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eSentry's new Annual Contract Works and Single Project Contract Works insurance policies can now be easily extended to include the new Section 3 coverage for Professional Indemnity which is a market first

eSentry recognises that a typical builders activities may include some level of Professional Service for Project or Construction management. Unlike other insurers that may only recognise 'Professional Service' when there are fee activities'. As long as these activities are duly noted within the project's construction contract then we will deem these as Professional activities under our Professional Indemnity Basis of Coverage Definition.

All three Sections (Material Damage, Legal Liability and Professional Indemnity) are issued under a single aligned policy. This means:

- > Coverage does not have the gaps common where separate policies are issued (and sometimes by different Insurers).
- > Your job is easier as you can still get a quote and bind cover by our simple on-line application process.
- > Our competitively priced combined policies now provide brokers with a seamless solution for your SME construction clients, making eSentry the market leader.

Risk Appetite for projects up to \$20 million

- > Residential and Commercial Projects
- > Industrial and Institutional Projects
- > Office / Retail Fit-out and Refurbishment
- > Residential Owner Builder Projects
- > Low Deposit Pay As You Go Annual Cover Alternative

New Policy Benefits

- > Australian Standards DE4 Compliant Wordings
- > Broader Sub-Limits including Full Limit Vibration Cover
- > Options for Either Run Off or Transfer Basis Annual Wordings
- > Automatic Temporary Structures Coverage
- > Affordable Add-on Professional Indemnity Section with \$1m, \$2m, \$5m and \$10m Limits
- > Low Minimum Premiums

Security is provided by Tokio Marine

- > APRA Approved Insurer - Trading in Australia for over 50 years
- > 7th Largest General Insurer in the World
- > Standard & Poors Rating AA-
- > Highly Experienced, Efficient and Local Claims Handling

eSentry Professional Indemnity Insurance

eSentry Professional Indemnity Insurance was created to complement our existing suite of construction insurance products (Single Project, Annual Transfer Basis & Annual Run-Off Basis) for material damage and legal liability construction exposures.

It is designed to provide a basic level of Professional Indemnity cover for builders, who may have an exposure to losses as a result of any professional act, error, omission of the insured and/or parties for who they are vicariously liable (subject to the policy wording). In addition, the policy also covers defence costs relating to the defence of any claim (in the insured's name and on their behalf), regardless of if the claim is false, groundless or fraudulent.

How can a builder be exposed to a Professional Indemnity loss?

Any builder who is involved in:

Design, including advice in relation to design, in accordance with all the relevant building, construction or engineering codes and standards;

Drafting;

Technical Calculation;

Technical Specification;

Construction and Project Management;

Programming and Time Flow Management;

Quantity Surveying and /or

Land and Engineering Surveying

Has a potential Professional Indemnity exposure. The E-Sentry Professional Indemnity Insurance policy (in addition to the

Material Damage and Legal Liability cover) also provides additional cover for:

Claims made under Competition and Consumer Acts (alleging misleading, deceptive or likely to deceive conduct under the terms of the Competition and Consumer Act 2010 (Cth) or any other Fair Trading Legislation of any State or Territory of Australia in the conduct of professional services.

Continuous Cover - Cover is provided for the failure of the named insured to notify a fact or circumstance (subject to Section 40(3) of the Insurance Contracts Act 1984 (Cth)) that would have been covered under the same or similar type of cover to that afforded under the E-Sentry PI wording.

E-Sentry will accept notification of the above if this is advised in writing during the period of insurance. Any subsequent claims arising out of the circumstance, regardless of when the claim is actually made against the named insured, shall be deemed to have been first made against the named insured on the date E-Sentry was advised in writing of the fact.

However, there are provisos in connection with the operation of this additional cover. These are:

- 1) Only applies if the named insured has been continuously insured (without interruption) with E-Sentry for liabilities covered under the PI section between the date the named insured first became aware of the fact or circumstance and the commencement date of the period of insurance; &
- 2) Liability for the claim would have been covered under an earlier policy on the date you became first aware of the fact or circumstance, but for the late notification, and is also covered under the E-Sentry policy;
- 3) Indemnity for claims may be reduced by the amount of prejudice suffered by E-Sentry as a result of the late notification;
- 4) The maximum amount payable for this additional cover is the lesser of the limit of liability shown for this section & the limit of liability available under the earlier cover current at the time you first became aware of the fact or circumstance.

Policy exclusion 4.8.2 relating to prior claims or circumstances does not apply to the above.

This additional cover allows for certain claims with respect to the retroactive date, subject to the above provisos.

Cover is also provided for **Intellectual Property**. Any claim alleging infringement of intellectual property rights in the conduct of professional services. Intellectual property "shall mean all existing and future intellectual property rights throughout the world in whatever media, whether registered or unregistered and whether or not capable of registration, including copyright, trademarks, trade names, domain names, brand names, slogans, logos, emblems and designs (and all applications or renewals for the protection or registration of these rights) together with all confidential information concerning trade secrets, know-how, formulae, methods or routines and other proprietary technology".

Loss of Documents - cover is also provided for any claim against the named insured for any physical loss, destruction or damage of documents and the reasonable costs incurred by the named insured without prior consent, to replace such documents. Documents "shall mean a document of any nature whether written, printed or reproduced by any method including computer records, designs, drawings or electronic data, in the named insured's possession or control but does not include Money".

Principal's Indemnity - Cover is extended to include the principal (to the extent that the named insured is contractually required) for any claim first made against the principal and notified to E-Sentry during the period of insurance arising out of any error, act or omission in **the conduct of professional services by the named insured for the principal**, within the territorial limits, in connection with any construction or building project falling within defined building types.

