

Commercial Construction Stakeholder Mold Insurance Needs Summary

Stake Holder	Builders Risk Insurance	Contractor Pollution Liability Insurance (CPL)	Property Environmental Risk Management (PERM)	Risk Drivers
<p>General Contractors</p>	<p>May be purchased by the GC or the owner.</p> <p>Lenders require the purchase of this coverage on all projects to protect their security interest in the project.</p> <p>Builders risk policies usually have restrictive sub-limits for mold damages. The mold coverage gap on the builders risk policy is best filled with PERM insurance.</p>	<p>Usually purchased by the GC, but maybe purchased by the owner under a “wrap up insurance program” to protect the owner and the GC from environmental liability (including mold) arising from the GC’s negligent insured operations. GC’s and subcontractors need this coverage to fill the gap in coverage created by the exclusions for mold and pollution in their GL policies.</p>	<p>May be purchased by the GC but this insurance is usually purchased by the owner. The GC can be insured under the owner’s PERM policy.</p> <p>Generally trade contractors will need to be insured under a CPL based policy.</p> <p>Were available as an option the CPL and PERM policies should be provided by the same insurance company to streamline claims settlements.</p>	<p>GC’s have exclusions for pollution and mold related damages in all of the traditional liability and property insurance policies they buy. They need specially adapted environmental insurance policies to fill their insurance coverage gaps.</p> <p>There is usually no first party clean up coverage in a CPL policy; therefore the CPL policy does not fill the insurance coverage gap in the Builders Risk policy that the lender requires on the project.</p> <p>Where CPL can be adequate to insure the needs of contractors; owners/developers need PERM insurance to fill the coverage gap in their property insurance policies and their liability insurance.</p>
<p>Developers</p> <p>Owners</p> <p>Future Owners</p> <p>Condo Associations</p>	<p>Same as for the CG discussion above.</p> <p>On occasion the GC may provide the Builders Risk insurance on a project. Owners /Developers should pay close attention to the insurance required in the loan covenants and the insurance provided on the project. Most Builders Risk policies today do not meet spec on the loan.</p>	<p>If a owner/ developer needs to insure against the negligence of the contractor, the developer/owner may pay for a CPL policy on the project.</p> <p>CPL policies are protection for the contractor’s liability. CPL policies are rarely adequate to meet the insurance needs of the owner.</p>	<p>Should be purchased by the owner/developer as the primary source of environmental/mold risk protection for the project.</p> <p>With one of these policies in place there is limited need for the owner/developer to pay for a CPL policy to protect the contractor against the negligence of the contractor.</p>	<p>Owners/Developers need to fill the coverage gaps they have in both the Builders Risk policy and in their GL insurance on the project.</p> <p>PERM is the only insurance product that can fill both coverage gaps.</p> <p>PERM policies offer much broader insurance and loss prevention protection than a CPL policy and are a superior value for the owner developer.</p>

Architects	NA	NA	NA	Architects can still purchase professional liability insurance that does not exclude mold related damages. This insurance is written on a annually renewable <i>claims-made</i> * basis which makes it totally unreliable as a risk management strategy on a project. If an exclusion for mold related damages is added to the Professional Liability policy at any point in the future, the architect will lose all of their insurance protection for mold related damages both prospectively and retrospectively. To manage this potentially future uninsured risk, architects should specify the use of mold resistive building materials and recommend that all of their larger projects purchase a PERM policy to access the water intrusion loss control services offered by the underwriters of the PERM policy
Lenders	NA	NA	NA	Lenders ask for Builders Risk insurance on 100% of their secured loans. By default this insurance policy should cover mold. Lenders appear to be oblivious to the fact that they are being provided policies with total mold exclusions. The only policy that fills the gap in insurance coverage for mold related damages under a builders risk policy is the PERM policy.

* Insurance written on a Claims Made policy form pays for claims made on the policy in force at the time the claim is first made against the insured. A properly structured claims-made policy will cover all of the prospective designs of the firm over the course of the policy term and will also provide coverage for all the work the firm has done in the past. However if a future professional liability policy has a mold related claims exclusion added to it, the architect not only loses all of the mold coverage for new designs but also loses coverage for anything they have designed in the past. The purchase of the Extended Claims Reporting Period on the policy will not fix this coverage gap. The only practical solution to manage this potentially uninsured future risk of the architect on the project is to:

1. Design the building using proven building science based protocols to prevent water intrusion.
2. Recommend to owners to purchase long term PERM insurance coverage to access the loss prevention protocols of the insurance companies and Purchase project specific design liability insurance policies with policy terms out to 10 years.

