The Journal of Risk and Insurance

DOI: 10.1111/j.1539-6975.2011.01457.x

Rainfall or Rainmaking? Lawyers, Courts, and the Price of Mold Insurance in Texas

Charles M. North
James R. Garven
Carl R. Gwin

Abstract

In well-functioning property–liability insurance markets, the price of coverage reflects the impact of the legal environment on the frequency and severity of claims. This article presents a case study of the Texas mold insurance crisis of 2001–2002. We provide a narrative of the controversy in Texas over insurance coverage for household mold and use county-level data from a single Texas insurer to assess the determinants of postcrisis prices for supplemental mold, slab, and extended water loss coverages. We find that more attorneys per capita and more heavily Democratic courts were both associated with higher prices for mold and slab coverage.

Introduction

In well-functioning property–liability insurance markets, the price of coverage reflects, among other things, the impact of the legal environment on the frequency and severity of claims. This article presents a case study of the Texas mold insurance crisis of 2001–2002, showing that rapid changes in that state's legal environment were largely responsible for the crisis. Although regulatory reforms and market innovations resolved the immediate crisis, the legal environment subsequently continued to affect mold insurance prices. After providing a historical narrative of how the mold insurance crisis unfolded, we find that, other things being equal, postcrisis mold insurance prices were higher in Texas counties with more lawyers and more plaintiff-friendly courts.

In 2001, homeowners insurance claims for mold damage surged dramatically in Texas. For the three largest homeowners insurers in the state, the cost of mold-related claims increased from $9.1 million in the first quarter of 2000 to $79.5 million in the first

---

Charles M. North is an Associate Professor of Economics at Baylor University. James R. Garven is a designated Contact Author, the Frank S. Groner Memorial Chair in Finance, and a Professor of Finance and Insurance at Baylor University. Carl R. Gwin is Non-Resident Fellow at ISR, Baylor University. The authors can be contacted via e-mail: James_Garven@baylor.edu. For helpful comments, the authors thank two anonymous referees, Michael Makowsky, Allen Seward, Hamp Skelton, and Robert Woody. We thank Malcolm Gold for research assistance. All mistakes are solely those of the authors.

quarter of 2001.[1] Similarly, the number of mold claims in Texas increased 548 percent between early 2000 and 2001.[2] This led to a showdown between insurers and the Texas Department of Insurance (TDI) over whether homeowners policies would continue to cover mold damage and even whether insurers would issue new policies.

Why was there such a sudden surge in the number of mold claims? Mold has been a constant companion of mankind throughout its existence, and it is extremely unlikely that there was a sudden surge in the amount of mold in Texas in 2001. We show instead that the Texas legal environment was an important contributing factor. In particular, in mold damage, entrepreneurial lawyers found a new legal area in which to file lawsuits, and courts friendly to homeowners' claims contributed to the surge in claims as well. To support our lawyer'/courts' explanation of the Texas mold crisis, we first provide a narrative of the Texas mold crisis that explains anecdotally the role of attorneys and courts. Next, we test the effects of attorneys and courts using data from a major insurer on postcrisis prices of mold insurance. We find that prices for mold coverage endorsements and slab coverage endorsements were significantly higher in Texas counties with more lawyers per capita and in counties within the geographic jurisdictions of courts of appeals with more Democratic Party judges.[3]

We are not the first to suggest that the presence of lawyers and friendly courts drives up insurance prices. Cummins and Tennyson (1992) showed how minor traffic accidents effectively gave motorists a lottery ticket with a high probability of recovering some amount of money as compensation for pain and suffering from a minor bodily injury. One element needed for these "lotteries" to work was "court systems that favor the plaintiff." They also found that in the city with the most successful insurance lottery, a "high proportion of the claims involved the same doctors and lawyers," who acted as managers of the lottery process. Derrig, Weisberg, and Chen (1994) emphasize that increased public awareness of the potential rewards from insurance lotteries played a major role in increased costs of auto accident bodily injury claims. In their study, Derrig, Weisberg, and Chen examined auto claims in Massachusetts, finding that the presence of an attorney was associated with increased medical expenses for strains and sprains, an increased probability of crossing the state's tort threshold,[4] an increased probability of filing a bodily injury claim, and a 50 percent increase in the total bodily injury compensation paid to claimants.

Another related line of literature analyzes the "market for lawyers" (e.g., Pashigian, 1977; Spurr, 1987; Rosen, 1992; Rebitzer and Taylor, 1995; Sauer, 1998), studying subjects such as the earnings of lawyers, the matching of lawyers to types of claims,

[1] Texas Department of Insurance (2001d).

[2] Collier (2002) (quoting Robert P. Hartwig of the Insurance Information Institute).

[3] Our conclusions echo the suspicions of one insurance industry spokesperson. A *New York Times* article on household mold infestations (Stewart, 2007) quoted Robert P. Hartwig, president and chief economist of the Insurance Information Institute, as saying, "Mold has been around longer than humans. The entirety of our existence has been in the company of mold. Why had insurance adjusters never seen a mold claim before 2002? It wasn't because a new strain of mold had been unleashed upon the earth. It was the trial lawyers."

[4] At the time of Derrig, Weisberg, and Chen's (1994) study, Massachusetts law required that damages for bodily injury be at least $2,000 in order to pursue a tort remedy rather than a remedy under the no-fault scheme.

the adjustment of lawyers' labor markets over time, and job mobility across types of legal practice. These studies are not directly relevant to our project because they focus on the determinants of lawyers' earnings while we examine how the presence of lawyers affects insurance prices. However, in the "Data" and "Results" sections, we take advantage of the findings of this literature to explore possible endogeneity in our analyses.

The article proceeds as follows: "The Texas Mold Insurance Controversy" section is a narrative account of the controversy that arose in Texas in 2001 and 2002 over insurance coverage for mold damage. The "Theoretical Considerations" section summarizes theoretical considerations relating the role of attorneys and courts in determining the expected loss to insurance pricing approaches. The fourth section describes our data, the fifth section presents our results, and the last section concludes. Because we use cross-sectional data, causal inference is difficult and results must be interpreted with caution. To minimize the possibility of erroneous inferences of causation, we employ both ordinary least squares (OLS) and instrumental variables (IV) estimation methods, as discussed in the "Results" section. Though we believe that the risk of endogeneity is small, we cannot completely rule out its presence. Similarly, our pricing data are from a single insurer, and we cannot know how closely our data are correlated with prices of other Texas insurers.

THE TEXAS MOLD INSURANCE CONTROVERSY

The mold insurance controversy in Texas had its roots in 1990s litigation over homeowners policy coverage for damage to concrete slab foundations.[5] In these cases, homeowners sought to have their insurance policies cover repairs to cracked or otherwise damaged concrete slab foundations. The legal issues involved competing interpretations of the exclusions to coverage in the standard Texas homeowners policy form, which in the 1990s was the "HO-B" policy form. The HO-B was an "all perils" policy; that is, it covered all losses except for those specifically excluded from coverage.[6] The HO-B form contained an exclusion stating, "We do not cover loss under Coverage A (Dwelling) caused by settling, cracking, bulging, shrinkage, or expansion of foundations. . . ." Immediately following was an exception to the exclusion that stated, "We do cover ensuing loss caused by . . . water damage . . . if the loss would otherwise be covered under this policy." In a different section of the policy ("Coverage B") addressing loss to personal property in the dwelling, the policy stated that the foundation exclusion just quoted did not apply to losses caused by "Accidental Discharge, Leakage, or Overflow of Water or Steam from within a plumbing, heating, or air conditioning system. . . ."

Thus, the legal question of whether cracked or damaged slab foundations were covered under the HO-B policy required reconciling three provisions of the HO-B policy:

[5] This section draws on a number of sources, including Collier (2002), Cook and Schoonmaker (2002), Hartwig and Wilkinson (2003), Jordan and Kenchel (2002), Kirsch and Perel (2002), Van Voris (2001),Williams (2002), the court opinions cited below, interviews with attorneys involved in litigation over insurance coverage for slab foundations and mold, and the authors' personal knowledge of the matters discussed.

[6] In contrast, the HO-A (another approved policy form, discussed more below) was a "named perils" policy that covered only those losses specifically identified in the policy.

the basic policy provision that said that "all perils" were covered under the policy; an exclusion that removed damage to foundations from the "all perils" coverage, except when the damage was an "ensuing loss" from an otherwise covered loss; and a third provision (located in the section of the policy defining coverage for personal property) that restored coverage for losses from accidental discharges of water. In the 1998 *Balandran* decision,[7] the Texas Supreme Court interpreted these policy provisions to mean that the HO-B covered damage to a home's foundation if the foundation damage was caused by an accidental discharge of water, such as a plumbing leak under the house.[8] *Balandran* clarified the legal rights owed under the HO-B policy and shifted the focus of the litigation over damaged slab foundations. Before *Balandran*, such lawsuits had a significant focus on the legal question of whether the HO-B covered damage to foundations. After *Balandran*, it was clear that foundation damage was covered if caused by a discharge of water; subsequent cases focused on the factual question of what caused the foundation damage.