There are, however, provisos to the cover. These are:

- 1) Any claim would be treated as if made against the named insured and would be entitled to coverage under this section;
- 2) E-Sentry to have conduct and control of all claims the principal seeks cover for from the named insured;
- 3) E-Sentry will not indemnify the principal in respect of claims arising out of their own act, error or omission.

Vicarious Liability - This additional cover extends cover to include claims made against the named insured and notified to E-Sentry during the period of insurance, alleging an act, error or omission by **an agent in the conduct of professional services** within the territorial limit in connection with any construction or building project falling within the project types. No cover under this section extends for the agent's own liability nor will E-Sentry be restricted from seeking recovery from any agent.

Claim Examples

As with all PI policies, the E-Sentry PI cover is provided on a “Claims Made” basis. With claims made policies, the policy that is in place at the time of the claim being made responds to the loss, regardless of when the professional act, error or omission occurred (subject to a retroactive date being in place {also known as a prior acts date}, which serves to limit the cover to claims made after the retroactive date).

EXAMPLE 1

Mrs Smith alleges personal injury as a result of the construction of a new house built by ABC Constructions, resulting in paralysis.

At the time of notification of the incident, the director of ABC Constructions had over 30 years construction experience.

The project commenced 15/01/07 & was completed 15/01/08.

Mrs. Smith alleges that the design of her rear patio steps were erroneous, resulting in her slipping, thereby leading to her falling and breaking her back. Following preliminary investigations undertaken by her legal team, it is ascertained that the design of the steps were altered on by ABC Constructions, which led to the steps being narrower than first thought.

The date of Mrs. Smith’s fall was 13/11/09.

ABC Constructions were notified of the incident on 25/5/14.

E-Sentry was notified of the incident on 26/5/14.

ABC had a policy with E-Sentry, as follows:

Annual Construction (Run-Off Basis) Material Damage, Legal Liability & Professional Indemnity policy

Inception Date: 30/03/13. Due Date: 30/03/15.

Retroactive Date*: 20 years retroactive from the above Due Date.

Retroactive Date is the date shown in the schedule and is found in all PI policies. It is designed to limit the period in which a claim can be made for a past event.

Limit of Liability: \$10,000,000, Excess: \$1,000

Will the policy respond?

Yes.

The policy will respond as Mrs. Smith’s potential claim triggers all four requirements for a Professional Indemnity policy for the following reasons:

- 1) The insured must be notified of a claim or potential claim during the period of insurance (in this instance, ABC were notified of the potential claim on 25/5/14, well within the period of insurance, the policy being due 30/03/15);
- 2) The insured must advise the insurer during the policy period (ABC advised E-Sentry on 26/05/14);
- 3) The act, error or omission must occur after the Retroactive date noted in the policy schedule (the alteration to the design took place during the construction phase, this being between 15/01/07 & 15/01/08. This falls within the retroactive date of 30/03/05 – 20 years from the current due date of 30/03/15);
- 4) The act, error, or omission must fall within the professional services definition as defined in the policy (The erroneous alteration of the design of the steps falls within the definition of “professional services” as described in the General Definitions Applicable to All Sections).

EXAMPLE 2

Mr. Jones alleges personal injury as a result of the construction of a block of units undertaken by 123 Constructions, resulting in a broken leg.

At the time of notification of the incident, the director of 123 Constructions had over 20 years’ construction experience, including 5 years drafting experience.

The project commenced 23/08/07 & was completed 23/02/09.

Mr. Jones alleges that the design of his rear balcony was incorrect, resulting in him slipping, breaking his leg. Following preliminary investigations undertaken by his legal team, it is ascertained that the “fall” of the balcony (designed to remove excess water) was altered by 123 Constructions, which led to the angle of the fall being less than required in the initial design. The draft-work for the fall was done by the director of 123 Constructions.

The date of Mr. Jones’ slip was 14/10/10.

123 Constructions were notified of the incident on 25/02/13.

E-Sentry was notified of the incident on 26/05/14.

123 Constructions had a policy with E-Sentry, as follows:

Annual Construction (Run-Off Basis) Material Damage, Legal Liability & Professional Indemnity policy

Inception Date: 30/03/13. Due Date: 30/03/14.

Retroactive Date*: 20 years retroactive from the above Due Date.

Retroactive Date is the date shown in the schedule and is found in all PI policies. It is designed to limit the period in which a claim can be made for a past event.

Limit of Liability: \$10,000,000, Excess: \$1,000

Will the policy respond?

No.

The policy will not respond as Mr. Jones’ potential claim does not trigger all four requirements for a Professional Indemnity policy:

- 1) The insured must be notified of a claim or potential claim during the period of insurance (in this instance, 123 were notified of the potential claim on 25/03/13, well within the period of insurance, the policy being due 30/03/14);
- 2) The insured must advise the insurer during the policy period (123 advised E-Sentry on 26/05/14, OUTSIDE the policy period, the policy not being renewed beyond 30/03/14);
- 3) The act, error or omission must occur after the Retroactive date noted in the policy schedule (the alteration to the design took place during the construction phase, this being between 23/08/07 & 23/02/09. This falls within the retroactive date of 30/03/04 – 20 years prior to the current due date of 30/03/14);
- 4) The act, error, or omission must fall within the professional services definition as defined in the policy (The erroneous alteration of the design and draft work for the balcony falls within the definition of “professional services” as described in the General Definitions Applicable to All Sections).

If you are looking for a second-to-none service and a wealth of industry experience and knowledge, contact Adrian Martin, Chief Executive Officer or contact Tony Spall, Victorian Business Development Manager. To obtain an online quotation, simply register at our website and/or login to esentry.com.au

eSentry Underwriting Pty Ltd is an underwriting agent of the Insurer Tokio Marine & Nichido Fire Insurance Co., Ltd. (TMNFA) and acts under its own AFSL as agent of TMNFA

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