

**IMPLICATIONS FOR ENVIRONMENTAL INSURANCE COVERAGE OF THE  
ALASKA STATUTORY PROHIBITION ON DENYING INSURANCE CLAIMS  
WHERE THE RISK, HAZARD OR CONTINGENCY INSURED AGAINST IS THE  
DOMINANT CAUSE OF THE LOSS**

George R. Lyle, Guess & Rudd PC  
January 16, 2013

In State Farm Insurance Company v. Bongen, 925 P.2d 1042 (Alaska 1996), the insured's home was destroyed by a mudslide which they alleged was "contributed to or caused" by the clear-cut of a transmission line right of way by Kodiak Electric Association above their home. The Bongen's insurer, State Farm, denied the claim based on its earth movement exclusion. The Superior Court held that the "efficient proximate cause" rule applied since there were multiple causes for the loss, and found that State Farm's effort to circumvent that rule was prohibited by public policy. The Supreme Court reversed, finding that the State Farm policy "excluded from coverage any loss resulting from earth movement, regardless of the cause of the earth movement, and regardless of whether a non-excluded risk acted 'concurrently or in any sequence with' earth movement." The Court also concluded that the exclusion did not violate public policy, holding that "an insurer may expressly preclude coverage when damage to an insured's property is caused by both a covered and an excluded risk."

According to the Letter of Intent offered by its sponsor, Senator Dave Donley, AS 21.36.096 (formerly codified as AS 21.36.212) was intended to reverse the Bongen decision by providing that: "An insurer may not deny a claim if a risk, hazard, or contingency insured against is the dominant cause of loss and the denial occurs because an excluded risk, hazard, or contingency is also in a chain of causes but operated on a secondary basis."

It appears that the Alaska Division of Insurance ("DOI") first relied on the statutory prohibition in AS 21.36.096 in DOI Bulletin B 04-07 (copy attached), which stated that: "Forms that attempt to limit or exclude coverage for mold damage resulting from an otherwise covered cause of loss violate this section [AS 21.36.096] of the Alaska Insurance Code." Bulletin B 04-07 also provided examples of mold exclusion language that would be acceptable to the DOI.

On December 11, 2007, the DOI wrote the Insurance Services Office ("ISO") (copy attached) to inform the ISO that:

It has come to the attention of the Alaska Division of Insurance that a number of ISO forms approved for use in Alaska are in violation of AS 21.36.212. Some of these forms were approved prior to the effective date of AS 21.36.212 (January 1, 2001) and must now be amended in order to comply with AS 21.36.212. A number of forms were

inadvertently approved subsequent to the effective date of AS 21.36.212 and must also be amended.

Alaska Statute AS 21.36.212 prohibits an insurer from denying a claim if the denial occurs because an excluded risk is in the chain of causes by which the loss operates on a secondary basis, when the dominant cause of loss is a covered risk. The language "in whole or in part" appearing in exclusion creates the possibility of such a denial and is the language which must either be revised or language must be added to clarify that the exclusion does not apply if the dominant cause of a loss is a risk or peril that is not otherwise excluded.

This letter also provided a non-exclusive list of forms which the DOI required to be withdrawn or revised by the ISO.

On March 19, 2008 the ISO filed a variety of Alaska-Specific Endorsements as filing GL-2008-OEND1, in order to comply with the requirements in the DOI's December 11, 2007 letter. This filing was approved by the DOI on April 9, 2008, and provided that it was applicable to all ISO policies written on or after October 1, 2008.

One such form which the ISO modified was the so-called "Total Pollution Exclusion," ISO form CG 21 49 09 99, which provided, in relevant part, the coverage was excluded for: "'Bodily injury' or 'property damage' which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of 'pollutants' at any time." The new "Alaska Total Pollution Exclusion," ISO form CG 32 67 09 08, which was filed to comply with AS 21.36.096 removed the "in whole or in part" language so the exclusion now applied only to: "'Bodily injury' or 'property damage' which would not have occurred but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of 'pollutants' at any time."

