

THE CONTRACTORS PLANT INSURANCE HANDBOOK

(Eighth Edition April, 2004)

**(The "What Is" and "How To" Book)
(for Insurance Brokers)**

PRODUCED
BY

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PROFILE

CEMAC Pty Ltd is an AFS Licensed Underwriting Agency which distributes, through Intermediaries Licensed under the Australian Financial Services Reform Act (FSRA), a range of specialist products in the area of Contractors Plant Insurance (CPI).

The company commenced operation as CEMAC Pty Ltd on 1st July 1999 following the purchase of the long-standing and very successful portfolio. Managing Director, Murray Rogash, has been operating exclusively in this specialist field since 1989, including the period from 1994 managing this portfolio.

From the point of view of facility stability, the Material Damage and Road Risk (TPPD) sections have been written through Lumley continuously since 1st October 1994 and the Liability since 20th April 1998.

CEMAC's stated objective is to achieve and maintain market leadership in its chosen field by commitment to the following principles:

- Develop and continually monitor innovative products;
- Offer superior service with the support of secure Australian underwriters;
- Ensure that all Insurance Intermediaries with whom CEMAC deals are kept informed of relevant information and developments;
- Increase use of technology to enable simpler, faster transfer of information.

CPI IS A SPECIALIST FIELD

Before delving into the intricacies of Contractors Plant Insurance (CPI) it is vital to be aware of several points.

Traditionally contractors plant and machinery has been written by nearly all general insurers to varying extents, under either motor vehicle (registered units) or engineering (unregistered units) policies. What we have done, as specialists in CPI, is recognise that these traditional methods were insufficient. The following four points indicate the variables which were simply not catered for by using simple motor vehicle or engineering policies.

1) **What constitutes Contractors Plant?**

It is any unit, fixed or mobile, which can be set up for use as a working tool of trade, whether registered or not, and includes attachments whether or not they are attached to the unit eg. registered backhoe with 2 buckets, trencher and borer - an engineering policy generally will not cover a registered unit and motor vehicle policies only cover the attachments whilst attached to the vehicle (in this instance at least 2 attachments would be unattached at any given time).

2) **Wide diversity of activities**

Identical units can be used for totally different purposes which require equally different underwriting approaches eg. an excavator can be used for digging dams on country properties, inner city development (deep excavations in close proximity to other buildings), housing estates, road making, bridge building, swamp clearing, demolition, rock breaking/crushing, pipe laying and a myriad of other activities.

3) **Business Activities**

We need to look at these operators as business people, not just as drivers of machines. They have similar insurance needs to operators of more conventional businesses eg. Liabilities (site, office, tool of trade, public & products), business interruption, workers compensation, superannuation, legal expenses, tax audit etc. The information gathering process must also take into account the type of operations eg. is plant dry hire, wet hire, own use or a combination; geographics; hazardous or any unusual activities.

4) **Contractual Obligations**

These play a bigger part in this type of business than probably any other and can work in two ways.

- (a) Contract conditions which the Contractor has to sign to obtain work eg. Government institutions and large corporations, most principal building and construction contractors. These generally contain (either clearly or surreptitiously) hold harmless or joint insurance clauses which can adversely affect standard covers.
- (b) Contractor's conditions of hire which are generally printed on the reverse of hire dockets. Generally for conditions to be effective they must be sighted, agreed and signed prior to commencement of the hire period but this can be overcome in certain cases eg. several prior business dealings under the same conditions.

COVERS OFFERED BY CEMAC

The usual basis for CPI coverage under the CEMAC facility is a three part package.

1(a) Material Damage

Broadform engineering based wording covering loss or damage to the insured plant, with no differentiation between registered or unregistered units, and a range of options available, as detailed later in this booklet, to extend a Contractor's cover to suit his individual requirements.

Additional Benefits

- accessories, tools and spare parts.
- Dry Hire.
- recovery expenses (when no loss)
- expediting expenses.
- damaged windscreen replacement.
- protection and removal.
- signwriting.
- tyre replacement.

