FAQ's - ICT Professionals

6 Common mistakes or misunderstandings regarding PI Insurance for ICT Professional

Do you think Public or Products policy (General Liability) covers all the risks of your technology business? If so, you're setting yourself up for some hefty liabilities. How hefty? They're the kind of costs that can take a small business to the cleaners.

The General Liability myth is just one of the common misconceptions among small technology businesses. In order to manage all your business's liability risks, and to fully protect your business assets, you need to understand the distinct coverage PI policy offers

Mistake No. 1: My General Liability Insurance Covers All My IT Risks

To put it plainly, it does not. Think of General Liability Insurance as your physical accident protection. It covers losses stemming from medical expenses, property damage, bodily injury to third parties, and defending related lawsuits. This policy excludes losses due to negligence, programming mistakes, and other errors - in other words, it won't cover claims related to the services you provide.

PI Insurance covers mistakes you may make, AND WE ALL DO SOMETIMES. It's the Malpractice Insurance for your IT business. PI Insurance covers you when a client accuses you of making professional errors, including…

- Mistakes, oversights, and negligence in service.
- Failure to provide a service.
- Good faith violations.
- Under delivery.
- Documentation errors.
- Mismanagement.
- Misrepresentation of facts.

For example, say you contract to deliver a revamped website to knock your client's competition cold, and then, before the agreed deadline, you lose part of your key design team and wind up delivering late. Sure enough, your client holds you responsible for lost sales and leads caused by the delay. Your General Liability Insurance won't cover that - but PI Insurance will.

Mistake No. 2: I Don't Need PI Insurance Because I Don't Make Mistakes

You're fooling yourself if your business plan is built on perfect scenarios - everyone makes mistakes. As good as you are, you can't possibly guarantee perfection, and it's unwise to try. And what about the work of your employees or contractors? You can't be everywhere at once.

Mistakes happen; some are big, some are little, but you can count on them happening, and the PI policy tailored for your company will cover whatever level of risk is run by your organization.

Another point to keep in mind is that you don't have to do anything wrong to be sued. An upset client might sue whether or not you've actually done anything wrong - and the cost of defending yourself can be significant. PI Insurance covers those legal fees, keeping your business assets safe.

Mistake No. 3: I Don't Need PI Insurance if I'm Just Providing Advice

As a consultant, your professional advice is just as much a part of your service as installing software or designing an e-commerce site.

For example, if you recommend a computer program that doesn't pan out, your client could blame you directly for that software failure. You could face a charge that your recommendation caused serious loss of time and money to your customer's business - and that charge might have a big, fat “R” sign attached to it. Consulting liabilities pose a significant risk for any small company, especially those in the technology sector. The costs to defend against any claim, even if it's groundless, can run the gamut from significant to monumental. Those are the kinds of potential losses that most small tech firms cannot afford to cover.

Mistake No. 4: I Can't Afford a PI Policy for Every Employee and Contractor.

You don't have to. Your PI policy can be crafted to fit the size and scope of your IT firm, including employees and independent contractors. If you make use of part-time or volunteer help, such as interns, PI Insurance can cover them all.

Mistake No. 5: I Work from Home, Which Lowers my PI Risk.

Your base of operations changes nothing when it comes to potential risks. The client who thinks you jacked up his database couldn't care less whether you work in your living room or on the moon - he's still going to want you to pay for correcting damage and the cost of lost business.

You're asking for serious trouble if you rely on Homeowners and General Liability policies to cover all your IT liabilities. PI Insurance will protect your home business, even when you're on the road.

Mistake No. 6: All PI Policies Are Alike, So Low Price Wins.

This misconception is similar to the General Liability myth. And that's not to mention the idea that you get what you pay for. This is especially true in insurance. The stakes are too high to settle for anything less than a PI Insurance policy tailored for your company. Just the same, make sure you carefully review your needs with PIFRS to get adequate coverage for your operations. A programmer designing restaurant software runs a different level of risk than a company designing healthcare databases.

Below is a list of generally asked questions. If you would like more information please send an email to: PravashnieP@pifrs.co.za

A PI Policy (as well as D&O and Malpractice) provides cover on a “CLAIMS MADE” basis.

What does “CLAIMS MADE” mean?

The policy provides cover for “claims made”(and reported to insurers) **during the period of the insurance policy only.**
A claim or circumstances that the insured was aware of before the policy period would not be covered. Similarly a claim after the policy period has expired would not be covered.
It is therefore of the utmost importance to report matters to insurers as soon as you become aware of them. This could be in the form of a summons, allegations of negligence, threats of legal action or even just verbal criticism.

Even if you renew your policy any known matters must be reported prior to the renewal. If you intend changing insurers this is even more important.
Once a claim or circumstance has been reported then insurers are obliged to protect the insured even though the policy period might expire and not be renewed.

