### Professional Liability Insurance

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  - Schedule of Covered Manufactured Products
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  - Coverage for Damages Awarded Against the Insured
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    - Exposures Faced by Real Estate Brokers
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  - Coverage Gap? Designated Professional Services Endorsement, CG 21 16
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  - Covered Persons/Covered Organizations
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      - Covered Organizations/Covered Persons
      - Covered Damages
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      - Coverage Trigger
  - Union Liability Insurance
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    - Key Coverage Provisions
      - Covered Persons/Organizations
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  • Seedsmen’s E&O Insurance vs Product Liability Insurance
  • Exposures
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  • Key Coverage Provisions
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    • Coverage for Seeds Sold during a Prior Policy Period
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 o Environmental Consultants Professional Liability Insurance
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    • Types of Environmental Consultants
    • Types of Claims Against Environmental Consultants
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    • Revenues
    • Major Modification Factors
    • Secondary Modification Factors
  • Loss Control
  • Coverage Coordination
    • Commercial General Liability
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    • Pollution and Remediation Legal Liability (First/Third Party)
    • Pollution Legal Liability Insurance (Third-Party)
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    • Forms Combining CGL and Specific Professional Exposures
  • Approaches to Environmental Consultants Professional Liability
  • Coverage: Key Aspects
    • Covered Acts/Services
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    - General Partners Liability vs Partnership Managers Liability
    - Nature of Limited Partnerships
      - Exposures to Claims
      - Underwriting Data
      - Coverage Coordination Issues
      - Key Coverage Provisions
  - Mutual Fund and Directors & Officers E&O Liability Insurance
    - Exposures
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      - Underwriting Data
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    - Key Coverage Provisions
      - Covered Acts/Services
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      - Covered Persons/Organizations
      - Coverage Extension for Research Firms
      - Exclusions
  - Representations & Warranties Insurance
    - Representations & Warranties Associated with Corporate Transactions
    - Need for Representations & Warranties Insurance
      - Escrow Funds versus a Representations and Warranties Policy
    - Other Advantages of Representations & Warranties Policies
      - Advantages to a Seller
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    - Coverage Provided by Representations & Warranties Policies
      - Insuring Agreement
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- Situations in Which Loss Mitigation Underwriting Is Used
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  - Claim Buyouts
  - Risk Transfer Arrangements
- LMUs versus Loss Portfolio Transfers
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  - Offers Customized Financing
  - Obtaining Insurer Claim Management Expertise
  - Removing Impediments to M&A Transactions
  - Balance Sheet Cleanup
  - Types of Loss Situations in Which LMUs Have Been Applied
- Underwriting
  - Developing a Value for the Litigation
  - Documents To Review
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- Tax Opinion Insurance versus Tax Insurance
- Scope of Coverage under Tax Opinion Insurance
- Applications of Tax Opinion Insurance
- Tax Opinion Insurance in Action: A Practical Application
- The Need for Tax Opinion Insurance Coverage
- Advantages of Tax Opinion Insurance Coverage
  - Increase in Earnings
  - Avoidance of Maintaining Contingent Reserves
  - Reduction of Board Inertia
- Loss Payable under Tax Opinion Insurance
- Coverage Provided by the Policies
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- Exposures
- Underwriting
  - Rating
- Key Coverage Provisions
  - Coverage of Additional Insureds
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XXI: Employment Practices Liability

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  - Common Law Exposures
    - Discrimination
    - Liability from "Ban-the-Box"/"Fair Chance" Legislation
    - Wrongful Termination
    - Sexual Harassment
    - Retaliation
    - Claims Arising from Social Media
    - Inappropriate Workplace Conduct
  - Statutory Law EPL Exposures
    - Fair Labor Standards Act of 1938
    - Equal Pay Act of 1963
    - Title VII of the Civil Rights Act of 1964
    - Age Discrimination in Employment Act (ADEA) of 1967
    - Pregnancy Discrimination Act of 1978
    - Worker Adjustment and Retraining Notification Act of 1988
    - Americans with Disabilities Act (ADA) of 1990
    - Americans with Disabilities Act Amendments Act of 2008 (ADAAA)
    - Family and Medical Leave Act (FMLA) of 1993
    - Uniformed Services Employment Reemployment Rights Act (USERRA) 1994
    - Genetic Information Nondiscrimination Act of 2008
  - Liability under State and Local Statutes
    - Fair Employment Practices Laws
    - Whistle-Blower Statutes
    - Public Policy Protection
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  - Key Employment Claim Data
    - EEOC Data
    - Employment Practice Liability Jury Award and Claim Settlement Data