Important Note - Breakdown:

The principal exclusions in most policies of this type are breakdown (but not resultant damage) and wear and tear etc. It is worth noting the possible differences in interpretation of "resultant damage" between underwriters. Australian insurers tend to exclude only that component which broke whereas some overseas based insurers exclude the whole section of a machine of which the broken component formed a part. This difference in interpretation can mean a substantial increase in the proportion of the claim which is paid.

eg. Front universal joint on crane failed causing tailshaft to break free causing severe damage to front and rear diffs and then damage to the fuel tank and under the chassis. Under the CEMAC policy only the universal would be excluded but under some policies from overseas insurers the entire drive chain (universal, tail shaft and diffs) would be excluded - perhaps even more if the wording excludes "loss or damage directly caused by..... mechanical breakdown failure or derangement".

1(b) Third Party Property Damage (TPPD Road Risk)

TPPD with standard limit of \$20,000,000 excluding tool of trade. (Covered under same policy as Material Damage).

Additional Benefits

- Bodily Injury liability where necessary.
- includes loss of use of property either damaged or undamaged
- property damage arising out of movement of other machines parked in a position preventing use or passage of your machine.
- removal of debris.
- damage caused while towing disabled machine (not for financial gain).
- damage due to towing of trailer.
- cross liability.
- sea transportation in Australia (general average & salvage).

General Extensions Applicable to 1(a) and 1(b)

- automatic inclusion.
- LPG conversion.
- other interested parties.
- subrogation waiver (hold harmless).
- "Innocent Breach" rider to drink/drug exclusion.
- "Innocent Breach" rider to incorrect use exclusion

Several of the above benefits & extensions are charged as extra premium options by some other CPI insurers, while others may not be available from them.

Important Note - Hold Harmless:

We are aware that almost all Contractors enter into agreements with government departments and/or major contractors, certain conditions of which may contravene normal policy conditions regarding actions which affect subrogation rights of Insurers. We have therefore included a Hold Harmless extension as a standard part of the policy. This allows such subrogation waivers without prejudicing the policy.

eg. Contractor on State Rail Authority (SRA) site has signed a tender application/contract agreeing to note SRA as joint insured. While working his crane in rail yards a vehicle driven by a SRA employee collides with his stationary crane. Normally the Contractor's Insurer would pay repairs and seek recovery from SRA but the "joint insurance" clause prohibits this - a breach of standard policy conditions. The "Hold Harmless" extension means that the Contractor's Insurer would indemnify the Contractor, but waive its right of recovery against SRA.

We felt that this extension was vital to all Contractors which is why we chose to have it included as part of our standard cover.

2) Liability

Broadform liability policy developed into several different packages to suit a range of contractors eg. Earthmoving Contractors, Crane Operators, Drill Rig Operators etc.

The cover offered is: "The operation (ie "tool of trade risk") of Machinery listed in the schedule which includes the activities of persons employed by the Insured directly associated with such operation together with the use of any property by the Insured for their administration, maintenance or storage purposes in connection with such Machinery".

For cranes this automatically includes Hook Liability to a sub limit of \$500,000 if the liability limit taken is \$5 mil, or \$1,000,000 if the limit of indemnity is \$10 mil or higher.

Note:

It is important to be aware of the recently discovered problems regarding unregistered units on what was previously thought to be private property eg. Bobcat loading soil into customer's trailer at garden supply business; forklift loading timber onto T.P. truck in timber yard. The fact that the car and truck mentioned in these examples were allowed onto the property, under certain state legislations, makes that property a public "place", "street" or "highway", thus requiring registration &/or CTP cover. This now takes on extra significance with the establishment of a national system of "Conditional Registration" for any plant or vehicle which operates on roads – even that which was previously unregistrable.

OPTIONS AVAILABLE TO EXTEND MATERIAL DAMAGE

COVER (and examples)

Unintentional/Non-Deliberate Overload (UNO)

In years gone by most Insurers excluded "deliberate overload" or "knowingly overloaded" etc, only to find it almost impossible to prove that such was the case even in the event of extreme operator negligence or carelessness. This meant that these Insurers were forced to pay claims for actions they had not intended to cover - a very expensive lesson. The modern trend is to totally exclude overload but make available an option for "unintentional/non-deliberate overload". This has the effect of bringing to the operator's attention the fact that he will be held responsible for his actions. In the event of damage due to overload the onus is on the Insured to show that a prudent operator could not have reasonably expected such overload to occur.