Summary of Insurance Coverage's

Builders Risk Insurance

Builders risk insurance is a property insurance policy that is designed to provide coverage for direct physical loss to the insured property over the course of construction. To protect their security interest in property, virtually all secured lenders require in their loan covenants "All Risk" property insurance to be maintained in force on the properties they finance. These property insurance policies pay for the replacement of the insured buildings and contents which may be damaged by a wide range of insured perils such as fire, lightning, windstorm, civil commotion, aircraft, vehicles, smoke, hail, riot, vandalism, malicious mischief, and explosion. All-Risk property insurance is the broadest type of property insurance available in the insurance market place. Subsequent to 2003 virtually all Builders Risk insurance policies exclude damages *related to* mold. Therefore all borrowers certifying they have Builders Risk insurance with policies that have mold related claims exclusionary endorsements are in technical default with their loan covenants. The purchase of a PERM policy with first party no-fault on site clean-up of mold coverage is the only practical way to close this insurance coverage gap in the builders risk policy.

Property Environmental Risk Management Insurance

Several insurers have specialized in offering environmental insurance coverage including coverage for mold losses. **Property Environmental Risk Management** insurance insures the property itself and mold clean up coverage is provided on a no-fault basis. This policy form can be utilized on new and existing buildings.

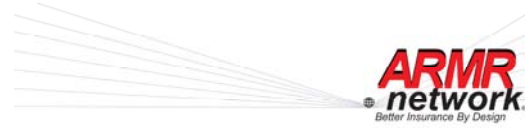
Properly structured Real Estate Environmental Liability policies fill the mold coverage gaps found in both the property and general liability policies. A PERM/HPR/Mold policy will respond to losses arising from costs to remediate mold (first party cleanup costs) and also provide business interruption and extra expense coverage, which effectively fills the mold coverage gap in All-Risk Property policies. Additionally, claims brought by persons claiming bodily injury and property damage (third party losses) are covered including the cost of defense, which fills the mold coverage gap in the General Liability policies carried by developers, owners and contractors.

Contractors Pollution Liability Insurance

The other method to insure the mold loss exposure in new construction is for the contractors to purchase a **Contractors Pollution Liability** that has been specifically adapted to address mold as a pollutant. CPL policies insure against the contractors negligence.

Contractors Pollution Liability insurance is commonly purchased by contractors performing environmental and mold remediation work but is rarely purchased by firms engaged in traditional construction activities. With the advent of universal mold related claims exclusions, the vast majority of contractors are now completely uninsured for water intrusion events that lead to mold related damages. Evaluating a contractor's loss exposure to mold losses is not difficult. Some examples are extremely easy. For example, what does a plumber's work do if it is defective? What damage does it cause? Is the claim likely to be related to mold in any amount and therefore totally excluded? For these reasons any contractor that constructs or works in buildings occupied by people now needs specially modified Contractors Pollution Liability insurance to cover the mold loss exposure within their operations.

March 2011



Choosing The Best Insurance Coverage Option

Between these two options for new commercial construction projects, the PERM/HPR/Mold policy provides a superior risk management solution for the developers, owners, contractors and lenders because it incorporates no fault clean up and restoration coverage plus pre-funded building science based loss control services in a multi-year insurance policy that can be assigned without additional premium to the eventual owner of the building after its construction. In contrast CPL policies are fault based and are not assignable to subsequent owners of the property. Assignment of the policy is a very important risk management strategy because it enables building science based loss control services to be engaged over the course of the policy term. PERM policies can be written for policy term as long as 10 years which insures the stakeholders to the end of their statute of repose liability period in most states. In contrast CPL policies usually only insure claims for pollution releases (including mold growth) that occur during the course of construction as a result of the contractors negligence. Therefore claims arising from completed operations are not covered in most CPL policies.

ARMR.Net

American Risk Management Resources Network LLC Is a wholesale insurance brokerage and consulting firm specializing in environmental and mold insurance solutions. We feature a wide spectrum of highly customized insurance products from top rated insurance companies in every state and Canada.