

WHAT IS PROFESSIONAL INDEMNITY (PI)?

Breach of duty - A typical PI policy will provide indemnity to the insured against 'loss arising from any claim or claims for breach of duty which may be made and reported to the insurers during the policy period by reason of any neglect, error or omissions committed in the conduct of the insured's professional business...'. Some policies are more tightly worded.

Civil liability - Some PI policies go further than the standard cover and provide indemnity to the insured "for any civil liability whatsoever..." This covers such areas as breach of contract, libel and slander (some standard policies may include libel and slander as extensions to the policy wordings). Because the operative clause of a "civil liability" policy is so wide, there is normally a long list of exclusions in order to exclude liabilities that should be covered elsewhere - otherwise things like Employers Liability (EL) and Public Liability (PL) might be covered.

Breach of a contractual liability that is not caused by negligence - This is often excluded from PI policies and occurs when a professional signs up to a contract which might impose a liability that goes beyond what one would normally expect in law. Examples include liquidated damages, e.g. late delivery penalties - or accepting liability for otherwise unforeseeable economic loss, e.g. business interruption.

Contractual liability - This is an important issue in highly competitive professions or during times of recession when the insured's client holds all the negotiating cards - a case of "just sign here and you've got the job". But the professional can pay for it later. In some professions, it becomes a way of life to the extent that PI insurers must offer to cover an element of contractual exposure (such as collateral warranties) in order to meet the insured's basic professional needs.

Legal costs - These are normally covered by PI policies, subject to the insurers' prior consent. They cover the costs of investigation, defence and settlement of claims. These costs might embrace lawyers for investigation and defence, loss adjusters, experts and court costs. Claimant's legal costs normally form part of the claim against the insured professional.

'CLAIMS MADE' INSURANCE

Professional indemnity, (along with directors & officers, medical malpractice and libel insurance) is written on a "claims made" basis. This means that the policy covers claims made (and reported to insurers) during the currency of the policy period unlike most liability policies which cover the loss occurring during the currency of the policy. A claim is generally notifiable under a PI policy when the insured first becomes aware of a circumstances that could lead to a claim - this could be anything from a verbal criticism to receipt of a written statement of claim. The interpretation of when this situation occurs is the source of frequent policy disputes between the insurer and insured. **If in doubt notify insurers and let them decide if the matter is a notifiable event.**

NOTIFIABLE FEATURES ON A 'CLAIMS MADE' POLICY ARE

- A claim might be made against a policy written now but the act of neglect might have occurred many years previously.
- It protects the insured against the erosion of the value of cover by inflation. Where latent defects might lead to claims many years after an act of neglect, such as in the construction industry, this can be crucial in times of only modest (let alone high) inflation.
- It protects the insurer against the effects of legislative changes, inflationary awards and claims made with new knowledge. It was not so long ago that the market was predicting the disappearance of "losses occurring" policies altogether following the wake of losses arising from US asbestos and environmental claims under policies written decades previously, on terms and conditions prevalent at the time which could not possibly have anticipated the losses to hand.
- If the policy lapses for any reason, there is normally no cover thereafter for any claims that might arise, regardless of when the alleged neglect might have occurred.