



CLAIMS EXAMPLES

A FOCUS ON PROFESSIONAL LIABILITY CLAIMS

In recent years, there has been substantial growth in the demand for professional liability (errors and omissions) insurance. This increase in demand has been attributed to a number of factors, the major one being the spread of a more litigious attitude within society that has led to a greater number of lawsuits against professionals. Additionally, the tendency of U.S. courts to award higher judgments against professionals has spilled over to Canadian courts, which have a propensity to follow U.S. trends.

The need for professional liability insurance arises from the legal duties that are owed by professionals to their clients and other third parties. These legal duties may be based on contract law, tort law (negligence) or statutory law.

A professional is someone who:

- has or shows great skill
- is an expert
- is a skilled practitioner
- conforms to the standards of a profession

Professional liability insurance offers protection from claims arising from alleged negligent acts, errors or omissions on the part of a professional in the performance of a service to a third party. For an action to succeed, there must be a duty of care owed to the claimant by the professional. It is the breach of this duty that can expose the professional to financial liability and hence trigger the policy.

The following claims examples demonstrate the importance of professional liability insurance coverage as a key component of effective risk management practices.

Printer's Labels Cause Large Recall

A printer specialized in printing self-adhesive labels for its customers. A detergent manufacturer hired the printer to provide self-adhesive labels that would be applied to various detergent containers during the production process. Although the labels initially appeared satisfactory, after 24 hours had passed, the manufacturer found that many of the labels were curling and peeling off the containers. Unfortunately, by this time, the containers were not only in the manufacturer's warehouse, but also in various distribution warehouses and on the shelves of several retailers. The manufacturer notified the printer of the problem and of their intention to hold the printer fully responsible for its costs.

The printer notified its insurer; the claim was for the costs to the manufacturer of locating and recalling all of the affected product, and the removal and re-application of the replacement labels. The total loss was \$250,000.

Travel Agent Fails to Provide Timely Notice

A travel agent booked an exotic, "all inclusive" two-week trip for an individual. Prior to departure, the individual became ill and, although she had not purchased cancellation insurance, she did notify the travel agent immediately that she would be unable to travel. At this time, there were several staff members away on vacation at the travel agency's office, and so the agent was not able to notify the travel company for several days. At the time the travel company was so notified, they advised the agent that the individual was now past the date at which a partial refund would have been available. The agent then confirmed to the individual that there would be no refund.

The individual was very angry and advised the travel agent that she would hold them responsible for this loss.

The travel agent notified its Professional Liability insurer and, upon investigation, it was found that had the travel agent notified the travel company promptly, the individual would have been eligible for a refund of 50% of the cost of the trip. The travel agent was deemed to have been professionally negligent and the insurer paid for the costs of the investigation and the partial trip refund.

Arbitrator Not Impartial

Two parties to a very adversarial dispute hired an arbitrator to resolve their disagreement. At the conclusion of the arbitration, the arbitrator found wholly in favour of "Party A", awarding both damages and legal costs. Party B was very upset with the arbitrator's findings and felt that both the decision and the amounts awarded were too one-sided. Party B decided to pursue legal action against the arbitrator, alleging that the arbitrator was unduly and unfairly biased towards Party A. Party B was seeking a dismissal of the arbitrator's decision.

The arbitrator notified his Errors and Omissions carrier. The insurance company's investigation revealed that the arbitrator was a personal acquaintance of Party A—a fact that the arbitrator did not disclose at the outset of the arbitration proceedings.

Although the arbitrator's decision was not entirely negligent, because of the conflict of interest it was deemed that the decision be dismissed. A new arbitration was commenced, and the insurer paid for the related costs.

Personal Counsellor Not Liable

An individual hired a personal counsellor to assist him in resolving some mental health issues. The individual, a recovered alcoholic, had had a traumatic childhood and was now having emotional difficulties as a parent himself. He hoped that the counsellor's advice would help him cope with his past and become a stable, positive parent. Upon attending several counselling sessions, many early childhood memories came back to the individual. The individual was unable to deal with the vividness of these memories, and began experiencing suicidal thoughts and resorted to drinking as a means of coping. He then lost his job.

The individual sought legal counsel, and decided to launch a negligence action against the counsellor. The individual alleged that the counsellor did not recognize how vulnerable his emotional state was and how harmful his childhood memories would be. Furthermore, he alleged that the counsellor failed to ensure that he had a suitable support network in place to assist him while he was undergoing counselling.

The Professional Liability insurer defended the counsellor, and the courts found that there was no direct, causal link between the counselling services rendered and the harm suffered by the individual. The claim amounted to over \$50,000 in defence costs.

Trisura Professional Liability Insurance Class of Business Appetite

We underwrite all risks on an account by account basis, taking into consideration the unique risk characteristics of each submission. We apply our underwriting expertise to any class of business in order to find a solution, with a focus in the following classes:

- Alternate Dispute Resolution Services
- Auctioneers
- Bookkeepers
- Claims Adjusters
- Computer Consultants
- Court Reporters
- Expert Witnesses
- Forensic Accountants
- Human Resource Consultants
- IT Consultants
- Management Accountants
- Management Consultants
- Media Liability Accounts
- Meeting Planners
- Personal Counsellors/Social Workers
- Placement Agencies
- Property Appraisers
- Property Managers
- Relocation Consultants
- Tax Preparers
- Translators
- Travel Agents
- Web Development & Design
- And Many More....

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Trisura Guarantee is a subsidiary of Trisura Group Ltd., a leading international specialty insurance provider operating in the surety, risk solutions, corporate insurance and reinsurance segments of the market. Trisura Group has three principal regulated subsidiaries: Trisura Guarantee Insurance Company, Trisura International Insurance Ltd. and Trisura Specialty Insurance Company. Trisura Group is listed on the Toronto Stock Exchange under the symbol "TSU".

Refer to your policy for complete details. In case of inconsistency between this document and your policy, the policy terms, conditions and limitations will apply.