- Rating and Underwriting Employment Practices Liability Coverage
  - Rating Basis for EPLI Policies: Rate "Per Employee"
    - Jurisdiction
    - Industry
    - Size of Company
    - Use of Leased Employees
    - Union Employees
    - Profitability and Net Worth
    - Age of Firm
    - Mix of Exempt and Nonexempt Employees
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  How EPLI Coverage Is Afforded by Insurers
    Stand-Alone EPLI Policies
    A Part of Management/Executive Liability Package Policies
    How Does the Scope of Coverage Compare Across the Two Policies?

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Covered Persons
  Definition of "Employee"
  Coverage for Workers Leased to Others
  Spousal Coverage
  Coverage of Heirs, Executors, Trustees, and Legal Representatives

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- Harassment
- Retaliation
- Wrongful Employment Practices Act
- Employee Privacy
- Internet Wrongful Acts

- Third-Party Liability Coverage
  - Third-Party Liability Claims: Several High-Profile Examples
  - Need for Third-Party Liability Coverage: What Drives the Exposure?
  - Third-Party EPL Coverage

- Coverage for Wage and Hour Claims
  - The Wage and Hour Exclusion in EPLI Policies
  - Wage and Hour Defense Coverage Endorsements
  - Immigration-Specific Coverage Endorsements under EPLI Policies

- Covered Losses/Covered Damages
  - Excluded Losses/Excluded Damages
  - Coverage for Punitive Damages

- Definition of "Claim"
  - Coverage for Administrative Proceedings

- Claims Management Provisions
  - Claims Settlement Procedures
  - Duty To Defend Language versus Non-Duty To Defend Language

  - Defense Costs Reduce Policy Limits: The "Shrinking Limits" Factor
  - Insurer Internal Claims Handling Expenses Are Not "Defense Costs"
  - Additional Defense Coverage Limits

- Policy Limits, Deductibles, and Coinsurance
  - Policy Limits
  - Retentions/Deductibles

- Conditions
  - Arbitration Provisions
  - Other Insurance Provisions
  - Severability Provisions

- Exclusions
  - Criminal, Fraudulent, or Intentional Injury
  - Bodily Injury
  - Liability under Workers Compensation and Similar Laws
  - Contractual Liability
  - Americans with Disabilities Act
  - Wage and Hour Claims
  - Prior Knowledge of Potential Claim Incidents
- Claims Reported to Prior Insurers
- Labor-Related Claims
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**Coverage Triggers**
- Operation of Claims-Made Coverage Triggers
- Retroactive Dates
- Discovery Provisions
- Extended Reporting Periods

- Coverage Checklist

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  - **Exposures**
    - Practice of Medicine
      - Branches of Medicine
      - Medical Education
      - Licensing and Practice Requirements
      - Hospital/Staff Privileges
      - Medical Society Membership
      - Professional Medical Societies
    - Physicians Claim Data
      - Average and Median Indemnity Amount Trends
      - Large Claim Trends
      - Trends in Claim Causes
      - Overall Award Trends
      - Plaintiffs "Win Rate" in Medical Professional Liability Cases
    - Medical Professional Liability Insurance Liability Crisis
      - Effects on Physicians
      - Physician Specialties under Pressure
      - Medical Professional Liability Insurance Crisis: Potential Solutions
      - Help Efficient, Accessible, Low-Cost, Timely Healthcare Act, 2005
      - Stronger Policing of "Bad Docs"
      - Hospitals Offer "Free" Coverage to Physician Employees
      - Patient Compensation Funds
      - "Going Bare": Doctors without Insurance
    - Professional Liability Exposure of Physicians
      - Negligence Liability
      - Vicarious Liability
      - Statutory Duties
      - Special Duties Owed by Physicians
      - Evidentiary Rules and Procedures
✓ Common Allegations of Medical Professional Liability
✓ Defenses to Medical Professional Liability Claims

