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The world in which professional service providers operate is one of ever-increasing pressure with demands for quick answers and cost-effective solutions. This pressure can lead to errors and omissions in the rendering of professional services which in turn can lead to claims. These factors, together with the increasing litigious nature of society, underscore the need for the protection afforded by Professional Indemnity Insurance (PI).

Professional indemnity insurance provides the insured - usually the practice - with indemnity in respect of the liability arising out of negligent acts, errors or omissions that may occur within the conduct of their profession. It is important to understand that a professional indemnity policy provides indemnity in respect of legal liabilities and that moral liability and commercial considerations carry no weight in determining whether or not the policy will respond.

Professionals need to adopt a pragmatic approach to the question of such liability when discussing professional appointments. Claims can arise out of the provision of professional services and as such thought needs to be given to the risk exposure, risk management and risk transfer on any appointment.

The Attorneys Fidelity Fund has provided PI cover to all practitioners practising in South Africa since 1972. In 1991 the Act was amended in such a way that the Attorneys Fidelity Fund was empowered to form and administer a public company to provide insurance cover to practitioners in respect of claims arising from their professional conduct. In 1993 the Attorneys Insurance Indemnity Fund (a non-profit company) was registered. Through this vehicle the Attorneys Fidelity Fund has since provided a primary layer PI cover to practitioners.

“Top-up” cover for Legal Practitioners

Aon Professional Risks provides cover in excess of the Attorneys Insurance Indemnity Fund cover, referred to as top-up PI. Our professional risks team members are specialists in liability programmes with a reputation for innovation and servicing the specific needs of our professional client base. Aon draws on the expertise of our qualified

attorneys within the professional risks business unit to provide qualified risk management and claims handling.

Essentially, a “top-up” PI policy provides catastrophe insurance designed to protect the assets and good name of a professional person by providing the funds to procure first class legal advice and expert witnesses, together with the funds to settle any claims where liability is proven.

Unlike the fire, theft or money policy where the subject matter of the insurance is easily identifiable and capable of being valued, the indemnity offered by the PI policy is not as easily explained. Whether or not a particular event is covered will always be determined by the unique circumstances. However if the policy is current and there has been a negligent act, error or omission in the conduct of the profession, which results in damages, for which the insured is liable at law, then subject to the policy exclusions and conditions the claim would be met.

The PI policy will also pay for all costs, fees and expenses in investigation, defence or settlement of any claims made against the insured as well as the costs of representation at any hearing, inquiry or any other proceedings which may be relevant to any claim made or which might be made against the insured.

Perhaps the most important part of the topic of PI concerns the handling of claims - not only by the insurer but also by the claimant. For our present purposes the word “claims” shall mean that chain of circumstances commencing with notification to the insured (the legal practitioner) of a circumstance likely to give rise to a claim through to the insurer closing his file. A claim comes into existence in one of three ways:-

- The insured is advised verbally or by letter of the third party’s intention to sue,
- The insured receives a summons,
- The insured becomes aware of a circumstance which may give rise to a claim.

In all of the above situations the insured is obliged to give notice as soon as possible to the insurers and this will usually be done via the insurer’s brokers. On receipt of the notification of a circumstance or claim the insurer will seek to establish a strategy for handling the problem. This may range from pro-actively taking steps to remedy the problem to adopting a wait-and-see attitude.

If a letter of demand or summons has been received then the insurer will as a matter of course establish and confirm the following:

- Is the policy in force? This may seem obvious but there will be no point in incurring costs if the policy was not in force.
- Is the insured liable to the claimant? An assessment of the extent of the liability of the insured (legal practitioner) will give an indication of the steps to be taken.

The actual settlement of claims will depend upon the course of action circumstances demand. Frequently claim settlements are protracted affairs taking many months, if not years, should it be necessary for the matter to go to court.