The Alaska legislature's enactment of AS 21.36.096, the DOI's application of that statute, and the ISO's 2008 modification of various insurance forms, including the Alaska Total Pollution Exclusion, establish that, as long as the dominant cause of a loss is a covered event (such as negligence), then the fact that pollution resulted from that covered event should not allow an insurer to exclude coverage for that resulting pollution. In addition, since AS 21.36.096 has been effective since January 1, 2001, but most insurers apparently failed to modify their exclusions to comply with that statute until the ISO filings on March 19, 2008, there is also a strong argument that any insurer which denied coverage based on an exclusion which violated AS 21.36.096 did so wrongfully.



**Division of Insurance**

550 W. 7th Avenue, Suite 1560, Anchorage, AK 99501-3568  
Telephone: (907) 269-7900 • Fax: (907) 269-7910 • Text Telephone: (907) 465-5437  
Email: Insurance@dced.state.ak.us • Website: www.dced.state.ak.us/insurance/

**BULLETIN B 04-07**

**TO: ALL PRODUCERS AND INSURERS AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF ALASKA AND OTHER INTERESTED PARTIES**

**RE: MOLD/FUNGI COVERAGE**

The Alaska Division of Insurance (division) has received endorsements to either exclude or limit coverage for losses due to mold, fungi, and related causes of loss (collectively referred to as "mold"). Many of these endorsements have not been approved because they do not comply with Alaska's insurance laws. This bulletin provides guidance to insurers for preparing and submitting forms that limit coverage in property and liability filings so that the limitations comply with Alaska law.

Under AS 21.36.212, "[a]n insurer may not deny a claim if a risk, hazard, or contingency insured against is the dominant cause of a loss and the denial occurs because an excluded risk, hazard, or contingency is also in a chain of causes but operates on a secondary basis."

Forms that attempt to limit or exclude coverage for mold damage resulting from an otherwise covered cause of loss violate this section of the Alaska Insurance Code.

The following are examples of language that has been approved by the division. Insurers wishing to limit their exposure to mold claims may do so by filing language that is no more restrictive than these examples.

**PROPERTY COVERAGES**

**Example Exclusion Language**

This insurance does not apply to loss or damage caused by mold. This exclusion does not apply to the extent the coverage is provided as an additional coverage under (*Refer to the appropriate section of the policy that contains language similar to that of Example A, B, or C*).

Example A

This policy is extended to cover the direct physical loss or damage to covered property caused by or resulting from mold when mold is the direct result of physical loss or damage by a peril otherwise covered by this policy and includes any cost or expense to clean up, remove, contain, treat, or neutralize mold from covered property resulting from such covered loss.

### Example B

If mold is the result of a covered cause of loss, we will pay for

- (1) direct physical loss of or damage to covered property or property insured; or
- (2) your liability for property of others

at the premises shown in the declarations, caused by or resulting from mold. This includes the necessary and reasonable cost incurred to test for, contain, abate, mitigate, remove, dispose of, or neutralize mold.

Coverage provided by this extension includes:

- (1) the actual loss of business income you sustain;
- (2) the necessary extra expense you incur; or
- (3) ordinance or law coverage;

if these coverages are provided by the policy.

### Example C

If a covered cause of loss results in mold and direct physical loss to covered property is caused by or results from the mold, we will pay:

- (1) the cost to remove the mold to the extent necessary to repair the damage from the covered cause of loss;
- (2) the direct physical loss to covered property caused by the mold to the extent it is damage from the covered cause of loss;
- (3) up to \$10,000 for the cost of testing for, treating, containing, or removing mold beyond that which is required to repair or replace the covered property damaged by the covered cause of loss.

## **LIABILITY COVERAGES**

### **Example Exclusion Language**

#### Option A

This insurance does not apply to

- (1) liability arising from the actual, alleged, or threatened contact with, exposure to, existence of, or ingestion of mold at any premises you own, rent, or occupy or previously owned, rented, or occupied;
- (2) liability arising from the actual, alleged, or threatened contact with, exposure to, existence of, or ingestion of mold at any premises that you contracted to build, remodel, or otherwise provide contracting services performed by any insured or any subcontractor working directly or indirectly for any insured.

