



Professional Insurance

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volume 26 • issue 6

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So Sue Me!

That old childhood taunt may have been a snappy comeback at the time, but nowadays it can send a chill down a professional's spine.

Even the best of advice given by the best of advisors can yield less-than-optimal results. When it does, you can bet a legal claim isn't out of the question. Plaintiffs can make very broad allegations regarding financial losses suffered, or they can dig deep into the minutiae of fiduciary conduct, legal missteps, accounting errors, etc. The demand on a professional firm's time or that of its legal counsel can be exceedingly costly as defense

preparations and responses to plaintiffs' attorneys mount.

Different liability policies cover different aspects of the claim process. Some provide reimbursement; some pay upfront from the

first dollar up to the limits specified in the policy. Some cover regulatory investigations within the policy; others require an addendum or "endorsement" to cover expenses associated with regulators' demands.

Professional insurance can cover generalized problems, such as errors and omissions, but it can also be tailored to your specific specialty.

Consult your insurance provider for details on coverage best suited for your firm.



Preventing Claims

While a comprehensive professional liability policy is an excellent safety net, don't overlook the value of preventing claims in the first place. In other words, how is your professional risk management doing?

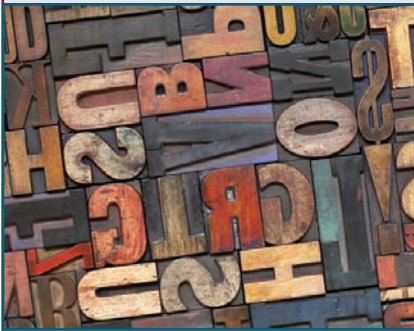
- Do you have an ongoing review of your policies and procedures with a goal of minimizing or eliminating oversights and errors that could lead to liability claims?
 - Is your risk management focus not only on claims, but also on creating improved client service?
 - Are your risk management processes designed to be sustainable and profitable?

• Do you consult regularly with protection professionals who can provide that "third eye" to see clearly those key problem areas that may have become "invisible" to you due to habit, comfort and/or familiarity?

• Are you aware of, and up-to-date on, best practices of others in your industry?

Risk management works in tandem with your professional insurance to give you the safest business protection. It might seem like a lot of extra administrative work, but be assured: It is well worth your time and investment. Never forget that the least expensive claim is the one that never happens.

To Improve D&O, Just Add Letters!



D&O is shorthand for directors and officers coverage. Most businesses that have boards or key executive leaders already know how important it is to protect them from expensive claims of negligence or errors. But have you considered the possible gain of adding additional letters to that D&O? For example, how about EPLI and K&R?

EPLI (employee practices liability insurance) and K&R (kidnap and ransom) are two valuable protections for your business's leaders. EPLI offers coverage for claims of sexual harassment, discrimination of many kinds, bad payroll practices, and other problems having to do with the treatment of employees or prospective employees.

K&R seems a little "out there" to some, but it is increasingly important these days, especially for businesses whose executives travel abroad. This specialty insurance can help pay for the professional assistance that is needed in a kidnapping crisis as well as costs incurred to rescue the victim.

Sometimes it is possible to include EPLI and K&R in a single policy package with your current D&O. If you qualify, it can mean better coordination of coverages and limits, as well as decreases in overall cost.

Taking on Small-Claim Costs

When purchasing employee practices liability insurance (EPLI), many firms consider the policy in the same light as general liability: breadth of coverage, defense provisions and limits provided. But perhaps a potentially valuable consideration is being overlooked: deductibles.

According to industry experts, it may be best if a firm considers an EPLI policy as a means of financing the "big-hit," single-plaintiff claim or the class-action, multiple-plaintiff claim—rather than using the policy to fund relatively small, run-of-the-mill cases. Purchasing an EPLI policy with a high retention (or deductible) eliminates coverage for those minor claims in return

for more attractive pricing and perhaps broader coverage by utilizing a "catastrophe" approach to their program.

The selection of what constitutes an adequate or desirable retention will vary with each business. For example, a company with five employees and annual sales of \$1 million may consider a retention in the thousands of dollars perfectly acceptable. At the other extreme, a business employing thousands, with revenue in the hundreds of millions could look at retentions in the multi-million-dollar range. An even better result can be obtained if the savings from reduced premiums are invested in loss control and risk management.

