

## Covering Some New Ground

### How Professional Liability Insurance Can Protect You

*By JOSEPH RUSENKO, AAI*

**F**aced with the very real possibility of a lawsuit arising at some point in their careers, today's professionals have become savvier about protecting themselves.

Consequently, professional liability coverage is one of the fastest-growing segments in the insurance industry. It is also one of the more complicated. This type of policy is structured very differently from general liability policies, and it contains some unique terminology like 'consent to settle,' 'retroactive date,' and a 'tail.'

Professional liability is a specialized type of liability insurance protection for professionals such as physicians, attorneys, certified public accountants, insurance producers or directors, or officers of corporations, though coverage is definitely not limited to these professions. In any situation where you are acting as a professional and are supposed to know what you are doing, but make an error, this is the coverage you need.

Medical malpractice is the most well-known example; when a doctor makes a mistake resulting in damages to the patient, this type of coverage will apply.

While general liability usually covers an entity or business, professional liability covers the act of an individual. For example, let's say you own an office building and you fail to keep the entryway ice-free during the winter. When someone slips and falls, your general liability will cover you. You have failed to maintain a safe environment and are therefore negligent, so you are at fault. The situation had nothing to do with an individual acting in a professional capacity.

A professional liability policy comes to your defense if someone brings suit claiming your professional acts caused them damage. It really does not matter if you were at fault or not—anyone can sue for anything. In many lawsuits the biggest expense can be the legal fees—you could easily lose thousands of dollars simply because

someone felt they had a case. Your professional liability policy needs to be structured to cover your legal fees.

There are some critical details to consider when shopping for professional liability insurance. First, some policies will include a 'consent to settle' clause. If your reputation is important to your business, you should make sure you consider a policy that includes such a provision. This clause simply means that the insurance company will need the insured's consent to settle a claim. The reason for including it is to protect your image, since settling might seem to imply guilt or at least some fault. However, the insurance company may determine that it makes monetary sense for it to settle out of court. It will want to do so despite the fact that your reputation may be tarnished. It is becoming more common for this clause to be left out, so be sure to ask for it.

Most common insurance policies (such as an automobile policy) are

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occurrence forms, where the policy that is in place at the time an accident happens is the policy that reacts to the claim. In professional liability cases, the damage done by an error may not be realized for some time; it may be years later when a claim is filed. This is considered a claims-made policy in which it is the timing of the claim, not the incident, that matters. In this case it does not matter what policy was in force when the error happened, but rather which one is in effect at the time the claim is filed.

Suppose a lawyer is being sued for an error she committed 15 years ago. The claim is filed today; 15 years ago the lawyer had coverage with a limit of \$100,000, and now she has a policy with a limit of \$2 million. The lawsuit will be in today's dollars, as should be the insurance coverage.

Lastly, what happens when you retire or change careers?

You can extend coverage past the end of your last policy with something called a 'tail.' This provision extends coverage for a certain number of years in case a claim should arise. This is a relatively inexpensive way to cover yourself once you have ceased operations. It is less expensive because there is no 'new' activity to increase your exposure.

There are many ways to structure your professional liability policy. Therefore, it is worth discussing your options with a professional. If you serve clients and are supposed to know what you are doing, you just might find yourself the defendant in a lawsuit. It is always good to know you have an insurance policy ready to respond to your situation.

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