

What is Professional Liability?

Often referred to as Errors & Omissions or “E & O” insurance, professional liability insures a person and/or an entity (corporation, LLC, LLP, partnership, etc.) against claims made by third parties (clients, customers, etc.) alleging negligence while rendering professional services, or failure to provide a proper level of professional services. In such cases “negligence” can be loosely defined as the failure to provide the degree of knowledge, care or skill expected of the average professional. Essentially, anyone or any firm that claims to be experts in a particular field can be held responsible for their work, advice, or counsel.

For many years, professional liability insurance was mainly associated with academic professions such as medicine and law. However, the scope has broadened in recent years to include anyone who claims to be an expert in a particular field. If the expert is paid for his or her expertise, he or she can be held responsible if things don't turn out as expected.

Professionals are expected to possess extensive technical knowledge or training, and to perform the services for which they are hired according to the standards of conduct in their profession. If they fail to use the degree of skill expected of them, they can be held legally responsible for any harm to people, property or businesses that results.

A common misconception is that liability can be avoided simply by establishing a corporation, a limited liability company (LLC), or another type of limited liability entity, and should a claim be made, bankruptcy is an easy escape route. This is not the case. Most professional liability claims are based on a personal service. While the contract may have been made with a corporation, a person provides the actual work or advice. The claim usually names both the entity and the individual(s) involved.

Professional Liability vs General Liability

Even if you are maintaining general liability coverage, you are probably not protected against a professional liability claim. General liability typically does not cover professional liability unless a specific endorsement is added to the policy.

An easy way to understand the difference between general and professional liability in lay terms is to say that professional liability covers your opinions. If you offer an opinion about a tree's hazardous condition, that opinion is covered under professional liability. If you say a tree is safe and there is an accident later, for example, a branch falls and injures someone, you would be covered by your professional liability (same as errors and omissions insurance), assuming you have this coverage. If you don't have professional liability insurance and turn the claim into your general liability insurance company, you can expect them to deny the coverage.

If you are working on a site topping a tree which results in damages to the property, that would be a general liability exposure and is covered by a general liability policy. You do not have to be physically on site to have these exposures. If you uproot a tree and leave it overnight and someone falls into the hole, it would be considered a general liability exposure and claim.

Professional Liability in a New Era

The insurance industry has developed specialized products and services for many professions, including landscaping and tree service businesses.



Professional liability is a specialty business requiring considerable expertise. The risk to a professional's reputation and associated issues gives rise to a number of special policy provisions involving legal defense. Loss control services are tailored to the unique activities and claims exposures of the insured.

The best course for professionals is to work with brokers and/or agents who are familiar with insurance and specialty insurance. They can provide them with specialized insurance products designed specifically for their profession.

Case In Point

A Northeastern tree service set out to service a client that needed a tree taken down. The tree service severed numerous branches from the crown of the tulip poplar tree in preparation for it to be taken down. However, the tree, at least 300 or 400 years old, was not the tree to be removed. The tree service inadvertently stopped at the wrong location, which happened to have a similar address and similar tree on the property.

The residents of the property and owners of the tree filed suit against the tree service, which acknowledged full responsibility for the error. Experts for both sides were brought in to assess the damage. It was determined that the tree could survive following its wrongful disfigurement. However, there was still loss exposure to the tree service because of the age and rarity of the tree and the extensive changes in its appearance.

The damage to the tree could have meant irreparable harm to the tree service. While the tree could survive, a hefty loss could destroy the company. But not only was the tree saved, so was the company, thanks to its insurance broker. The broker had advised the tree service to purchase a professional liability endorsement to cover the unique errors that a tree service can make while performing normal business operations such as cutting down the wrong tree, spraying the wrong property or location, and over-spraying.

Errors & Omissions Endorsement to General Liability Policy

Know the Laws of Your Area

With state and local governments constantly adding and amending environmental legislation throughout the country, it is difficult to stay abreast on all the laws that impact the green industry. To further complicate matters, many municipalities impose legislation that is specific to a given area or a certain species, and do not notify the affected parties.

Case in Point:

When a West Coast municipality outlawed the cutting of oak trees in the region, it was not widely publicized. A licensed arborist, learned about this new law the hard way when he cut down an old oak tree at the homeowner's request. The homeowner, also unaware of the recent legislation and associated penalties, was ordered by the city to pay thousands of dollars in fines. The homeowner, in turn, blamed the arborist stating that he should be aware of the laws affecting his industry and should therefore be responsible for the fines.

The arborist was lucky that, on the advice of his broker, he purchased the Errors & Omissions (E&O) Endorsement to his general liability policy and was covered. **(In some cases a separate policy may be required.)** Though it is critical to understand all of the laws governing the region you work in, sometimes it is not possible to know everything affecting your profession. This client learned firsthand how having the right insurance coverage can protect you from the unknown.

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MOST GENERAL LIABILITY POLICIES - E&O - IS VERY LIMITED COVERAGE, READ THE ENDORSEMENT!



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- ◇ Business Auto
- ◇ Commercial General Liability
- ◇ Equipment Coverage
- ◇ Workers' Compensation

- ◇ Disability
- ◇ Health
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- ◇ Long Term Care
- ◇ Retirement Plans

- ◇ Errors & Omissions Endorsement
- ◇ Professional Liability

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Professional Liability Coverage

Actual Case In Point