The 1990s litigation over coverage for damage to slab foundations laid the groundwork for the mold controversy of 2001–2002 in two important ways. First, it focused the attention of lawyers, courts, and the Texas Department of Insurance on how "exceptions to exclusions" could provide coverage for losses that were seemingly excluded from coverage by the express language of the HO-B policy. As described below, the key to coverage for mold claims was another "ensuing loss" provision in another exception to a policy exclusion.

Second, the concrete slab litigation attracted attorneys and expert witnesses who spent nearly a decade specializing in such cases. These lawyers saw in mold litigation a very similar area of law where their expertise from foundation cases was directly applicable. This effect may have been most noticeable in Nueces County (which contains Corpus Christi), where immediately prior to *Balandran* the TDI (1997) stated that water damage claims made up 75–80 percent of homeowners losses and that 85 percent of the Nueces County water loss claims were for foundation damage. This compared to a statewide average of 15–20 percent of homeowners' claims that were for water loss. Not surprisingly, there had also been a much larger increase in homeowners premiums in Nueces County than the average for the rest of the state. As the subsequent mold insurance controversy came to a head in 2001, Nueces County was again the center of attention. In fact, the TDI (2001b) asked the Texas Attorney General to launch an inquiry into potentially abusive mold cleanup practices in Nueces County, based on that county's dramatic overrepresentation for high-value mold-related claims relative to other parts of the state. The TDI Commissioner mentioned both the possibility of excessive prices charged by Nueces County mold remediators and the unusual frequency of multiple mold claims on the same house in Nueces County. However, the Commissioner did not mention the possibility that attorneys may have aggressively acted to attract mold claims and to manage the claims process on behalf of homeowners.

---

[7] *Balandran v. Safeco Ins. Co.*, 972 S.W.2d 738 (Tex. 1998).

[8] The most plausible alternative explanation was that the "exception to the exclusion" permitted coverage of damage to furniture, carpets, and other personal property within the dwelling if damage to the foundation caused a discharge of water that, in turn, damaged the personal property. The *Balandran* court rejected this more limited interpretation.

In December 1998, 5 months after *Balandran*, Melinda Ballard filed with her insurer a claim for water damage from leaks in the bathroom of her 22-room mansion near Austin, Texas. The home had a history of water leaks that had never been reported to the home's insurer, Fire Insurance Exchange (part of the Farmers Insurance Group). Throughout the first half of 1999, Fire Insurance Exchange and Ballard worked unsuccessfully at resolving the various claims for damage to the house. In April 1999, Ballard by chance met an indoor air consultant on a plane flight. After hearing of the water damage to her home and her family's various health problems, the consultant suggested that she might have mold problems. A few days later, the consultant conducted air quality tests, which showed the presence of the toxic mold *stachybotrys.*[9] On May 5, 1999, the family filed suit against the insurer, alleging breach of contract, deceptive trade practices, breach of the duty of good faith and fair dealing, and negligence in the claims handling process. On June 1, 2001, an Austin jury awarded Ballard $32.1 million: $6.2 million in actual damages (to remediate, raze, and rebuild the home), $12 million in punitive damages on the bad faith claim, $5 million in mental anguish damages, and $8.9 million in attorneys' fees.

Although the *Ballard* case was still pending in the Austin trial court, the intermediate Court of Appeals located in Dallas issued an unpublished opinion in *Home Insurance Co. v. McClain* on February 10, 2000.[10] The *McClain* opinion analyzed the mold exclusion contained in the HO-B policy. This provision expressly excluded from coverage losses caused by mold. However, an exception to the HO-B's exclusions stated that the policy covered "ensuing loss caused by . . . water damage . . . if the loss would otherwise be covered under this policy." In the *McClain* case, water had leaked into the McClain's home through a damaged roof, and mold had grown in the soaked areas behind the walls. The court held that the mold damage was an "ensuing loss" from the roof leak, which was covered under the policy. Though the *McClain* opinion was not designated for publication, it was available to the legal profession in the Westlaw and Lexis databases.

The problem of heavily publicized mold infestations was not limited to Texas, of course. Prominent cases arose in Delaware, Florida, and California, as well. Even the real-life Erin Brockovich discovered a serious mold problem in her home, and Ed McMahon filed a $20 million mold coverage lawsuit against his insurer. However, the TDI (2001a) recognized in August 2001 that Texas was at the forefront of mold coverage issues because of the generous coverage for water damage provided in the HO-B, a policy form unique to Texas.

Whether triggered by the *McClain* opinion, the highly publicized jury award in *Ballard*, or some other set of factors, in 2000 and 2001 insurers in Texas saw a massive increase

[9] A "toxic mold" is one that produces mycotoxins, compounds known to cause illness in humans. However, scientists are still researching the degree of linkage between indoor toxic molds and various reported illnesses, and there is some evidence that exposure to indoor molds is associated with various symptoms, especially respiratory problems. The Centers for Disease Control and Prevention has taken the position that there is not yet evidence of a causal link between toxic mold and any specific disease or illness. See http://www.cdc.gov/mold/stachy.htm.

[10] *Home Ins. Co. v. McClain*, No. 05-97-01479-CV, 2000 WL 144115, 2000 Tex. App. LEXIS 969 (Tex. App.—Dallas 2000, no writ).

in claims for mold damage under the HO-B homeowners policy. For example, the Farmers Insurance Group had 12 mold claims in Texas in 1999; in 2001, Farmers received over 12,000. Allstate had 1,000 mold claims in the first 3 months of 2002, up from only 40 in the same period a year earlier. Overall, according to TDI (2001c), the number of mold claims per thousand homeowners policies in Texas increased from 1.6 in January 2000 to 10.8 in June 2001. Moreover, the average cost of a mold claim in that time period was approximately $18,000, which was 4.7 times higher than the average homeowners claim and 5.6 times higher than the average cost of a nonmold-related water damage claim. Even though the Court of Appeals in Austin reduced the judgment in *Ballard* from $32 million to $4 million in December 2002,[11] a crisis had already erupted over mold coverage in Texas homeowners' policies.

With mold claims increasing dramatically in the first half of 2001, and despite the urging of the TDI commissioner to the contrary (see TDI, 2001a), insurers doing business in Texas took a variety of steps to limit losses on such claims. Several insurers refused to write new policies until the mold coverage issue was resolved. The Farmers Group and Allstate went further by refusing to renew the "all perils" HO-B policies, offering instead to renew policies with a "named perils" HO-A policy that limited coverage for water damage and eliminated mold coverage entirely.[12] In addition, a number of insurers asked the TDI to approve new policy endorsements that would either partially or totally exclude coverage for mold damage as an ensuing loss. Similarly, pursuant to a 1997 statute authorizing the TDI to approve the policy forms used by "national insurers,"[13] several large insurance companies sought approval of their own homeowners policies, each of which excluded mold coverage. Insurers also pressured the TDI to implement standards for mold testing and remediation, and to create a certification process for mold remediators in order to limit fraudulent claims.

A general resolution of the mold insurance controversy was reached in late November 2001, when the TDI (2001c) issued an order implementing amendments to the HO-B policy form with regard to mold coverage. The effect was to limit basic coverage to the cost of repairing or replacing property damaged by mold that ensued from a covered water discharge, leak, or overflow that was sudden and accidental (which was defined to include hidden or concealed discharges, leaks, or overflows that were undetectable). Thus, the basic coverage under the amended HO-B applied to damaged property, but the cost of testing and other types of remediation were excluded. Additionally, insurers were required to offer "buyback" endorsements to the HO-B, by which consumers could "buy back" the now-excluded coverage for the

---

[11] *Allison v. Fire Insurance Exchange*, 98 S.W.3d 227 (Tex. App.—Austin 2002, writ withdrawn). The Court of Appeals held that there was no evidence that the insurer's conduct was committed "knowingly" and therefore rejected the awards of punitive and mental anguish damages. The court also remanded for reconsideration of the $8.9 million attorneys fee award in light of the reduction in the other damages.

[12] This decision by Farmers led to class action litigation over the pricing of the HO-A policies, as discussed in *Lubin v. Farmers Group, Inc.*, 157 S.W.3d 115 (Tex. App.—Austin 2005, writ filed), and *Farmers Group, Inc. v. Geter*, Nos. 09-03-404-CV, 09-03-396-CV, 2004 Tex. App. LEXIS 9364 (Tex. App.—Beaumont Oct. 21, 2004, no writ).

