



## Why is Errors & Omissions Cover Necessary?

### Expert Opinion

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Professionals owe certain duties to their clients by virtue of the special skills, knowledge, and expertise that characterize their chosen occupations.

The need for professional liability insurance stems from these duties which may be based in tort law, contract law, or statutory law.

**Tort Law:** A professional has to exercise a standard of care that would be considered reasonable for people in his or her profession. However despite having best of the systems, negligence in providing the professional services can creep in.

Negligence can arise in the act of rendering professional services or advice, in which case it would be classified as an act of commission or an error.

Negligence can also result from the failure to render professional services or advice, in which case it would be classified as an omission.

To prove negligence in an E&O claim, a plaintiff must prove four things.

- The defendant owed a legal duty to the plaintiff.
- The defendant breached that duty.
- The plaintiff suffered actual financial harm.

- The financial damage was proximately caused by the breach of duty.

Disproving any one of the four elements creates a successful defense against a negligence claim. For example, a design firm may argue that it did not breach its duty to the client because its work was performed at a level similar to what would be expected of other professional design firms. Other common defense used by professional to fight negligence claims include following:

- ***Contributory or comparative negligence:*** if the party bringing the claim can be shown to have contributed to his or her own damages, a decrease the size of the judgment to the plaintiff.
- ***Assumption of risk:*** in some cases, clients may have knowingly and voluntarily taken on a risk. They cannot come back and sue for damages if the risk they assumed comes back to bite them.
- ***Statues of limitations:*** allegations of professional liability must be brought within a specified time from when the alleged negligent action occurred. The actual time frame varies from state to state and by the type of negligence alleged.

**Contract Law:** when professional agree to take on a job for a client, they create a contract with legal obligations related to the performance of the service or services. If the professionals fail to uphold their end of the contract and the client suffers harm, a lawsuit can be brought seeking damages, which can be categorized as one of the following:

- ***Compensatory damages:*** These are meant to make the plaintiff whole. In other words, the damages should equal the actual value of the plaintiff's loss.

- **Consequential damages:** These arise as a consequence of the error or omission, such as loss of profits when software malfunctions and prevents a business from accessing key data.
- **Liquidated damages:** These are stipulated in the contract, specifying how much will be awarded if the contract's terms are not met. Agreeing in advance to what damages would be paid is one way to help prevent disputes from going to court, but could raise coverage issue in an E&O policy as will be discussed later in this report.

**Statutory Law:** Historically, statutory law has not been a major factor in E&O liability, but that is changing. The Sarbanes-Oxley Act of 2002, for example, was passed following a number of high-profile corporate scandals and is likely to have a significant effect on the relationships that accountants, lawyers, and financial professionals have with their clients. Sarbanes-Oxley and other measures that have been proposed in response to the various corporate scandals of the past few years also target the role of corporate directors and officers. Some disputes are likely to arise as insurers - and, ultimately, the courts - decide whether particular cases are rightfully matters concerning E&O coverage or directors and officers (D&O) coverage.

For more information on Professional Indemnity Policy, write to us on [info@optima.co.in](mailto:info@optima.co.in)

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