These exclusions do not apply if the occurrence is caused by a peril that is not otherwise excluded.

Option B

This insurance does not apply to

- (1) bodily injury, property damage, personal, and advertising injury arising from the actual, alleged, or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any mold on or within a building or structure;
- (2) any loss, cost, or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediation, or disposing of the effects of mold by any insured or by any other person or entity.

These exclusions do not apply if the occurrence is caused by a peril that is not otherwise excluded.

**DEFINITION**

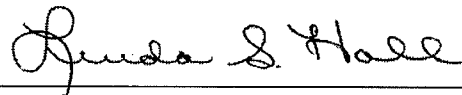
**Example Definition Language**

“Mold” means any type of fungus, including mildew, rusts, mushrooms, yeasts, and mycotoxins, spores, or scents, produced or released by the mold. This does not include fungi intended by the insured for consumption.

The definition of mold used in mold exclusions should not be expanded beyond the above. For example, bacteria, organic pathogens, or biological hazardous substances should not be included in the definition of mold. Broad definitions are misleading and subject to disapproval under AS 21.42.130(2) or (3).

If you have questions, please contact the Division of Insurance, P.O. Box 110805; Juneau, AK 99811-0805; (907) 465-2515; or via electronic mail at [insurance@dced.state.ak.us](mailto:insurance@dced.state.ak.us)

Dated this 20<sup>th</sup> day of May, 2004



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Linda S. Hall  
Director



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Division of Insurance

*Sarah Palin, Governor*  
*Emil Notti, Commissioner*  
*Linda S. Hall, Director*

Via E-mail

December 11, 2007

Eric D. Kinney, CPCU  
Regional Regulatory Specialist  
Insurance Services Office, Inc.  
Government Relations  
388 Market St., Ste. 750  
San Francisco, CA 94111

Re: Concurrent Causation language in currently approved ISO forms

Dear Mr. Kinney:

It has come to the attention of the Alaska Division of Insurance that a number of ISO forms approved for use in Alaska are in violation of AS 21.36.212. Some of these forms were approved prior to the effective date of AS 21.36.212 (January 1, 2001) and must now be amended in order to comply with AS 21.36.212. A number of the forms were inadvertently approved subsequent to the effective date of AS 21.36.212 and must also be amended.

Alaska Statute 21.36.212 prohibits an insurer from denying a claim if the denial occurs because an excluded risk is in the chain of causes but operates on a secondary basis, when the dominant cause of the loss is a covered risk. The language "in whole or in part" appearing in exclusions creates the possibility of such a denial and is the language that must either be revised or language must be added to clarify that the exclusions do not apply if the dominant cause of a loss is a risk or peril that is not otherwise excluded.

The following list of forms have been identified by the division as requiring withdrawal or revision. This list is not considered exhaustive; your office should work to identify and amend all forms that contain language in violation of AS 21.36.212.

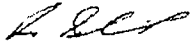
CG 21 55 09 99  
CG 21 49 09 99  
CG 21 63 09 98  
CG 21 64 09 98  
CG 21 65 12 04  
CG 21 86 12 04  
CG 21 96 03 05  
CG 31 66 12 04  
CG 31 67 12 04

P.O. Box 110805, Juneau, Alaska 99811-0805  
Telephone: (907) 465-2515 Fax: (907) 465-3422 Text Telephone: (907) 465-5437  
Email: [insurance@commerce.state.ak.us](mailto:insurance@commerce.state.ak.us) Website: <http://www.commerce.state.ak.us/insurance/>

CG 33 70 03 05  
CG 33 71 03 05

Please contact me by telephone at 907-465-8486 or by e-mail at [Ann.Schmid@alaska.gov](mailto:Ann.Schmid@alaska.gov), if you have any questions.

