

OUR **GREATEST** NEED

The case for, and path to, industry
advocacy for the restoration industry.

By Mark Springer, CR

It doesn't matter where you go, it doesn't matter who you are talking to, wherever two or more restorers are gathered, the tone will likely be a bit terse. Some of the "old-timers" are becoming resigned to the fact that things are changing quickly and it might be time to cash in their chips and sell their business. A leading business consultant who works with some of the largest corporate firms in the world, Donald Cooper, says, "The human brain is wired for negativity." While this condition might explain some of the nervousness, it is clear that more significant changes are on the horizon, and a restorer in the 21st century is facing a landscape that is evolving quickly.

As restorers, this juncture presents a couple of options. The first would be to reactively accept the conditions, evolve with the industry, recalibrate and refocus our efforts toward adaptation to these trends. Many of us have been doing this for years with less-than-satisfying results. The second option is to take a more proactive approach. This entails identifying the issues and their root causes, building a strategy to address the issues, and then uniting as an industry to speak to the issues and drive positive change.

As the reader of this article may surmise, I am firmly in favor of the latter approach. The purpose of this article is to build a case for proactive advocacy for the best interests of restoration companies. This won't be an easy task to implement. Hard work will be required, and the engagement of RIA contractor members will be critical to its success. I hope in this piece to detail a vision for a path that we can all embrace for the good of our businesses and the strength and sustainability of the property repair industry.

WHAT IS THE PROBLEM?

In a previous *C&R* article, ("Contractors: It's Time to Take a Stand," November/December 2018), I described a situation where an insurance carrier refused any payment on a water mitigation claim due to a technicality in document upload. It is not my intent to relitigate that argument but rather to expand on some of the issues that restoration contractors face. In that article, I stated a thesis that poses a somewhat grim outlook for the restoration industry. However, with each passing month, I continue to see challenges emerge that reinforce this position. The thesis is this:

"If restoration companies are unwilling to unite, advocate for sustainable claims practices and take a proactive approach with insurance carrier claims policies, then the restoration industry as we know it will cease to exist within a decade."

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"Claims policies" go much deeper than the specific policies that a carrier dictates to issue payment. The issues we face are many, and they all impact the entire claims process that a property restoration company must navigate in the course of their day-to-day operations. What follows are some examples of the challenges and threats we face. Realistically, each of these areas, or sectors of concern, are not only necessary but essential in the claims environment. However, there are some key questions that each restorer, and the industry at large, should be examining if we are going to be able to operate our businesses sustainably. These questions are not rhetorical; they are not intended to be presented sarcastically or with bias. This isn't a time for conspiracy theories, but we would be exceptionally naive if we were to think that the largest fiduciaries in the world, who incidentally are the repositories of the largest quantities of data in the world, were looking out for any interest other than their own and that of their shareholders.

Example 1 – Pricing/Scoping Platforms: I'm not going to beat around the bush: Xactware and its parent Verisk are massive companies. Xactware's main platform Xactimate is an incredible estimating and scoping tool, and when used as such, can benefit the restorer in many ways. In fact, Xactimate was developed by contractors several decades ago. But how much do you know about Verisk? Here are details for your consideration: Verisk is a publicly traded company with a market capitalization, at the time of this writing, of a little more than \$19 billion dollars. Verisk reports \$2.1 billion in revenue per year, and their adjusted net earnings in 2017 were \$630 million dollars. That is a 29 percent net margin income. Keep this number in mind when you are having to defend a "10 and 10" overhead and profit argument.

Before they went public, Verisk Analytics Inc. was owned primarily by American International Group (AIG), Travelers Insurance and the Hartford. When Verisk went public in 2009, it was the largest initial public offering (IPO) since Visa had gone public a year earlier in 2008. These insurance carriers were able to divest

their ownership after the IPO. Verisk's stock ownership is now largely diversified between mutual funds, insurance companies, exchange traded funds, as well as individual investors.

What is Verisk's mission? Their website, www.verisk.com, proclaims, "Verisk provides data analytic insights to customers in insurance, energy and specialized markets, and financial services to help them make better, faster, and more focused decisions that minimize risk and maximize value."