- Eg.**
- (i) Head Contractor advised Insured to hold the weight of a supposedly empty tank weighing 1 tonne, while the legs were cut from under it, to enable shifting. The tank turned out to be full and weighed over 5 tonne. Crane sustained damage as a result of this overload.
 - (ii) Concrete panel lifted within correct radius. Gust of wind blows load outside radius and causes crane to topple.

Substitute Hire Costs (SHC)

Quite often the lack of availability of parts (particularly for older, imported or specialised machines) or the sheer magnitude of the damage can cause lengthy delays in getting the plant back to work. This can have a disastrous effect on the Insured's business and has, in fact, caused some businesses to fold.

This option allows the Contractor to hire in a replacement unit and continue running the business. The Insured is responsible for the first seven (7) days following the loss and the limit of indemnity is then \$50,000 or 3 months from the date of loss, or as otherwise specified. Before taking this option it is obviously wise for the Contractor to ascertain the availability of a replacement unit. It would be silly to pay for the option and then not be able to locate a replacement unit.

Finance Payment Protection (FPP)

In certain circumstances (eg. Non-availability of replacement machines) the SHC option may not provide viable cover so the underwriters can offer the alternative of cover for regular finance payments for the period during which the plant is being repaired or replaced. Subject to 14 day franchise/excess 10% of claim.

Multi Lift (ML)

This is the sharing of a load by two or more lifting devices. Cover is dependant on compliance with the following two conditions (which are also almost universally adopted OHS/WHS safety standards).

- 1) The safe working load of each unit to be 25% in excess of their calculated shares of the load - eg. Crane capable of lifting 20 tonne at given radius and boom length. For dual lift at that radius and boom length the maximum for his share of the load is 16 tonne.

Note: Crane code or local workplace Health and Safety regulations may require a greater safety margin for more than 2 cranes. Compliance with such statutory regulations is a policy condition.

Eg. May well be:	No. of Cranes	Reduction of safe load
	2	20%
	3	33%
	4	50%

- 2) A competent person must be appointed to supervise the lift and must be in a position to maintain permanent contact with each operator.

Note: For lift involving more than 3 machines, certain additional conditions apply – refer to policy wording.

Finance Gap Payment (FGP)

Cover is provided under this endorsement, in the event of a total loss, for the gap between the market value and the actual amount owed to a finance company provided the gap is not more than 20% of the market value. Naturally it does not include any arrears or balloon payments.

Agreed Value (AV)

Basis for settlement can be amended to Agreed Value, subject to provision of valuations from an accredited valuer. A new valuation is required at each renewal.

Appreciation in Machine Value (AMV)

There are several things which may cause the value of a machine to increase during the period of insurance. Eg. shortage of supply, currency fluctuation, increase in import duties or other taxes etc. This option allows the Insured to provide for such increase of up to 25%.

Ongoing Hire Costs (OHC)

When contractors dry hire in plant the hire conditions generally stipulate hire costs will continue until return of the plant in the same condition (except for fair wear and tear) as when delivered to the hirer. This extension covers such ongoing hire costs to a limit of \$50,000 with a seven day excess. It can also be adopted by a contractor dry hiring plant out, to cover hire charges owed to him – in many such cases this is paired with EDH.

Extended Dry Hire (EDH)

The old style dry hire endorsement (which is a standard inclusion in our policy) was designed to protect the owner/insured but not the hirer. It is conditional on hire conditions making the hirer responsible for loss so, in the event of a claim while on dry hire, the Insured is indemnified and the Insurer has subrogation rights against the hirer.

Many hirers' conditions contain damage waiver clauses which may breach policy conditions and the Trade Practices Act. Also, if the owner charges for a damage waiver, it is possible that they are breaching the Insurance Contracts Act and various State stamp duty regulations. Note: A recent ruling by APRA indicates that damage waivers will not be construed as "insurance" but there is a distinct chance that some of the wordings in damage waivers may render this ruling in-effective eg. Some of them actually use the word "insurance", some use "excess waiver" etc.

This option is designed to extend the protection under the policy to the hirer, and allow the Insured to recoup part of his premium costs, without breaching any of the above-mentioned laws, regulations or conditions.

Underground Risk (UR)

Underwriters will, under certain circumstances, extend policy to cover plant operating underground. This will generally only be available for "hard rock" mines.

Loss of Revenue

Under certain circumstances the Underwriters will consider the inclusion of a special clause for revenue loss resulting from damage to an insured unit for which indemnity is granted under the policy.