[13] Tex. Ins. Code art. 5.35(b). A "national insurer" is one that is licensed to do business in at least 26 states and maintains aggregate premiums across all states of at least $750 million.

costs of "testing, treating, containing, decontaminating, or disposing of mold beyond that which is necessary to repair or replace property that is physically damaged by water" (TDI, 2001c, p. 12). The effect of the revisions was to remove coverage for mold testing and remediation, while requiring insurers to let homeowners "buy" this coverage "back" by paying a specific additional premium to add an endorsement to the base policy providing coverage for mold testing and remediation. Beginning with State Farm in March 2002 and USAA in May 2002, the TDI approved the use in Texas of national forms by several "national insurers," as permitted by the above-mentioned 1997 statute. With regard to mold and water losses, both the State Farm and the USAA policies approved by the TDI covered only losses from sudden and accidental water discharges, and not losses (including slab foundation damage) caused by constant or repeated seepage or leakage of water or by sewer backup (TDI, 2002a, 2002b). Both insurers were required to offer their policyholders the opportunity to "buy back" coverage for mold testing and remediation.

Although the crisis in Texas over mold coverage was resolved, still left in the air was why it had erupted so suddenly. In other words, why mold, and why now? Kirsch and Perel (2002) suggested that energy-efficient construction may have led to less drafty buildings that retained moisture better, thus providing better environments than ever for mold to grow. However, a gradual shift in the composition of building construction cannot effectively explain the sudden explosion of mold claims seen from early 2000 to mid 2001.

One possible reason for the rapid surge in mold coverage cases is that the cases were driven as much by the presence of enterprising attorneys as by the presence of the mold. The editor of *Mealey's Litigation Report: Mold* was quoted in Belkin (2001) as saying, "Mold litigation isn't going to go away any time soon. The attorneys involved are cutting edge, the type who are always looking for the next big thing." Kirsch and Perel (2002) also pointed to "large settlements and jury awards, eager trial lawyers, increased public awareness and inflammatory publicity." Similarly, Williams (2002) noted that the threat of serial litigation was a major source of risk for insurers. In particular, the ability of a group of lawyers to organize to share information, witnesses, and documents raised the possibility of bankruptcy-level liability exposures, as evidenced by earlier mass litigation related to asbestos, tobacco, drugs, and supplements (including Fen-Phen), and other products. Van Voris (2001) reported that many experts who were trained in lead and asbestos cleanup had been shifting into the mold cleanup business as lead and asbestos contaminations were on the wane.

In 1998 in Texas, a subset of attorneys had just succeeded in the *Balandran* case in getting coverage for damage to slab foundations based on an "exception to an exclusion" in the HO-B policy. They constituted a compact network that could quickly disseminate information about potential new causes of action. These lawyers had expertise in interpreting "exceptions to exclusions" in the HO-B, knowledge of the nature of structural damage to homes, connections to structural engineering expert witnesses, and a favorable Texas Supreme Court decision on their side. In some parts of the state, these lawyers also faced relatively plaintiff-friendly courts inclined to expand on the *Balandran* decision. The time was right for a new push into the area of mold coverage litigation.

THEORETICAL CONSIDERATIONS

The manner in which the Texas homeowners insurance market performed during the mold crisis conforms well to the insurance market dynamics implied by the capacity constraint models of Gron (1994) and Winter (1994). These models predict that a rational (short-run) response by the insurance industry to a large exogenous capital shock (e.g., resulting from a major natural or man-made catastrophe) is to sharply increase premiums and reduce underwriting capacity. Insurers limit supply because raising capital in the external capital markets is costly due to adverse selection. Therefore, following an adverse capital shock, the quantity of insurance traded falls (due to the withdrawal of supply and its impact on prices). Price can be subject to even further upward pressure since the demand for insurance may rise when such an event occurs. However, such episodes are typically self-correcting, in the sense that capital is eventually replenished and the insurance market returns to a long-run equilibrium characterized by more "normal" prices and quantities.

In the case of the Texas mold crisis, the shock to the homeowners insurance market came in the form of suddenly increased frequency and severity of mold claims. Insurers responded to the crisis by raising prices and limiting coverage; indeed, a number of companies stopped writing policies altogether. As the previous section of the article illustrated, this gave rise to regulatory reform that resulted in mold insurance being treated as a separately covered contingency. Although the Gron (1994) and Winter (1994) models provide a useful framework for understanding market performance during the crisis, a standard actuarial pricing approach is appropriate for analyzing prices charged for mold insurance after the crisis was resolved. The pricing data we use in the "Data" and "Results" sections come from the postcrisis time period following the regulatory reform. Therefore, we rely upon a standard actuarial pricing approach to derive testable predictions about the impact of entrepreneurial attorneys and plaintiff-friendly courts on insurance pricing in the *noncrisis* setting that emerged in 2002.

The standard actuarial approach to pricing requires computing the total loss, or pure premium distribution, which is obtained by convoluting the claim severity and claim frequency distributions.[14] *A priori* we expect that entrepreneurial attorneys and plaintiff-friendly courts will increase claims severity and frequency, and other things equally. Thus, a standard actuarial pricing model implies that insurance prices should be higher in jurisdictions characterized by high per capita lawyer densities and plaintiff-friendly courts. We also control for variables such as the expected value and variability of water losses, rainfall, the value of the housing stock, and median incomes, as each is a likely determinant of insurance prices.

DATA

To analyze the determinants of mold insurance prices in Texas, we gathered data on all 254 counties in Texas. Summary statistics are presented in Table 1. The dependent variables in our analysis consist of prices for various levels of mold insurance offered for coverage year 2003 by one insurer (USAA) to its customers in Texas as part of the

[14] The claim frequency distribution represents the number of possible losses for a risk during a given time period, whereas the claim severity distribution represents the range of loss magnitudes that are possible.

TABLE 1
Summary Statistics

Variable	Mean	Std. Dev.	Min	Max
Dependent variables				
Price of mold coverage ($)				
Coverage limit = 100%	532.5	528.5	197	3,890
Coverage limit = $75,000	439.1	465.4	137	3,565
Coverage limit = $50,000	355.2	397.0	107	3,245
Coverage limit = $25,000	246.1	282.9	57	2,695
Price of slab coverage ($)	90.6	30.8	79	339
Price of extended water loss coverage ($)	49.7	14.1	28	118
Attorneys, courts, and politics				
Attorneys per thousand population	1.095	0.903	0	8.316
Court of Appeals percent Democrat	33.0	29.2	0	100
Variables measuring moisture				
Average water loss per policy in 2002	395.7	452.7	0	3,243.8
Coefficient of variation for water losses	0.786	0.350	0	2.236
Average annual rainfall (inches)	30.4	11.1	8.8	58.3
Other demographic variables				
Percent black	6.7	7.2	0	33.7
Percent Hispanic	27.5	22.8	1.7	97.5
Median household income (1999)	32,694	7,482	16,504	70,835
Median housing unit value	57,589	24,098	13,800	155,500
Percent housing units: $0 to $24,999	21.6	11.5	1.8	68
Percent housing units: $25,000 to $49,999	25.7	7.4	3.2	39.7
Percent housing units: $50,000 to $79,999	22.4	5.0	6.4	43.6

Note: Number of observations = 254. Pricing on 100% coverage assumes a home value of $175,000. Other coverage levels are based on a maximum coverage amount, not a home value.

buyback program mandated by the TDI.[15] The insurer provided a county-by-county price list for three types of insurance: mold coverage,[16] slab coverage,[17] and extended water loss.[18] Mold coverage prices were provided for four different coverage levels: $25,000, $50,000, $75,000, and 100 percent of value. Thus, USAA gave its customers the option, regardless of home value, to purchase coverage of $25,000, $50,000, or $75,000, plus a 100 percent coverage option. Because 100 percent coverage would obviously vary with home value, the sample price provided was for a $175,000 home. As a result, for homes with values other than $175,000, we know the price for the

[15] Having panel data to conduct this analysis would help us make inferences on causation, but the insurer has not changed the prices since 2003. Thus, there is no variation across time, making panel analysis impossible.

[16] The mold coverage policy amendment provided coverage for direct physical loss from mold, as well as testing and remediation measures.

[17] The slab foundation policy amendment provided coverage up to $15,000 for damage to a slab foundation from accidental discharge or leakage of water or steam.

[18] The extended water loss policy amendment provided coverage for water damage caused by the constant or repeated seepage or leakage of water or steam from heating, air conditioning, or fire sprinkler systems; from household appliances; and from plumbing systems.

three dollar-valued coverage levels, but we do not know what the insurer would have charged for 100 percent coverage. It is likely that premiums would have been scaled in approximate relation to home value, though, so that the 100 percent coverage price for a $175,000 home is nevertheless a good proxy for prices of 100 percent coverage for other home values.

As Table 1 shows, there was substantial variation in the prices of mold coverage across counties. For 100 percent coverage, prices ranged from $197 per year in El Paso County to $3,890 per year in Nueces County (which is a weighted average[19] of several within-county prices); the average across all counties was $532.5, and the median county price was $337. Figure 1 shows the geographic distribution of prices for 100 percent mold coverage. The distributions of prices for the other mold coverage levels follow a similar pattern as the 100 percent coverage but at lower price levels. The prices for slab coverage and extended water loss coverage are much lower, on average, than the prices of mold coverage, and they are less variable.

