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Technical Advisory

TA 238

Date: July 8, 2004

SUBJECT: MOLD BUY-BACK OPTIONS AVAILABLE

BACKGROUND: It is often said that discretion is the better part of valor. In dealing with the myriad problems related to mold, most insurers seem to be heeding that advice.

The U.S. insurance industry reportedly paid approximately \$2.5 billion in claims related to mold in 2002.

At the same time, a newly released study by the National Academy of Sciences found that toxic mold in homes was not likely to cause serious health problems for most people.

A spokesperson for the Insurance Information Institute commented on the NAS study by saying, "Governmental bodies have been saying for quite some time that there are very few case reports that mold can cause unique or rare health conditions."

"Yet misinformation and an astounding array of ailments have been attributed to mold. This public fear and in some cases hysteria about mold has resulted in profiteering by trial lawyers and remediators, and has had regulators struggling with the issue."

"A general abuse of the tort system has created an ideal environment for growth of mold suits which has impacted the homeowners and commercial markets. Even media misrepresentation of mold has intensified the public's fear about health concerns. So we hope these findings might allay those fears."

MAIN POINTS: Amid this chaotic legal environment, the insurance industry initially responded by introducing mold exclusions. However, given the difficult and contentious litigation history of pollution exclusions, and seeing the intense public pressure insurance regulators were under, the insurance industry seems to be moving to a position of accommodation, rather than drawing a line in the sand (the discretion over valor approach).

The result has been that many insurers are using mold sublimits rather than exclusions, and including mold buy-back options with their filings related to mold limitations.

In Louisiana, the Property Insurance Association of Louisiana (PIAL) recently filed a mold buy-back program for the Dwelling Program and the Homeowners Program. The filings have now been approved by the Louisiana Insurance Rating Commission for use with policies effective on or after July 1, 2004.

The PIAL recently sent information to all member companies and Louisiana agents explaining the filings. ISO filings are also being sent to companies and manual holders.

Dwelling Program. With the optional "Limited Fungi, Wet Or Dry Rot, Or Bacteria Coverage Endorsement" (DWG-E290 07 04), coverage limits from \$10,000 to \$100,000 may be selected. According to Rule 18, attachment of the endorsement automatically provides \$10,000 of coverage. Increased limits of \$25,000, \$50,000 and \$100,000 are available. However, not all markets will necessarily provide the increased limits.

Homeowners Program. With the optional "Limited Fungi, Wet Or Dry Rot, Or Bacteria Coverage Endorsement" for Homeowners policies, the limitation for Section I is \$10,000, with increased limits of \$25,000, \$50,000 or \$100,000 available.

For Homeowners Section II, the limitation is \$50,000, with an increased limit of \$100,000 available.

However, not all markets will necessarily provide the increased limits for Section I or Section II.

Personal Umbrella. It is likely that some Personal Umbrella markets will also file mold limitations, so it will be important to communicate with each market the agency does business with to determine what changes are being made to specific personal umbrella coverage forms.

E&O recommendation. It certainly goes without saying that all agency staff must be aware of how each insurer they represent is handling mold exclusions and mold buy-back coverage options. As with any other coverage option available to insureds, it is always important to be consistent in making insureds aware of their choices, and to document the transaction properly.

NECESSARY ACTION: Circulate this Technical Advisory to all appropriate Personal Lines staff.