

Special Insurance Needs For Cleaning, Drying and Restoration Contractors

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The cleaning and restoration business is getting a lot riskier. In 2010 one of the major insurance companies who insures this class of business saw a 1200% increase in the number of liability claims being made against their policy holders compared to their historical five year average. According to this insurance company they would need to raise premiums by 30% to make money in the class of business, their solution is to not offer renewal to most of their policy holders. This should be a wake-up call to restoration contractors. Now is the time to buy insurance from a specialty insurance company that will be able to weather the storm of rapidly increasing losses and depressed insurance pricing. The insurance companies who lack an understanding of the special insurance needs of restoration contractors are certain to exit the business, leaving their policy holders looking for replacement coverage with a huge black cloud of non-renewed insurance hanging over the firm for the next five years.

The insurance needs of cleaning and restoration contractors changed dramatically when the insurance industry in response to an explosion in "Toxic Mold " claims years earlier introduced mold exclusions in 2006. The problem today is nobody from the insurance companies told the insurance buyers or their insurance agents what the new mold exclusions were going to do to the coverage. It turns out that fungus/mold/bacteria exclusion endorsements in virtually all the insurance policies sold today are extremely onerous for anybody in the cleaning and restoration business.

Everybody seemed to catch that a mold exclusion would delete the insurance coverage for being a mold clean-up contractor, the deep secret is that these exclusions essentially exclude being in the Category 3 water restoration and the microbial decontamination cleaning business as well. The exclusion not only eliminates coverage for exposing people to these contaminants, they eliminate coverage for being in the business or even showing up at a job where this work is anticipated to be performed. Surprised? So was I.

Here is how the insurance companies eliminated a lot of the standard liability insurance coverage for cleaning, drying and mold contractors by the introduction of one exclusionary endorsement targeting mold claims. Although the actual exclusions in insurance policies vary, a typical Fungus/Bacteria exclusion produced by the Insurance Services Offices for use in Commercial General Liability insurance policies will read:

This insurance does not apply to:
Fungi Or Bacteria

a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

What does this exclusion on the General Liability insurance really do to a contractor's General Liability insurance policy? Well no body knows for sure because they are relatively new exclusions that have not been fully tested in civil court. In my informed opinion as an expert witness in multiple Federal courts on related topics, this exclusion eliminates a lot more insurance coverage than most people realize for any firm who works with cleaning bacteria, Category 3 water and/or mold.

Here is how the fungus/bacteria exclusion can take over an insurance policy anytime an insurance company wants to walk away from a loss. First this exclusion is an endorsement to the policy so it automatically overrides the other provisions in the insurance policy. Although commonly referred to in insurance circles as the "Mold" exclusion, the word after fungus in the exclusion (which includes mold in its definition) is bacteria. As written the exclusion blows out the liability insurance coverage for both sources of contaminants if the liability claim against the insured party is even partially based on the threatened existence of these materials. Anybody who is IICRC mold certified knows that mold spores are omnipresent in the planet earth. The first part of the exclusion becomes effective at the threatened existence of something that is already at every job site, wow. Referring back to S500 the IICRC water restoration standard by definition this exclusion would also apply to Category 3 water which would then include work on backed up sewers and floods which is common work for all water restorators and a lot of cleaning contractors as well.

The words in section a. of the exclusion that start with "regardless of whether any other cause....." were originally created for the flood exclusion in property insurance policies around 1963. In insurance lingo that section of the fungus/bacteria exclusion is referred to as the anti concurrent causation section of the exclusion, although the words anti concurrent causation are not used in the verbiage. This is the first time the anti concurrent causation clause has been used in the General Liability policy. Although the affects of these terms in a liability insurance policy is not well known at this time, the effect of the anti concurrent causation clause on property insurance policies is very well known. As any contractor who is trying to collect for their work under a property policy knows, a flood exclusion on a property policy knocks out all the insurance coverage if a flood in any sequence of events caused even part of the loss. Now the same words are sitting in the General Liability insurance policy of every cleaning and restoration contractor in North America. Note there is no reference in the exclusion to how much or what type of fungus or bacteria needs to be threatening to exist before this exclusion takes over the entire insurance policy. What this new exclusion does to virtually all General Liability insurance policies is to give the claims adjuster the ability to deny a liability loss that involves even a threatened speck of any type of fungus or bacteria as part of or in any sequence to the overall loss.