While the published pricing methodology of Xactimate suggests a unique and scientific approach, many contractors (such as myself) have experienced long-term stagnation of pricing. This all while experience in the marketplace is the opposite, with labor rates increasing rapidly. This reality should prompt restorers should grapple with these questions:

1. Does Verisk's mission create an environment whereby pricing is suppressed unfairly for contractors?
2. If we are comfortable with this environment, are we collectively comfortable with the methodology whereby this company sets pricing?
3. Who is speaking to Verisk on behalf of contractors about their methodology, and is their approach fundamentally fair in its assumptions and calculations?
4. What level of transparency does this company provide with respect to how it gathers data and sets pricing?
5. What is Xactware hearing from contractors? Is it consistent? What are the repercussions for ignoring this voice?

Example 2 – Consultant Involvement for Claim

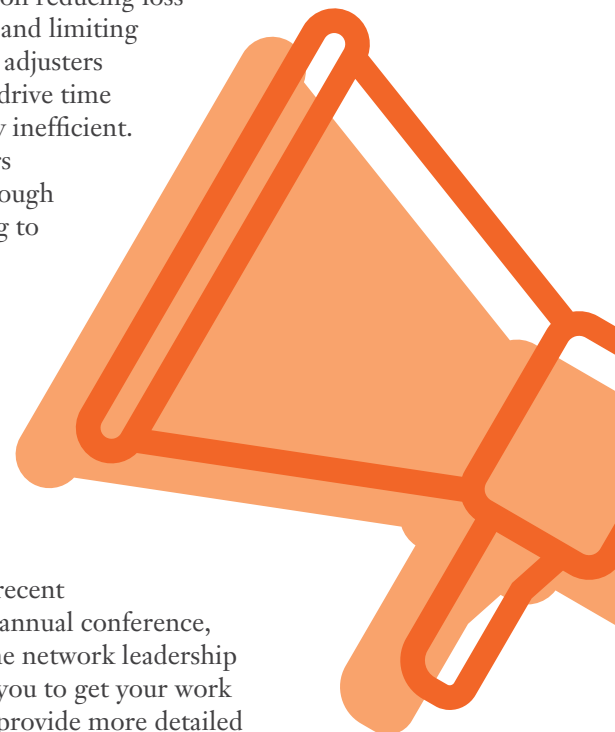
Resolution: If you are working on a "large loss," the trend that is en vogue is the assignment of a claims consultant. In a good scenario, this consultant is assigned on the front end of the claim. The restorer, the carrier and the consultant are able to agree to parameters that will help ensure that the claim is handled efficiently. However, this ideal situation is often not the case. In many situations, a consultant is assigned to the claim after the mitigation is completed. The consultant is often dispatched from an area far from the location of the claim where market conditions may be very different from those where the damage has occurred. Sometimes the approach of the consultant is immediately hostile, and sometimes it is belittling and demeaning. An endless cascade of requests for documentation, records and other information soon follows. Many of these requests are well outside the scope of what any reputable business would offer their clients. In some cases, a consultant may demand that the contractor use a different billing style that is in direct conflict

with the contract agreement with the customer. To add additional frustration, when one task is completed, many other requests immediately materialize. At some point, the contractor often taps out and accepts a settlement at a fraction of the original invoice, whether that be a unit cost scope or a time and material estimate. In either case, the documentation can be excellent, the transparency exceptional, and yet the settlement offer continues to be a fraction of the fully justifiable total that was earned by the restoration contractor.

1. Are these unscheduled administrative requests as "the cost of doing business," or are they billable expenses to the expense of the project?
2. Should there be established ground rules for these interactions?
3. Should consultants be expected to provide evidence of their qualifications to serve in any capacity on an insurance claim?
4. Should a consultant be required to disclose their financial interest in successfully reducing the cost of the claim?

