

## P-C Trends

### **Legionnaires' of the Rich and Famous**

*Insurance issues arise after bacteria makes Playboy Mansion partygoers sick.*

After a party at the Playboy Mansion associated with a conference in Los Angeles, more than 150 people reported flu-like symptoms, some cases of which could be Legionnaires' disease or a milder form of the disease, Potomac Fever. Both conditions are caused by bacteria, and both cause significant insurance issues. Commonly added to all manner of insurance policies today are fungus/mold/bacteria exclusionary endorsements. Depending on the extent of injuries (Legionnaires' can be fatal), the insurance coverage in place and what caused the infection to spread, millions of dollars could be at stake. Most of these losses will be uninsured because of the exclusions for these contaminants.

In 1976 at an American Legion convention in Philadelphia, hundreds of people became sick and more than 30 people died from a previously-unknown bacterium, Legionellosis. This event became the namesake for Legionnaires' disease. The outcome from infection can range from death to bacterial pneumonia to a mere flu-like experience. So far, of those infected in Los Angeles, no fatalities have been reported and symptoms appear to be those associated with a milder infection—the less virulent version of “Legion Fever,” known as Potomac Fever.

Whatever the final outcome for those sickened at the mansion, the situation brings with it some very interesting insurance questions. The insurance coverage issues arise from insurers adding fungus, mold or bacteria exclusionary endorsements to all types of insurance policies.

“Today, we find the industry adding exclusionary endorsements to nearly every policy,” says David Dybdahl, president of the environmental/pollution insurance wholesaler on Big “I” Markets, American Risk Management Resources Network, LLC. “These exclusions go well beyond the expected elimination of coverage for being in the mold remediation or microbial decontamination business, which is usually completely excluded in the typical GL policy. These exclusions in the property and liability policies eliminate the insurance coverage for any firm that has or can be associated with a water intrusion problem in a building that results in the growth of any type of mold or anyone exposing others to any form of bacteria.”

According to Dybdahl, there is no better example of the surprising consequences of fungus/mold/bacteria exclusions than in two cases involving hotels where Legionellosis bacteria caused a loss. One of these is significant because of the death of a guest from exposure to the bacteria and the [\\$4.5 million](#) involved he says; the other, because the court case makes clear the fungus/mold/bacteria exclusion not only removed any insurance coverage for injuries from bacteria, [it was ruled](#) the insurer had no duty to defend the hotel owner.

“And if completely uninsured, if wrongful deaths from a hotel hot tub are not troubling enough to insurance buyers, another adverse outcome of the exclusion is developing when exclusions incorporate anti-concurrent causation language,” said Dybdahl. Armed with anti-concurrent causation language in the fungus/mold/bacteria exclusions in property and liability insurance policies, an insurance adjuster can conceivably decide any claim involving the smallest speck of [any type of mold or bacteria is unpayable](#), even when mold or bacteria are only a very small part of the overall claim. Once the exposure and concern is identified, agents have two strategies for getting clients covered, says Dybdahl.

In rare cases, agents can get the exclusions removed from policies, but others probably have to purchase specially-modified environmental insurance coverage. Use caution in evaluating the adequacy of sublimits of coverage for fungus/mold/bacteria, as the actual loss exposure from these contaminants usually far exceeds the amount of the sublimit being offered. For example, exposing 150 partygoers to a potentially fatal disease will not be adequately insured with a \$10,000 sublimit. “We have affordable commercial

insurance products designed to pick up both the property and liability exposures from contaminants like mold, fungus and bacteria,” said Dybdahl. “We’ve been saying for some time that if your customer can have or be associated with causing a water loss, [he has] a risk management problem you can help [him] with.”

“Clearly, we have some evolving and troubling coverage issues that agents need to be aware of,” says the Virtual University’s Bill Wilson. Mark Wolf, vice president of professional liability on the Big I Advantage® team, indicates that agencies need to be aware of the E&O risk management tools and strategies available when insuring clients who may have a mold or fungus exposure. “We’ll coordinate with our technical affairs team at the VU and look at the agency E&O and risk management issues to get information in member’s hands,” Wolf says.

Watch for more on this coverage issue in IN&V and via the VU at [www.independentagent.com/vu](http://www.independentagent.com/vu).

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