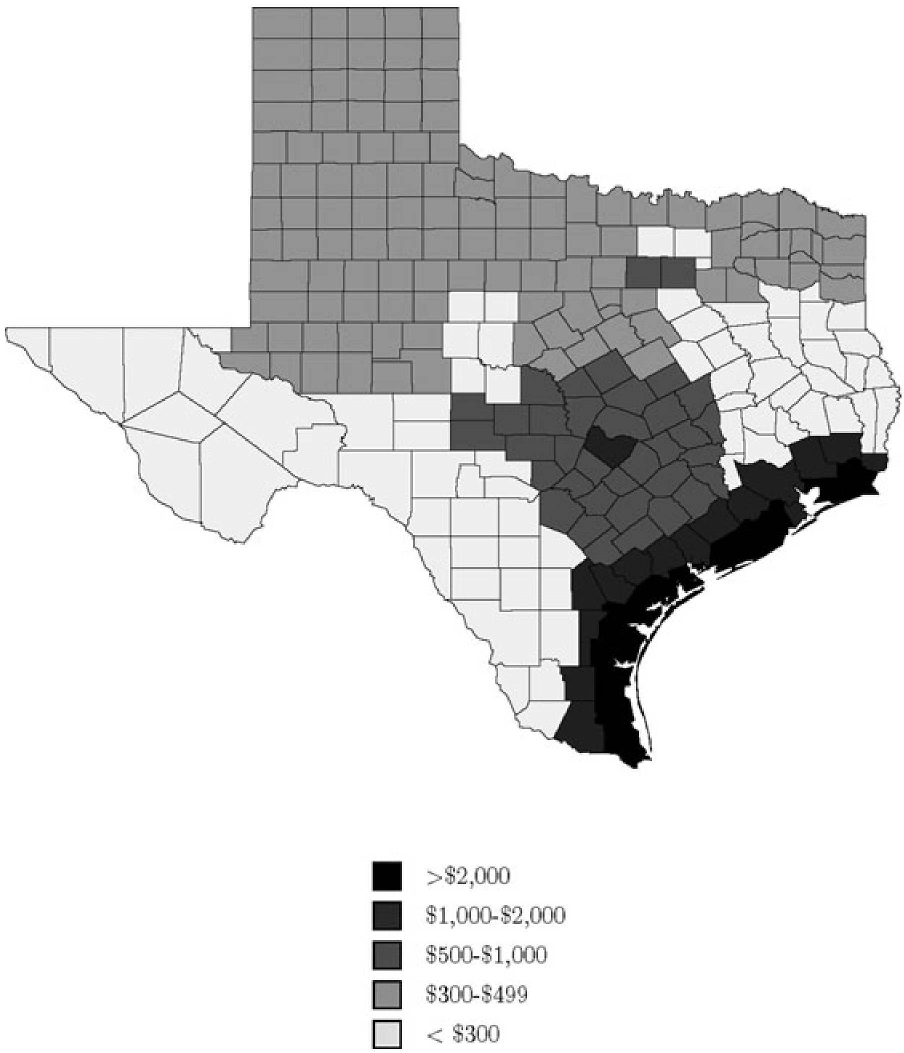
From the State Bar of Texas, we obtained data on the number of attorneys in each of the 254 counties in Texas for the year 2002. From these data, we calculated the variable *Attorneys per Thousand Population* for each county; Figure 2 presents a geographic distribution of the variable. Not surprisingly, the county with the highest number of lawyers per capita is Travis County, which contains Austin—the state capital and home of The University of Texas, the state's largest law school. Among the 20 counties with the highest *Attorneys per Thousand Population* are several of the counties housing the main metropolitan areas (listed in order from highest to lowest attorneys per capita): Dallas, Houston, Amarillo, San Antonio, Tyler, Corpus Christi, Midland, Beaumont, Lubbock, and Fort Worth. Also, in the top 20 counties for *Attorneys per Thousand Population* are two suburban counties near Dallas. However, this top 20 list also includes four rural counties located in the Texas Hill Country (the large black area in Figure 2 located west of Austin and northwest of San Antonio in the central part of the state), two rural counties located in the Big Bend region of western Texas, and one rural county near the Texas Panhandle. Nine rural counties with low population totals had no lawyers at all.

To determine whether the courts that have jurisdiction over each county were likely to be more favorable to insurers or policyholders, we chose to focus on the party affiliations of the judges on the intermediate Courts of Appeal. Like the federal courts and many state courts, Texas has a three-tiered court system. Each county has several types of trial courts, and these have original jurisdiction over most types of disputes. Above the trial courts are 14 Courts of Appeal, with jurisdiction over cases appealed from the trial courts. The Courts of Appeal are scattered throughout the state, and each Court of Appeals has jurisdiction over appeals from a specified group of counties. At the top of the civil courts system in Texas is the Texas Supreme Court, which has discretionary appellate jurisdiction over appeals from civil decisions of the Courts of Appeals. Judges at all three levels are chosen through general elections after being nominated by political parties' primary elections.

---

[19] In most counties, the insurer charged a single price for each coverage throughout the entire county. In a few counties, the prices varied within the county according to zip code. In these cases, we constructed a population-weighted average price for the entire county.

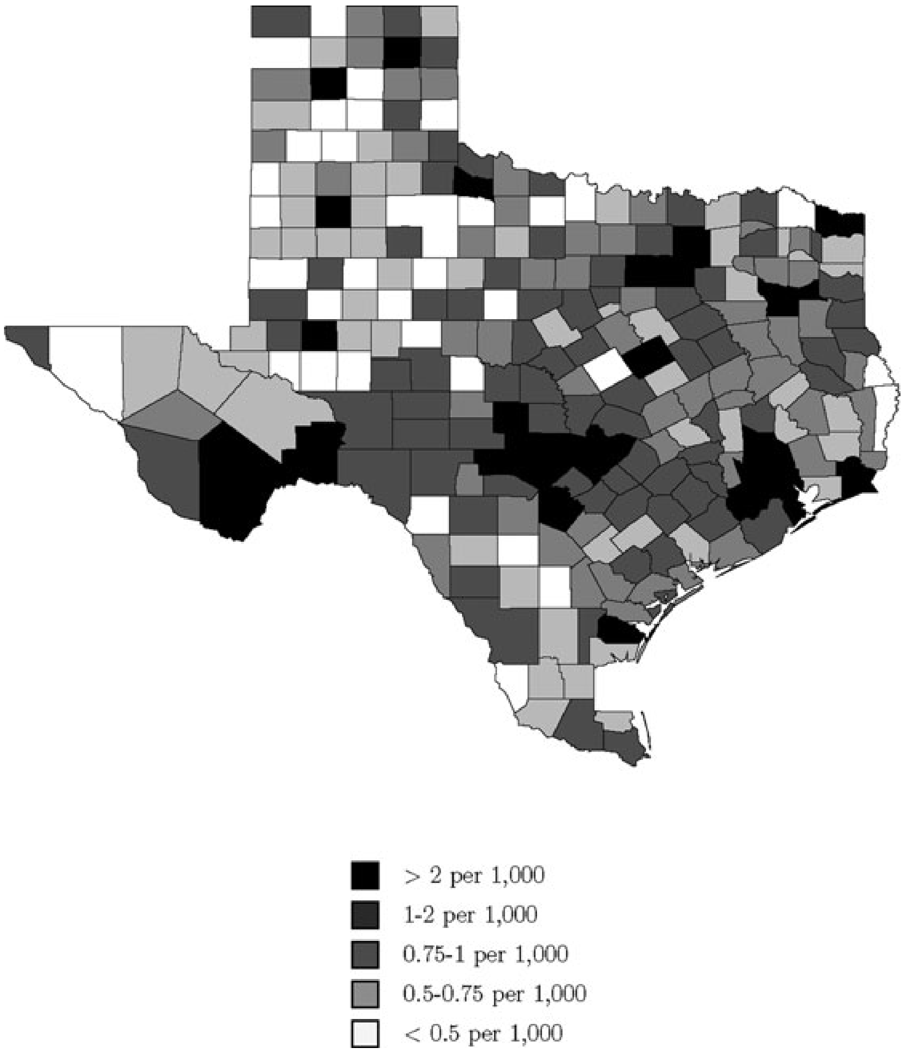
FIGURE 1
Price of Mold Insurance (100% Coverage)



To control for judicial philosophy, we focused on the judges on the Courts of Appeals because (1) each county can clearly be assigned to the jurisdiction of a particular Court of Appeals;[20] (2) the published opinions of the Courts of Appeals establish controlling precedent, whereas the various county trial courts do not publish precedent-setting

[20] In all, there are 14 different Courts of Appeals in Texas. Although most counties are contained within the jurisdiction of only one of the courts, there are several counties located along borders between court jurisdictions whose appeals are split between two Courts of Appeals (and one county whose appeals are split among three Courts of Appeals). In these instances, we calculated the percentage of the judges on all of the courts who were Democrat.

