

What Safety Professionals Need to Know About Buying Professional Liability Insurance

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As business owners we are all accustomed to buying insurance for our businesses. As a rule the business risks we want to insure are not difficult to understand for those of us in the risk assessment and accident prevention business. We buy auto insurance, homeowners', umbrellas, business owners' policies, maybe workers' compensation, healthcare, disability and so forth. As a rule these coverages are pretty standard; all that varies are deductibles, limits and sometimes waiting periods.

For some reason the need for professional liability insurance is a difficult concept especially for new entrants into the consulting business. Throughout my career I have heard endless rationalizations of why consultants don't need to buy the coverage. Perhaps the most common is "I am incorporated". They don't understand that the coverage is for the "professional service" they provide and list in the policy via the application for insurance they submit. Professional liability insurance covers "unintentional" mistakes in what was done as well as "unintentional" errors of omission in what was not done. The reason safety professionals need this coverage is quite simple. In our legal system if you are alleged to have done or failed to do anything that is a breach of the standard of care in our profession and that breach causes damage someone will likely sue your company for damages. When you are sued whether or not you were negligent you have to have legal defense. That is one of the expenses a professional liability insurance policy covers. I think those that want to ignore this necessity have no idea of how expensive legal defense can be. As someone who works in this field I can tell you that it doesn't take long to go through \$100,000 in legal expenses. To those who say they don't need the coverage all I can say is that legal defense will cost more money than most of us have lying around to cover a business oversight. The naïve might also think "I will just ignore this suit and it will go away." Wrong again, if you don't respond a judgment will probably be entered against your company whether or not there was negligence on your part. All you would accomplish by ignoring the suit is to admit negligence.

The common question is "what limits of coverage do I buy?" That question has two answers; what do my clients require and how much do I need to protect my net worth? Consulting firms who deal with major multinational corporations can expect a requirement to maintain several million in coverage. That can be very expensive. A business decision must be made as to whether your consulting business can be profitable after the additional insurance expense. If the cost can be passed along that works, if it can't it may not.

Another subject that is a frequent issue is a client's desire to become an "additional insured" on the consultant's policy. A lot more can be said about this issue than I am going to discuss here but suffice to say it is often not a good idea for either party. Additional insured means that the policy limits are divided by the number of parties to the insurance contract. I have always tried to offer a certificate of insurance and avoided making a client an "additional insured." That way the limits available to me are not diminished.

Professional liability insurance is much more difficult to buy because of several differences it has from the rest of the coverages I mentioned. The first and probably the most significant difference it has is that it is virtually always written on a "claims made" basis instead of an "occurrence" basis. That means if you have a claim reported the day before or after your policy was in force you have no coverage. In occurrence coverage if you have a claim reported today that occurred 5 years ago whichever insurance carrier you had at the date of the occurrence is responsible to cover the claim.

You must always buy what is called "tail" coverage with professional liability insurance back to the initial date when you first started buying coverage to be sure you have no gaps in coverage that will leave you uninsured for some period of time. Also, when you decide to sell or close your business you will need to buy this tail for several years to make sure you have coverage for any claims that have not yet been reported. Buying this "tail" coverage is the closest you can get to approximating having occurrence coverage.

Coverage for safety professionals has always been problematic. To understand why this is true you need to realize that insurance policies are written in two different ways, standard forms and manuscript policies. Generic professional liability policies are mostly standard forms and are generally pretty much the same among all carriers. Manuscript policies are custom written for the policyholder or group they insure to cover their unique risks.

Over the years, I have been offered professional liability insurance by many insurance brokers. Unfortunately, some of the policies I bought were a waste of money because they would not have covered my most likely causes of loss from safety consulting. You may ask "how can that be?" The answer goes back to the discussion above about standard form and manuscript policies. The safety consulting profession is a very tiny segment of the business world at large. As a result the standard form policies that are out there are not written to cover our unique risks, they were written for accountants, insurers, etc. We need coverage from accidents that will result in bodily injury and property damage. These are both excluded causes of loss on the standard professional liability policy. You may go to any number of insurance brokers and they will sell you something called a professional liability insurance policy but the problem is it won't cover your business risk because it was not written to include that risk.

In other words just because you find a broker that will sell you a professional liability insurance policy your investigation is not over, it has just begun.

Anyone that buys this insurance by price alone is naïve. What you bought may be of no value to protect your risk. It is important to use a reputable insurance broker who knows your risk and will properly protect it. They must give you a policy that does not exclude loss from bodily injury and property damage. When you have that discussion with a broker I suggest you get that assurance from them in writing. Buying from a broker offers another level of coverage in that they carry errors and omissions as well. So if they make a mistake in how they cover your business they also have insurance to cover the loss.

Our group's unique exposure is one of the reasons a group policy specifically written to cover our unique risks is attractive. That being said, my broker's review of our association program revealed the ASSE program excluded loss from property damage. That would have been a problem, for instance, to any of our members who did fire protection work. When I brought this to the attention of our association broker they said they would amend the coverage.

Generally, association programs are advantageous for coverage and price but only if the group is homogeneous; unfortunately our group is not. There are those like myself who do mostly litigation consulting and little accident prevention consulting at the other extreme those who do only construction safety consulting and auditing. The difference in exposure between those extremes is vast. It cannot help but have those of us with little risk subsidizing those with greater exposures to loss. For this reason the association program is not a complete solution either unless the program is large enough to be properly underwritten to fairly price each member's actual exposure to loss.

Another issue we must all be aware of is how these policies are priced. Generally, professional liability is written on a gross annual sales number as a measurement of exposure. Most policies are written with \$100,000 annual sales as a minimum premium level. If your sales are below that, you won't get a discount but if your sales reported to the carrier are above that number you will most likely be charged additional premium.

In summary, following are considerations you need to address in buying professional liability coverage for your safety consulting business:

1. Do I have "tail" coverage back to the date I started safety consulting?
2. If I'm retiring or closing my business how long should I buy "tail" coverage?
3. Does the policy I'm going to buy cover losses resulting from bodily injury and property damage? If it doesn't its useless.

4. Has my broker evaluated this policy and answered the above question affirmatively in writing?
5. Does my broker carry errors and omissions insurance?
6. What limits of liability should I buy?
7. Do I need to add additional insured's?
8. Where does this policy premium fall in the spectrum of what I have evaluated?
9. If I'm looking at a professional group policy what type of exposure do the members have? How is that likely to affect my future pricing in the program?
10. How will my policy be underwritten? Will it be based on my experience or the group as a whole? Many group policies are not individually underwritten at all.
11. What are my annual sales? This will be the premium cost basis. Generally the sales estimates provided on your application are not audited.
12. What is the minimum premium sales assumption in the policy I am looking at? Does it give me some room to grow without increased premium costs?
13. Read, discuss and understand the exclusions on the policy before you buy.

Buying professional liability insurance is not as easy as buying other business coverages; however, it is not a daunting task either once you know what you need to buy. One of the most important partners you can have in this endeavor is a trusted insurance broker who values your business and understands your risk. Therefore, the beginning of this journey must start with the selection of an insurance broker for your business. I happen to be married to mine but that is not essential to the search. After that renewals are simply an annual assessment of what is available and how much does it cost.