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✓ Physicians Professional Liability Rating
✓ Modification Factors in Rating
✓ Case Study
  ✓ General Information
  ✓ Educational Background
  ✓ Board Certification or Eligibility
  ✓ Physician Underwriting Information
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  ✓ Notice of No Prior Acts Coverage
  ✓ Fraud Statement and State-Specific Notices
  ✓ Notice Regarding Incomplete or Incorrect Information
  ✓ Signature Section
  ✓ Authorization To Release Information
  ✓ Authorization To Provide a Certificate of Insurance
  ✓ Sample Application Form

✓ Controlling Physicians Professional Liability Losses
✓ Patient Communication
✓ Document Consent, Diagnosis, and Treatment
✓ Do Not Conceal Error/Unexpected Results
✓ Outline All Possible Outcomes
✓ Develop Effective Billing Procedures
✓ Consult with Specialists
✓ Continuing Education
✓ Avoid Treating Via the Telephone
✓ Avoid Overbooking Appointments
✓ Use Interpreters
✓ Review Notes/Reports Immediately

✓ Coordinating Physicians Professional and General Liability Policies
✓ CGL Policy Coverage Restrictions
✓ Gray Coverage Areas
✓ Combined CGL-Professional Liability Coverage A Partial Solution
  ○ Insurance Markets
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✓ Covered Services/Covered Acts
  ✓ Coverage for Acts of Insured Physicians
  ✓ Coverage for Employees/Paramedical Personnel: Vicarious Liability
• Coverage for Peer Review Activities
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□ Covered Persons/Covered Organizations
  ▪ Coverage for the Named Insured
  ▪ Corporate/Partnership Coverage
  ▪ Coverage of Employees
  ▪ Coverage of Legal Representatives
  ▪ Coverage of Temporary Substitute "Locum Tenens" Physicians

□ Covered Territory
  ▪ Coverage for Acts Committed Where Insured Is Licensed To Practice
  ▪ Coverage for Acts Committed in and Lawsuits Filed in U.S.
  ▪ Coverage for Worldwide Acts and Lawsuits Filed in U.S.

□ Covered Damages
  ▪ No Coverage for Fines, Penalties, or Punitive Damages
  ▪ No Coverage for the Return of Professional Fees

□ Covered Defense Costs
  ▪ Defense Provided in Addition to Policy Limits
  ▪ Defense Provided within Policy Limits: "Shrinking Limits" Policies

□ Claim Settlement Provisions
  ▪ Insurer Cannot Settle Claims without Insured's Consent
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  ▪ Standard "Hammer Clause" Settlement Provision
  ▪ Claim Settlement Provisions and National Practitioner’s Data Bank
  ▪ Claim Settlement Provisions: An Assessment

□ Covered Supplementary Payments
  ▪ Supplementary Payments Covered in Addition to Policy Limits
  ▪ No Deductible/Retention Applicable to Supplementary Payments

□ Limits and Deductibles
  ▪ Limits
  ▪ Deductible Provisions

□ Conditions
  ▪ Notice of Cancellation
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  ▪ Other Insurance
  ▪ Mandatory Practice Change Notice Provisions

□ Exclusions
  ▪ Exposures Not Excluded but Not Covered
  ▪ Obligation To Defend within Exclusionary Language
  ▪ Four Types of Exclusions
- Exclusions for Uninsurable Exposures
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  - Operation of Claims-Made Coverage Triggers
  - Retroactive Dates
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  - ERP Provisions in Physicians Professional Liability: Implications

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  - Documents & Checklists
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