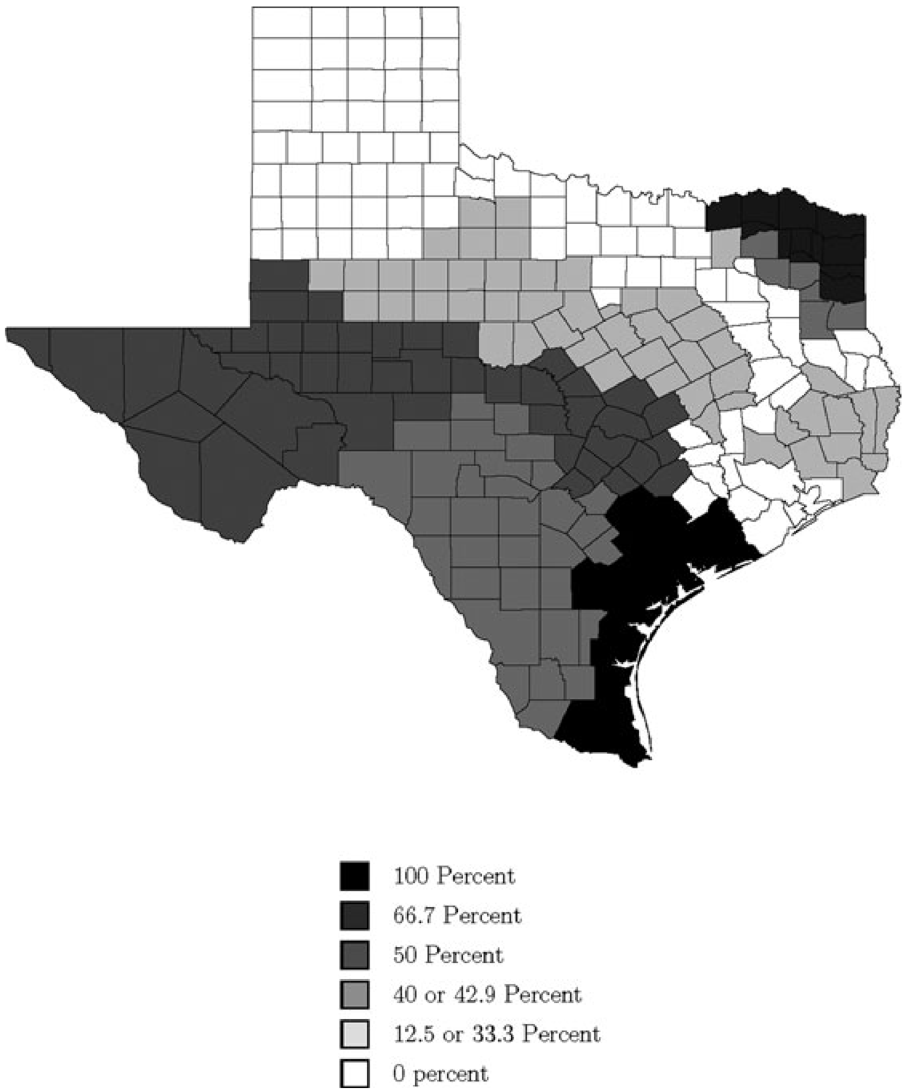
FIGURE 2
Attorneys per Thousand Population



opinions; and (3) there is a variation in political affiliation of judges across the various Courts of Appeals.

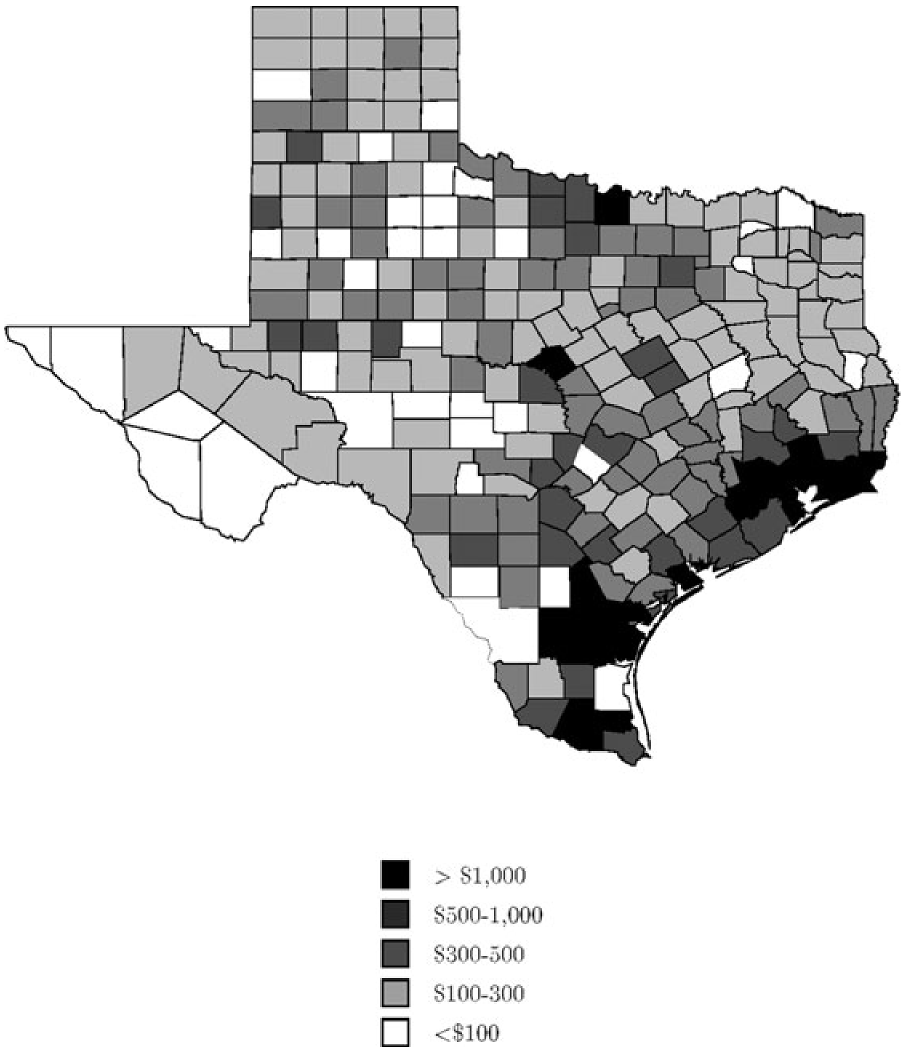
Consistent with prior research (e.g., Spiller and Spitzer, 1995; De Figueiredo and Tiller, 1996; Peresie, 2005; Taha, 2007), we use the judges' political party affiliations as a proxy for their judicial philosophies. Although this is not a perfect measure of "liberal" versus "conservative" or similar conceptions of judicial philosophy, it was generally the case in Texas during the years of our sample that Republican judges were less plaintiff oriented than Democratic judges and were more likely to favor insurance companies in disputes over policy coverage. For example, Texans for Public Justice

FIGURE 3
Court of Appeals Percent Democrat



(2005, p. 5) notes a long history of financial support from Texas "trial lawyers" for Democratic Party causes. Thus, our measure of the judicial philosophy that governs a county's courts is the percentage of the judges on the county's Court of Appeals who were elected as Democrats (*Court of Appeals Percent Democrat*), as identified in the Texas State Directory, a listing of public officials throughout the state. Figure 3 shows the geographic distribution of *Court of Appeals Percent Democrat* in 2002. Over one-third of the counties were located within the jurisdiction of an all-Republican court of appeals; in contrast, the only court of appeals with all Democrat judges was