Example 3 – Third Party Administrator (TPA)

Involvement and Expanded Influence: Technically, what we call a "TPA" should more accurately be referred to as a contractor network. But for the sake of maintaining clarity, we'll refer to these as TPAs. The expansion of TPAs continues at an incredible rate, and the reason for this is logical and predictable: Insurance carriers are focused on reducing loss adjustment expense and limiting claim severity. Field adjusters are costly, and with drive time between claims, very inefficient. The trend of carriers assigning claims through a TPA is likely going to expand significantly over the coming years. However, this expansion is bringing more pressure to restoration contractors disproportionate to the "opportunity." At a recent contractor network annual conference, the message from the network leadership was clear: We need you to get your work done more quickly, provide more detailed



documentation, increase customer Net Promoter Scores and do all of this for less money.

1. What are TPAs hearing from contractors prior to negotiating contracts with carriers?
2. Are TPAs conveying contractor concerns to carriers with good faith or any sense of urgency?
3. How can claim disputes be resolved in way that honors the contractor's integrity while still protecting the interests of the client, as the insured?
4. Are TPA programs in alignment with accepted restoration industry best practices and published guidelines that have been established as the Standard of Care?

Example 4 – Government Regulations and Rules, EPA

Lead-Based Paint Requirements: On April 22, 2010, the EPA required firms handling renovation in homes, child care facilities and kindergartens that were built prior to 1978 to have either state or EPA certification. The implementation of these rules heavily impacted the disaster repair industry, particularly in the arena of water mitigation where rapid response and often invasive demolition are required to prevent collateral damage from subsurface moisture. Restoration companies run by sound operators took these changes seriously, acquired certifications, retained records and followed the required protocols. Unfortunately, many poor operators fly under the radar.

1. When the EPA made these changes, as arguably the most impacted industry in the country, was our voice heard?
2. What exceptions are made for contractors in emergency mitigation efforts?
3. Should the costs of implementing these programs be borne by the restorer who is unable to recoup the cost within the current claims programs and carrier guidelines?

WHAT IS ADVOCACY?

In all of these cases, whether it be a pricing software, a claim consultant, a third-party claim administrator or a government entity, I respect and understand the need for their place in our

industry. Some restorers just want TPAs to go away. This is extremely unlikely in the near future. All these market forces are here to stay. In fact, they are likely going to increase in their significance and influence on the industry. What I am not comfortable with, and I don't think any contractor in the property claims industry should be comfortable with, is the fact that we have virtually zero collective representation to any of these claim resolution stakeholders. Our voice is not heard and, lamentably, in many cases, it isn't valued. Somewhat embarrassingly, we are part of the reason why this voice isn't appreciated. This, again, is because our voice is inconsistent and fragmented.

Some of these individual entities may have a group of contractors on their advisory boards who counsel them on best practices. Sadly, this voice is often fragmented and inconsistent. It could be argued that the worst voice for contractors is a single or small group of contractors. They often state, "I just can't tell my contractor services network that this new policy is harmful because they might stop sending me claims." Realistically, contractors have abdicated their voice to the TPA networks, which essentially speak on behalf of restorers to the insurance carrier community. Is this improving the landscape for the restorer? Are claims running smoother, more efficiently and more profitably? While this may happen in some isolated cases, in most cases, it is not. Increasingly, contractors are reducing territory, seeking other claims sources or trying to get out of TPA work entirely.



WHAT IS
ADVOCACY?

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It's time the restoration industry start to speak for itself. As the restoration industry's premier trade association, RIA should be the conduit for this voice. RIA is an association with an impressive history and pedigree. Trade associations typically advocate for their trade and their members. This is what we should be doing now and what we should have been doing for the past 74 years. It is counterproductive to have a discussion about why we haven't done this. What we can focus on at this point is the future — a future that can be better if we unite around this common goal and move forward in a thoughtful and strategic manner.

HOW DO WE ACCOMPLISH THIS? HOW IS OUR VOICE HEARD?

As restoration contractors, let's stop wringing our hands in anxiety, fretting and talking about the existential threats we face. For a minute, let's imagine that our industry, after carefully considering the most significant threats, were able to deploy its own lobbyist to speak in protest of laws and regulations that are detrimental to our businesses. What if we had representation who was able to convey our concerns about the aforementioned questions that we have asked ourselves about pricing methodologies, repair “guidelines” or hostile claim consultants? This wouldn't stop with merely conveying our concerns. The other players in the property repair ecosystem need to see that we understand our position, that we are mobilized to affect change, and that we will stand united for our collective rights as contractors under the law, to uphold equitable policies and practices.

