

Create a Defensive Strategy to Protect Your Business

Even without making a mistake, the decisions and recommendations you make in your professional duties can result in you being named in a lawsuit. It happens all the time, and the costs to defend yourself can be devastating. Even if the suit has no merit, the resulting legal defense costs can be sizable. Consider the opportunity costs or intangible costs if sued:

- Loss of billable or working hours as you spend time defending yourself and your company
- Office morale negatively affected
- Adverse impact on business relationships and community reputation
- Possible publicity

The Opportunity of Loss

If a business experiences a loss due to your mistake or one of its own, you may inadvertently be involved in a whirlwind effort to recoup costs. In the chemical consulting field, it is not unusual for companies facing a financial loss to seek redress from their consultants. The claims made against you may or may not be a result of your work.

That means if you were involved in contract work that later resulted in regulatory fines, a product liability lawsuit, a bad real estate investment, or other similar circumstances, you could find yourself facing your client in court—even if you did not commit any error, omission, or negligence in your service to your client.

If you faced these allegations, would you be prepared? Can you afford a defense? Do you have the protocols in place to protect yourself?

The Case for a Good Defense

Consider these three claims scenarios, showing the range of exposures in the professional liability arena.

- 1) A company brought legal action against its chemical consultants for erroneous lab results. The company claimed that its client used the results to provide an environmental assessment for a piece of property. However, after the sale, the company's client discovered that the land and structures needed environmental remediation. The company brought suit to cover the loss to its client.
- 2) A company retained a consultant to provide advice on fire and explosion risks at a factory. After new fires occurred at the factory, the client alleged that it had implemented the insured's recommendations. The client asserted damages from the fire and claimed the consultant was negligent and in breach of contract.
- 3) A company hired a consultant to repack an EPA-regulated fungicide made by another entity, a fact that was not initially shared with the consultant. As a result, filings with the EPA were in error, and the client sought \$281,000 in legal fees, fines, and other expenses from the consultant. This was despite the fact that the company originally concealed the source of the fungicide. The case was settled in mediation for \$175,000.

Professional Liability Insurance Helps Mitigate Risk

These cases show how consulting chemists can become embroiled in complicated legal cases alleging failure to properly perform a job and committing an error or omission that led to a client's financial loss.

Professional liability insurance protected these consultants. A professional liability insurance plan covers defense costs for civil cases, including when legal action turns out to be groundless. It does not include coverage in criminal cases.

General liability policies typically cover more direct forms of harm, such as damage to property or life, and do not cover these types of cases. This is why professional liability insurance is necessary to protect you and your business.

Practical Advise

How can you protect yourself?

- Always keep detailed records of every aspect of each consulting job you do. Include what you did, what the client told you to do, and also what you did not do (and why).
- Keep track of any training or professional guidelines and policies you have. These can come to your defense in negotiations pre-trial or in court.
- Have your own professional liability insurance, even if you are covered by your employer. Odds are you will not be insured for any independent consulting work you perform outside of the scope of your official position.
- Seek out a professional liability insurance plan that includes:
 - A dedicated claims attorney with experience handling claims related to chemical consultants.
 - A range of liability limits and deductibles, suited to your exposure.
 - A policy underwritten by a strong insurer.

Even if a company commits fraud or negligence on its own part, a chemical consultant may need to create a strong defense to demonstrate they did not have a role in the company's downfall.

Taking practical precautions and having the right insurance policy in place can help protect your business and finances.

Explore Your Options

With a wide variety of liability limits and deductible options, the Professional Liability insurance program through the ACS Member Insurance Program offers flexibility to fit your budget. Specifically developed for chemical consultants, the program also offers a dedicated claims attorney and premium financing options. Visit the acs.haysprograms.com website for more information and to request a consultation.

ACS Member Insurance
Protecting Life's Elements

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Questions on professional liability insurance coverage?
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