

A Restoration Contractor's Buying Guide To Contractors Pollution Liability Insurance

Introduction

The introduction of Universal Mold Exclusions in 2003 created significant gaps in insurance coverage for restoration contractors and their customers. To fill this new gap in insurance coverage, restoration contractors are being asked to provide relatively expensive Contractors Pollution Liability (CPL) insurance to their customers that require certificates of insurance.

The most efficient way of filling the insurance coverage gap for the customer and the contractor is to purchase a CPL policy with appropriate coverage for the restoration contracting business. Sophisticated customers are asking for CPL insurance because they too have Universal Mold Exclusions in their insurance programs. For this reason the requests for CPL are unlikely to go away. For more information on business insurance trends in the restoration business see the white paper [The New Insurance Reality for Restoration Contractors](#) at www.armr.net/newreality.pdf or call 608-798-2904 and request a copy.

It is important to note buying CPL insurance puts the contractor back to the insurance coverage position they were in before the introduction of Universal Mold Exclusions. CPL is not for the most part new insurance coverage (The losses were covered by GL prior to mold exclusions) although CPL will be a new and expensive insurance policy for most restoration firms. An explosion of mold related insurance claims between 2001 and 2002 set off the quickest exit from a new source of losses of any event in the four hundred year history of the insurance business. Asking an underwriter to cover mold losses is difficult. Asking them to write true CPL coverage inexpensively is impossible.

Restoration contractors looking to purchase CPL insurance face a number of challenges. These include:

1. Finding qualified insurance advisors with experience in environmental insurance. (Finding qualified advisors on environmental insurance is the biggest constraint in the insurance industry today.)
2. Finding affordable CPL and General Liability insurance.
3. Qualifying for the CPL and maybe General Liability insurance.
4. For firms under \$700,000 in revenue, affording minimum premiums is a challenge.
5. Insuring the work done by subcontractors who do not have CPL insurance themselves.
6. Finding insurance that meets bid specifications.
7. Making informed buying decisions on coverage and price.

This Buyers Guide is intended to offer practical advice on how to overcome the above challenges. This paper is written for a broad audience. Every Restoration firm and their insurance relationships are unique. Long standing relationships with certain insurance companies and insurance agents can add considerable value to the firms over all risk management program. Contractors Pollution Liability insurance is available on a stand-alone basis or can be purchased as part of a business liability insurance package. Purchased separately, CPL insurance can stand on it's own and be purchased outside of the traditional lines of business insurance coverage. Careful consideration should be given to all the existing relationships before a change in business insurance is made. A qualified environmental insurance professional will be able to provide guidance on the available options to obtain CPL insurance without going through the laborious task of completing multiple CPL insurance applications.

The Two Minute Buyers Guide to CPL insurance for Restoration Contractors

(Details below)

1. Get somebody on your team that is a subject matter expert on liability insurance for restoration contractors. Recruit this person as being part of your management team. Most restoration firms will rely on an insurance agent to fulfill what is effectively an outsourced risk manager role, hire a knowledgeable insurance advisor.
2. Get #1 above right and finding good CPL insurance coverage will take care of itself.
3. IICRC or IAQA certified firms, with good loss experience and financials usually qualify for CPL.
4. Minimum premiums for real CPL coverage are about \$7500. Try a combined GL/CPL policy to save \$\$\$\$.
5. The most widely sold CPL policies today restrict subcontracted work. Carefully evaluate the effect this has on coverage and on your contractual commitments.
6. Many CPL policies being sold to restoration contractors today are not well suited for restoration contractors. Because CPL insurance was invented for hazardous waste contractors, a disregard for CPL coverage nuisances can leave a restoration contractor either completely uninsured or just the opposite, making the contractor the primary casualty insurance company for the bad faith claims adjusting activities of the insurance company that is paying for the job. Both are very bad situations that could bankrupt a restoration contractor. One famous bad faith claim-adjusting lawsuit went for \$32,000,000 before appeal and it was on a house!
7. There can be a huge difference between the premium charged for CPL insurance and true cost of insurance. Coverage differences need to be taken into account in the cost evaluation criteria. An insurance cost comparison model is presented below to assist in these evaluations.