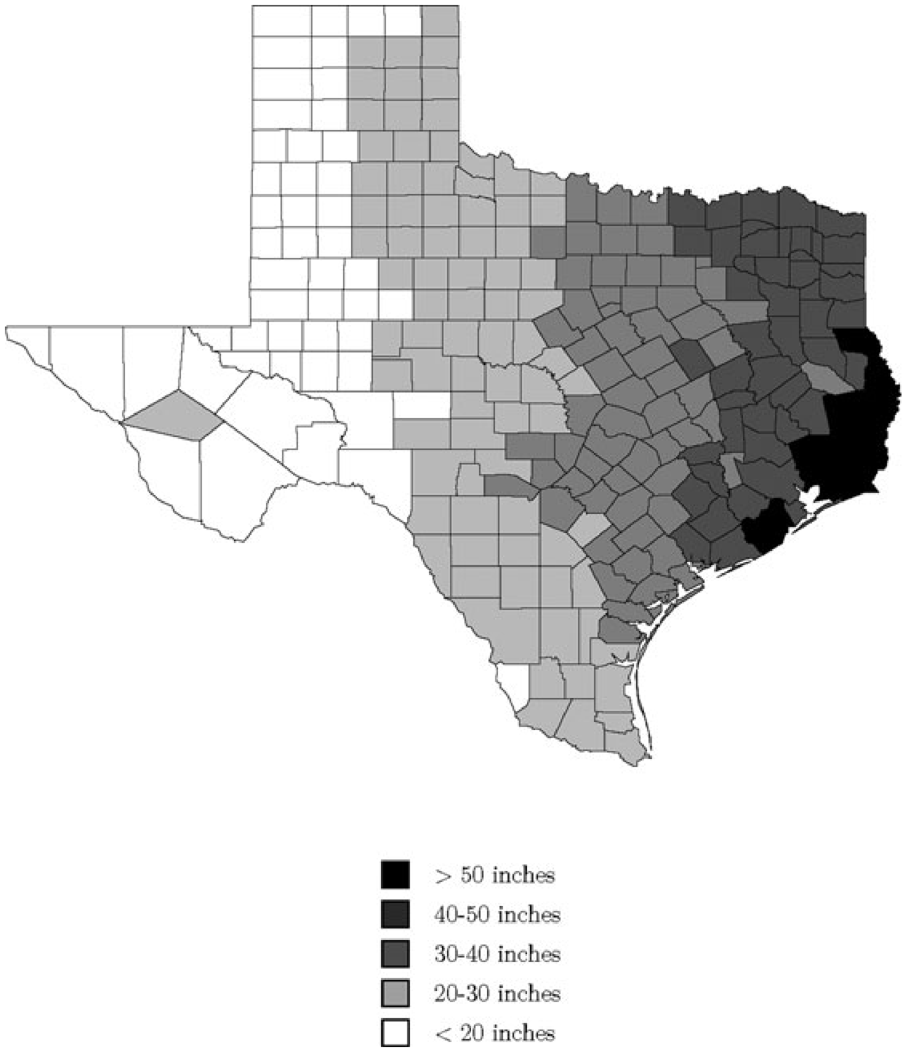
FIGURE 4
Average Water Loss per Policy in 2002



the Corpus Christi Court of Appeals, and only 78 counties overall had 50 percent or higher *Court of Appeals Percent Democrat*.

Because we are studying the prices for various forms of supplemental water loss coverage, the direct risk of water losses should be a major determinant of the premiums. To control for the degree of risk from water losses, we use three variables: the *Average Water Loss per Policy in 2002* in the county (as shown in Figure 4), the *Coefficient of Variation for Water Losses* in the county for 1998–2002, and the county's historical *Average Annual Rainfall* in inches (as shown in Figure 5). The first two variables were calculated from county-level claims and loss data obtained from the Texas

FIGURE 5
Average Rainfall per Year



Department of Insurance. Each county's average annual rainfall was obtained from the 2002 Texas Almanac.

Nueces County (Corpus Christi) had the highest *Average Water Loss per Policy in 2002*, and four other counties within 75 miles of Nueces County were also among the top 10. Both of the counties in the Beaumont metropolitan area were also in the top 10 counties for *Average Water Loss per Policy in 2002*; Beaumont has long been regarded as a plaintiff-friendly jurisdiction. While both of the counties in the Beaumont metropolitan area were also the two highest counties for *Annual Average Rainfall*, Nueces County was 119th out of 254 counties in rainfall, and its near neighbors were not in the top 50 counties. (Of course, being along the Gulf Coast, they still have the high humidity levels and warm temperatures conducive to mold growth.) The 20 highest rainfall counties were located in an arc beginning south of Houston continuing east to Beaumont and northward along the Louisiana border to Texarkana. This pattern is easily seen in Figure 5.

Finally, we obtained data on other demographic factors that might have affected the pricing of mold insurance, including the percentages of the county's population that were black or Hispanic, the median household income, and measures of the distribution of housing values in the county. These data were obtained from the 2000 Census using the American FactFinder on the Census Bureau's website.

Results

Tables 2–4 present the results of our empirical investigation. In Table 2, the dependent variables are the prices of 100 percent and $75,000 mold coverages. The dependent variables in Table 3 are the prices of $50,000 and $25,000 mold coverages, and the dependent variables in Table 4 are the prices of concrete slab foundation and extended water loss coverages. For each type of insurance, we present OLS and IV estimates. In all instances, standard errors were calculated using clustering by Court of Appeals jurisdiction, as suggested by Bertrand, Duflo, and Mullainathan (2004).

We used IV estimation because of concerns over potential endogeneity related to *Court of Appeals Percent Democrat* and *Attorneys per Thousand Population*. For example, there could be some unobserved propensity toward litigiousness in each county that affects insurance prices and also impacts the kinds of judges elected and the number of attorneys who locate there. If so, using OLS could erroneously attribute to the courts or the lawyers an effect that stems from the general litigation environment in the county. To deal with this problem, we experimented with several potential instruments for *Court of Appeals Percent Democrat* and *Attorneys per Thousand Population*. We used Durbin and Wu-Hausman tests (available in STATA) to test for endogeneity of the instruments, and we also used a Wooldridge score test and a regression-based test (also available in STATA) to detect overidentification when multiple instruments were used. We report the results of the endogeneity tests for each IV regression in Tables 2–4. Where the p-values of the tests are greater than 0.10, we suspect that there is not an endogeneity problem and OLS estimates are likely to be more accurate.

After experimenting with a variety of instruments, we concluded that the appropriate specification was to use *Percent Hispanic* as an instrument for *Court of Appeals Percent Democrat*, and not to use any instrument for *Attorneys per Thousand Population*. For *Court of Appeals Percent Democrat*, use of *Percent Hispanic* in the first-stage regression yielded an F-statistic of 29.5 and an R^2 of 0.241, suggesting that it is a strong instrument. We also explored using as an instrument the percentage of the county's voters who voted Democrat in the 2000 presidential election, but it performed poorly compared to *Percent Hispanic*. We also considered including *Percent Black* as an instrument, but it had little power to explain *Percent Democrat Court of Appeals* either by itself or when paired with *Percent Hispanic*.

We also examined several potential instruments for *Attorneys per Thousand Population*, drawing on the literature on the market for lawyers. In particular, we relied

TABLE 2
Determinants of Mold Insurance Prices 100 Percent Coverage and $75,000 Coverage

	100% Coverage		$75,000 Coverage	
	OLS	IV	OLS	IV
Attorneys, courts, and politics				
Attorneys per thousand population	40.9	59.9	32.6	48.2
	(0.053)	(0.031)	(0.046)	(0.039)
Court of Appeals percent Democrat	6.25	12.8	5.33	10.8
	(0.099)	(0.039)	(0.105)	(0.052)
Variables measuring moisture				
Average water loss per policy in 2002	0.675	0.541	0.606	0.496
	(0.000)	(0.000)	(0.000)	(0.000)
Coefficient of variation for water losses	−16.2	14.3	−22.9	2.21
	(0.871)	(0.914)	(0.795)	(0.985)
Average annual rainfall (inches)	3.73	3.15	2.83	2.36
	(0.473)	(0.690)	(0.528)	(0.724)
Other demographic variables				
Median household income (1999)	0.017	0.031	0.016	0.027
	(0.060)	(0.076)	(0.048)	(0.073)
Median housing unit value	−0.004	−0.003	−0.004	−0.003
	(0.367)	(0.426)	(0.344)	(0.392)
Percent housing units: $0 to $24,999	4.44	10.6	4.08	9.17
	(0.546)	(0.317)	(0.529)	(0.328)
Percent housing units: $25,000 to $49,999	−5.06	−0.532	−3.72	0.016
	(0.510)	(0.952)	(0.591)	(0.998)
Percent housing units: $50,000 to $79,999	8.41	15.2	8.15	13.8
	(0.145)	(0.104)	(0.118)	(0.099)
Constant	−572.1	−1,644.1	−565.7	−1,449.9
	(0.444)	(0.239)	(0.393)	(0.239)
R^2	0.593	0.480	0.588	0.489
F-statistic (OLS) or Wald χ^2 (IV)	186.5	1,790.2	201.2	1,187.4
	(0.000)	(0.000)	(0.000)	(0.000)
Wooldridge's score test for IV endogeneity		3.38		2.88
		(0.066)		(0.090)
Regression-based test for IV endogeneity		3.52		2.98
		(0.062)		(0.086)

Note: Number of observations = 254. The p-values are in parentheses. Standard errors in all regressions are calculated by clustering on Court of Appeals district. The IV regressions use two-stage least squares, with *Court of Appeals Percent Democrat* estimated in the first stage using *Percent Hispanic* as an instrument.

upon the finding in Pashigian (1977) that the number of active corporations in the United States was a significant determinant of the number of lawyers in the United States in any given year. Additionally, we used the geographic distance from each county's seat to each of Texas's law schools as a proxy for postgraduation migration costs for lawyers. Thus, we explored using the following variables as instruments in estimating *Attorneys per Thousand Population*: distance from the county seat to each law school in Texas and the number of business establishments in the county in