Equity Protection (EP)

This is similar to the FGP but is to cover losses by the Insured due to finance pay-out figures eating into their equity. The following example probably best explains the option:

Operator bought a \$205,000 excavator, paid \$40,000 himself and financed the balance of \$165,000. Clearly, the sum insured is required to be \$205,000 with no reason for FGP to be taken. However, checking with the financier revealed that, if the unit were written off in the first couple of months, the pay-out figure would be \$196,000. After deducting this from the S.I. the client would receive the \$9,000 balance (less excess) – a loss of \$31,000 on his original equity. This option (EP) covers this loss with a limit of 20% of the value of the machine and an excess of 10% of the gap.

This space left for future options

LIABILITY - THE HIDDEN THREAT

If a Contractor suffers an uninsured loss on an item of plant, the most he can lose is the value of the machine. If he suffers an uninsured liability claim he can lose everything he owns.

The main points to emphasise are:

- A liability policy protects against losses for which an Insured can be held legally liable as a result of negligence of the Insured or their employees.
- There is a wide range of liability policies and care must be taken to ensure correct cover based on the Insured's business activities.

The need for a General Liability Policy

Some common misconceptions exist about the need for liability protection for Contractors, particularly if their plant is registered.

It appears that there are still some Insurers who are, through their agents or through ill-advised brokers, passing off Section II motor cover (extended for tool of trade) and CTP as adequate liability protection for plant operators. The following are just a few examples of why this is not only incorrect, but dangerous:

- 1) Large attachment from crawler crane left on ground on site. Heavy rain washed away edge of site and attachment crashed through safety fence onto footpath injuring passer-by - nothing to do with driving of vehicle so no cover under CTP but covered under liability policy.
- 2) Concrete slab falls 40 metres from hook of an insured crane and lands 1 metre from worker employed by different contractor. Severe mental anguish prevents him from attending work on building site for 2 years. No "bodily injury" so CTP cannot cover it (even though some rulings have said CTP covers tool of trade incidents in some States) but it is a definite case of "personal injury".
- 3) Backhoe operator digs hole for RTA then moves onto next job leaving RTA to fill in after their work. Passer-by falls into hole and injures himself. No cover under CTP as it did not relate to use of vehicle but would be covered under a Broadform Liability policy .
- 4) Pallet load of pipes unloaded onto road edge. Some time later restraining straps break and pipes roll onto cars parked nearby. No TPPD cover as not related to use of the vehicle but would be covered by products liability section of Broadform policy.
- 5) Crane dogman flings heavy chain over lowered boom of crane and hits someone on the head with it causing brain damage. Incident had nothing to do with the operation of the crane which did not even have a driver in the cabin at the time.

Probably a worker's comp case but with the restrictions and limits now adopted under most schemes it is likely that the injured party will seek a different source for compensation ie. legal action against the Contractor. If the injury was to a bystander (not a worker) it is extremely unlikely that CTP would respond - if it did there could be subrogation rights against the contractor. Additionally, in some states there are limits on CTP benefits.

Imaginative Brokers could no doubt think of many more such situations but the point of this exercise is to stress the shortcomings of motor liabilities even if extended for tool of trade. The main points being:

- (a) Grey areas as to when CTP is/is not operative.
- (b) CTP only covers "bodily injury" not "personal injury".
- (c) Neither TPPD nor CTP offer completed operations/products cover.
- (d) Would need to take out separate general liability for:
 - (i) Activities of workers when apart from vehicles.
 - (ii) Office/site risk, tenants liability etc.
 - (iii) Home office risk etc.

The operators most at risk from these exposures appear to be owner/operators of small businesses with one or two registered backhoes, small cranes etc. Unfortunately we cannot get to all of them as some people are not prepared to listen, but you can make sure that none of your clients have such exposures.

Hook Liability

What is it? - Loss or damage, to goods being lifted by a lifting device, for which the operator of the lifting device is held legally liable. This includes defence costs of such a claim. Personal injury or property damage occasioned by the goods falling from the hook (eg. Landing on a car or a person) is covered by the general liability policy.

