

PROFESSIONAL LIABILITY

Professional Liability is an Errors and Omissions policy. The titles are interchangeable and are used synonymously when spoken about.

Just like in our own profession, it is common for insurance professionals to overlook that we hold a duty of care to consumers because we hold a greater understanding than they do in any one situation. For example, a broker holds a high duty of care to consumers because they hold more information about contract law and insurance procedures and applications. However, in the case of an insurance professional to insurance professionals, there is a lower duty of care as there is an expectation that each professional holds a reasonable amount of knowledge for them to conduct the services that are required of their profession.

Comparison between GL and Professional Liability

A General Liability policy holds 4 main coverages:

1. Bodily Injury and Property Damage
2. Personal and Advertising Injury

3. Medical Payments
4. Tenant Legal Liability

The purpose of the GL policy is to provide coverage to a business for bodily injury, personal injury, and property damage caused by the business' operations, products, or injury that occurs on the business' premises.

It is a coverage that is more clear cut as it refers to either a tangible loss of goods due to the insured's negligent actions or bodily injury to a third party. As a result, claims are more obvious. They can be:

- Slips and falls
- Mental anguish and/or Emotional distress
- Sexual misconduct
- Damage to vehicles due to snow removal
- Wrongful imprisonment
- Wrongful eviction
- Slander/libel

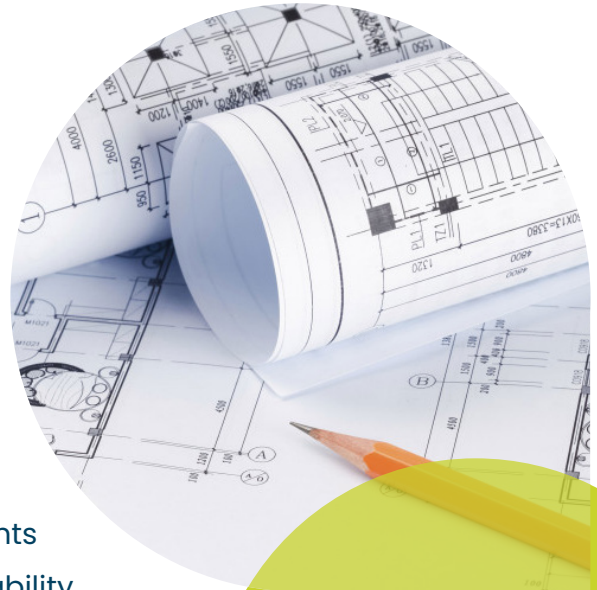
Professional liability insurance provides coverage for the economic damages for claims of liability that arise from

errors, omissions or negligent acts that professionals commit in the course of their professional services.

For the purposes of a professional liability policy, economic damages means financial loss or injunctive relief.

The coverage can be either on a reimbursement basis or pays on behalf of the insured the damages being claimed as well as their defence, if the insurer has a duty to defend the insured.

The definition of financial loss is very loose as it can include the costs incurred





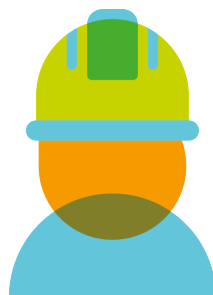
due to a failure to meet contractual obligations, timelines, mismanaged budgets, statutory violations, etc as these can be normal responsibilities to the insured.

Many times policies can hold a crossover of coverage – this is a section of insurance where there could be an argument for coverage on one policy but it is difficult to determine if coverage truly lies in that policy or if there is a better fit elsewhere. This could be because there are similar terminologies that are utilized in one policy and that is used in another policy but the definitions are different between the coverages. Or we, as professionals, have overlooked what the coverage triggers are or we haven't compared where the gaps are between the 2 policies.

An example of where potential crossover coverage could lie would be on Products and Completed Operations and Personal and Advertising Injury on the General Liability policy.

Products and Completed Operations holds 2 coverages:

- Coverage for products that are manufactured and sold by the insured; and
- Coverage for work performed by the insured or services delivered to consumers.
 - This can include work that has not been completed or abandoned; or
 - Work on a job site that was supposed to be completed by a contractor or sub-contractor for the same project; or
 - Providing of or failure to provide warnings or instructions to third parties.



In contrast, Personal and Advertising Injury covers services concerning the insured's advertising of goods and services and to cover off personal injuries. This can include:

- False arrest, detention or imprisonment;
- Malicious prosecution;
- Wrongful eviction
- Libel and slander
- Oral or written publication of material that violates a person's right of privacy;
- The use of another's advertising idea in your advertisement ; or
- Infringing upon another's copyright, trade dress or slogan in your advertisement

But how do these coverages differ from those on a Professional Liability?

- The intent of a General Liability is bodily injury or property damage, not financial damages. To

claim on the coverage, the coverage trigger needs to be met which is proof that the insured's work or actions were due to negligence caused bodily injury or property damage

- We should note that General Liability policies will hold exclusions for Professional Liability, Professional Services or Economic Loss because that isn't the intent of the policy and there are products available to cover off this exposure.

Coverage Triggers:

For a General Liability policy, the triggers are recognizable to all of us:

- Bodily Injury; or
- Property Damage

The policy is generally occurrence- based – which means that the wrongful act needs to take place when the policy was active even if is not currently active.

Professional liability triggers are a bit vague but include language like:

The definition of Claim usually includes the following statements:

- "an oral or written demand for money or services"; or
- "an allegation of..."; or
- even "a circumstance, dispute or controversy which a reasonable person might expect or should foresee could subsequently give rise to a Claim"
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So instead of a list of perils, it will hold open language about in relation to economic losses or services.

A Professional Liability Policy is generally Claims-made or Claims Made and Reported (it's rarely occurrence- based)

- **Claims Made:** the claim needs to be made or first made during the policy period
- In other words: The Service of Suit date needs to be after the inception date of the policy.
- The Reporting Requirement is looser on a Claims Made policy and is usually defined as "As soon as practicable"
- **Claims Made and Reported:** the claim needs to be made or first made during the policy period, but the reporting requirement is generally stricter and limited to a certain period of time

- Due to the policy period limitation on a Claims-Made or Claims-Made and Reported policy, a Professional Liability policy will usually hold a Retroactive Date on it.

The Retroactive Date will establish a time frame that an insurer is willing to go back and cover a loss. However, the Retroactive Date limits when the wrongful act can occur and not just when the claim was received.





Who Needs a Professional Liability policy?

The simplest answer is anyone who holds the duties of a Professional requires an E&O policy. While this is a broad response, the answer is broad as well. Every day people create new jobs for themselves that are less labour- based and are more services rendered based. This means that they consider themselves to be Professional in their industry and should be treated as a professional.

Please note though -- Each industry class has its own set of standards of practice and imposes ethical standards – each of these should be taken into consideration when advising insureds of coverages



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