Sincerely,



Ann Schmid  
Insurance Analyst



388 MARKET STREET SUITE 750 SAN FRANCISCO, CA 94111  
 TEL: (415) 874-4361 FAX: (415) 398-8064 E-MAIL: jmasek@iso.com  
 SERVING: CALIFORNIA, HAWAII, IDAHO, MONTANA, OREGON, WASHINGTON, GUAM,  
 NEVADA, ALASKA, UTAH, WYOMING AND COLORADO

JAMES E. MASEK  
 REGIONAL DIRECTOR

March 19, 2008

Honorable Linda Hall Department of Commerce, Community,  
 Director of Insurance And Economic Development  
 State of Alaska  
 Rate and Form Filings  
 Division of Insurance  
 P. O. Box 110805  
 Juneau, Alaska 99811-0805

State of Alaska  
 APPROVED  
 Date: 4-9-2008  
 By: Ann Schmid  
 Eff. Date: 10-1-2008

**RECEIVED**

MAR 24 2008

SOA - DCCED  
 DIVISION OF INSURANCE  
 JUNEAU OFFICE  
 FILING # 73172

RE: GL-2008-OEND1  
 Introduction of Alaska-Specific Endorsements

Dear Director:

Insurance Services Office, Inc. hereby files the above captioned filing on behalf of those participating insurers who have authorized us to do so.

I am enclosing a copy of your December 11, 2007 letter in regard to Concurrent Causation language in currently approved ISO forms.

These changes are applicable to all policies written on or after October 1, 2008.

Companion filing GL-2008-ORU1 will be submitted under separate cover.

Your early approval will be appreciated.

Very truly yours,

Eric D. Kinney, CPCU  
 Regional Regulatory Specialist



**Property & Casualty Transmittal Document**

<div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>1. Reserved for Insurance Dept. Use Only</p> <p style="font-size: 24px; font-weight: bold; margin: 0;">RECEIVED</p> <p style="font-size: 18px; font-weight: bold; margin: 0;">MAR 24 2008</p> <p style="font-weight: bold; margin: 0;">SOA - DCCED DIVISION OF INSURANCE JUNEAU OFFICE FILING # <u>73172</u></p> </div>	<p>2. Insurance Department Use only</p> <p>a. Date the filing is received:</p> <p>b. Analyst:</p> <p>c. Disposition:</p> <p>d. Date of disposition of the filing:</p> <p>e. Effective date of filing:</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; border-bottom: 1px solid black;">New Business</td> <td style="width:50%; border-bottom: 1px solid black;"></td> </tr> <tr> <td style="border-bottom: 1px solid black;">Renewal Business</td> <td style="border-bottom: 1px solid black;"></td> </tr> </table> <p>f. State Filing #:</p> <p>g. SERFF Filing #:</p> <p>h. Subject Codes</p>	New Business		Renewal Business	
New Business					
Renewal Business					

3. Group Name	Group NAIC #
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4. Company Name(s)	Domicile	NAIC #	FEIN #	State #
Insurance Services Office, Inc.	DE		13-3131412	

5. Company Tracking Number	GL-2008-OEND1
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Contact Info of Filer(s) or Corporate Officer(s) [include toll-free number]

6. Name and address	Title	Telephone #s	FAX #	e-mail
Eric D. Kinney Insurance Services Office, Inc. 388 Market Street, Ste. 750 San Francisco, CA 94111-5314	Regional Regulatory Specialist	(415) 874-4362	(201) 748-1057	EKINNEY@iso.com

7. Signature of authorized filer	
8. Please print name of authorized filer	Eric D. Kinney

Filing information (see General Instructions for descriptions of these fields)