As tough as the first part of the fungus /bacteria exclusion is, the second part of the exclusion, section b. is worse for cleaning and restoration contractors. With essentially any combination of events resulting in a claim that involves even a threatened speck of any type of fungus or bacteria being completely excluded from the policy, what would the purpose of part b .of the ISO fungus /bacteria exclusion serve? I can only think of one thing. **This is the "you cannot be in the water restoration, mold remediation or the anti microbial cleaning business" exclusion in the core business liability policy purchased by firms.** Under the words in

section b. the General Liability policy could become totally null and void once a contractor shows up at a job to ‘in any way access or respond to fungus or bacteria’. The main difference between this part of the fungus bacteria exclusion and the first part is this section does not require exposure to or the threatened existence of the materials to take over the entire insurance policy including the insurance company’s duty to defend the insured. For example as soon as the contractor shows up at a job to access or respond to Category 3 water loss technically the GL policy is void when he or she walks in the door. For example if the contractor causes a fire on a Category 3 water loss, the fire would be excluded by part b. of the exclusion even if there was no exposure to fungus or bacteria. That is because it is the job itself not just a loss resulting from exposure to the materials is excluded under part b. of the fungus /bacteria exclusionary endorsement.

There are a handful of business liability insurance policies available that are specifically designed to correct for the gap in liability insurance created by fungus/mold/bacteria exclusions; but only about one out of ten firms that need these policies actually have them in place today. The other firms have fundamental coverage flaws in their insurance coverage designs. Like a design flaw on a bridge, everything looks good until it falls down usually under load, design flaws in insurance coverage show up at the most inopportune time. Why would anybody buy a insurance policy with fundamental design flaws? This is a question we struggle with everyday in ARMR.Net. It makes no sense that nine out of ten cleaning and restoration firms risk losing their business from a needlessly uninsured liability loss.

The only way to correct the material coverage defect in the General Liability policies sold to cleaning and restoration contractors is to purchase a combined General Liability and Contractors Pollution Liability insurance policy from the same insurance company preferable on a single insurance policy. From reviewing hundreds of actual insurance policies sold to cleaning and restoration contractors we know that 80% of all the cleaning and restoration contractors have fundamentally flawed liability insurance programs in place today. The coverage flaws are primarily because either the firm does not purchase CPL coverage which is common with cleaning firms that mistakenly think the effects of fungus/mold exclusions are limited to mold contractors. Or the contractor buys a separate CPL insurance policy and a separate GL policy. In addition to usually wasting premium dollars in this inefficient design, the purchase of separate Contractors Pollution Liability insurance can never fill the gap in insurance coverage created by the “you cannot be in the business exclusion” in the General Liability policy. Any insurance program on a cleaning and restoration firm that has these two vitally important liability insurance policy forms with separate insurance companies is fundamentally flawed in its design because of the irresolvable coverage gap between the GL and the CPL policy.

The combined GL/CPL policy forms sold to cleaning and restoration contractors are not standardized in the insurance industry, they are not reviewed and approved by insurance commissioners and they vary a great deal in their quality. To help insurance agents through the coverage morass in these unregulated policy forms the Independent Agents of America has introduced a customized policy for cleaning and restoration firms. These insurance products are available in every state through any of their three hundred thousand member “Trusted Choice” agents in the United States over an internet based market access facility called Big I Markets. Contractors seeking a state of the art solution for their liability insurance needs can now go to any independent insurance agent in the US and access the customized insurance package that is essentially free of the fundamental design flaws discussed above. Allstate insurance agents also have access to customized insurance programs for cleaning and restoration contractors but it requires a home office referral to access the product line. Allstate also has Automobile insurance at discounted rates for IICRC certified firms. Good quality insurance for the cleaning

and restoration business is readily available, accessible and affordable. The right insurance may cost a little more than a fundamentally flawed insurance design the same way a car with an engine will cost more than a car without an engine. Insurance agents do not want to sell flawed insured designs but if the contractor is not willing to pay the premium for a policy that does not have fundamental design problems; the agent's ability to get the right insurance is greatly impaired. Be sure to check under the hood. The coverage provided by the liability insurance policies sold to restoration vary a great deal, it is impossible to judge the differences in the policies by looking at the premium, deductible and limits of liability. In fact the lower the premium the more likely it is that there is a fatal design flaw in the coverage being offered. With the coverage deck stacked against cleaning and restoration contractors, electing to buy the cheapest insurance on the table should never be the selection criteria. Unfortunately that is how most insurance buying decisions are made. That is why 90% of the firms in the cleaning and restoration business having seriously flawed liability insurance coverage in place today.

Excellent insurance coverage is available through hundreds of thousands of distribution outlets. Now is the time to shop carefully for the right business liability insurance coverage with a long term player specifically in the cleaning and restoration business sector. Be sure to instruct your insurance agent to find good quality coverage and that you are willing to pay for good quality coverage.

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