Why professional indemnity insurance is vital in today's litigious landscape

By Jean-Paul Rudd

30 Mar 2023

Litigation in South Africa has risen tremendously over the years with more and more individuals and organisations seeking redress through our courts.

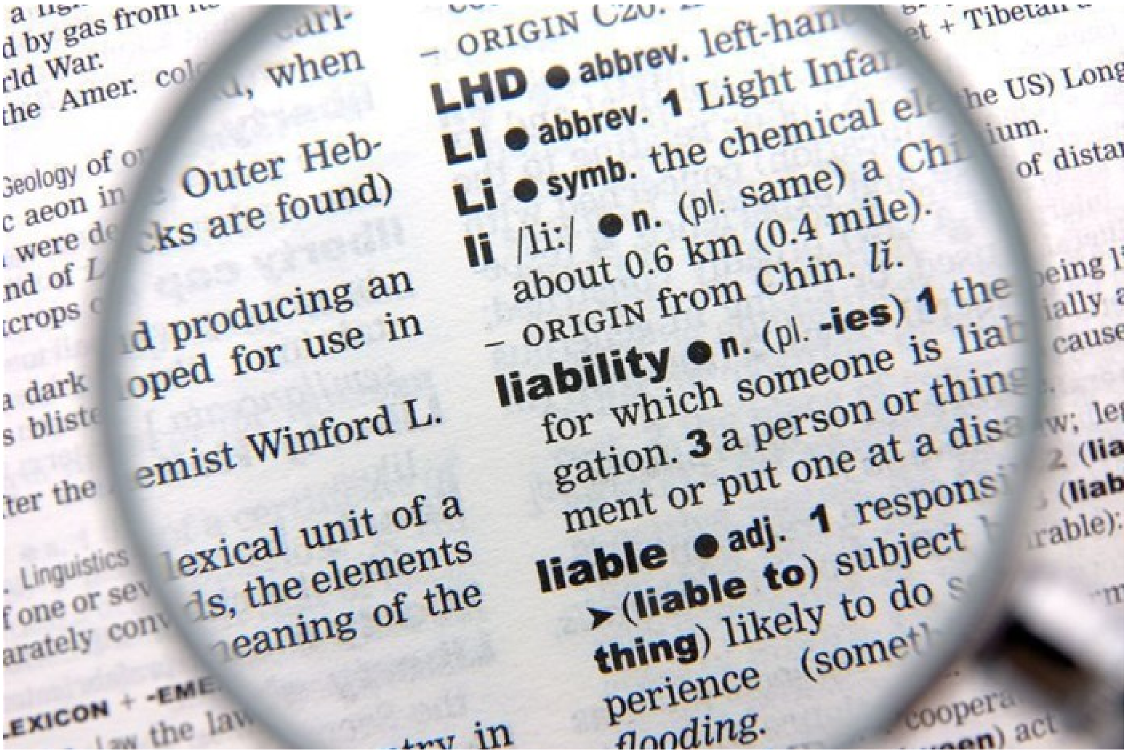

Image source: Norman Kin Hang Chan – 123RF.com

The increase in litigation can largely be ascribed to:

1. Improved access to justice through initiatives, such as the Small Claims Court, Legal Aid South Africa, and the various industry Ombuds.
2. Consumer friendly legislation, such as the Contingency Fees Act, the Consumer Protection Act, the Financial Advisory and Intermediary Services Act, and the National Credit Act.
3. Society becoming more aware of their legal rights through the growth of the internet and social media.

Professionals, such as doctors, lawyers, accountants, and so on are particularly at risk of being sued. There are many reasons therefore:

a. They are held to a higher standard and owe a duty of care to their clients.

b. They often work with high value assets, providing clients with an added incentive to sue should something go wrong.
c. They perform complex work, drastically increasing the risk of something going wrong.
d. They are often subject to draconian-like regulations, heavily weighted in favour of their clients.

Stubborn insurer to pay for claim *and* court costs
Jean-Paul Rudd 26 Jan 2023

Professional indemnity insurance should therefore form part of any professional's shield, particularly those who offer advice, consultancy, or other services to clients. Irrespective of a professional’s educational background, experience in the industry and natural skill, mistakes can still happen. If such a mistake leads to a client suffering harm or financial loss as a result thereof, they may institute legal action to recover the damages they have suffered. Without professional indemnity insurance, a professional would be solely responsible for paying any compensation awarded to the client, as well as any legal costs associated with the claim. This can have dire financial consequences, potentially resulting in sequestration.

Selecting the right professional indemnity cover is no easy task, given that professionals operate in different industries, with some industries containing more risk than others. After a professional has considered their risk appetite, they should consider factors, such as coverage limits, policy exclusions, and premium costs. Not all industries are eligible for professional indemnity insurance coverage, given the higher risk of damage or injury associated with some industries. Insurance companies therefore assess the risk associated with each industry before deciding whether to provide coverage or not.

In conclusion, while not all industries may be eligible for coverage, it is important for professionals to research and understand their insurance options to ensure they have appropriate coverage for their specific industry and circumstances. The importance of possessing professional indemnity insurance in light of increased litigation cannot be overstated.

ABOUT JEAN-PAUL RUDD

Jean-Paul Rudd is a partner in Adams and Adams' personal injury and insurance departments. He specialises in civil litigation with special emphasis on personal injury related matters, which includes Road Accident Fund, medical negligence, slip and fall and wrongful arrest claims, professional indemnity matters, and insurance related matters.

- Pitfalls of failing to follow rules of court - 17 May 2024
- What 'prescription' means in terms of medical malpractice claims - 11 Aug 2023
- Solar and inverter installation - did you get a compliance certificate? - 5 Jun 2023
- Auditor and compliance officer cleared, insurers to pay costs - 18 May 2023
- Why professional indemnity insurance is vital in today's litigious landscape - 30 Mar 2023

View my profile and articles...