The property insurance repair industry faces many unique challenges. These challenges are not necessarily common among non-insurance related general contractors, specialty trades or the general service industry. Many of these other industries don't face the sort of challenges that are described above. However, we don't have to reinvent the wheel when it comes to advocacy for our trade. Many other industries demonstrate examples where effective advocacy and government affairs, including lobbying elected officials, has been tremendously effective. In researching the subject for this article, I spoke with representatives from the auto repair industry (which has many parallels to the property

repair industry), local contractor associations, the National Demolition Association (NDA), the Window and Door Manufacturer Association (WDMA), and others.

Each of these industries share a similar playbook. Elements of this are described later in this article. The entire plan has not yet been approved by the RIA Board of Directors. However, our board directs its actions in alignment with the needs and wishes of our membership. If our membership is compelled to consider this course of action, or one similar to it, I expect that this could become a reality in the short term.

• STEP ONE: CREATE AN RIA ADVOCACY AND GOVERNMENT AFFAIRS COMMITTEE (AGA)

Trade associations are driven by volunteers. Volunteers are busy running their businesses in addition to their volunteer work. I try always to be sensitive to being critical of the work of volunteers, the work they have accomplished in the past or the decisions they have made in their tenure. With that qualification in place, I think that we as an industry are fighting an uphill battle, partially because our voice has been absent for such a long period of time. It's unfortunate that, in 2019, we are just now taking steps to implement a committee of such importance and bearing on our association work.

I am pleased to inform our members that attorney Ed Cross has agreed to serve as chairman of the initial Advocacy and Government Affairs (AGA) Committee. Many of our members, and certainly the industry at large, are familiar with Cross and hold his restoration acumen and successes in defending restoration contractors in high regard. We will be populating this committee with successful restorers from regions across the United States who are willing to dedicate some of their time to the critical work on which this committee will embark.

The work will start with the committee internally determining its mission and goals. They will need to have a crystal clear shared vision for what will constitute success and how success is measured. In the restoration business,

the lack of a budget and a schedule can decimate the success of any project. The same will be true of the work of the committee.

- **STEP TWO: PRIORITIZATION OF ISSUES AND SOLICITATION OF MEMBER FEEDBACK**

In our initial phases, we will have to focus our efforts with laser-like precision. It would be exciting to start speaking and advocating the positions of restorers on the myriad issues that impact us. As impressive as this would be, the sugar rush of this effort would likely be short-lived and the results superficial at best.

Once they determine their mission and goals, the first order of business for the AGA Committee will be to identify the top issues affecting contractors in the restoration industry. This curated inventory will then be submitted to all of the RIA membership for feedback and a vote as to which issues will receive focused attention at the outset. If you are reading this article, take a quick mental note of this and be on the lookout for the survey. Traditionally, surveys get little feedback and response. This is a big one, folks, because here you have a meaningful way to impact the future of your industry and your very livelihood if you respond thoughtfully to the survey.

- **STEP THREE: DEVELOP POSITION PAPERS AND POSITION STATEMENTS**

The purpose of a position paper is to succinctly organize an argument or opinion on a matter that can then be utilized to generate support or a specified course of action. When we have clear direction from the AGA Committee and our members as to the most pressing issues that have bearing on our future, we will develop position papers to unequivocally state where we stand and what

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we see as a path to resolution for a specific issue. While the committee may seek industry experts and various stakeholders for input on the work of these position statements, it will be their ultimate responsibility to ensure that the positions taken are strongly aligned with the best interests of RIA's contractor members.

It's essential that all our members understand that RIA's constituents represent a wide base of contractors who obtain their customers and execute their businesses in a variety of fashions. The official RIA position statements will necessarily incorporate the comprehensive needs of our membership based on the direction of our contractor members who are engaged with the committee.

- **STEP FOUR: HIRE A RESTORATION ADVOCATE**

In the isolated cases where RIA is currently advocating for contractors, this role is often relegated to a volunteer who is either a restoration company owner or high-level employee in a larger company. This individual might be then put into a bit of a predicament if they speak candidly to the issues they are facing. There would probably be a fear of retaliation, especially if the contractor is advocating on an issue relating to an insurance carrier or TPA.

