



REESE, YEATMAN & ASSOCIATES, INC.

Benefits and Insurance Solutions

Understanding Professional Liability Insurance

Definition

Professional liability is more commonly known as errors & omissions (E&O) and is a form of liability insurance that helps protect professional advice- and service-providing individuals and companies from bearing the cost of defending against a negligence claims and damages made by a client. The coverage focuses on alleged failure to perform on the part of, financial loss caused by, and error or omission in the service or product sold by the policyholder. These are potential causes for legal action that would not be covered by a more general liability insurance policy which addresses more direct forms of harm. Sometimes the coverage also provides for the defense costs, including when legal action turns out to be groundless. This is important because even groundless claims cost money to defend.

Professional liability insurance may take on different forms and names depending on the profession. For example, in reference to medical professions it is called malpractice insurance, while errors and omissions (E&O) insurance is used by insurance agents, consultants, brokers and lawyers. Other professions that commonly purchase professional liability insurance include accounting and financial services, construction and maintenance (general contractors, plumbers, etc., many of whom are also surety bonded), and transport.

The primary reason for professional liability coverage is that a typical Commercial General Liability insurance policy will only respond to a bodily injury, property damage, personal injury or advertising injury claim. But various professional services and products can give rise to legal claims without causing any of the specific types of harm covered by such policies.

Common claims that professional liability insurance covers are negligence, misrepresentation, violation of good faith and fair dealing, and inaccurate advice.

Coverage

Professional liability insurance policies are generally set up based on a claims-made basis, meaning that the policy only covers claims made during the policy period. More specifically, a typical policy will provide indemnity to the insured against loss arising from any claim or claims made during the policy period by reason of any covered error, omission or negligent act committed in the conduct of the insured's professional business during the policy period. Claims which may relate to incidents occurring before the coverage was

active may not be covered, although some policies may have a retroactive date, such that claims made during the policy period but which relate to an incident after the retroactive date (where the retroactive date is earlier than the inception date of the policy) are covered.

Cyber liability, for technology risks, covering data breach and other technology issues, may not necessarily be included in core policies, although it is readily available on the market.

Errors and Omissions

Errors and omissions (E&O) insurance, which may exclude negligent acts other than errors and omissions ("mistakes"), is most often used by consultants and brokers and agents of various sorts, including notaries public, real estate brokers, insurance agents themselves, appraisers, management consultants and information technology service providers (there are specific E&O policies for software developers, website developers, etc.), architects, landscape architects, engineers, attorneys, third-party business administrators, quality control specialists, nondestructive testing analysts, and many others. A mistake which causes financial harm to another can occur in almost any transaction in many professions. ¹

What You Can Do

Since professional liability insurance takes many specific forms based on industry and specific services, advice etc of the insured, it is best to discuss your particular business exposures with a licensed insurance agent who understands your market segment.

At Reese Yeatman & Associates, we have been providing commercial insurance solutions for business in the Virginia, Maryland, and DC areas since 1972.

Please call (301) 657-9492 for a no obligation consultation today or go to <http://goo.gl/zse4Xu>

Ask for Gordon.

Please see the following page for some examples of actual claims that were covered by Professional Liability insurance.

¹ http://en.wikipedia.org/wiki/Professional_liability_insurance

Errors and Omissions Scenarios

1. A virus attacks a company's computer system leaving the company unable to fill customer e-commerce orders for an entire month. The company loses a significant amount of revenue over this time span, but the inability to fill customer orders costs the larger customers revenue because they rely on the company to supply critical parts. The customer then sues the company to recoup their losses. The company, in this scenario, would then look to insurance to pick up the legal expenses to defend the claim.
2. A company website has all necessary security measures in place; however, a virus attacks the email system. A company employee transmits the virus to customers and the customers, in turn, sue the company for the cost of "cleaning up" their own computer network. The company, in this scenario, would then look to insurance to pick up the legal expenses to defend the claim.
3. Hackers break into a company's customer database and steal vital customer information. A customer's identity is stolen and they sue the company for damages. The company, in this scenario, would then look to insurance to pick up the legal expenses to defend the claim.
4. A company's system failure allowed hackers to gain access to personal data of the company's customers. The customer information was stored on its system in a country that just recently passed privacy laws. These privacy laws hold the company responsible for all damages incurred. Thousands of customers were affected and will likely sue. The company, in this scenario, would then look to insurance to pick up the legal expenses to defend the claim.

Technology E & O

1. "Internet Content" – A health system accidentally posted the medical records of thousands of patients on the Internet. A class action suit was filed for alleged emotional distress of the effected patients.
2. "Service Interruption" – A data processor to a financial institution caused an interruption in service, which resulted in a loss of revenue to the financial institution. Defense expenses and resolutions costs of this third-party claim exceeded \$1,000,000.
3. "Database Error" – An online procurement company had a database error which sent thousands of dollars of the wrong

equipment to the wrong location causing a project to fall behind schedule and miss critical deadlines. This customer's suit resolved for \$485,000.

4. "Third-Party Business Interruption" – Software implementation went awry and interrupted mission critical processes to a third-party customer. Defense expenses were \$300,000 associated with defending the suit, claiming business interruption of a third party.

Cyber Liability

1. "Personal Records Disclosure" – A woman purchased a used computer from a pharmacy. The computer still contained the prescription records, including names, addresses, social security numbers, and medication lists of pharmacy customers. Loss: The cost of notifying effected parties per state law totaled nearly \$110,000.

Two lawsuits were filed:

one alleged damages in excess of \$200,000 from a party who claims she lost her job as a result of the disclosure;

the second alleged that the plaintiff's identity was stolen, and that costs of correction and emotional distress exceeded \$100,000. A HIPAA investigation was also conducted.

2. "Data Security" – A part-time hospital employee gained unauthorized access to confidential electronic patient records and discussed with coworkers an individual's HIV status. The individual sued the hospital for lack of adequate IT security measures in protecting digital patient records. The hospital was held liable for \$250,000. An additional \$85,000 was spent on defense.

3. "Missing Data" – An employee of a financial institution had a laptop with sensitive client data go missing. Multiple lawsuits were filed by the individuals whose data had been compromised. Total defense costs exceed \$700,000.

4. "Unauthorized Use" – An online retailer had its network hacked by an unauthorized user, resulting in exposure of the credit card information of customers. This resulted in a class action filed against the retailer.

5. "Unauthorized Access" – An online business software inadvertently provided access to an unauthorized user, exposing confidential customer contact information to other unauthorized users. Loss: Regulatory investigation for a data privacy incident. Private suit for loss or damage of data settled for \$875,000. Defense expenses in excess of \$275,000 were incurred.

Denial-of-Service Attacks, Sabotage and Business Interruptions

1. A hacker overwhelmed several large websites through multiple distributed denial-of-service (DDoS) attacks. The culprit hijacked various computers throughout the world to bombard target servers with seemingly legitimate requests for data. It is estimated the DDoS attacks, which interrupted the sites' abilities to efficiently conduct their business, caused over \$1.2 billion in lost business income.
2. A disgruntled employee of a major consulting firm downloaded malicious code onto the networks of the firm, its clients and vendors. The code launched confidential information into the public domain and destroyed some critical corporate applications, resulting in more than \$10,000,000 in third-party claims.

CALL US TODAY TO DISCUSS YOUR INDIVIDUAL SITUATION.