TABLE 3
Determinants of Mold Insurance Prices $50,000 Coverage and $25,000 Coverage

	$50,000 Coverage		$25,000 Coverage	
	OLS	IV	OLS	IV
Attorneys, courts, and politics				
Attorneys per thousand population	22.8	34.3	14.5	18.8
	(0.052)	(0.063)	(0.053)	(0.093)
Court of Appeals percent Democrat	4.35	8.37	2.67	4.17
	(0.111)	(0.079)	(0.127)	(0.219)
Variables measuring moisture				
Average Water loss per policy in 2002	0.529	0.447	0.389	0.359
	(0.000)	(0.000)	(0.000)	(0.000)
Coefficient of variation for water losses	−30.3	−11.7	−42.8	−35.9
	(0.691)	(0.900)	(0.462)	(0.562)
Average annual rainfall (inches)	1.80	1.45	−0.018	−0.150
	(0.631)	(0.785)	(0.994)	(0.960)
Other demographic variables				
Median household income (1999)	0.014	0.022	0.011	0.014
	(0.039)	(0.077)	(0.022)	(0.086)
Median housing unit value	−0.003	−0.003	−0.003	−0.002
	(0.310)	(0.339)	(0.263)	(0.263)
Percent housing units: $0 to $24,999	3.23	6.99	2.13	3.54
	(0.553)	(0.377)	(0.590)	(0.528)
Percent housing units: $25,000 to $49,999	−0.287	−0.116	−0.113	−0.096
	(0.637)	(0.986)	(0.812)	(0.984)
Percent housing units: $50,000 to $79,999	7.31	11.4	5.75	7.30
	(0.102)	(0.107)	(0.086)	(0.141)
Constant	−476.9	−1,129.7	−320.7	−564.9
	(0.395)	(0.278)	(0.437)	(0.433)
R^2	0.579	0.505	0.573	0.517
F-statistic (OLS) or Wald χ^2 (IV)	159.7	620.8	56.8	795.2
	(0.000)	(0.000)	(0.000)	(0.000)
Wooldridge's χ^2 score test for IV endogeneity		2.09		0.529
		(0.149)		(0.467)
Regression-based F-test for IV endogeneity		2.13		0.520
		(0.146)		(0.472)

Note: Number of observations = 254. The p-values are in parentheses. Standard errors in all regressions are calculated by clustering on Court of Appeals district. The IV regressions use two-stage least squares, with *Court of Appeals Percent Democrat* estimated in the first stage using *Percent Hispanic* as an instrument.

2002, drawn from the Census Bureau's County Business Patterns. However, endogeneity tests indicated that there was no endogeneity between these instruments and *Attorneys per Thousand Population*—the Wooldridge score test failed to reject the null hypothesis of exogeneity at a p-value of 0.245, and STATA's regression-based test failed to reject exogeneity at a p-value of 0.344. Therefore, we did not use instrumental variables when using *Attorneys per Thousand Population* as a control variable.

TABLE 4
Determinants of Insurance Prices Concrete Slab Foundation and Extended Water Loss Coverages

	Concrete Slab Coverage		Extended Water Loss	
	OLS	IV	OLS	IV
Attorneys, courts, and politics				
Attorneys per thousand population	6.47	8.13	0.431	0.209
	(0.001)	(0.001)	(0.673)	(0.854)
Court of Appeals percent Democrat	0.376	0.955	0.031	−0.046
	(0.073)	(0.000)	(0.671)	(0.833)
Variables measuring moisture				
Average water loss per policy in 2002	0.035	0.023	0.008	0.010
	(0.007)	(0.011)	(0.042)	(0.031)
Coefficient of variation for water losses	−0.847	−5.80	−0.958	−1.31
	(0.189)	(0.417)	(0.717)	(0.609)
Average annual rainfall (inches)	−0.081	−0.132	−0.385	−0.378
	(0.788)	(0.808)	(0.023)	(0.008)
Other demographic variables				
Median household income (1999)	0.001	0.002	0.001	0.001
	(0.084)	(0.010)	(0.000)	(0.004)
Median housing unit value	−0.000	0.000	−0.000	−0.000
	(0.880)	(0.865)	(0.560)	(0.530)
Percent housing units: $0 to $24,999	0.309	0.849	0.316	0.245
	(0.545)	(0.185)	(0.194)	(0.423)
Percent housing units: $25,000 to $49,999	−0.205	0.192	0.618	0.565
	(0.641)	(0.722)	(0.043)	(0.045)
Percent housing units: $50,000 to $79,999	0.176	0.771	0.774	0.694
	(0.699)	(0.221)	(0.130)	(0.028)
Constant	37.4	−56.5	−15.8	−3.31
	(0.441)	(0.427)	(0.582)	(0.932)
R^2	0.506	0.251	0.295	0.274
F-statistic (OLS) or Wald χ^2 (IV)	13.7	59.9	41.5	97.8
	(0.000)	(0.000)	(0.000)	(0.000)
Wooldridge's score test for IV endogeneity		7.88		0.585
		(0.005)		(0.445)
Regression-based test for IV endogeneity		8.60		0.547
		(0.004)		(0.460)

Note: Number of observations = 254. The p-values are in parentheses. Standard errors in all regressions are calculated by clustering on Court of Appeals district. The IV regressions use two-stage least squares, with *Court of Appeals Percent Democrat* estimated in the first stage using *Percent Hispanic* as an instrument.

Generally speaking, the results from OLS and IV were qualitatively similar, with minor variations in significance levels and somewhat larger differences in magnitudes of the coefficients. With regard to the four levels of mold coverage in Tables 2 and 3, we find that *Attorneys per Thousand Population* is positively and significantly correlated with the price of mold coverage, and the size of the effect decreases as the coverage amount decreases. Using the IV estimate for 100 percent mold coverage, a one standard deviation increase in *Attorneys per Thousand Population* is associated with an increase in the price of coverage of $54.09, which is 10.2 percent of the mean price reported in Table 1. Similarly, a one standard deviation increase in *Attorneys per Thousand Population* is associated with an increase in the price of $75,000 mold coverage of $43.52 (9.9 percent of the mean), an increase in the price of $50,000 mold coverage of $30.97 (10.7 percent), and an increase in the price of $25,000 mold coverage of $16.98 (6.9 percent). Thus, we find that the price of mold coverage is higher in counties with more *Attorneys per Thousand Population*, and the dollar value of the effect is larger at higher coverage amounts. This result suggests that mold insurance prices were affected by insurers' concerns about the threat of litigation in counties where lawyers were more plentiful.

Turning to *Court of Appeals Percent Democrat*, we find that the IV estimates are significant and positive for 100 percent, $75,000, and $50,000 coverage levels, but not for the $25,000 coverage level. In contrast, the OLS estimates were generally just outside traditional levels of statistical significance, with *p*-values ranging from 0.099 to 0.127. Using the IV estimates, we find that a one standard deviation increase (29.2 percentage points) in *Court of Appeals Percent Democrat* is associated with a $373.76 increase in the price of 100 percent coverage, a $315.36 increase in the price of $75,000 coverage, and a $244.40 increase in the price of $50,000 coverage. These dollar amounts are roughly 70 percent of the respective mean values of the mean prices reported in Table 1 of each coverage level.

The price of slab foundation coverage (as shown in Table 4) follows a similar pattern to mold coverage on both *Attorneys per Thousand Population* and *Court of Appeals Percent Democrat*, with the coefficient estimates on both variables being statistically significant in both the OLS and IV regressions. Using the IV estimates, an increase of one standard deviation in *Attorneys per Thousand Population* is associated with an increase in the price of slab foundation coverage of $7.34, which is 8.1 percent of the mean price in Table 1. A one standard deviation increase in *Court of Appeals Percent Democrat* is associated with an increase in the price of slab foundation coverage of $27.89, which is 30.8 percent of its mean price.

In contrast to both mold coverage and slab foundation coverage, the price of extended water loss coverage (Table 4) is not significantly affected by either *Attorneys per Thousand Population* or *Court of Appeals Percent Democrat*. This result supports our narrative analysis above, which concludes that mold coverage and slab foundation coverage were particularly driven by concerns over litigation and a culture of entrepreneurial lawyers. The prices of these two forms of insurance coverage are significantly higher where there are more attorneys and more Democratic courts, but that is not true for the less litigation-driven extended water loss coverage. As already mentioned, increases in the number of attorneys had the most economically and statistically significant effects on the higher coverage levels of mold insurance, suggesting that mold prices increased with the extent of the insurer's risk exposure. For the coverage types most affected by the litigation environment—mold and slab coverages—we find that the number of attorneys and the judicial philosophy of the courts had statistically significant effects on insurance prices.