Background On CPL Insurance

Contractors Pollution Liability was developed in 1986 to fill the gap in General Liability insurance coverage created by the introduction of pollution exclusions. CPL insurance was originally designed for hazardous waste contractors. The introduction of universal mold exclusions in 2003 basically created an uninsured loss exposure for any firm that works with water in the built environment. For this reason the customers of the restoration contracting industry are starting to demand CPL insurance to fill the insurance coverage gaps created by universal mold exclusions. Without appropriate CPL coverage a mold coverage gap now exists for all the work performed by restoration firms including drying, plumbing, roofing, window and door installation, siding, and reconstruction to name a few traditional services and of course mold remediation.

The universal mold exclusion coverage gap exists on self-performed work and subcontracted work. Subbing out mold remediation work does not remove the restoration firm from the mold liability chain nor does it completely fill the universal mold coverage gap even if the mold remediator is covered by their own CPL policy. The only way to fix the insurance coverage gap created by universal mold exclusions is to purchase appropriate CPL coverage.

A CPL policy insures liability claims for Bodily Injury, Property Damage, Clean Up Costs and Defense arising out of the emission escape release or dispersal of "pollutants" as a result of the insured's **described operations**. To adapt the CPL policy to the insurance needs of restoration contractors, mold and fungus are added as specifically defined insured "pollutants" by endorsement to the policy. A restoration contractor should not purchase a CPL policy that does not have mold added as a defined pollutant. Also, true CPL coverage should cover claims from all of the insured's described operations as a restoration contractor. CPL policies with coverage carve outs eliminating coverage for subcontracted work or only covering the work performed for a specified customer are defective insurance policies that are likely to disappoint the insurance buyer in the event of a claim. Some CPL policies strip out coverage for

property damage liability as a result of the contractors work. Since more than 90% of all mold related damages claims are for property damage, then these policies only provide one-tenth the insurance coverage as a policy that does not have similar limitations. Where a stripped down policy may give the buyer the impression of being cheap insurance, it is by far the most expensive way to insure the firm. (See the Calculating The True Cost of CPL Insurance below.)

Stripped down CPL policies are also potential insurance agent Professional Errors and Omissions Liability traps. Universal "Mold Related" claims exclusions were also slipped into many insurance agent professional liability policies in 2003. Because of their potentially uninsured E&O loss exposure, contractors can expect professional insurance agents to become increasingly unwilling to provide restoration contractors stripped down CPL insurance if better coverage options are available.

Get Expert Help.

All restoration firms will have engaged the services of an insurance agent to help them in procuring their business insurance packages. The services of the insurance agent are an important part of the firm's risk management program. The advent of CPL insurance as generally accepted line of insurance for restoration contractors now necessitates adding a new skill set to the insurance agent team of the firm. Finding a good servicing team is the most important step a restoration contractor needs to make when looking for CPL insurance.

All buyers of environmental insurance should seek the advice of an expert in environmental insurance before purchasing any pollution insurance policy. Environmental policies are not standardized or regulated by State Insurance Commissioners. Also insurance agents are not tested or trained in environmental insurance in state insurance licensing exams. Environmental insurance can vary a great deal in coverage and price and it will take a subject matter expert in environmental insurance and restoration contracting to accurately sort out the differences in the policy forms.

Environmental insurance products are some of the most complex insurance contracts on the face of the planet. It will be difficult for the insurance buyer to evaluate an agent's skill sets in this area. Look for specific experience and educational credentials like you would for any job applicant. The agent and broker are there to perform a job for you. Picking an insurance agent based solely on their ability to bring you the cheapest insurance will never be the best risk management decision in the long run in any line of insurance. In environmental insurance there is a very good chance the least expensive insurance provides the least coverage or maybe none at all. As a resource for insurance agents there are a handful of very qualified specialty environmental wholesale brokers that will assist them. But beware; wholesale brokers also receive no testing or training environmental insurance in any state licensing exam. A wholesale insurance broker that has access to insurance companies that offer CPL insurance is no assurance that the broker is remotely qualified to be working on your insurance. If you are relying on the expertise of a wholesaler, ask your insurance agent to evaluate their qualifications to be on your risk management team as well. Expert help costs no more than having a complete neophyte working on your insurance. Wholesale brokers work on commission that is fixed by the underwriters. Good help can cost the same as no help in the insurance agency business.

