PROFESSIONAL INDEMNITY INSURANCE

Professional indemnity insurance is specially designed to provide coverage to professionals against exposures of liability that they owe to others, arising from the conduct of their profession. In the normal course of practice, a professional provides advice, design, specifications or other services that will be relied and acted upon by a client. In the event that a client suffers financial loss as a result of alleged neglect, error or omission, professional indemnity insurance will meet the cost of defending claims and any damages payable.

Why is Professional Indemnity cover necessary?

Any person who provides advice, design or offer similar services in a professional capacity is seen by clients as an expert. In these times of high consumer awareness, clients will not hesitate to pursue a claim if they feel that they have received sub-standard service. Mistakes occur even in the best managed business. A professional may even be sued by a client who is merely dissatisfied, but has no valid claim, leading to substantial legal costs and time away from running his business. The need for professional indemnity insurance has never been greater.

While some professionals see professional indemnity insurance as an expensive and unnecessary overhead, experience tells us that any professional can produce substantial claims. For example, a simple error in design calculation may result in the cracking of a crucial building structure which requires a substantial amount of monies to rectify.

Besides the above, court awards have risen sharply in recent years. Without insurance and unless the business is financially strong, the financial security of a business is threatened.

What does Professional Indemnity insurance cover?

Professional indemnity insurance provides a means of indemnification against legal liability to pay damages as a result of a breach of professional duty by a professional occurring in connection with the conduct of his practice or business. Besides providing cover for settlements, compensation, and/or damages awarded against professionals, the insurer will also pay for costs incurred in the defence provided these costs have been incurred with the insurer's consent.

The policy covers liability for act of neglect, error or omission committed in good faith and can be extended to include:

1. dishonest or fraudulent acts of an employee for which you or your firm are liable, provided you or the other person claiming indemnity has neither committed nor condoned such employee's act or omission. The dishonest person, for obvious reasons, is not entitled to indemnity;
2. libel or slander;
3. reasonable costs of reconstituting documents lost or damaged (while in the custody of the policyholder or any other person entrusted with the same);
4. unintentional breach of intellectual property.

The policy is written on a 'claim made basis' wording. This means that the policy will respond to a valid claim provided it is notified in the same insurance period as it was first discovered. All policies contain conditions on the timing of such notifications. It will thus exclude any claim which were known or discovered prior to the inception of the policy or any claim which is not notified within the timeframe as specified in the policy.

If you are currently insured and are considering a policy with another insurer, it is vital therefore that the insurer on the expiring policy be put on notice of any claim, matter, circumstance that could give rise to a claim before the policy expires.

Unless a retroactive cover is specially negotiated and agreed with the insurer, it will also exclude any claims first made during a current insurance policy, which arose from act or omissions, committed or which occurred before the commencement of the policy.

Exclusions

All insurance policies are subject to terms and conditions and exclusions, and differ from one insurer to another. It is, therefore, important to study the terms of the policy and be able to distinguish between the various forms of coverage. However, professional indemnity insurance policies generally would not provide cover for:

1. liability to employees;
2. liability for any debt incurred;
3. liability for death, bodily injury unless arising out of advice, design or specification, or the omission to perform a professional duty;
4. liability arising out of advice, design or specification where the policyholder contracts to manufacture, construct or install or supply material or equipment;
5. liability arising out of any claim or circumstances which could possibly give rise to claims, which the proposer was already aware of before the inception of the policy;
6. any claim for penalties or liquidated damages;
7. any liability assumed under any express warranty, guarantee, hold harmless agreement, indemnity clause or the like unless such liability would have attached in the absence of such agreement.

Duration of Cover

There are two types or professional indemnity insurance currently available. One is an annual policy and, as the name suggests, this policy is valid for one calendar year. Subject to policy terms, conditions and exclusions, cover is available to all claims against you during the policy period arising from all work undertaken by you after the retroactive date.

It is possible to extend the policy to include cover for claims arising from work undertaken by you prior to the retroactive date but this is subject to the insurer's agreement as to how far back they can date the retroactive cover. If the insurers agree to provide this 'backdated' cover, additional premium will be imposed.

One important aspect to bear in mind when considering an annual cover is that, because there can often be a long delay between an event and a subsequent claim; you need to be covered both at the time of the event and when the claim is made. This means that in order to avail yourself to the protection of an annual policy, you need to renew your policy annually as you are unable to know for certain when a claim would be made against you.

The other policy is the single project professional indemnity policy. The policy is specific to a particular project and policy period is for the whole of the construction period plus the period of maintenance thereafter. If required, it is possible to purchase an 'Extended Reporting Period' extension for a specified period following the expiry of the policy during which any claims or claims circumstances discovered by you can be notified.

