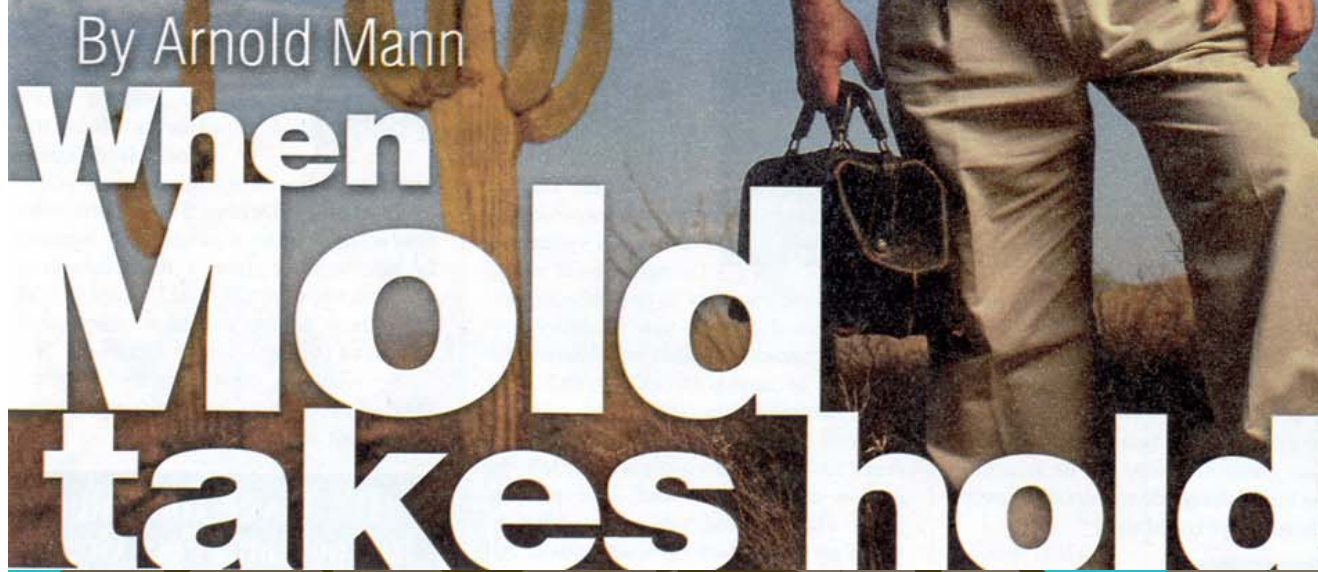
1. Prompt notification of any water intrusion issues.
2. Change and maintain air filters.
3. Maintain all caulking/grout.
4. Maintain roof flashing.
5. Keep vegetation and sprinklers from impacting house perimeter.



Risk Transfer

6. Do not oversize HVAC system without disclaimer.
7. Homebuyer should not install any vapor barrier that contributes to ensuing mold problems such as vinyl wall covering or carpet in bathrooms.
8. Keep all gutters/roof/drains free from debris and anything that impedes water flow.
9. Maintain home with the following parameters of relative humidity: 40 – 65%; temperature: 60-78°.
10. Use all exhaust fans when using shower or bath and when cooking in kitchen.





By Arnold Mann

When Mold takes hold

Renters from arid Arizona to tony Manhattan attribute sinus infections, seizures and worse to the toxins lurking in the apartments they know they should flee — but often can't.

USA Weekend, July 19-21, 2002

Mold Is Not Asbestos

➤ Some differences:

- Medical causation
- Historical epidemiological studies
- Liability causation
- No strict liability - most jurisdictions
- Non-repetitive defendants - no industry-wide culpability
- Lack of volume of serious injury (e.g., esophageal, lung, and colon cancers)



Mold Links

- www.nmhc.org
- www.epa.gov/iaq/molds/moldresources.html
- www.acoem.org
- www.epa.gov/iaq/molds/mold_remediation.html
- www.invironment.com
- www.aiha.org