Another option to bring expertise to the table on your behalf is to hire a risk management consultant under similar skill set evaluation criteria.

Major CPL Coverage Differences

Environmental insurance policies are not standardized and there are over fifty policies available in the market place. In contrast General Liability insurance has been completely standardized. There is only one Commercial General Liability policy and every restoration contractor, flower shop and hospital in the US purchases it. Although the insurance market like the stock market is in a constant state of flux there are some fundamental coverage differences in the CPL policies being offered today that are worth mentioning. The major differences fall into these areas:

1. Does the CPL policy exclude claims to “Your Work”? An example of an uninsured claim would be if the insured through negligent work does not get a carpet dry in a short a enough time to avoid mold growth and the entire carpet needs replacing because of mold growth. This exclusion deletes coverage for operations performed by you or on your behalf.
2. Is damage to Impaired Property as a result of “Your Work” excluded? From the above example, the moldy carpet contaminates with spores all of the stuffed furniture, bedding, ceiling tile, clothing and air ducts which all have to be replaced. This exclusion would eliminate all coverage for the property damage. A sick baby would still be covered.
3. Does the policy exclude losses due to Loss of Use? From the above example the additional expenses incurred by the building owners for the loss of use of the uninhabitable building would be excluded.
4. Does the policy exclude coverage for work performed by subcontractors? If the drying contractor was a subcontractor to the insured, all Bodily Injury, Property Damage and Clean Up claims would be excluded, even the sick baby. The policy would be unlikely to defend the insured either.
5. Does the policy force the CPL insurance buyer to hire subcontractors that also carry liability insurance of various kinds?

The most widely sold CPL policy to restoration contractors has all of these exclusions on a Claims Made policy form and is also the least expensive. The Zurich ESP policy available through ARMR.Network does not have any of these exclusions and costs about 25% more than the low price leader for an Occurrence based policy form. (About \$2,000 more on \$1,000,000 revenue firm.)

Calculating the True Cost of CPL Insurance.

Premium is not the only determining variable in calculating the cost of insurance. The coverage provided must be taken in account. Taking into account what the policy insures allows for the calculation of the Effective Rate paid for the CPL insurance. For readers that like formulas,

Effective CPL Rate = CPL Premium/ Net Insured Revenue

Net Insured Revenue = Gross Revenue - Sub Contracted Work (if excluded by the policy) - Any Uninsured Projects or Classes of Work

Effective CPL Rate X Net Insured Revenue = True cost of insurance on an equalized basis.

This calculation is heavily dependent upon the CPL policy form and the business model of the applicant. Utilizing this cost comparison model allows for apples to apples cost comparisons of CPL policies with different coverage grants. However another very important correction needs to be made if there are coverage differences between the policies.

According to the American Trial Lawyers Mold Sub Committee, more than ninety percent of the mold damage claims that are actually paid are for Property Damage not Bodily Injury. A CPL with a series of “Your Work “ exclusions eliminates coverage for Property Damage claims effectively insures only one tenth of the loss exposure of a policy that does not have similar exclusions. To accurately compare the

cost of insurance between two divergent CPL coverage forms, one covering Property Damage, Clean Up and Bodily Injury claims and one only covering Bodily Injury claims, the buyer needs to multiply the rate of the more restrictive coverage form by a factor of 10 after corrections for uninsured work (subcontracted) to create an apples to apples true insurance cost comparison between the CPL policies.

To compute the effective rate for a CPL policy that excludes Property Damage losses compared to a Full Coverage CPL policy the following formula can be used.

Effective Rate = Premium x 10/ Net Insured Revenue

In reality the premium differentials between full CPL coverage and a stripped down CPL policy are a lot closer than a factor of 10 so this calculation is rarely used.

Claims Made Vs. Occurrence

There are two basic coverage forms of CPL insurance available, Claims Made or Occurrence based policies.