Planning for Your Future

Typically, professional liability policies are written on a "claims made" basis, which generally means that the policy will cover only those claims made during the period the policy is in effect.

If you stay with the same insurer, and as long as coverage is continuous with no breaks in coverage, your policy should cover whatever claims come along—new or old.

But what if your firm goes out of business or closes the doors for retirement and decides not to renew its current professional coverage? What happens when a future claim is made under these circumstances?

The first answer is simple: No policy means no coverage. But insurance carriers have at least a partial solution, known as an extended reporting period (ERP) endorsement. The title of the endorsement says it all: It does not provide a new policy but, rather, extends the expiring policy to cover certain claims that are reported during the period of the ERP.

ERP endorsements vary in availability, the coverage that's included, the limit of payments and the length of the reporting period. But if you are considering bringing your business to a close for any reason, contact us for specific options available to you. Don't find out too late that locking the door to your business has also locked away your professional liability protection.



When It Rains Liability, Try an Umbrella

As liability judgments seem to be on an ever-increasing payout spiral, purchasing a policy specifically to provide high limits of liability coverage is moving from an attractive option to a basic necessity.

To get high liability limits above and beyond your underlying general and professional liability policies, you might want to turn to a commercial umbrella policy.

There is currently no standard umbrella policy form, so when choosing the best one for your business, care must be taken to be certain the specific form will provide the coverage you are seeking. The following are a few of the guidelines that can help you sort through the options:

Underlying Limits How high are the limits the umbrella insurer is requiring for your general and professional liability policies? Since these underlying forms become, in a sense, “deductibles” for the umbrella coverage, the insurer is going to make specific requirements for the amount and quality of the underlying coverages.

Defense Coverage How will the umbrella policy handle the key issues,



such as defense coverage? While your underlying policies are the primary source of your defense, what happens when those policies exhaust their limits? Will the umbrella carrier step in and take over? Will the carrier assist with the defense from the first dollar? Will the umbrella provide no defense at all?

Coordinating Policies How does the umbrella policy cover your profession-

al exposures? While general liability forms are fairly standardized, professional policies are often customized forms, varying by insurer and professional occupation. Failing to be certain your umbrella form coordinates properly with your professional coverage could leave you with a major gap in coverage should your underlying limits be exhausted and the umbrella insurer deny further coverage.

General vs. Professional Liability Coverage

Throughout the year, local media highlight stories of people injured by the failure of business equipment. Some of those injured are customers, clients or mere bystanders. They are a good example of how allegations of liability can blur the line between a business's general liability and its professional liability.

For example, direct responsibility for injuries and property damage due to faulty equipment or construction would typically fall under the general liability policy. Yet what

if, as worded in one specific recent incident, the claim allegation is that the defendant failed “to ensure that equipment was able to withstand stresses imposed on it during its operation and to perform the function for which it is intended or designed...” Such “bad judgment by someone who ought to know better” is negligence that falls squarely within professional conduct and, thus, should trigger a professional liability policy in response.

While a final decision on who is liable and which policy must

respond (if any) belongs to the courts, the key for a business owner is to make sure adequate insurance coverage is in place. If part of your business is to operate machinery/equipment or design/erect structures that non-employees or their property are exposed to, a thorough review of those operations is in order.

If you have questions about the differences in coverage between general liability and professional liability for your specific business, please give us a call for assistance.

Overseeing Risk Management

Corporations are all different, and so are their risk management concerns and solutions. This means that boards of directors or corporate advisory councils must be in regular consultation with the CEO and any senior management responsible for strategic planning, current operations, measuring success and evaluating business risks.

The Canadian Institute of Chartered Accountants offers “20 Questions Directors Should Ask About Risk.” For example, here are five:

1. How do we integrate risk management with the corporation’s strategic direction and plan?
2. What are our principal business risks?
3. Are we taking the right amount of risk?
4. How effective is our process for identifying, assessing and managing business risks?
5. Do people in this organization have a common understanding of the term “risk”?

For a complete copy of the study, go to www.rogb.ca/director-series/20-question-series/item36598.aspx.

Thank you for your referral.

If you’re pleased with us, spread the word! We’ll be happy to give the same great service to all of your friends and business associates