

December 5,
2002

To: All Licensed Property & Casualty Insurers
From: Nathaniel S. Shapo, Director
Re: CB #2002-07 Filing Procedures and Requirements for Exclusions and Limitations
Related to Mold
For Commercial Forms Filing Questions: Keith Fanning, P&C Compliance Unit
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For Personal Forms Filing Questions: Kathi Armstrong, P&C Compliance Unit (217)
558-2960 FAX: (217) 558-2083 E-MAIL: kathi_armstrong@ins.state.il.us

Reply To: **For Questions regarding Policy Renewal, Cancellation, or Nonrenewal:** Gayle
Neuman, Consumer Services Unit (217) 524-6497; FAX (217) 558-2083; E-MAIL:
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***Due to the number of expected inquiries, we request that you e-mail your questions or inquiries as much as possible.

Background

Illinois property and casualty insurers have begun filing policy language, exclusions, and limitations for mold, fungi, wet rot, dry rot, bacteria and related causes of loss. Some forms already contain language relating to similar causes of loss.

In response to concerns about mold-related issues, the Department is issuing this bulletin that outlines our requirements for companies to file and use mold-related exclusions and limitations in Illinois.

Policy or Form Language Requirements

After reviewing applicable laws, regulations, and court cases, please be advised of the following regarding mold-related language in forms, exclusions, and limitations in property and casualty insurance policies as defined in Section 4 of the Illinois Insurance Code:

Personal and Commercial Property Insurance:

The Department will consider mold and fungus-related exclusions or limitations for personal or commercial property insurance (including but not limited to homeowners, dwelling fire, renters, condo, mobile homeowners, farm owners, inland marine, commercial property, business owners, automobile, recreational vehicle, boat owners, etc.). However, all mold and fungus-related exclusions or limitations are subject to pertinent provisions of the Illinois Insurance Code governing the filing of all policy form and endorsement

compliance. All mold and fungus-related exclusions or limitations that do not comply with the following provisions of the Illinois Insurance Code or any other pertinent provision of the Illinois Insurance Code will be disapproved:

- **Standard Fire Policy exception** -- All personal and commercial property policies that provide coverage for the perils of fire or lightning (pursuant to Class 3 (a) of Section 4 of the Illinois Insurance Code) must cover mold, fungus, etc. that results from a covered fire or lightning loss. If there is water damage and mold following a covered fire or lightning loss, the total of all damages is subject to the full policy limit.
- **Compliance with Section 143(2)** -- Mold-related language in policy forms, exclusions and limitations may not violate any provisions of the Illinois Insurance Code, contain inconsistent, ambiguous, or misleading clauses, or contain exceptions and conditions that will unreasonably or deceptively affect the risks that are purported to be assumed by the policy.

Personal and Commercial Liability Insurance:

The Department will consider mold and fungus-related exclusions or limitations for personal or commercial liability insurance (including but not limited to homeowners, dwelling fire, renters, condo, mobile homeowners, farm owners, inland marine, commercial property, business owners, automobile, recreational vehicle, boat owners, etc.). However, all mold and fungus-related exclusions or limitations are subject to pertinent provisions of the Illinois Insurance Code governing the filing of all policy form and endorsement compliance. All mold and fungus-related exclusions or limitations that do not comply with the following provisions of the Illinois Insurance Code or any other pertinent provision of the Illinois Insurance Code will be disapproved:

- **Workers Compensation exception** -- Mold or fungus-related exclusions are not allowed in workers compensation policies and will be disapproved.
- **Compliance with Section 143(2)** -- Mold-related language in policy forms, exclusions and limitations may not violate any provisions of the Illinois Insurance Code, contain inconsistent, ambiguous, or misleading clauses, or contain exceptions and conditions that will unreasonably or deceptively affect the risks that are purported to be assumed by the policy.

The Department will not immediately disapprove forms that do not comply with these requirements, but will give companies until January 31, 2003 to bring their forms into compliance. After January 31, 2003, we will begin disapproving forms that do not comply with these requirements.

Insurers that have issued mold-related forms that violate one of the above provisions must immediately begin a process to send the revised compliant form to insureds no later than their next renewal dates.

Until such time as insureds receive the revised compliant forms, any forms previously issued that violate one of the above provisions shall, pursuant to Section 442 of the Illinois Insurance Code, be construed in accordance

with those sections and the rights and obligations of the company shall not be less favorable to the holder of the contract than is required by those provisions of the Code.

Although the Department will not disapprove mold-related exclusions or limitations that comply with the above requirements, the Department encourages insurers to provide some limit of protection rather than total exclusions, and/or to develop and offer coverage buy-back endorsements for those policyholders who desire such coverage.

Notification Requirements

Insurers must comply with the following requirements when notifying Illinois consumers about such mold-related exclusions or limitations:

- Insurers must comply with all laws regarding renewal, cancellation and nonrenewal of property and casualty insurance policies, including but not limited to Sections 143.11 through 143.27.
- Insurers must, when issuing any mold-related exclusion or limitation to new or existing insureds, include a separate detailed and noticeable written notification explaining the removal or limitation of coverage and its effect on the policy.

Claims Recommendations

Insurers must endeavor to contact all policyholders within 24-48 hours of a report of loss where water damage may be involved, and:

- Advise the insured of any mold-related exclusion or limitation and how such exclusion or limitation may affect coverage for the loss.
- Advise the insured of the need to protect the property from further damage (including resulting mold) by immediately drying the damaged property and contacting a water extraction company if necessary.

The Department recognizes that 24-48-hour response is sometimes difficult, especially when catastrophic, widespread water losses occur. In those cases, we encourage the industry to use mass media and other means to advise consumers that they should check their policies regarding the type of coverage provided and any mold-related exclusions or limitations, and the steps consumers can take to prevent resulting mold growth as much as possible.

Industry Monitoring and Tracking Requirements

Effective immediately, insurers must maintain and track the following and make such information available to the Director upon request:

- All mold-related claims reported (whether there is coverage or not), including numbers of claims paid, denied, or pending. For paid claims, amounts paid and reserved.
- All complaints received regarding mold-related issues.

Department of Insurance Activities

The Department of Insurance will continue to monitor the marketplace to determine if mold exclusions and limitations are adversely affecting the Illinois insurance marketplace. In addition to monitoring the form filing activities, the Department will monitor consumer complaints we receive regarding mold-related issues, and may review mold-related activities in future market conduct examinations.

If necessary, the Department will contact insurers to obtain information about policyholder claims and complaints.

In addition, the Department will continue to monitor insurance industry information, public health agency information, and other state and federal activities and information regarding mold-related risks and the health effects of mold.

To educate consumers about mold-related exclusions and limitations, as well as provide consumers with general information about mold prevention and cleanup, the Department has developed a consumer fact sheet that is available on our web-site at <http://insurance.illinois.gov> or by calling the Department toll-free at (866) 445-5364.

If, after monitoring marketplace activities, future mold research, and the effects of mold exclusions or limitations, the Department determines that mold exclusions or limitations are adversely affecting Illinois consumers, the Director will take appropriate action.

Effective Date and Expiration Date

This bulletin shall take immediate effect and shall expire only upon withdrawal of the bulletin by the Director of Insurance.