

Miscellaneous Professional Liability Claim Scenarios



We can show you more.®

PROFESSIONAL SERVICES

Easily cover your clients against a wide range of expenses and claims

Give your professional service customers greater peace of mind with CNA Miscellaneous Professional Liability (MPL). Designed to broaden the scope of a typical professional liability policy, CNA MPL covers companies and individuals against economic loss resulting from errors. It also covers your clients against claims of negligence, inaccurate advice, misleading statements and breach of duty.

Review the claim scenarios below and discover how many thousands of dollars in defense and settlement costs these professionals could have avoided with CNA MPL as an enhancement to their Professional Liability policy.

Coverage scenarios:

Management Consultant

The Facts: A manufacturer retained a management consultant to evaluate operational efficiencies and provide recommendations to streamline production and reduce staffing costs. The consultant recommended a restructuring plan, which introduced a new staffing model and supply chain management process.

Risk Factors: The capabilities of several of the manufacturer's key suppliers changed after the plan was drafted. The consultant provided revised recommendations to the client, which the client ignored, causing delays. It took 18 months to fully implement the plan, during which several key employees resigned due to frustration with the process.

The client sued the consultant, alleging that the consultant had not fully investigated the supply chain issues and had used unrealistic assumptions in the plan, leading to \$150,000 in additional costs to get new suppliers in place and \$350,000 in lost profits due to the inability to meet customer demand during the transition. The investigation revealed that the revised recommendations provided to the client were not communicated in writing, and written reporting during the implementation phase was insufficient to fully defend the consultant in this matter.

The Bottom Line: In the absence of detailed written communications with the client evidencing both the nature and timing of the consultant's recommended changes to the plan, defending the matter would have been difficult. The business owner and founder would likely have been viewed sympathetically at trial. The matter was resolved prior to trial and settlement as well as defense costs totaled approximately \$135,000.

Call Center

The Facts: A call center provided 24 hour service to a number of different businesses, including tow truck operators, parts distributors, physicians and dentists. Operators were trained and provided with protocols for responding to calls received for each business.

Risk Factors: Employee turnover at the call center was high. New employees were hired and trained monthly. At times, more experienced operators were asked to review the protocols with new employees and mentor them until training could be completed. Call volume was heavy weekend evenings and at times, callers were placed on hold and sometimes were even disconnected.

The Bottom Line: Repeated calls made by several businesses requesting tow services were disconnected or not answered. At times, customer information received by the call center was lost, incorrectly communicated, or delayed in transmission to the client. The businesses cancelled their contracts with the tow service, resulting in a loss of more than \$150,000 in annual revenues. Upon discovering this, the tow truck company fired the call center and filed suit, alleging negligence in handling the calls, and seeking recovery of lost profits. \$12,000 in defense costs were incurred, and the case settled prior to trial.

Human Resources Consultant

The Facts: A small construction contractor hired a consultant to perform outsourced human resources consulting services, including recruiting seasonal trades people such as electricians. As the business grew, eventually 12 electricians were hired full time during busy season.

Risk Factors: Because work was seasonal, the contractor was sensitive to holding down overhead costs. In earlier years, the electricians were hired as independent contractors and would fill in as needed for the employer but were able to work as well for other contractors. As business improved, these became full time summer positions. Because the electricians were treated as independent contractors, IRS form 1099 was issued to them yearly for tax reporting purposes.

The Bottom Line: The state labor department audited the contractor and determined that the electricians were improperly classified as independent contractors for several years. The results were shared with the IRS and the Department of Labor, resulting in enforcement actions against the contractor and lawsuits filed on behalf of the electricians, alleging they were wrongfully denied payroll benefits. The client in turn sued the consultant for the costs incurred in responding to the enforcement actions, and filed cross claims for indemnification and contribution in the lawsuits filed by the electricians. The matter was litigated and resolved prior to trial. Defense costs and indemnity totaled approximately \$250,000.

Notary Public

The Facts: A notary routinely executed documents for clients as required to enter into business transactions or secure licensing. A lawsuit was filed against the notary by an entity alleging that certain grant deeds included her signature purportedly on its behalf. The entity alleged that due to the notary's alleged negligence, property was transferred when it should not have been. The claims investigation revealed that the notary's signature and stamp were forged on the documents.

Risk Factors: Notaries are subject to the risk of fraud, as they certify the identity of the parties signing documents.

The Bottom Line: The notary was able to prove that their notary stamp and signature were falsified. The matter was dismissed. \$9,000 in defense costs were incurred.

Public Relations Firm

The Facts: A business hired a public relations firm to assist in promoting the opening of their new concept restaurant, which used local and sustainably produced foods. The contract included a confidentiality provision.

Risk Factors: The client business had launched two previous concept restaurants which failed, and recruited a new investment group to fund this venture. They also recruited a local celebrity to help raise the visibility of the project and provided him with an ownership interest in lieu of payment for services.

The Bottom Line: The public relations firm created an advertising campaign for the business, using social media and live appearances by the celebrity to raise interest and local news coverage of the opening. The public relations firm coached the celebrity prior to appearances and provided him with scripted comments.

An investigative reporter ran a news story highlighting alleged misrepresentations made by the business in their prior business ventures regarding the use of locally sourced foods. The public relations firm managed the social media response for the client. The celebrity was arrested on drunk and disorderly charges at a local bar, and was recorded making slanderous remarks about the investigative reporter and restaurant suppliers, alleging the information was provided by employees of the public relations firm. The remarks were posted on social media.

The client sued the public relations firm, alleging breach of confidence and breach of contract. \$75,000 in defense costs were incurred prior to reaching a negotiated agreement to dismiss the complaint and waive all outstanding fees.

Advertising Agency

The Facts: An advertising agency in a mid-size city created and produced television commercials for a local used car dealer. Employees and family members of the client appeared in the commercials with a puppet that served as a mascot for the client.

Risk Factors: The puppet was handmade by a family member of the client. The advertising agency allowed the client to script the onscreen appearances with the puppet. With the client's permission, clips from some of these commercials were posted to a social media website and promoted by the advertising agency through other social media sites and use of email lists provided by the client.

The Bottom Line: A puppet manufacturer became aware of the clips posted on social media and sent a cease and desist letter to the client, alleging copyright infringement related to both the design of the puppet and a slogan attributed to the puppet in the advertisements. The client honored the cease and desist order, but fired the advertising agency and sued for the costs it incurred with a new agency to develop an entirely new campaign. \$30,000 in defense costs were incurred, and the matter was settled confidentially.

Franchisor

The Facts: A franchisor of commercial home cleaning businesses expanded operations to a new geographic area. Franchisees were provided with training and marketing support, and were contractually required to meet minimum performance criteria (MPC) based on sales and growth.

Risk Factors: The franchisor had no experience operating in the targeted geographic area, and used financial projections prepared by an accounting firm in the area to set MPC. Franchisees were attracted by the low cost of entry, and typically had little prior experience operating a business.

The Bottom Line: One of the franchisees filed suit against the franchisor, alleging fraudulent inducement and misrepresentation pertaining to the financial projections and statements made regarding business growth opportunities. Other franchisees joined the lawsuit, which remained pending for more than 3 years. \$150,000 in defense costs were incurred. The case was settled prior to trial.

For more information on Miscellaneous Professional Liability, contact your CNA-appointed agent or visit www.cna.com.