Unlike an annual policy, the limit of indemnity under a specific project policy is reserved only for all claims which may arise from work carried out for that project during the policy period. This policy is also written on a 'claims made' basis and subject to the insurer's agreement, a 'run off' cover after the policy period has expired can be arranged.

How much cover is required?

Unfortunately, there is no specific formula to determine the limits to be purchased. The amount of cover/ limit of indemnity required would depend on a realistic assessment of the potential damages and legal costs for which the business could be liable. It is important when choosing the amount of insurance to

purchase that you have considered all factors such as the type of work carried out, the size of work i.e. the construction contract value, assessment of possible exposures and what risk avoidance and/or risk management systems you have in place.

How much does it cost?

The premium will depend on a number of factors such as the limit of indemnity required, the type of work undertaken, fee income, number of qualified professionals and other staff, experience, past claims experience and, specifically for single project policy, the duration of cover. Unlike fire and motor policies, there is no tariff for professional indemnity policies and, as such, each risk has to be underwritten separately and the premiums imposed may differ from case to case.

Information/documents required

For an annual professional indemnity policy, insurers will require a proposal form to be completed, signed and dated for their underwriting purposes. They will quote based on what has been declared in the proposal form.

For a single project professional indemnity policy, a different proposal form needs to be completed, signed and dated. In addition, the following information/documents need to be provided:

1. The title of the contract;
2. The value of the contract;
3. Duration of construction period;
4. Duration of maintenance period;
5. Names of all parties/consultants (if more than one) to be insured;
6. Respective scope of works of parties to be insured and their fees;
7. A copy of the letter of award. If this is not available during the tender stage, a description of your scope of works shall be made available.

Conclusion

Having a professional indemnity policy is no longer considered a luxury, but is an essential financial protection for professionals and, more importantly, for peace of mind.

As an international broker and global leader in risk management, insurance broking, reinsurance and human capital consulting services, we are able to act in your best interests to source and negotiate with reputable insurance companies for the most favourable terms available at the most economical premium.

If you have further enquiries or require further assistance, please feel free to contact us:

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The application form can be downloaded from the IEM website at www.iem.org.my.

Workshop on Lady Engineers in Engineering at University Malaya, Kuala Lumpur on 19 March 2008

By: Engr. Magdalene Tan Lee, FIEM, P Eng.

In conjunction with the IEM Engineering Week from 17-22 March 2008, five committee members of the Lady Engineers Sub Committee, headed by its Chairperson Engr. Chin Lee Leng, held a half-day workshop for female engineering students in University Malaya on 19 March 2008. The other speakers who were present include Engr. Kumari Nalini, Engr. Magdalene Tan Lee and Engr. Dr Maisarah binti Ali.

The workshop covered mainly on topics pertaining to engineering practice by lady engineers. Each committee member keenly shared their experience of working life in the so-called 'male dominated' professional arena. The students were particularly interested to find out if there was any gender discrimination when it comes to promotions or overseas assignments.

As shared by each speaker, there is no perceived gender discrimination. All employers are more motivated by profits and thus, would only promote those who can perform professionally and those who can organise the department most profitably. As such, the speakers emphasised that all lady engineers must first think like an 'engineer' rather than be convinced of their own perceived gender disadvantage.

The students were also told that there were many organisations which appear to reserve certain management functions for lady engineers to head the department. This is because of the proven traits of female personnel who are generally more organised, able to multi-task more systematically and more diligent in their work.

Each speaker, apart from sharing their experiences with the students, also strongly encouraged the female students to practice engineering upon graduation. They were proud of their ability to perform multiple roles as mother, wife, employee/employer and co-worker. Some speakers also shared with the students their pride of being able to contribute their time to serve in IEM and other engineering associations and societies.

The main objective of the workshop is to encourage the students to continue to practice engineering upon graduation and to contribute to professional institutions to further encourage other lady engineers to enter the profession.

The committee members also shared with the students who are soon going to enter the working world that, apart from the daily routine of engaging in the activities of the engineering profession, the committee also found time to visit an orphanage. The committee member found the experience very enriching, and have further plans to assist in bringing up some of the orphans to be useful citizens.

The workshop ended with afternoon tea which was sponsored by the IEM for all participants. The committee would like to thank University Malaya's Working Committee from the Faculty of Engineering for co-organising the workshop, i.e. Engr. Prof. Datin Dr Masitah binti Hasan, Dr Zainah binti Ibrahim, Dr Nor Hafizah binti Ramli, and the students, Nor Aqila binti Zainal, Nurul Ili bin Mohd. Ibrahim, Shazliana binti Idris Shah, Noor Shafeqah Zamri and Suhana Koting. ■