9. Type of Insurance (TOI)	17.0000 Other Liability
10. Sub-Type of Insurance (Sub-TOI)	17.001
11. State Specific Product code(s)(if applicable)[See State Specific Requirements]	
12. Company Program Title (Marketing title)	Commercial General Liability
13. Filing Type	<input type="checkbox"/> Rate/Loss Cost <input type="checkbox"/> Rules <input type="checkbox"/> Rates/Rules <input checked="" type="checkbox"/> Forms <input type="checkbox"/> Combination Rates/Rules/Forms <input type="checkbox"/> Withdrawal <input type="checkbox"/> Other (give description)
14. Effective Date(s) Requested	New: 10/01/2008    Renewal: 10/01/2008
15. Reference Filing?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
16. Reference Organization (if applicable)	Not Applicable
17. Reference Organization # & Title	Not Applicable
18. Company's Date of Filing	
19. Status of filing in domicile	<input checked="" type="checkbox"/> Not Filed <input type="checkbox"/> Pending <input type="checkbox"/> Authorized <input type="checkbox"/> Disapproved

### Property & Casualty Transmittal Document---

<b>20.</b>	<b>This filing transmittal is part of Company Tracking #</b>	GL-2008-OEND1
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<b>21.</b>	<b>Filing Description</b> [This area can be used in lieu of a cover letter or filing memorandum and is free-form text]
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This filing introduces various Alaska-specific endorsements in response to a request from the Alaska Division of Insurance.

<b>22.</b>	<b>Filing Fees</b> (Filer must provide check # and fee amount if applicable) [If a state requires you to show how you calculated your filing fees, place that calculation below]
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**Check #:**  
**Amount:**

**Refer to each state's checklist for additional state specific requirements or instructions on calculating fees.**

**\*\*\*Refer to each state's checklist for additional state specific requirements (i.e. # of additional copies required, other state specific forms, etc.)**

**This Filing is being submitted under Alaska Prior Approval filing procedures.**

**FORM FILING SCHEDULE**

(This form must be provided **ONLY** when making a filing that includes forms)  
 (Do **not** refer to the body of the filing for the forms listing, unless allowed by state.)

<b>1.</b>	<b>This filing transmittal is part of Company Tracking #</b>		GL-2008-OEND1		
<b>2.</b>	<b>This filing corresponds to rate/rule filing number</b> (Company tracking number of rate/rule filing, if applicable)		GL-2008-ORU1		
<b>3.</b>	<b>Form Name /Description/Synopsis</b>	<b>Form # Include edition date</b>	<b>Replacement Or withdrawn?</b>	<b>If replacement, give form # it replaces</b>	<b>Previous state filing number, if required by state</b>
01	Exclusion - Year 2000 Computer-Related and Other Electronic Problems - Limited Coverage Options	CG 04 31 09 98	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		
02	Exclusion - Year 2000 Computer-Related and Other Electronic Problems - Limited Coverage Options	CG 04 32 04 98	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		
03	Total Pollution Exclusion	CG 21 49 09 99	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		33314
04	Total Pollution Exclusion With A Hostile Fire Exception	CG 21 55 09 99	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		33314
05	Exclusion - Year 2000 Computer-Related and Other Electronic Problems	CG 21 60 09 98	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		
06	Exclusion - Year 2000 Computer-Related and Other Electronic Problems - Products/Completed Operations	CG 21 61 04 98	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		
07	Exclusion - Year 2000 Computer-Related and Other Electronic Problems - With Exception For Bodily Injury On Your Premises	CG 21 62 09 98	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		
08	Exclusion - Year 2000 Computer-Related and Other Electronic Problems - Exclusion Of Specified Coverages For Designated Locations, Operations, Products Or Services	CG 21 63 09 98	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		
09	Exclusion - Year 2000 Computer-Related and Other Electronic Problems - Exclusion	CG 21 64 09 98	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		

	Of Specified Coverages For Designated Products Or Completed Operations				
10	Total Pollution Exclusion With Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception	CG 21 65 12 04	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		57890