Other Key Insurance for Legal Practitioners

A further important area of insurance which is normally discussed in conjunction with PI for legal practitioners is that of Misappropriation of Trust Money and/or Property Insurance. Misappropriation of Trust Money Insurance provides cover in respect of any theft by any principal or employee of trust money and/or property as defined in the Attorneys Act.
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Blake, JC BCom LLB, Renade Attorneys, Klerksdorp, 30-3-2012.
Bloom, A BA (Hons) LLB, Gordon Stevens & Ranchhojee, Johannesburg, 1-10-2012.
Blumberg, L LLB, Dyason Attorneys, Pretoria, 1-3-2012.
Boonzaaier, CA LLB, Serfontein Viljoen & Swart, Pretoria, 15-3-2012.
Booysen, NC LLB, Wits University Law Clinic, Johannesburg, 21-2-2012.
Bopape, MMR LLB, Maponya Attorneys, Pretoria, 26-1-2012.
Bosch, M LLB, Klyneveild-Gibbens Inc, Potchefstroom, 13-2-2012.
Botes, C BCom LLB, Meyer Van Sittert & Kropman, Klerksdorp, 6-3-2012.
Botha, S ST LLB, Van Aswegen & Co Inc, Johannesburg, 14-12-2011.
Botha, MT BSC LLB, Botha Attorneys, Johannesburg, 15-12-2011.
Botha, N LLB, Blean & Co Inc, Johannesburg, 29-6-2012.
Bottin, R BCOM LLB, Whalley Van der Lijn Inc, Johannesburg, 7-12-2011.
Bowens, M LLB, Lapen Attorneys, Potchefstroom, 11-10-2011.
Brink, MCM BCom LLB, Wessels Theron Inc, Pretoria, 8-12-2011.
Braxton, M LLB, Liebenberg & Sutherland Inc, Johannesburg, 8-9-2011.
Breed, CJH LLB, Buhrlen Attorneys, Pretoria, 5-3-2012.
Breedt, C LLB, Bosman Attorneys, Polokwane, 6-10-2011.
Brits, A LLB, Kruger & Okes, Nigil, 7-12-2011.
Brooks, RK LLB, Webber Wentzel, Johannesburg, 3-10-2011.
Brouwer, S LLB, Van Aswegen & Co Inc, Johannesburg, 3-1-2012.
Burger, WJ BA LLB, Molefe & Molefe Attorneys, Pretoria, 3-11-2011.
Cassim, G BCom LLB, Mothe Jomba & Sadiba Inc, Pretoria, 12-4-2012.
Cawood, MD BCom LLB, Eversheds, Johannesburg, 16-4-2012.
Chauke, FH LLB, Moleto-Stoffel Inc, Johannesburg, 17-11-2011.
Chauke, GP LLB, Legal Aid Board, Pretoria, 14-11-2011.
Chauke, MV1 LLB, Molthanka Inc, Roodepoort, 30-1-2012.
Chavala, P LLB, Baloyi & Rikhotso, Giyani, 7-12-2011.
Choate, IJ BA LLB, Webber Wentzel, Johannesburg, 12-4-2012.
Cingo, NE LLB, Venter Attorneys, Johannesburg, 17-1-2012.
Clark, BS BCom LLB, Newtons Inc, Pretoria, 29-3-2012.
Clayton, DP BSc LLB, Levin Attorneys, Johannesburg, 10-12-2012.
Clotee, DJ BCom LLB, Weavind & Weavind Inc, Pretoria, 19-3-2012.
Coetjez, DJ LLB, Kriek Attorneys, Roodepoort, 21-11-2011.
Coetzee, A LLB, Moller & Co Inc, Johannesburg, 26-3-2012.
Coetzee, Z LLB, Bekker Brink & Brink Inc, Ermelo, 19-3-2012.
Combrink, C LLB, Dyason Attorneys, Pretoria, 23-1-2012.
Crookson, JMM LLB, Christodoulou & Mavrikis Inc, Johannesburg, 5-4-2012.
Cundell, C LLB, Bart Meaden & Co Attorneys, Johannesburg, 19-1-2012.
Dhedha, MDS LLB, Lazzara-Leicher Inc, Johannesburg, 9-3-2012.
Da Silva, CPS BA LLB, Knowles Husain Lindsay Inc, Johannesburg, 6-2-2012.
Dahms, M LLB, Du Toit Smuts & Mathews Phosa, Nelspruit, 17-4-2011.
Danson, OA MA LLB, Adams & Adams, Pretoria, 22-1-2012.
De Beer, JM BCom LLB, Snyman Inc, Krugersdorp, 1-3-2012.
De Figueiredo, S LLB, Niselow Attorneys, Johannesburg, 8-3-2012.
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De Klerk, Y LLB, Mills & Groenewald Inc, Vereeniging, 1-11-2011.
De Klerk, MCH LLB, Mclaren Attorneys, Johannesburg, 15-3-2012.
De Ponte, T LLB, Pienaar Inc, Pretoria, 3-10-2011.
De Saio José, RJ LLB, Botha De Plessis & Kruger Inc, Johannesburg, 12-1-2012.
De Sauty, E LLB, Creighton & Associates Inc, Fonteinefontein, 8-12-2011.
De Vries, SR LLB, Vorster Attorneys, Tzaneen, 5-12-2011.
De Wet, B LLB, Cilliers Reinders Inc, Centurion, 7-8-2011.
Deeta, N LLB, Van Der Walt & Mortimer Inc, Pretoria, 29-3-2012.
Dharsey, S LLB, Maitin Attorneys, Johannesburg, 13-1-2012.
Dilaugh, N LLB, Webber Wentzel, Johannesburg, 12-4-2012.
In terms of section 26 of the Attorneys Act, No. 53 of 1979 ("the Act"), the primary purpose of the Attorneys Fidelity Fund ("the Fund") is to reimburse members of the public who may suffer pecuniary loss consequent upon the theft of money or property entrusted to a practitioner in the course of his/her practice as such, or where a practitioner acts as executor or administrator in a deceased estate, or as a trustee in an insolvent estate, or in any similar capacity. (AFF website)

In addition it must be noted that this cover is different to Fidelity Guarantee cover which normally forms part of your general short-term insurance cover for your firm.
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