



CLEANING & RESTORATION

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# Restorers and Insurers:

A WARY RELATIONSHIP ON A PRECIPICE

Hiding Out, Part II

5 Questions with Pete Consigli





# RESTORERS AND INSURERS:

## A Wary Relationship on a Precipice

By Ralph E. Moon

**I**t was a simple business relationship born out of necessity. An insured experienced a loss, and the insurer was required to indemnify or compensate the insured for the loss. Before 1960, insurers satisfied this need through the services of local contractors, home repair and carpet-cleaning businesses. Claim volume was manageable by a small group of experienced adjusters, and the repair costs fell within anticipated price expectations. Overhead expenses for the insurance companies were manageable, and investments flourished as profits grew. Local contractors were pleased to get the insurance assignments because their work was appreciated, and reimbursement payments were relatively uncontested and promptly made.

Experienced contractors get a little misty-eyed when they describe the early stages of their businesses in the 1960s and 1970s. Details regarding invoice payments were discussed with the adjuster over lunch. Price negotiations were reasonable and productive. More importantly, the contractor and the adjuster discussed their concerns and expectations about the policy owner's needs openly, face to face, with mutually beneficial interests in mind. Furthermore, both participants were interested in maintaining a professional relationship.

As insurance claims increased with new policies and population growth, the diversity and number of claims propelled restoration contractors to offer a greater variety of services. Carpet-cleaning firms diversified into home repair, smoke and content restoration. Restoration firms recognized that they could expand their insurance business with more claims by offering dependable,

high-quality service with unquestioning trust. Insurance providers rewarded stable and dependable contractors with repeat business and national contracts. The business atmosphere, encouraged by a strong entrepreneurial spirit, prompted contractors to reinvest in anticipation of new opportunities and growth.

*“In many ways, effective communication begins with mutual respect, communication that inspires and encourages others to do their best.” — Zig Ziegler*

By the mid-1960s, the connection forged between restorers and individual adjusters represented a practical working relationship with a vibrant growth potential and the opportunity to create wealth among an ever increasing and influential middle-class population. Small carpet-cleaning companies and home repair and consulting services evolved into corporations with hundreds of employees that continued to prosper. Catastrophic events such as Hurricane Betsy (1965), one of the deadliest and costliest storms (\$9.8 billion, 2010 USD) in United States history causing 164,000 New Orleans homes to be flooded and created a new sector within the restoration industry: “the large loss contractor.”

*“Twenty-five years ago, I did the work, the homeowner was satisfied, and I presented a bill to the insurance company who paid it.” — Anonymous*

Global events such as the November 1970 “Bhola Cyclone” in modern Bangladesh that produced a devastating storm surge estimated to be 20–30 feet high and killed an estimated 300,000 people in the low-lying



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region near the coast also powered the growth of both the insurance industry and restoration contracting services. However, it was Hurricane Andrew (1992), the most powerful hurricane to hit South Florida in almost 30 years, that represented a “watershed moment” in the working relationship. This event revealed the inherent weakness in the management of thousands of claims by an overwhelmed staff within a short period of time. Physically exhausted insurance company staff struggled with the real-world conflict between following the normal protocol and processing a tremendous number of claims in a timely fashion, while still avoiding complaints of unfair claim settlement practices due to long delays.

This variation from standard protocol and expedited work atmosphere exposed an opportunity for greedy and or unethical restorers to take advantage of a previously amiable business association and for plaintiff attorneys

to leverage both real and perceived claim management errors. The potential for short-term financial gain by contractors fueled disregard for the long-term trust. In turn, confidence in restorers was replaced with suspicion and resentment toward the entire industry. Insurers recognized the disrespect of the working relationship and implemented a radical change in the method of invoicing. Rather than accounting for repair costs based on time and materials (T&M), a new system of cost evaluation was designed to value the restoration effort based on unit cost.

T&M had been a favorable billing practice for the contractor. T&M did not allow easy comparison between like claims, locations or staff. However, it allowed inherent flexibility for the contractor to identify and repair damage that may have been unknown to the insurance adjuster during a prior site inspection. This aspect may be one of the most significant changes that occurred in the working relationship.

When a contractor billed by T&M, full payment was anticipated regardless of how many hours were expended. As remediation efforts proceeded, the discovery of unexpected damages (a normal attribute of every project) prompted a change in scope, the addition of new tasks and resulted in increased cost. A disadvantage emerged when the invoice included higher costs than expected and friction between the restorer and insurer was created.