PC FFS-1

## FORM FILING SCHEDULE (cont.)

**This Filing is being submitted under Alaska Prior Approval filing procedures.**

State: ALASKA Company Tracking #: GL-2008-OEND1 Page      of     

3.	Form Name /Description/Synopsis	Form # Include edition date	Replacement Or Withdrawn?	If replacement, give form # it replaces	Previous state filing number, if required by state
	Exclusion - Exterior Insulation And Finish Systems	CG 21 86 12 04	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		57890
	Silica Or Silica-related Dust Exclusion	CG 21 96 03 05	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		60270
	Exclusion - Exterior Insulation And Finish Systems	CG 31 66 12 04	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		57890
	Exclusion - Exterior Insulation And Finish Systems	CG 31 67 12 04	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		57890
	Silica Or Silica-related Dust Exclusion	CG 33 70 03 05	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		60270
	Silica Or Silica-related Dust Exclusion	CG 33 71 03 05	<input type="checkbox"/> New <input type="checkbox"/> Replacement <input checked="" type="checkbox"/> Withdrawn		60270
	Alaska Total Pollution Exclusion	CG 32 67 09 08	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
	Alaska Total Pollution Exclusion With A Hostile Fire Exception	CG 32 68 09 08	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
	Alaska Total Pollution Exclusion With Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception	CG 32 69 09 08	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
	Alaska Exclusion - Exterior Insulation And Finish Systems	CG 32 70 09 08	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
	Alaska Exclusion - Exterior Insulation And Finish Systems	CG 32 71 09 08	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
	Alaska Exclusion - Exterior Insulation And Finish Systems	CG 32 72 09 08	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
	Alaska Silica Or Silica-related Dust Exclusion	CG 32 73 09 08	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
	Alaska Silica Or Silica-related Dust Exclusion	CG 32 74 09 08	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		

	Alaska Silica Or Silica-related Dust Exclusion	CG 32 75 09 08	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
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STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE

**PROPERTY & CASUALTY FORMS CHECKLIST**

Policy Provision	REFERENCE	COMMENTS	Applicable	Page Number
Entire Contract in policy	AS 21.42.150	The policy must contain the entire contract between the parties.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Cancellation notice for a personal insurance policy	AS 21.36.220(a)	If an insurer cancels, a written notice must be mailed to the named insured at least: <ul style="list-style-type: none"> <li>• 10-day notice for discovery of fraud or material misrepresentation made by the insured, etc. (see statutes);</li> <li>• 20-day notice for nonpayment of premium, etc. (see statutes);</li> <li>• 30-day notice before the effective date of the cancellation for any other reason.</li> </ul> If the insured is 70 years old or older, the insurer must also notify the named insured's designee.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Cancellation notice for a business or commercial policy	AS 21.36.220(b)	If an insurer cancels, a written notice must be mailed to the insured and to the agent or broker of record at least: <ul style="list-style-type: none"> <li>• 10-day notice for discovery of fraud or material misrepresentation made by the insured, etc. (see statutes);</li> <li>• 20-day notice is for nonpayment of premium, etc. (see statutes);</li> <li>• 60-day notice before the effective date of the cancellation for any other reason.</li> </ul>	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Unearned Premium refund insurer cancel	AS 21.36.220(c)	The unearned premium must be refunded before effective date of cancellation except for the reasons stated in AS 21.36.220(c)(1). Then the refund must be within 45 days after the notice of cancellation.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Unearned Premium refund insured cancel	AS 21.36.255	The insurer must return any unearned premium within 45 days of receipt of a request for cancellation or the effective date of cancellation, whichever is later.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Cancellation fee	AS 21.36.255(a)	If the insured cancels a policy, the insurer may charge a cancellation fee of not more than 7.5% of the unearned premium. A cancellation fee may not be charged unless the fee is clearly stated in the policy. A statement that the cancellation fee will not exceed 7.5% does not satisfy this requirement. The exact amount of the fee must be stated.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	