Of course, inferring causation from these correlations is difficult in any cross-sectional analysis. For example, it is conceivable that homeowners premiums could be higher in certain counties because of a higher taste for litigation in those counties, which could, in turn, lead to differences in the numbers of attorneys per capita. As described above, we have taken statistical steps to avoid endogeneity bias in our estimates of coefficients and standard errors. Furthermore, it is not likely that some underlying cultural characteristic is at work here. If it were, it would have to explain *both* why a sudden increase in mold claims occurred in 2001–2002 *and* why the number of attorneys per capita did not change dramatically. The more likely explanation is that changes in the legal landscape and the strategic decisions of lawyers already in place drove the sudden surge in mold claims. Furthermore, our conclusions are based on prices from a single large insurer, so our results are only suggestive in regard to prices of other insurers in the Texas market.

There are other interesting results in Tables 2–4. As expected, all types of coverage were significantly more expensive in counties with higher *Average Water Loss per Policy in 2002*. Interestingly, the coefficient estimates on *Average Annual Rainfall* were insignificant for every type of coverage except Extended Water Loss, where the coefficient estimate was negative and significant. We infer that whatever effect rainfall may have as a proxy for ambient moisture is incorporated into the pricing decision through the previous year's water loss. Finally, the negative sign on *Average Annual Rainfall* for Extended Water Loss coverage (holding average water loss per policy constant) suggests that this type of insurance was less expensive in counties where a larger part of the water loss per policy was rain related. This is a plausible result, since Extended Water Loss applies to water damage caused by the leakage from household systems and appliances rather than outside water events.

The recent variability of water losses as measured by the *Coefficient of Variation for Water Losses* had no significant effect on prices of any of the types of insurance. Perhaps the sudden increase in numbers of mold and other water claims in 2001 and 2002 made the variability from 1998 to 2002 less informative than is typically the case in insurance pricing.

On the other hand, the coefficient estimates on county *Median Household Income* were uniformly significant and positive, suggesting that prices of all types of coverage were higher in wealthier counties, all else being equal. The magnitude of the effect is fairly large: a one standard deviation increase in *Median Household Income* is associated with price increases of $228 for 100 percent mold coverage, $201 for $75,000 mold coverage, $165 for $50,000 mold coverage, $102 for $25,000 mold coverage, $14.51 for concrete slab coverage, and $7.23 for extended water loss coverage.

Neither the *Median Housing Unit Value* nor any of the housing value distribution variables had any consistent significant effect on prices of any of the coverage types. One plausible reason for the insignificance of the housing value variables is that each type of coverage for which we have prices is specified in an absolute dollar amount rather than in relation to the home value. (The exception, of course, is the 100 percent mold coverage, but the prices we have are based on a home worth $175,000, not a median-valued home in each county.) Overall, the relative values of homes in each county did not have an effect on the prices of mold or slab coverage, again emphasizing that other factors were at work.

Conclusion

Our study of the mold insurance crisis in Texas provides fresh evidence that the legal environment plays an important role in the pricing of insurance. Using data from a single large Texas insurer, we have concluded that the prices in Texas for supplemental homeowners coverage of mold damage and slab foundation damage were significantly higher in counties with a higher number of attorneys per thousand and a higher proportion of Democratic appellate judges. These results are consistent with the historical background and anecdotal evidence arising out of the Texas mold insurance controversy of 2001–2002, which suggested that mold and other water claims were a direct result of an entrepreneurial attorney culture that dominated the slab foundation cases of the 1990s and carried over to the mold claims beginning in 1999 and 2000. The combination of attorney-driven claims and relatively plaintiff-friendly courts likely played a sizable role in creating the mold controversy in Texas and subsequently had the effect of increasing the prices paid for mold and slab coverage in Texas.

References

Belkin, L., 2001, Haunted by Mold, *New York Times Magazine*, 28.

Bertrand, M., E., Duflo, and S. Mullainathan, 2004, How Much Should We Trust Differences-in-Differences Estimates? *Quarterly Journal of Economics*, 119(1): 249-275.

Collier, J., 2002, Mold Madness: Mopping Up the Damage, *Florida Underwriters*, 13.

Cook, V. P., and P. W. Schoonmaker, 2002, Homeowner Policies Rarely Cover Losses Due to Mold, *Chicago Daily Law Bulletin*, 5.

Cummins, J. D., and S., Tennyson, 1992, Controlling Automobile Insurance Costs, *Journal of Economic Perspectives*, 6(2): 95-115.

De Figueiredo, J. M., and E. H., Tiller, 1996, Congressional Control of the Courts: A Theoretical and Empirical Analysis of Expansion of the Federal Judiciary, *Journal of Law and Economics*, 39(2): 435-462.

Derrig, R. A., H. I., Weisberg, and X. Chen, 1994, Behavioral Factors and Lotteries Under No-Fault With a Monetary Threshold: A Study of Massachusetts Automobile Claims, *Journal of Risk and Insurance*, 61(2): 245-275.

Gron, A., 1994, Capacity Constraints and Cycles in Property-Casualty Insurance Markets, *Rand Journal of Economics*, 25(1): 110-127.

Hartwig, R. P., and C. Wilkinson, 2003, *Mold and Insurance*, Insurance Issues White Paper Series, Vol. 1, No. 4 (New York: Insurance Information Institute).

Jordan, L. J., and J. K., Kenchel, 2002, Recent Developments in Property Insurance Law, *Tort & Insurance Law Journal*, 37: 675-708.

Kirsch, L. S., and A. J. Perel, 2002, Defense Can Win Toxic Mold Lawsuits, *New York Law Journal*, 227: S8.

Pashigian, B. P., 1977, The Market for Lawyers: The Determinants of the Demand for the Supply of Lawyers, *Journal of Law and Economics*, 20(1): 53-85.

Peresie, J. L., 2005, Note: Female Judges Matter: Gender and Collegial Decision-Making in the Federal Appellate Courts, *Yale Law Journal*, 114(7): 1759-1790.

Rebitzer, J. B., and L. J., Taylor, 1995, Efficiency Wages and Employment Rents: The Employer-Size Wage Effect in the Job Market for Lawyers, *Journal of Labor Economics*, 13(4): 678-708.

Rosen, S., 1992, The Market for Lawyers, *Journal of Law and Economics*, 35(2): 215-246.

Sauer, R. M., 1998, Job Mobility and the Market for Lawyers, *Journal of Political Economy*, 106(1): 147-171.

Spiller, P. T., and M. L., Spitzer, 1995, Where Is the Sin in Sincere? Sophisticated Manipulation of Sincere Judicial Voters (With Applications to Other Voting Environments), *Journal of Law, Economics & Organization*, 11(1): 32-63.

Spurr, S. J., 1987, How the Market Solves an Assignment Problem: The Matching of Lawyers With Legal Claims, *Journal of Labor Economics*, 5(4): 502-532.

Stewart, S., 2007, What's Furry and Thirsty and Loves the Dark? *New York Times*, 1L.

Taha, A. E., 2007, Judges' Political Orientations and the Selection of Disputes for Litigation, Working paper. World Wide Web: http://ssrn.com/abstract=963468.

Texans for Public Justice, 2005. *Texas PACs: 2004 Election Cycle Spending*. World Wide Web: http://www.tpj.org/reports/txpacs04/txpacs04.pdfhttp://www.tpj.org/ reports/txpacs04/txpacs04.pdf.

Texas Department of Insurance, 1997, Coverage A (Dwelling) Coverage Under the Texas Standard Homeowners Policy HO-B for Losses Resulting From Accidental Discharge Which Causes Damage to Dwelling Foundation, Commissioner's Bulletin No. B-0032-97.

Texas Department of Insurance, 2001a, Montemayor Counsels Restraint on Mold Coverage Issue. News Release (August 27).

Texas Department of Insurance, 2001b, Mold Clean-Up Practices Inquiry Requested. News Release (October 5).

Texas Department of Insurance, 2001c, Adoption of Amendatory Mandatory Endorsements, Mandatory Offer Endorsements, an Amendment to Endorsement No. HO-170, and Amendments to the Texas Personal Lines Manual Rules to Modify Coverage for Mold and Other Fungi; and Amendments to the Texas Statistical Plan, Commissioner's Order No. 01-1105.

Texas Department of Insurance, 2001d, Montemayor Protects Consumer Choice, Availability of Mold Coverage. News Release (November 28).

Texas Department of Insurance, 2002a, Montemayor Expands Options for Homeowners. News Release (March 8).

Texas Department of Insurance, 2002b, Montemayor Further Expands Homeowners' Options. News Release (May 22).

Van Voris, B., 2001, Sexy It's Not, but Mold Is Real Hot, *National Law Journal*, A1.

Williams, D., 2002, Toxic Mold Claims Demand Insurer Action, *Claims Magazine*, 69.

Winter, R. A., 1994, The Dynamics of Competitive Insurance Markets, *Journal of Financial Intermediation*, 3: 379-415.