NOTE: Some Underwriters offer cover for accidental damage to goods lifted. There are potential gaps between this cover and certain liability wordings thus leaving the contractor with possible large exposures and no protection. There are also certain exclusions to the accidental damage to goods lifted extensions (eg fragility), as well as a flow on of base policy exclusions and conditions (eg overload and multi-lift when options not taken, use outside manufacturer's instructions). These can negate a claim even though the operator may be held liable. An average clause may also be operative either by inclusion in the option wording or by flow on from base policy.

STEPS FOR BROKERS TO TAKE TO ENSURE PROPER COVER

Adhering to the following steps should ensure two things:

- Your clients get the cover they need (or that portion of it for which they are prepared to pay).
- Your P.I. Insurer does not hate you forever.

Step 1 - Gather Information

- (a) Basic client information - eg. J & T Smith Pty Ltd t/as Jims Earthmoving - **NOT** Jim Smith.
- (b) Details of plant - eg. year, make, model, lifting capacity, registered (reg. no.) or unregistered (serial no.), attachments.
- (c) Full details of activities - eg. General earthworks, road making, pipe laying (what type?), dry hire etc.
- (d) Any contracts currently in force - eg. inward - SRA, RTA etc., outward - dry hire, subcontractors.
- (e) Any subcontracting - ie. Insured subcontracts for principal contractor **OR** Insured has subcontractors working under his control.

Step 2 - Determine Contractors Requirements

Using the information gathered as above and discussions with the clients you determine their needs.

- (a) Material Damage - what options?
- (b) Road Risk - registered units?
- (c) Liability - type of package required?
- limit of liability?

Step 3 - Obtain Quotes

Based on the above requirements forward quote slips to CEMAC. Remember - complete supply of all relevant information will expedite the quote. CEMAC will supply a quote request slip for completion.

Step 4 - Review

- (a) Offer terms to the clients as per their requirements decided in step 2.
- (b) Include other Insurances not covered by the CPI package - eg. Workshop ISR, motor fleet (sedans, utes etc.) Advise re workcover in states where this is required to be done.
- (c) This is the appropriate time to confirm settlement terms and recommend funding.
- (d) Confirmation now of Underwriter stability and reputation and the importance of same may prevent competitors slipping under your guard with cheaper quotes for substandard covers.

Step 5 - Effect Cover

- (a) Place interim cover ensuring all options required by client are requested.
- (b) Proposals, Driver Declarations etc. - ensure all sections are completed by the client. It is so much easier to ensure they are completed first time than have to revisit the client after we send them back to you.
- (c) Check your closings against the proposal and the quotes. (A two month survey of closings received mid '99 showed over 40% had discrepancies. (One received in '98 had 8 errors.) This has improved only marginally since then).
- (d) Payment within credit terms saves time for all concerned. CEMAC payment terms are 45 days from inception/renewal.

NOTE: CEMAC Pty Ltd expects all brokers to sign an "Administration/Operational Agreement" to enable both parties to professionally interact. This agreement form clearly spells out the brokers', and CEMAC's, obligations and clarifies the point of account ownership – the introducing Intermediary is the "broker of record" for the Insured. As our AFS Licence requires us to have agreements in place we cannot deal with Intermediaries (even if licensed) in the absence of an executed agreement.

CLAIMS PROCEDURES

- A. Take all necessary steps to minimise damage**
- B. Immediate notification by phone or fax**
- C. Complete claim form and return**
- D. Liaise with assessor**

This appears similar to your standard claims procedure but there are several areas where CPI claims have to be treated slightly differently.

Due to the size of normal CPI excesses the client may not be sure initially if the incident is going to result in a claim. It is still important to notify insurers even if it is lodged as a report only - it can always be upgraded to a claim when the repair quote or letter of demand arrives.

Important points on plant damage.

- Try to have the plant removed to the insured's premises rather than the repairer's.
- Try to obtain 2 quotes. You must have at least an estimate before a claim will be acted upon.
- It is quite often easier, quicker and cheaper to have parts fabricated locally, than to import so called "genuine parts".

The most important thing is that you have ensured, prior to inception, that the Insured was aware of the exclusions under the policy and the range of options available to over-ride many of the exclusions. Also that they were aware of the basis of settlement and the meanings of Average and Current Market Value.

We will always do our best to minimise the time the plant is off the road but it must be a team effort. The insured and the broker must also do their bit.

NB. In the event of a claim involving both material damage and liability, only the larger excess will apply.