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PROFESSIONAL INDEMNITY INSURANCE

Information Brochure

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Professional Indemnity Information brochure

Professional Indemnity Insurance is essential in today business environment. It protects the professional person or firm from damages and legal costs as a result of an act, error or omission in their professional capacity.

It is important to consider that the costs of defending an allegation of negligence can be huge. As a Professional Indemnity Insurance policy will also pay legal costs necessary to defend a claim a professional person may need the protection to defend a spurious claim.

What does the normal policy cover?

A professional indemnity policy is designed to cover financial loss arising out of an act, error or omission made in connection with the professional business practice of the insured person or insured firm. An act, error or omission could be an incorrect design, negligence advice, or failure to advise. The costs associated with such a claim can be devastating. Professional Indemnity insurance can assist to minimise the financial impact on firms and supply expert legal support to the professional person or firm.

Whilst all policies are different most policies will cover:-

- Breach of duty – This will cover the professional in the event of a claim that they breached their duty to a client or someone to whom they owed a professional duty.
- Trade Practice Act – claims arising from a breach or alleged breach of the Trade Practice Act or similar State legislation. An example would be an allegation of misleading or deceptive conduct.
- Dishonesty of employees – as employer's are vicariously liable for the actions of their employees this cover is of great importance.
- Infringement of copyright – accidental infringement of another persons' copyright.
- Libel and slander – allegations that, in your professional capacity, you have defamed a persons' character.
- Loss of documents – loss of an important document which is not easily replaced (eg a blue print or original document).

How does a “claims made” policy differ from other classes of insurance?

Professional Indemnity insurance is written on a “claims made” basis meaning that the professional person or firm must have a policy in place when they first become aware that a claim will be made against them (subject to the retroactive liability date of the policy).

Many other liability insurance products (eg public liability) are written on an occurrence basis meaning the event must occur during the period of insurance whilst the notification of this event can occur at any time subsequent.

What is the retroactive date and how does it impact the cover provided by the policy?

- Retroactive date is the date after which acts, errors or omissions of the insured are covered. That is, only acts, errors or omissions arising from work performed by the insured after the retroactive liability date will be covered.

What is “run-off” and when is it required?

A professional person or firm needs to purchase “Run off” cover when they cease operating, leave the industry or retire. As Professional Indemnity insurance is written on a “claims made” basis, a professional who ceases to operate needs to take “run-off” cover in order to cover future claims arising from design or advice given prior to ceasing to operate. As the statute of limitations only commences when the party discovers they have suffered a financial loss, a professional may need to purchase “run-off” cover for many years after their retirement.

When should I notify a claim?

You should notify a claim when you become aware of a situation which may lead to a claim being made against you. If you receive a letter or phone call which threatens legal action or demands compensation for an alleged loss, you should notify your insurer immediately.

What is the procedure of making a claim?

You can download a claim form from our web site and submit the claim form with supporting documents. Alternatively, you can send us a brief summary of the situation, which may lead to a claim being made against you. We will pass this onto your insurer who will respond with the appropriate action to be taken.

The insurer may ask you to keep it informed of any developments or the insurer may appoint a law firm to investigate the allegation.

What happens if I do not notify a claim?

Not notifying a claim can have drastic effects. Once a Professional Indemnity policy expires no claim can be sustained by the expired policy. If a claim is made against you and the matter is not notified to the insurer prior to the policy expiring then the insurer may be legally entitled to deny paying the claim. We encourage you to notify all claims and / or circumstances immediately you become aware of them.

Why do I have to complete a new proposal form each year?

Each year the insurer requires you to complete a new proposal form to ensure they have the most recent information on your business. Your business may change its focus, size or direction during the 12 month policy period. This change needs to be taken into consideration when the insurer is evaluating the terms and conditions for the forthcoming 12 months.

What is the difference between a “civil liability” policy and a “negligence” based policy?

A professional indemnity policy which is written on a “civil liability” basis will respond to claims arising out of any civil award by a civil made by a civil court. A professional indemnity policy written on a “civil liability” basis is broader than a negligence wording as it will indemnify the insured for claims arising from strict liability, where no negligence is involved.

What is an automatic reinstatement?

An automatic reinstatement under a professional indemnity policy will automatic reinstate the limit of indemnity to the original limit following a claim. Sometimes this is expressed as \$1,000,000 any one claim and \$2,000,000 in the aggregate. The \$2,000,000 in the aggregate means the policy will pay two claims of \$1,000,000 during the policy period before the policy limit is exhausted.

What is the difference between jurisdictional and territorial limits?

The Jurisdictional limit refers to the court of law in which a claim can be brought. If a policy states the Jurisdictional limit is “Australian and / or New Zealand” then in order for the policy to respond the claim must be brought in the courts of law of Australia or New Zealand.

The Territorial limit refers to the location where the act, error or omission happened. That is, the physical location where the faulty design or incorrect advice took place. Territorial limits are sometimes referred to as “geographical boundaries” means that the act, error or omission must occur within the geographical boundaries stated in the policy.

Some examples of claims

1. Negligence design

In designing a high rise building the engineer incorrectly designed the height of balustrade on the balconies. Years after the building was constructed a person fell over the balcony and sustained injury. As the injury was sustained by the person as a result of the incorrect design, the engineer was held liable for the injury sustained by the person.

2. Negligence advice

A financial planner advised a client to borrow money to purchase a property with the intention of negatively gearing the property against the clients' personal income tax. The financial planner omitted to advise his client that negative gearing was only tax effective if the client continued to earn a taxable income. The client was in his 60's and was planning for his retirement. As the client was looking to retire the financial planners advice was not appropriate for the client situation. Upon the client discovering that negative gearing was not appropriate for his situation the client sold the property and sustained a loss in the sale. The financial planner was liable to his client for negligent advice as the advice was not appropriate for the clients' situation.

Professionals need to be aware that the advice they give needs to be tailored to meeting the specific clients' needs.

3. Breach of copyright

A company designed and sold water reticulation system to farmers in Australia. A company involved in a similar field brought an action against the first company alleging their copyright had been breached.

Whilst the action was successfully defended the defence costs incurred were substantial and covered under the professional indemnity policy.

4. Fail to act / omission

The receptionist of a Real Estate / Property Manager was advised on a number of occasions that the garage of a house they managed had a large hole in the floor. The receptionist did not advise the property manager therefore the hole was not fixed. A tenant fell and injured herself in the hole and brought an action against the Real Estate.

The Real Estate was held liable as they did not discover the hole in the garage floor when they inspected the property and did not take action to fix the problem after the receptionist was made aware of the hole.

5. Misrepresentation / Financial loss

An IT consultant advised a client on a new invoicing and ordering system to be networked across 14 different locations. The system was implemented but could not be networked across so many locations. The company could not invoice their clients nor order new products for one month.

The company sued the IT consultants claiming the total financial loss of the business alleging misrepresentation and deceptive conduct.