Unit price billing is a service that is well suited when there is a precise understanding of the scope of work. Unit pricing allows cost comparison and confidence that similar extents of loss should result in similar and predictable costs. The use of software templates and fixed material pricing provided a sense of uniformity assuming the objectives of the contractor and the insurer are the same. Unfortunately, this is not always the case.

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### THE TORN SCREEN DOOR

Experienced and ethical contractors should be driven by the needs of the structure. They describe their work as an effort to return the structure back to pre-loss condition, a normal expectation for someone who performs restoration. Consider, as a hypothetical example, the repair of a torn screen door. There are several options for the contractor. One option would be to remove and replace the torn screen. A second option would be to replace the screen and refresh the appearance of the door frame with a coat of paint. Finally, the contractor may choose to replace the door entirely, according to code requirements or efficiency.

From an insurer's perspective, the torn screen door poses many questions. Is the torn screen a result of a covered loss or perhaps an excluded peril? (For our hypothetical

example, we'll assume it's a covered loss.) Did the screen tear occur within the policy period? Did the policy holder report the damage in a timely manner? Was the loss investigated promptly and accurately by the insurance adjuster? Was there previous damage to the screen? Could the damage have occurred under prior policy coverage? Was the screen damaged by a third party, a handyman perhaps, and offer a subrogation opportunity? Is an expert required to examine the loss? What is a reasonable cost to repair the screen?

Though vastly simplified in this example, the objectives of the contractor are driven by the structure, appropriateness of the repair and acceptability of the finished product, while the objectives of the insurance company are driven by the review of the policy contract and the date of loss falling within the policy period. These differences don't mean that the two parties can't share common goals. The vast majority of contractors want to sustain and grow their working relationships with insurance companies. Similarly, insurance companies recognize that contractors are a necessity, despite recent waves of skepticism.

### MUTUAL SKEPTICISM

Insurance companies have a reason to be skeptical. In recent years, thousands of claims were filed that prompted extensive inquiry into the circumstances of the loss. In some circumstances, evidence of collusion between homeowners and their representatives surfaced. Similarly, contractors believe that pricing concessions, substandard procedural and product agreements and price fixing are evidence of collusion between contractors and insurers. Here are a few examples that I have experienced.

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### Cracked Tile or Hammer Strike?

Homeowner policies often allow for the replacement of contiguous tile flooring should one or more tiles become accidentally damaged. This provision was intended to enhance the uniform appearance of the repair effort, especially where a replacement tile wasn't available or couldn't be obtained from an inconspicuous area within the residence. Unfortunately, this policy provision revealed an inherent weakness. The frequency of broken tile claims began to sweep through neighborhoods with an ever-increasing number of tile cracks, expressing the appearance of being hit with a ball peen hammer or similar object. This theme prompted scientific testing on objects dropped from various heights to simulate the circumstances described by the policy owner. In the end, many policy owners were denied coverage for tile cracks because recovery was limited under the policy and courts consistently ruled the damage to be marring and consequently excluded from coverage.

### Roof Leak or Coffee Stains?

Thousands of roof leak claims were filed and paid based on visible evidence of ceiling stains. Then someone examined the area of the brown ceiling discoloration, analyzed it and determined the brown stain contained caffeine, an unusual compound in a ceiling stain even among households with the most avid coffee drinkers. Testing revealed that in some instances, coffee and tea were being applied to simulate a stain from a roof leak. Before discovery, the amount of the damage claimed, usually less than \$10,000, was considered too small to prompt a formal investigation.

### Fact or Fictional Event?

The flooring materials and contents looked completely unaffected, yet the policy holder claimed they experienced water release that required a drying contractor for seven days. In some cases, the loss was embellished by the purposeful application of a faint brown stain along the base trim. Although there was

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no residual moisture, mold, odor or thickness swelling, restoration costs were several tens of thousands of dollars.

### Drying Effort or the Pursuit of Incipient Dryness?

A recent phenomena involves a water loss where the drying task prompts a contractor to monitor building elements (sill plates and concrete foundation) that would be prone to retain moisture. The contractor provides the policy owner with an assignment of benefits (AOB) and the statement that they will exceed accepted drying guidelines. Oftentimes, the cost of drying escalates into the tens of thousands of dollars, creates a dispute with the insurance company and, ultimately, yields a protracted restoration effort.

These are not isolated circumstances. Hundreds of irregular claims cross insurance adjusters' desks every day, typically authored by few, but reflective on many. Anyone managing a business would wonder how long that business could sustain this kind of assault. Yet, in the end, it can generate a disrespectful view toward each another.

### FINDING COMMON GROUND

Many restorers and insurers are discouraged about finding common ground. They argue, “We've talked enough!” The element that has suffered the most is trust, and trust is difficult to recover. The fact remains that insurers and restorers have no alternative but to salvage a functional working relationship.