This, I submit, is why RIA must have a non-contractor representative to speak on our behalf. What we need is a tough-as-nails diplomat who understands our industry and has the oratory skills to articulate and advocate for our position. This is not an administrative wallflower or a policy wonk. Perhaps this person would have a background in lobbying at the state or federal level, or perhaps they have executive experience or a background in law. This person would be hired by, and report to, RIA Executive Director Chris Mundschenk with input from the AGA Committee.

- **STEP FIVE: MONITOR ISSUES, ADVOCATE FOR POSITIONS, BUILD COALITIONS**

Our restoration advocate would report on a day-to-day basis to the RIA executive director. However, this person would also have a key level of involvement with the AGA Committee and their work. They would monitor issues based on our position statements and then speak, argue and lobby on behalf of our members for these positions wherever there is an opportunity to do so. This may include venues such as the Property Insurance and Restoration Conference (PIRC) meetings. It may also include setting meetings with leaders in companies or organizations where our voice is needed such as Xactware, individual contractor networks such as Crawford and

Alacrity, or with significant consulting companies such as JS Held or Young & Associates.

The challenges that restorers face are not always unique to our industry. There are often allies that we can engage with specific areas where we have common ground. Our advocate will also be tasked with identifying and potentially forming coalitions where a larger group can impact the outcome.

• STEP SIX: INFORM AND ENGAGE MEMBERSHIP

The engagement of our membership is key to our success. Again, due to the challenges and headwinds that restorers face, this is not a time wherein successful restorers can sit on the sidelines and do nothing. If we alert our members to specific threats, there will likely be an accompanying call to action that may include response to surveys, letter-writing campaigns, outreach to congressional representatives or other actions that further the cause.

As we proceed, we will need your feedback; we will need your time in helping to craft policies and positions; and we will need your financial commitment to execute this plan.

• STEP SEVEN: HIRE A RESTORATION LOBBYIST

Just because this step is last in this proposed plan does not mean that it is least important. Hiring a lobbyist will be a monumental step for RIA. It will be costly, and the results will likely only be evident over a period of time. Initially, we will need to decide where to focus our efforts: federal or at the state level? Here, coalitions will be vital.

WHAT'S NEXT?

It is very clear that the restoration industry currently faces immense challenges. It is my hope that this plea for advocacy is received enthusiastically. Anecdotally, the discussions I have had about the need for advocacy with numerous restorers across the various spectrums of revenue size, location and service demographics have been met with a great deal of positive feedback. We are at a point where we need much more than platitudes about the need for change. We need a strategic and operational path forward. This plan would require consensus and a strong mandate, not only from RIA contractor members, but it should also be driven by other potential partners who have a stake in our industry to help us in this massive task. These partners may include other restoration industry organizations such as the IICRC or IAQA, and potentially a significant level of involvement from the franchise groups and national restoration providers.

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While a focused strategy is important, I also believe that time is of the essence in this effort. Associations can tend to get mired in the details and encumbered by the availability of volunteers' available time. I would suggest that we don't have three to five years to get this figured out. And, as General George Patton said, "A good plan violently executed today is better than a perfect plan next week."

This effort will require significant quantities of three resources; time, talent and treasure. Without the time investment of restorers at all levels, we will not be able to move in a direction that impacts key issues. Without the talented thinkers, strategists and individuals who are gifted with execution skills, nothing will change. Without financial resources, we won't be able to hire staff, monitor issues or travel to the locations where our voice is needed. The initial cost isn't staggering; about \$100 per year per RIA member would provide the catalyst to move forward and get started. We need you if we're going to make a difference and positively change our industry.

I encourage all restorers to join this conversation at RIA's 2019 Restoration Convention + Industry Expo in Phoenix on April 30 through May 2. In our Town Hall session, we will further explore these concepts and proposed actions. It is important that your voice is heard in this venue. Join with your fellow restorers to meet our greatest need.

Author's note: I am very grateful to the many restoration colleagues and thought leaders who have reviewed this document and provided helpful criticism. These suggestions have improved this message and will hopefully further its effectiveness. RIA



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