

## What ISO Did Not Tell You About Mold and Bacteria Exclusions



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## Mold Is Still A Growing Risk Management Problem In The US

- Explosive claims growth in 2001-2002.
- Forced universal insurance exclusions for mold.
- Virtually everyone is now uninsured for damages *related* to mold & bacteria.
- These losses are company buster losses to middle market businesses.
- This is a great opportunity for insurance agents.

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## ISO Fungi & Bacteria GL Exclusion

This insurance does not apply to:

- "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, *regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.*
- Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, *or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.*

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption

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## Mold & Bacteria Exclusions In Property Policies

- Expands the traditional exclusions to totally eliminate coverage for related loss.
- Policies with these endorsements are no longer an "All Risk" property policy.
- All borrowers are in non compliance with their loan covenants.
- Most certificates of insurance issued to lenders are technically inaccurate.

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## Mold & Bacteria Exclusions Adversely Effect Millions Of Businesses

- Hundreds of thousands of mold & bacteria related losses occur annually.
- There is loss exposure anywhere there is;  
Indoor air + people + moisture ..... or food for people or animals
- Common classes  
Developers, general contractor's, trades owners, lessees, lenders, building products manufactures & suppliers, hospitality, food processing, grocery stores

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## Actual Mold and Bacteria Claims

- Plumber installs the wrong toilet wax ring in an apartment complex and creates a \$9,000,000 problem.
- Mold damages newly installed dry wall in a building. A \$1,450,000 loss, it costs the insurance agent \$150,000 out of pocket to get out of the agent E&O loss.
- See the Mold Loss summary, over 40 pages of loss examples.
- Listeria bacteria can produce illness with a twenty-five percent mortality rate. It is a pollutant.

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## The ISO Mold And Bacteria Exclusion

Policyholders have no GL coverage for claims arising from mold or bacteria *related work*.

Risks affected include janitorial, cleaning, sewer contractors, remodeling, and restoration contractors, roofers, plumbers, HVAC, etc.

- Exclusion removes all GL coverage if insured is; ...*cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing* **or in any way** responding to...

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## More Negative Effects

- Unlike mold, bacteria can kill!
- Types include; Staph, MRSA, E. coli, listeria, salmonella, legionella, anthrax, botulism, etc.
- Staph infections are on the rise. Who is disinfecting buildings – they do not have GL coverage!

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## And More Negative Effects

- Building owners are exposed to mold and bacteria outbreaks and nearly all are uninsured.
- Building owners are uninsured for damages caused by contractors (the contractors are uninsured too).
- The mold exclusion eliminates GL coverage for the job site, not just mold.
- A mold remediation contractor accidentally kills a child with a ladder – NO GL COVERAGE!

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## “Bodily Consumption” Exception Of Mold Exclusion Removed

- Some carriers remove the ISO exception to the exclusion in the GL or umbrella.

The impact on food service risks are dramatic –

- Target accounts include:

All food service and processors, super markets, college and universities, restaurants, nursing homes, shopping malls (food court), cafeterias, delis, taverns, markets, etc.

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## Anti-concurrent Causation (ACC) Now Used In Mold & Bacteria Exclusions

- Found in Property and GL exclusions:  
*“This exclusion applies regardless of whether any other cause, event, contributes concurrently or in any sequence to the loss.”*
- ACC denies coverage for most, if not all insured losses when excluded losses are also involved.
- If losses occur concurrently, i.e.. rainstorm & mold, the water loss from the rain storm is also excluded if mold develops!

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## Beware of ACC - They Can Erase Your Property And GL Coverage!

- Varies by carrier with some more onerous.
- Seek carriers who do not use ACC clauses.
- ISO-GL mold & bacteria exclusion uses ACC.
- Court rulings sparse but siding with insurers.
- Insurers likely to use on big losses.
- **Recent court cases affirming ACC;**
  1. See *Leonard v. Nationwide Insurance*, 5th U.S. Circuit Court of Appeals
  2. See *Tuepker v. State Farm*, 5th U.S. Circuit Court of Appeals

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## Are Insurance Agents The Mold Insurer Of Last Resort?

- Uninsured mold claims will domino into liability claims for multiple defendants.
- Unintentionally uninsured losses = Insurance agent's E&O loss exposures.
- Defenses are limited and usually revolve around what degree of ignorance was reasonable.
- Mold insurance has been readily available since 2003.
- Many insurance agents professional liability policies have mold related loss exclusions.

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## How To Insure Against Mold & Bacteria Losses

- Mold Exclusions = Pollution Exclusions
- Environmental insurance is the only solution.
- Policy must list mold & bacteria as covered loss.
- Not excluded does not mean covered.
- Specialized expertise is required to evaluate coverage.
- Beware of non-standardized policy forms.
- Off the shelf policies usually fail to insure mold & bacteria.

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## Environmental Insurance To Cover Pollution, Mold & Bacteria Losses

- Properly structured environmental insurance can fill the coverage gaps in both Property and GL insurance policies.
- Basic policy forms:
  - Contractors Pollution Liability
  - Professional Liability
  - Environmental Impairment Liability

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## Contractors Pollution Liability

- Insures BI, PD, Clean Up and Defense arising from the insured's negligent described operations.
  - general contractors, builders, remediation contractors, roofers, plumbers, trades, restoration, Construction Managers, HVAC, etc.
- Production Tip:
  - Most CPL policies sold have material coverage defects
  - Some exclude 90% of what the customer does for a living.
  - Call ARMR for an evaluation of coverage.

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## Avoid Major CPL Coverage Gaps

- Combine the GL and CPL with same carrier.
- Does the policy cover all the operations of the firm?
- Is work performed by subcontractors excluded?
- Are completed operations covered?
- Are claims from materials supplied by the insured covered?
- How is damage as a result of your work treated?
- Are there restrictions for opinions, reports, plans, advice?
- Are mold and bacteria specifically covered?

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## Combined GL/CPL Policies

- Claim coordination between GL and CPL is essential.
- Must properly define "covered operations".
- A must have for any company performing mold and bacteria work clean up work i.e., fire & water restoration, cleaning, janitorial, etc.

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## Environmental Impairment Liability For Building Owners & Developers

- Site Specific Pollution Insurance.
- Covers third party claims for BI, PD, defense costs plus first party clean up.
- Fixes coverage gaps in GL *and* Property policies created by mold/bacteria exclusion.
- Complies with insurance specifications for All Risk property coverage.
- Claims arising from operations of a contractor are covered for the owner but not the contractor.

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## The State Of The Art In EIL

- Policy terms of up to 10 years
- Assignable policies
- Multiple named insured's
- Business interruption and extra expense available.
- .01 cents/per square foot/ per million of limit/per year of coverage.
- \$10,000 Minimum Premium

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## ARMR Target Markets - Commercial Property EIL

- Commercial properties including condo, hotel, apartments, retail, & commercial construction projects
  - EIL insurance policy with mold & bacteria coverage.
  - Covers third party BI/PD, first party cleanup costs, business interruption, extra expense & defense costs.
  - Long term policy up to 10 years.
  - Limits up to \$50 million.
  - ARMR's proprietary engineering services.
  - This is the only solution for mold coverage gaps in GL and property policies.

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## ARMR Target Markets General Contractors Gap Filler Policy

- One policy fills the coverage fills the gap in GL for pollution, mold and professional
- Easy to sell
  - GCs have big uninsured pollution & mold risks now
  - Have the customer read their exclusions
- Premium = usually 1/10<sup>th</sup> of 1% gross receipts
- \$10,000 Minimum Premium
- We can insure **Paper GC's** for E&O with this policy.

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