

What Have the Doctors, Drugstores, Realtors, Lawyers.... Forgotten About the Internet... BUT Plaintiff Attorneys Remembered?

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Everyone is taking advantage of this new medium. The Internet will give us all opportunities, including the plaintiff attorneys.

The Internet revolution has started. Many professional firms that are conducting business on the Internet are not addressing their professional exposures. There are currently dozens and dozens of medical advice web sites, as there are dozens and dozens of legal, insurance, accounting, and real estate. If you are in the services industry and have a web site, your firm and senior management need to address the numerous exposures that are associated with conducting business utilizing the Internet.

The traditional professional E&O/malpractice underwriters usually are not interested in the e-professional exposures because they extend beyond the historical brick and mortar of professional perils. Most E&O underwriters' treaties do not address the bulk of Internet exposures.

When addressing the e-professional exposures of an Internet services firm, one must consider a number of important insurance coverages. One of the largest areas of concern is the "contextual" liability that arises from the errors and omissions that exist in the web site text. Contingent bodily injury and property damage now become a real concern, for example: a content provider ISP has a "health" page that provides "simple remedies" for everyday illnesses. However, because of an allergic reaction the "remedy" causes a worse injury. This scenario illustrates a contingent bodily injury that arose out of the site's text (i.e.: contextual liability). Because "hacker/cracker" unauthorized access to web sites always leaves the possibilities that the text of web sites will be altered, this exposure should be addressed via insurance protection. Be sure that any insurance protection purchased covers employees (usually disgruntled when committing an unauthorized entry), and external including but not limited to competitors. Internal "cracking" (malicious activity vs. hacking which is prompted by an intellectual objective), is the most frequent, although cracking for anti-competitive and political statement purposes are growing rapidly.

The global nature of the Internet means that contextual liability has no boundaries and material posted on one's web site can turn up anywhere in the world. Hence, because of the ease of the Internet the "problems" become international in seconds. In the brick and mortar environment E&O/ malpractice can often be minimized. This is not true in a quick and global Internet environment. With over 250 million people having Internet access and sharing information, what once was a contained problem can now become a disaster for a professional firm overnight.

The Internet also adds legal jurisdictional issues. Take any of the e-professionaI exposures (real estate, medical, legal etc.) and just in the United States there are usually 50 state laws to be addressed. Multiply that with the number of countries and one can easily see the massive potential of legal issues.

It is important to recognize the global exposure that the Internet processes. What was at one time limited to one or a few individuals is now communicated to the world in a manner of seconds. Historically, an accident in the operating room was limited to that individual. When a medical, accounting, real estate or law firm makes an e-mistake it could affect millions of individuals without the ability to correct. Once a message is sent through the Internet or posted on a web site thousands, if not millions of readers multiply the damage.

Even many B2C sites can have a professional (E&O) exposure. B2C sites targeted to “mothers” often have an “Ask The Doctor” page. Even if the site has a hold harmless from the doctor, the site will surely be a co-defendant in any litigation arising out of the misinformation. The same is true with law firm web sites with a bulletin board or an “Ask The Lawyer” page.

Most of the current “cyber liability” policies do not address this exposure yet the exposure is very real.

The contextual liability, although a relative new legal theory, is gaining momentum and the plaintiff attorneys are very interested in the massive potential it has for class action lawsuits. Getting proper coverage must be at the top of these firms’ list of insurance concerns. Often the limit purchased is not enough for the volume of “hits” these sites experience. In addition, the counters at the bottom of these e-professional sites only enhance the plaintiffs’ class action possibilities. When seeking cyber liability coverage make sure the professional exposures are being addressed in a way that matches the Internet exposure that comes with the territory.

The insurance industry in general has been slow to address the many perils that arise out of the Internet. And most of the few insurance products available are still being fine-tuned or using a traditional approach on a new environment of perils. Be careful when purchasing e-insurance. Seek experts or open yourself and your clients to unpleasant surprises. What the doctors, realtors and attorneys do not know WILL hurt them.