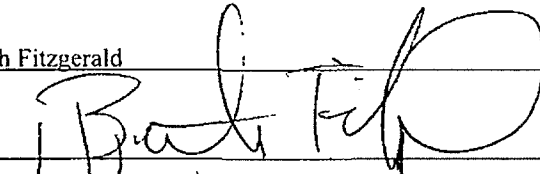




Policy Provision	REFERENCE	COMMENTS	Applicable	Page Number
		or in any sequence with" appearing in exclusions generally violates this statute.		
Lawsuits Against Insurer	AS 09.10.053  Supreme Court Case No. 1780	A person has three years to bring an action upon a contract.  In <i>Fireman's Fund Ins. Co v. Sand Lake Lounge, Inc.</i> (09/24/1973), the Alaska Supreme Court ruled that such a time limitation begins to run only after a claim is denied.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Minimum Earned Premium	AS 21.36.255(a)(2)	Minimum earned premiums must be stated in the policy	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Examination under oath	AS 21.42.130	An insured must be allowed to have legal representation present when examined under oath.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Other Insurance	AS 21.42.130	Making a primary policy excess over any other applicable insurance is misleading and grounds for disapproval under AS 21.42.130. There must be a method of sharing the loss with other policies.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Fungus, Mildew and Mold exclusions	AS 21.36.212 Bulletin B04-07	Coverage for fungus, mildew or mold may not be excluded when it results from a covered cause of loss.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Alaska Rule of Civil Procedure 82	3 AAC 26.500 – 26.550. Order 96-03 Bulletin 96-4  Supreme Court case No. SP-5715	A policy that limits coverage for attorney fees taxable against an insured under Alaska Rule of Civil Procedure 82 must satisfy the minimum standards of 3 AAC 26.500 – 26.550. Bulletin 96-4 provides sample notices.  <i>Therchik v. Grant Aviation, Inc.</i> (7/25/2003) - Alaska Supreme Court ruled that Civil Rule 82 notices must be "close to identical" to notices in Bulletin 96-4. The notices provided with Bulletin 96-04 must be used. Replacement notices may be submitted for review, but you will be required to demonstrate that the sample notices do not meet the needs of your company.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Terrorism Forms	Bulletin B06-05	Refer to the Bulletin for guidance.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Arbitration	AS 09.43.300 - 595  AS 21.42.130	Contracts entered into after January 1, 2005 must comply with the Revised Uniform Arbitration Act, including an Alaskan venue.  Are both parties required to agree to use arbitration? Yes No  Are the rules under which arbitration will occur identified in the form? Yes No	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Lead Exclusions	AS 21.42.130	Blanket lead exclusions are deceptive to the risk assumed and may not be used. For risks with known lead exposure, individual risk filings may be made describing the exposure and justifying the need for the exclusion.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	

Policy Provision	REFERENCE	COMMENTS	Applicable	Page Number
Extended Reporting Period	AS 21.42.130	Does the policy: <ul style="list-style-type: none"> <li>• provide 60 day coverage at no charge,</li> <li>• allow 60 days in which to purchase optional coverage, and</li> <li>• permit the purchase of optional coverage for a period of at least 5 years at a cost of less than 200% of the expiring premium?</li> </ul>	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Policy Contents	AS 21.42.160	General policy content requirements such as names of parties to the contract, premium, conditions, etc. See the statute for details.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Territory	AS 21.42.130	The coverage territory must include Alaska.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	
Time Limit on Filing Claims	AS 21.42.130  Supreme Court Case No. S-2408	An insurer may not put a blanket limitation on the time in which an insured has to file claims. In <i>Estes v. Alaska Insurance Guaranty Association</i> (05/26/1989), the Alaska Supreme Court ruled that an insurer must show prejudice due to late reporting of a claim in order to be excused from meeting its obligations.	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>	

Name (print): Beth Fitzgerald

Signature: 

Date: 3/13/08

# Introduction of Alaska-Specific Endorsements

## About This Filing

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This filing introduces various Alaska-specific endorsements in response to a request from the Alaska Division of Insurance.