Other factors remaining equal Occurrence Based policies are better because they pay for claims that occurred during the policy period regardless of when they are reported. Under a Claims Made Policy, only claims made and reported during the policy period or extended discovery period (1-2 years after the policy expires) are covered. Claims Made policies usually pay for completed operations from prior years as long as those operations were covered under continuously renewed Claims Made insurance. Mold created a hybrid CPL policy that provides Occurrence based pollution coverage except for the pollutant mold, which has a Claims Made coverage grant. The Zurich ESP policy is an example of this. Most insurance companies only will provide mold coverage on a Claims Made basis for mold due to their fear of run away mold claims.

What Environmental Loss Exposure Does a Restoration Contractor Have?

The big environmental loss exposure everyone in the insurance underwriting business is worried about with restoration contractors is water in the built environment can lead to mold growth. Of course actual mold remediation has the risks associated with that work. But the not so obvious mold related loss exposures include any work done by a plumber or roofer. What does their work do when it is defective? A cabinet installer that drives a screw into a water pipe leading to a slow interior wall leak that is discovered when the children in the home cannot learn in school anymore is the loss scenario the insurance underwriting community is most concerned about. The majority of CPL policies sold cover claims from any "pollutant" which could include carpet glue, solvents, anti-microbials and other materials that could lead to a liability claim. These claims would not normally be covered under the firm's general liability insurance because of the absolute pollution exclusion in those policies. Because pollution exclusions in General Liability insurance apply to any contaminant, CPL policies should be purchased to cover all sources of environmental liability not just mold.

How are CPL premiums determined?

The more refined rating models will have three rates the underwriter's use, all based on annual revenue in each class of work.

1. General restoration work.
2. Water and drying work.
3. Mold remediation work.

Pricing benchmarks for CPL minimum premiums range between \$4,000 and \$10,000. Rates range from ¼ of 1% for general restoration revenues to 4% of mold remediation revenues in high-risk states. The

Zurich ESP policy through ARMR.NETWORK has a \$7,500 minimum premium and generally rates less than 1% of gross revenue. That is the scientific rating method. In practice we have noted one very large provider of CPL insurance insuring restoration firms with \$300,000, \$3,000,000 and \$8,000,000 of revenue for CPL premiums of \$10,000, \$11,000 and \$11,500. The \$8,000,000 firm purchased a CPL policy that excluded all the work they did except for a particular client and also excluded all sub-contracted work. In the final analysis the effective rate they paid for CPL insurance was relatively high for the insurance protection afforded by the policy. But the premiums were very low, probably too low.

In addition to no standardization of CPL policy forms there are no standards for rates either. As a general rule in the insurance industry the most naïve underwriters always provide the very best prices in the short term. The \$3,000,000 and \$8,000,000 firms are obviously getting bargains from underwriters who are completely naïve even to their own company's rating structures and underwriting guidelines. Much like selecting your insurance agent a reality check on the competency of the underwriter is also in order. The down side to buying an obviously under priced insurance product is it opens a window for the claims adjuster to void the policy due to the insured's misrepresentation of what they did for a living. If the price is too good to be true, it probably isn't right.

Spend time on the application.

The applications for CPL are long and the CPL applications that were not specifically designed for Fire and Restoration Contractors will ask pages of irrelevant questions. Tough the application out and make sure to tell your story even if you have to attach a narrative to the application. If you have trained personnel be sure to send copies of their certificates. Some of the underwriters will ask for four years worth of prior insurance loss runs and three years of financials. As a general rule the underwriters with the most exclusions will ask the fewest questions. A complete application will save premium dollars.

Avoid the ultimate exclusion.

Misrepresentation on insurance applications can allow the underwriter to void the policy all together in the event of a claim. Insurance buyers need to closely review their applications and insurance policies to confirm that the underwriter has a sense of what the firm is doing for a living. This is especially important in the General Liability policy. A full service restoration contractor classified as a janitorial firm on their insurance policies needs to do some soul searching. Even Home Depot separates janitorial supplies from their tools and building supply sections.

Combined Policy Forms

There are basically two kinds of combined policy forms for restoration contractors. These policies combine a general liability policy with various coverage grants for CPL coverage.

The combined forms written by the professional environmental insurance underwriters will feature a full CPL coverage part with limits equal to the limits of the GL coverage or more.

