

Professional Indemnity Insurance

For many professions carrying PII is a requirement of their professional body and many professional appointments insist on it as, put simply, mistakes happen. In some instances these mistakes can be remedied promptly and with no or minimum cost. Unfortunately, sometimes the consequences can be significant. Should something go wrong then PII provides your business not just with an indemnity but also access to the necessary expert advice to support you and help resolve the problem.

The cost of obtaining advice and investigating or defending a claim can quickly escalate. Without the necessary insurance cover your business would be liable for these costs.

With the Government's increasing focus on improving health and safety in the construction industry, and the recent wholesale changes to the Construction (Design and Management) Regulations 2015 ('CDM 2015'), it is now more appropriate than ever to ensure your business is protected against the ever increasing risk of potential claims.

What is covered by PII?

What is covered will vary depending on the policy provider. Typically, however, PII policies cover:-

- the costs of remedying a mistake;
- the cost of investigating and defending any claim in legal proceedings which are brought against you;
- the cost of mitigating a potentially larger loss or exposure;
- the cost of any damages you become legally liable to pay to another party;
- payment of your unpaid professional fees should waiving your fees avoid an otherwise legitimate claim being made against you;
- the cost of complying with a HSE audit and any Fee for Intervention costs;
- the cost of replacing or restoring lost or destroyed documents where this may avoid an otherwise legitimate claim;
- the cost of defending a HSE investigation or a criminal prosecution for an alleged breach of HSE or Data Protection legislation;
- the cost of any claim made against you for an Intellectual Property infringement;
- access to a legal telephone advice helpline for queries relating to a claim or potential claim;

Potential Exposure

There are a number of different circumstances which may give rise to a claim. Here we highlight some of the types of claims often covered by PII. However, please check the scope of the cover provided by your policy carefully with your broker as not all policies are identical.

Criminal

Whilst PII will not cover the cost of any fine imposed on you, your costs of complying with a criminal investigation may be covered. As may at least part of the cost of instructing expert legal representation in the defence of a criminal prosecution relating to a breach of health and safety legislation.

Further PII policies will often cover your costs for representation at an investigation or enquiry ordered by the HSE and any Fee for Intervention (FFI).

Civil

In 2015 the HSE reported that the average cost of a work related injury was £7,500, a work related illness was £18,700 and a work related fatality was £1.6m.

For those who take on a professional duty to advise the construction industry on how to safeguard against the risk of injury - and in particular anyone appointed as a **Duty Holder** pursuant to CDM 2015 - the most likely claims will arise when an injury occurs or when your client is faced with a criminal prosecution.

A *Principal Designer / Principal Designer Advisor* has a professional duty to plan, manage and monitor the pre-construction phase and co-ordinate matters relating to health and safety so as to eliminate, mitigate or control the foreseeable risks. If an injury occurs, the injured party may allege that the **Duty Holder** breached their duty of care to safeguard them from injury. They may seek compensation for their injuries.

Alternatively, the HSE may investigate and prosecute your client for a breach of health and safety legislation. Your client may then seek to recover from you their costs of dealing with that prosecution. That could be in addition to any damages and costs they may have been ordered to pay as a result of a successful prosecution.

PII will indemnify you for both the *cost* of expert legal advice who will investigate and seek to resolve the matter on your behalf as well as any *damages* you become legally liable to pay.

Mitigation Costs

Often, where a mistake occurs, the loss can be mitigated or avoided if steps are taken immediately. PII will usually cover the cost of such steps providing the mistake amounts to

a notifiable circumstance, and in mitigating the loss you avoid an otherwise more substantial claim. For example, should you need to hire in additional staff or equipment following an incident - and thereby avoid or limit an inevitable claim for delay, loss or expense - insurers may well pay the cost of the additional staff or equipment, providing the cost does not exceed the cost of any otherwise valid claim.

Being proactive and working with your client to mitigate any loss may also help preserve good working relations.

Disputed Fees Cover

Often, a first resort when things go wrong is for your client not to pay your fees. Provided your insurers are notified, and they believe that by not pursuing payment of your fee from the non-paying party you may avoid a valid claim being made against you for more than the disputed fee, then Insurers will reimburse your fee.

Loss of Documents Cover

You may accidentally lose or damage documents. Replacing or restoring those documents may be expensive, particularly if they were the only copy. Say you were provided with a client's existing health and safety file and your office was damaged by a fire. The documents may be lost or damaged beyond reasonable use as a result and your insurers would pay the cost of replacing or restoring them if this would avoid an otherwise valid claim.

Infringement of intellectual property rights

Many businesses use a website or produce marketing literature which contain texts and images and, from time to time, these are subject to intellectual property rights. The law relating to infringement is complex and should you find yourself faced with a claim for infringement many policies will cover the cost of defending those proceedings and any damages you become legally liable to pay.

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Legalrisks are the Appointed PI Insurance Brokers to The Association for Project Safety.