

technologyreport

Information & Risk Management Ideas for the Technology Industry

Don't Get Caught Uninsured!

It wasn't supposed to happen—but it did. A computer technician made a mistake in July 2006 and accidentally deleted the applicant list for the State of Alaska's \$38 billion oil-funded account. Not only did he wipe the drive clean, but he also accidentally reformatted the backup drive. Plus, the backup tapes turned out to be unreadable.

Fortunately there were paper backups. But 800,000 electronic images were gone and the error cost the State of Alaska over \$220,000 to rectify.

Think it couldn't happen to you? Think again. Whether you provide custom programming, data processing, system design, Web design, or some other technology service, there's always the possibility that someone working for you could make a mistake that costs your client money. Even if it's not your fault. For example, if someone hacks into your client's system six months after you've installed new software, they may believe it's your fault.

In this day and age, every technology firm should have professional liability insurance. The policy is specifically designed to pay for "those sums in excess of the deductible that the insured becomes legally obligated to pay as damages because of any wrongful act to which the insurance applies."

"Damages" is typically defined as "monetary judgments, which the insured shall become legally obligated to pay to others or settlements negotiated with the approval of [your insurance company]."

If you're like many tech firms, your clients may require you to purchase

liability insurance as a condition of the contract. So you may tend to comply with the contract terms, purchase insurance, and then either cancel your policy when the contract is over to avoid paying any more premiums or just decide not to renew your policy when it lapses.

The problem: without insurance, you lose your protection—but not your risk of being sued.

Savvy Risk Management

Professional liability insurance operates on a claims-made basis. This means that you're only covered for a claim if you have a policy actively in force when the claim is made. The business reality is that there is often a lag between when a project ends and when a disgruntled client files a claim. A claim is typically defined as "any suit or written demand by any person or entity seeking to hold the insured responsible for damages as a result of any wrongful act actually or allegedly committed by the insured or by any other person for whose wrongful act the insured is legally responsible."

The information technology professional liability policy is designed to offer an automatic 60-day extended reporting period before your insurance officially lapses. "When you're thinking about renewing—or not—your professional liability insurance, an automatic extended policy reporting period lets you reflect on pesky matters that might come back to haunt you if you let your coverage lapse," says Jeffrey Hirsch, a partner with Kissel Pesce Hirsch & Wilmer, LLP. "Insurance is a risk management tool, and the decision to buy professional liability insurance is a proactive one. If and when your company needs it, you get a great return on

investment compared to the hassle, time and cost of defending a lawsuit yourself."

There are typically two ways to protect yourself against lawsuits after your insurance lapses:

- Renew your policy
- Purchase an extended reporting period

Obviously, the simplest solution is to keep your insurance policy in force.

If you're certain that you won't need professional liability insurance anymore (if you're getting out of the tech business, for example), then you should consider purchasing an extended reporting period (ERP). Commonly referred to in the industry as tail coverage, an ERP allows an insured to report claims for an extended amount of time, after the policy period ends (usually one year). The wrongful acts that caused the claim must have occurred between the retroactive date and the expiration date of the insured's policy.

Like a full-fledged professional liability policy, tail coverage is designed to protect your business against the risk of a lawsuit. The premiums are traditionally the same as an annual policy, and the full year must be paid up front, so it's only a good choice if you're certain you won't need the insurance in the future.

The bottom line is that insurance is just that—protection against unintended consequences. You may think your clients are all happy customers—but are you willing to gamble with your livelihood? ♦

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