

IT&T Professional Indemnity & Liability Insurance

Claim Examples and Scenarios

Insured: Reseller of Software

Scenario: The third party wanted a system to support their accounting and financial reporting requirements as well as a point of sale system to handle their retail and wholesale operation.

The insured had various stores within a capital city, which were all to be connected to each other and head office. The insured had the distribution rights for a well-known software package, which provided both back office and sales function.

Problem: Late Delivery of the System.

Data was dropping out of the point of sale system. The automatic ordering system was not updating into the main system.
The cash reports did not balance.

Outcome: Breach of Contract claiming that the system was not of merchantable quality & was not fit for stated purpose.

Breach of Trade Practices Act Section 52 (Misleading and Deceptive) Negligent representation and misstatements.

Claim: \$250,000

Insured: Software Developer

Scenario: The insured supplied their software to the third party, to run their point of sale requirements and upload into their back office system.

Problem: The system was slow and unable to cope with the peak times of the third party business.

Outcome: Breach of Contract, software was not fit for the purpose for which it was supplied, & not of merchantable quality.

Breach of Trade Practices Act Section 52 (Misleading and Deceptive)

Claim: \$125,000

Insured: Software Developer

Scenario: The third party investigated acquiring a computer software package to handle both the financial and general business functions. The insured and the distributor made a presentation to the third party on the capability of the systems.

The contract was awarded on the basis of the purchase, training and ongoing support & maintenance of the Systems.

The distributor undertook the integration of the systems and ran into difficulties. After a period of time the third party requested the insured to become involved in solving the functionality issues.

Problem: The system failed to meet the performance levels, which were indicated prior to installation.

Outcome: Breach of Trade Practices Act Section 52
Negligent in regard to the installation
Negligent in addressing and correcting problems
Breach of Contract, as software was not fit for the purpose for which it was supplied.

Claim: \$2,000,000

Insured: Internet Service Provider / Domain Name Register

Scenario: The Insured as part of its business activities provided domain name registration. The Insured did not renew a client's domain name and it was lapsed. Another entity registered a name of a similar nature less than 1 hour after the original domain name was removed.

Problem: The third party could no longer transact business using the domain name

Outcome: Breach of Trade Practices Act Section 52
Allegations of collusion
Breach of Contract
Negligence

Claim: \$450,000

Insured: Software Developer & Integrator

Scenario: An insurance company wanted to reduce the paperwork involved in processing motor vehicle claims. Insured tendered & won the contract to provide a workflow management system that involved imaging documents. In the tender process it was represented that document retrieval time would be between 2-4 seconds.

Problem: During the course of the project Insured discovered that the retrieval time could not be achieved but continued to spend money and time on the project. The final retrieval time ended up being over 60 seconds

Outcome: Breach of Trade Practices Act Section 52
Functionality issues
Retrieval time not as stated
Breach of Contract

Claim: \$3,200,000

Insured: Reseller of Software & Hardware

Scenario: The Insured won a tender to sell & install a warehouse management system for the third party with software imported from the US. However, the software had never been integrated into a warehouse of this nature before.

The project eventually failed after the functionality failed to meet the third parties requirements.

Problem: System was slow and could not cross check automatically & did not have the promised capacity.

Outcome: Breach of Trade Practices Act Section 52
Breach of the Fair Trading Act Section II
Breach of Implied warranties

Claim: \$300,000

Insured: Bureau Service Provider

Scenario: The Insured was engaged to provide specialist technology services involving data processing, storage & postage in respect of several large share buy-back schemes.

Problem: Several hundred shareholders failed to receive notification of the share buy-back & were denied access to the scheme.

Outcome: Breach of Trade Practices Act Section 52
Negligence

Claim: \$1,000,000

Insured: Internet Service Provider

Scenario: The Insured acted as a web host for the third party.

Problem: During back up procedures the server suffered a power surge and the web site was lost. Back up tapes were found to be corrupted.

Outcome: Breach of Trade Practices Act Section 52
Negligence

Claim: \$130,000

Insured: Software Developer / Reseller of Hardware

Scenario: The third party purchased an existing graphic design system & peripherals, which was demonstrated by the insured. By the time the system was supplied the insured had released a new version of the software, which was then given to the third party.

Problem: The new system was commercially unusable and over a long period of time the insured tried to fix the problems but failed to do so.

Outcome: The third party rejected the system and claimed for misrepresentation and breach of contract. Many of the defects were software related but the judge treated the system as a whole (software and hardware) as one 'product'.

Breach of Trade Practices Act Section 52
Breach of Contract

Claim: \$1,080,000

Insured: Software Developer & Consultancy

Scenario: The Insured entered into a contract for the design and development and supply of software. Two years later the software was incomplete and contained numerous errors.

Problem: The third party rejected the software and dismissed the insured. The third party abandoned the software altogether and engaged another party to develop a fresh solution.

Outcome: Proceedings were brought for breach of contract, claiming repayment of the contract price (\$600,000) and damages for wasted expenditure.

The insured relied on a clause limiting its liability to \$25,000 in respect of each contract, the third party claimed the terms were unreasonable and therefore unenforceable.

Breach of Trade Practices Act Section 52
Breach of the Fair Trading Act Section II
Breach of Contract

Claim: \$1,400,000

IT&T Professional Indemnity Insurance matters!

As an IT&T Professional, when providing software advice and/or design, are you providing a "service" or a "product"?

Understandably, the uncertainty has caused confusion in the handling of claims. Should the claim be treated as a "service" and therefore be covered under a Professional Indemnity policy? i.e. the claim arose from a breach of the Insured's professional duty.

Alternatively, should the claim be treated as a "product" under a Public & Products liability policy i.e. the claim arose out of a product or manufacturing fault?

Finding a solution to this is as simple as providing IT&T Contractors with all Liability covers in One Insurance Package.

Professional Indemnity and Public/Products Liability

Don't just hope for the best, ask an expert for the right advice.

For more on Information Technology Insurance – Professional Indemnity Insurance

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