The other sources of combined policy forms will usually provide an endorsement to the GL policy adding in a sub-limit of the GL policy limit for pollution claims. It is common for these limited environmental coverage grants on the GL policy to be inherently defective when compared to real CPL coverage. Extreme caution should be used when considering the purchase of one of these limited coverage policies. Some of the inherit flaws that may be present include

1. Is the CPL coverage grant real CPL coverage, does it insure restoration?
2. Is there a sufficient CPL limit to meet bid specifications as more and more informed customers demand full CPL coverage in contracts?
3. Will the policy allow for the certification of CPL coverage with Additional Insured status to the more sophisticated claims administration companies?

4. What is the minimum Earned Premium? If you have to cancel the policy to purchase real CPL coverage, can you get the unearned premium back?

A Combined GL/CPL Policy Form Specifically for Restoration Contractors

ARMR.Network has a customized business liability insurance package that combines Commercial General Liability insurance with CPL insurance. In many cases this combined policy will cost less than purchasing a separate GL and CPL policy. In the event of a claim, having both coverage's with the same insurance company is likely to be a big advantage. CPL policies are gap fillers for GL policies with pollution and mold exclusions. The GL exclusions are difficult to interpret with any precision. Therefore there is likely to be a disputed claim between the GL and CPL underwriters with both leaning to "It is the other guys job to pay this claim". At least with both coverage's placed with the same underwriter this option is off the table. For this reason the combined GL/CPL policy form is a superior risk management approach and insurance value, all other factors remaining equal.

This paper was prepared by American Risk Management Resources Network, LLC. a specialty wholesale environmental insurance brokerage firm. More information on ARMR.NETWORK can be found on the web at: www.armr.net

Applications for the ARMR.Net Restoration Contractors Insurance Program are also on the Home Page of the ARMR.NETWORK website.

David Dybdahl, CPCU, ARM, MBA
President
American Risk Management Resources Network, LLC
7507 Hubbard Ave, Suite 200
Middleton, WI 53562
Dybdahl@armr.net
608-836-9567
Fax: 608-836-9565

Robert Rosenfeld, PhD, CPCU
Managing Director
American Risk Management Resources Network, LLC
541 24th Place
Hermosa Beach, CA 90254
Rosenfeld@armr.net
310-937-7068
Fax: 310-693-8092

Ron Anderson
Senior Underwriter
American Risk Management Resources Network, LLC
7507 Hubbard Ave, Suite 200
Middleton, WI 53562
Anderson@armr.net
608-836-0551
Fax: 608-836-9565

Judi Martinez
Vice President
American Risk Management Resources Network, LLC
7507 Hubbard Ave, Suite 200
Middleton, WI 53562
Martinez@armr.net
608-836-9590
Fax: 608-836-9565

Fred Martinez
CSR
American Risk Management Resources Network, LLC
7507 Hubbard Ave, Suite 200
Middleton, WI 53562
fred.martinez@armr.net
608-836-9589
Fax: 608-836-9565

Dan Scheider
Associate
American Risk Management Resources Network, LLC
7507 Hubbard Ave, Suite 200
Middleton, WI 53562
Scheider@armr.net
608-836-9833
Fax: 608-836-9565

Michelle Schlachter
CSR
American Risk Management Resources Network, LLC
7507 Hubbard Ave, Suite 200
Middleton, WI 53562
schlachter@armr.net
608-836-9520
Fax: 608-836-9565

Janet Gaumer
CSR
American Risk Management Resources Network, LLC
7507 Hubbard Ave, Suite 200
Middleton, WI 53562
Gaumer@armr.net
608-836-9590
Fax: 608-836-9565

AMERICAN RISK MANAGEMENT RESOURCES NETWORK, LLC



Cynthia Statz
Administrative Officer
American Risk Management Resources Network, LLC
7507 Hubbard Ave, Suite 200
Middleton, WI 53562
cindy@armr.net
608-836-0603
Fax: 608-836-9565

Anne Hyberger
Regulatory Compliance
American Risk Management Resources Network, LLC
7507 Hubbard Ave, Suite 200
Middleton, WI 53562
anne@armr.net
608-609-0395
Fax: 615-302-4745