## New Forms

We are introducing:

- CG 32 67 09 08 Alaska Total Pollution Exclusion
- CG 32 68 09 08 Alaska Total Pollution Exclusion With A Hostile Fire Exception
- CG 32 69 09 08 Alaska Total Pollution Exclusion With Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception
- CG 32 70 09 08 Alaska Exclusion - Exterior Insulation And Finish Systems
- CG 32 71 09 08 Alaska Exclusion - Exterior Insulation And Finish Systems
- CG 32 72 09 08 Alaska Exclusion - Exterior Insulation And Finish Systems
- CG 32 73 09 08 Alaska Silica Or Silica-related Dust Exclusion
- CG 32 74 09 08 Alaska Silica Or Silica-related Dust Exclusion
- CG 32 75 09 08 Alaska Silica Or Silica-related Dust Exclusion

## Withdrawn Forms

We are withdrawing:

- CG 04 31 09 98 Exclusion - Year 2000 Computer-Related and Other Electronic Problems - Limited Coverage Options
- CG 04 32 04 98 Exclusion - Year 2000 Computer-Related and Other Electronic Problems - Limited Coverage Options
- CG 21 49 09 99 Total Pollution Exclusion
- CG 21 55 09 99 Total Pollution Exclusion With A Hostile Fire Exception

- CG 21 60 09 98 Exclusion - Year 2000 Computer-Related and Other Electronic Problems
- CG 21 61 04 98 Exclusion - Year 2000 Computer-Related and Other Electronic Problems - Products/Completed Operations
- CG 21 62 09 98 Exclusion - Year 2000 Computer-Related and Other Electronic Problems - With Exception For Bodily Injury On Your Premises
- CG 21 63 09 98 Exclusion - Year 2000 Computer-Related and Other Electronic Problems - Exclusion Of Specified Coverages For Designated Locations, Operations, Products Or Services
- CG 21 64 09 98 Exclusion - Year 2000 Computer-Related and Other Electronic Problems - Exclusion Of Specified Coverages For Designated Products Or Completed Operations
- CG 21 65 12 04 Total Pollution Exclusion With Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception
- CG 21 86 12 04 Exclusion - Exterior Insulation And Finish Systems
- CG 21 96 03 05 Silica Or Silica-Related Dust Exclusion
- CG 31 66 12 04 Exclusion - Exterior Insulation And Finish Systems
- CG 31 67 12 04 Exclusion - Exterior Insulation And Finish Systems
- CG 33 70 03 05 Silica Or Silica-Related Dust Exclusion
- CG 33 71 03 05 Silica Or Silica-Related Dust Exclusion

## Related Filing(s)

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GL-2008-ORU1

## Background

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ALASKA STAT. § 21.36.212, provides that "an insurer may not deny a claim if a risk, hazard, or contingency insured against is the dominant cause of a loss and the denial occurs because an excluded risk, hazard, or contingency is also in a chain of causes but operates on a secondary basis."

The Alaska Division of Insurance has stated that several General Liability exclusion endorsements contain provisions using language such as "...in whole or in part..." which are inconsistent with ALASKA STAT. § 21.36.212.

## **Explanation of Changes**

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In response to the Department's request, we have introduced Alaska-specific versions of several multistate endorsements which do not include the phrase "in whole or in part" in various exclusions.

Although these are new endorsements, we have used a format of ~~striking through~~ deletions and inserting a revision bar in the left margin to easily identify the changes from the corresponding multistate endorsement. With this filing, the corresponding multistate forms are being withdrawn from use in Alaska.

We are also withdrawing the various Year-2000 Computer-Related and Other Electronic Problems endorsements from use in Alaska as the coverage issue addressed is no longer relevant.

## **Copyright Explanation**

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## **Important Note**

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ALASKA TOTAL POLLUTION EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

**f. Pollution**

- (1) "Bodily injury" or "property damage" which would not have occurred ~~in whole or part~~ but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ALASKA TOTAL POLLUTION EXCLUSION  
WITH A HOSTILE FIRE EXCEPTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

**f. Pollution**

- (1) "Bodily injury" or "property damage" which would not have occurred ~~in whole or part~~ but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

This exclusion does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:

- (a) At any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste; or
- (b) At any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

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