What about Prior Acts or Services provided <u>before the policy period?</u>

This is covered by the provision of a RETRO-ACTIVE date.

What does the RETRO-ACTIVE date mean?

There are 3 scenarios:-

1. When a policy is taken out for the first time the cover will be effective either from the first day of the policy period or from a RETRO-ACTIVE date that you may choose. Normally a RETRO-ACTIVE date is selected by a Professional who has been delivering services to Clients over many years and wishes to be covered for any actual or alleged errors that might have occurred prior to the first policy period but which he is not aware of at the time of taking out the insurance. There is a once-off additional premium for this.

2. When a policy is renewed or even moved to a new insurer you still benefit from the same RETRO-ACTIVE date you chose on your first policy. And this will continue for as long as you maintain your cover in force, no matter how many years back it might be. Again, the timeous reporting of claims or circumstances is extremely important.

3. If a policy is allowed to lapse you will lose the benefit of the automatic "free" RETRO-ACTIVE date. If you wish to re-instate the cover you will have to apply for a new RETRO-ACTIVE date (if that is what you require) and there will be an additional once-off premium payable.

What is the definition "Negligence" or "Negligent Act"?

The commonest definition is "when a person has departed from the conduct expected of a reasonably prudent person acting under similar circumstances" - he may then be accused of Negligence or guilty of a Negligent Act. In law this is termed "Delict".

The hypothetical "reasonable person" provides an objective by which the conduct of others can be judged.
The law considers a variety of factors in determining whether the person has acted as the hypothetical reasonable person would have acted in a similar situation. These factors include:-

- The knowledge, experience and perception of the person,
- The activity the person is engaged in,
- The special skills required. If a person engages in an activity requiring special skills, education and training, the standard against which his conduct will be measured is the conduct of a reasonably skilled, competent and experienced person who is a qualified member of the group engaging in that activity – often an authorised group (by statute of law) such as Lawyers, Doctors, Engineers, Architects, Financial Services Providers and Accountants.

What is Contractual Liability as opposed to Negligence or Delictual Liability?

Contracts between Parties often impose additional obligations on Parties that go beyond what is normally contemplated in Common Law.
A PI policy will <u>not</u> normally cover liabilities arising under Contract (as opposed to Delict) as they extend the potential liabilities of the Parties (and their Insurers) beyond what Insurers are prepared to underwrite and accept. In certain circumstances Insurers are prepared to underwrite the Contractual Risks provided they are given all the information they require to either accept or reject the risk. For example Warranties,Indemnities and Guarantees.

What to do in the event of a claim,accusations from a Customer or another Party or you become aware of potentially damaging circumstances?

1. Do not make any statements or admission of liability or blame.
2. Contact PIFRS immediately you are able. We will assist you.
3. Do not enter into any correspondence regarding the accusations or allegations – refer the matter to PIFRS. We will deal with it.
4. Try to stay on reasonable terms with the Plaintiff – avoid "road rage".
5. Do not make reference (to the Plaintiff or anyone else) to the fact that you have "insurance."

Limit of Indemnity. Each & Every Claim and In the Aggregate

This is the maximum amount for which you will be covered in the event of a claim against you. It must be sufficient to cover both the Damages that may be awarded against you plus the Legal Costs incurred by you and, most likely, the Plaintiff's/Claimant's Costs as well.
Bearing in mind the high cost of the best legal protection, particularly in the event of a court action running at upwards of R 150 000 per day in 2014 terms, you need to make sure that your limit of Indemnity is sufficient to meet the most serious of claims against you. Otherwise your personal assets will be under threat.

The Limit of Indemnity can be applicable on 3 bases:-

- Each and Every Claim – which is the best
- In the Aggregate for the policy period – the least attractive,
- In the Aggregate plus “automatic reinstatements’ – the second best.

What do the above mean?

- Each and Every Claim means that your Limit of Indemnity remains intact no matter how many claims you have,
- In the Aggregate means that the Limit of Indemnity is the TOTAL amount for which you will be covered during the policy period for all claims against you. The major problem with this is that once a claim or circumstance is reported to insurers, even if it is a spurious or an unlikely claim, insurers will “reserve” an amount against the Limit of Indemnity and you may then not be covered for a subsequent more “serious” allegation.
- In the Aggregate plus automatic reinstatements means that insurers will “reinstate” or “top-up” your Limit of Indemnity up to a pre-agreed (and pre-paid for) number of times in the event of claims. Again, if you may be subjected to multiple claims the your Limit of Indemnity could be exhausted.
  Unless you specifically ask for it, Insurers will in most cases apply the “In the Aggregate” basis.

Legal Expenses

Your PI policy will cover Legal Expenses incurred in defending or settling a claim against you.
But they must be pre-agreed by insurers and/or the matter must handled by Insurers.
Do not incur legal costs without insurers consent in writing or they may not be recoverable under you policy.