I discovered that a fellow choir member was a retired “union buster” in the highly contentious banking and textile industries. I asked him, “How did you walk into a room of hundreds of angry people and break up a union?” He responded, “My biggest challenge wasn't the angry people; it was convincing his clients that a union would not be necessary if they just treated their employees fairly and reasonably.” Both restorers and insurers are seeking fairness in their working relationship. Here are some suggestions for improvement:

- Policy language that identifies a “sudden or accidental event” as occurring within days and weeks (less than 14 days) is contentious, encourages late reporting, obstructs site inspections and encourages contractors to complete extensive demolition and drying efforts before the insurer can investigate the loss. Consider “continuous and repeated seepage” as one of the operative terms for policy coverage decisions.
- Offer the policy owners the opportunity to seek competitive bids from any contractor they wish, as long as a qualified and independent third party

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defines the scope of work. Limit communications between the policyholder and the adjuster/insurer only so that the customer understands the consequences of their claim and their selection of a restorer.

- AOBs can be both an effective and deleterious instrument. AOBs provide leverage for the policy holder when claim adjusting needs tuning, but more frequently, they can be leveraged unfairly against the insurer. Legislative efforts should limit use of an AOB only where the insurer has the opportunity to review and approve a fair and thoughtful the scope of work.
- Encourage the use of science, research and publication of peer-reviewed articles to examine and substantiate opinions regarding insurance losses.

It may take years of encouragement for this working relationship to flourish. However, we cannot allow the consequences of miscommunication and disrespect to cloud the ultimate objective: to protect the needs of the policyholder. **RIA**

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# 5 QUESTIONS

WITH PETE CONSIGLI



From trends and challenges reshaping the restoration industry to a shout out to longtime mentors and confessions of his almost life as a Paris-trained chef, RIA Industry Advisor and Director of Education Pete Consigli, CR, WLS, keeps us guessing.

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## 1. WHAT TRENDS ARE YOU SEEING IN THE RESTORATION INDUSTRY?

A major trend I see is dealing with change on a scale never before seen in recent history. This is prevalent through the use of digital technologies for managing and running day-to-day operations at all levels. Those who don't adapt will become extinct. Those who adapt slowly will tend to become less competitive and lose market share.

## 2. WHAT IS THE GREATEST CHALLENGE FACING RESTORATION CONTRACTORS TODAY?

The relationship between restorers and insurers. Many claims are contentious, and the future of how property restoration claims are handled is on a road to perdition. The growth of TPAs serving as a middleman between contractors and carriers, in many cases, has created an impediment to claims resolution, with the policyholder often caught in the middle of disputes between the contractor and the carrier's assigned TPA. How the industry addresses this emerging pressure cooker may well determine the future of the restoration industry. It is in the best interests of both industries to communicate in such a way to best serve the common "customer" — the policyholder/disaster victim.

## 3. WHAT ADVICE WOULD YOU GIVE THE NEXT GENERATION OF LEADERS?

Learn the lessons of those who came before you and do not repeat the same mistakes. Apply the lessons learned to create the future and take the industry to a greater level than when you entered it. Challenge the way it has always been done to find ways to make it better.

## 4. WHO HAVE YOUR MENTORS BEEN IN THE INDUSTRY?

There have been many over the years, including three of the restoration industry's founding fathers: Marty King, Cliff Zlotnik and Claude Blackburn. Subject-matter experts such as Joe Lstiburek, Mac Pearce, Lew Harriman, Ed Cross, David Governo and Peter Sierck have filled a unique role in the growth and evolution of the industry for me. I would be remiss to not give a shout out to my Aussie mate Ashley Easterby who is a collaborator to promote best practices on a global scale. I have shared a special friendship with peers such as Rusty Amarante and Butch Carpenter that has influenced my professional work.

## 5. WHAT'S ONE THING THAT VERY FEW PEOPLE KNOW ABOUT YOU?

Many people know me as the executive chef for Joe Lstiburek's Summer Camp. What they don't know is that when I was in my 20s, I had an offer made by my best friend's father and his cohorts to attend the culinary institute in Paris if I was willing to make a 10-year commitment to be the executive chef at a five-star restaurant they wanted to open in New York City. I thought about it for two weeks and decided not to accept their offer and, instead, pursue a career in the emerging restoration industry. I have never looked back with regret and, in fact, reevaluated the idea when I took a three-year sabbatical in 2000. After thinking about it again and then traveling around the world, I decided my work in the industry wasn't done yet and the ride continues in my role with RIA and summer camp too!