

What is Miscellaneous Professional Services (MPS) Coverage?

MPS is written to:

- Protect the company from errors and omissions that occur in the company's rendering or failure to render professional services; and
- Help the company monitor and provide defense costs associated with responding to lawsuits; and investigations.

Why Companies Should Consider Buying MPS Coverage?

- Cost of defending corporate lawsuits may exceed the net worth of most companies;
- Judgments can be financially crippling;
- Errors and Omissions can cause irreparable harm to a company's reputation;
- Errors and Omissions can quickly impact the finances and operations of a company;
- Commercial General Liability policies are not adequate to respond to all liability matters; and
- Companies will have a difficult time attracting new clients without MPS coverage.

Current Business Trends Point to Purchasing MPS Coverage

- Increasing demand by clients; and
- Economic uncertainty.

What are the Sources of MPS Claims?

- **Clients:**

- Error or Omission
- Misrepresentation
- Breach of contract
- Negligence in the performance of professional services
- Failure to render professional services
- Personal injury (i.e. libel/slander, invasion of privacy, etc.)

- **Competitors:**

- Personal injury (i.e. libel/slander, defamation, invasion of privacy, etc.)

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Sample MPS Claims: *(The following examples are for illustrative purposes only.)*

Real Estate Broker:

Plaintiff alleges negligence, breach of contract, breach of a covenant of good faith and fair dealing arising from their real estate broker's execution of closing documents of its residential property.

Defense costs exceed \$50,000.

Collection Agent:

Agent is retained to pursue a borrower who has defaulted on school loan payments. Agent contacts borrower, who advises that the loan is not theirs. Agent sends follow up correspondence to the borrower seeking to collect the balance. Once again, the borrower responds by advising collection agent that the delinquent loan is not theirs. , Borrower retains counsel and commences a suit, alleging violation of Fair Debt Collection Practices Act.

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Property Manager:

Owner has undertaken project to repair 5 elevators. Cost of project is \$500,000. The repair company is to be paid \$100,000 as each elevator is completed. The property manager advances money to the repair company prior to completion the project. The repair company leaves the work site prior repairing several elevators. The owner has to hire a new company to complete the project and pay additional money to repair the additional elevators.

Owner commences a suit against the property manager seeking to recover amounts improperly paid to the first repair company.

Personal Injury:

A married couple allege that a collection agent harmed their credit status by placing incorrect entries upon their credit history report and, as a result, were not able to close on a new home. The plaintiff alleges personal injury and violation of the Federal Consumer Credit Protection Act.

Total defense costs and settlement exceeded \$50,000.

Breach of Contract:

A leased employee of a maintenance service company while working for a customer falls into a holding tank and dies of asphyxiation. The employee's estate sues the customer for damages. The customer files suit against the leasing company because the leasing company failed to purchase workers' compensation. The customer alleges that the leasing company agreed to indemnify them for any damages resulting from workers' compensation claims. The customer argues that the service company breached its agreement to procure the proper coverages and, as a result, should indemnify them for any damages attributable to the maintenance employee's death. , Total defense costs and settlement exceeded \$150,000.

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Mortgage Banker:

Borrower secures financing for the purchase of a home from the banker. They all agree on a closing date. Prior to closing, the borrower discovers that the financing will not be available. As a result, the purchase cannot go through on the agreed upon closing date. The borrower has to find replacement financing at unfavorable terms compared to the original financing.

The borrower sues for misrepresentation and seeks damages arising from the difference in terms of financing.

Property Manager:

Tenant leases property in a shopping center. The monthly rent amount includes charges for maintenance of common areas. Tenant asserts that the rent is being improperly calculated since the property manager is charging to cover areas, which are not actually common areas.

The tenant files suit against the property manager for breach of contract.

Real Estate Agent:

Buyer, who is a builder, purchases a piece of land upon which they want to construct two homes. An agent represents the seller in the transaction. Subsequent to sale, the buyer discovers that the property cannot be built upon because of soil contamination.

A suit is brought against the seller and agent alleging failure to disclose problems with the soil.

Third Party Administrator:

A TPA is responsible for ensuring that monthly premiums are paid for a client's stop loss coverage, which is effective from December 2001 to 2002. An employee at the TPA who is responsible for processing the payments leaves the company on January 1, 2002. The TPA fails to pay the premium to the stop loss carrier. As a result, the stop loss carrier cancels their policy. The TPA submits bills for reimbursement in June 2002. The stop loss carrier denies claims.

The client files suit against the TPA for negligence in the performance of professional services.

Third Party Administrator:

A TPA is responsible for obtaining and processing medical claims for its client's group health plan. The health plan has an annual individual expense limit of \$75,000. When an individual's annual expenses exceed this amount, the stop loss carrier reimburses the health plan. The stop loss policy requires all bills to be paid prior to the expiration of their policy. The TPA fails to process and pay bills on a

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timely basis. The TPA submits a request to the stop loss carrier, after the expiration of the stop loss policy, to reimburse all expenses exceeding the individual expense limit of \$75,000. As a result, the stop loss carrier denies all expenses above \$75,000.

The client files suit against the TPA for failure to render professional services.

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