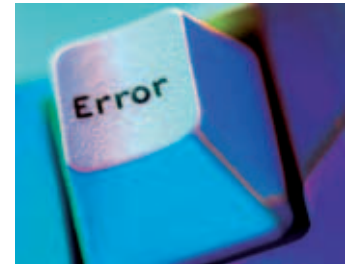


## ERRORS AND OMISSIONS

### *Loss Scenarios for Information Technology Companies*



Information and network technology firms are increasingly challenged to meet their customers' needs on time, on budget and within performance standards. Complex technology products and projects have volatile financial and liability risks that could put you out of business.

Over the past five years, claims severity for technology products and project dispute litigation has soared. Why?

- More and more customers are willing to sue established business partners for performance failure
- Dramatic increases in the average size and length of contract raises the plaintiff's chance that a performance failure "will be worth the fight"
- With companies putting more reliance on information technology it increases the likelihood that software solutions will be core business solutions. As a result, much more is at stake if the software fails or doesn't perform as promised

Information technology companies need timely solutions that have evolved with their industry and the new exposures being presented. Chubb's Errors & Omissions insurance offers such solutions and can help protect your firm from the devastations of a liability lawsuit.

Consider the following loss scenarios and then ask yourself whether you have adequate insurance protection in place.

#### **FAILURE TO DELIVER**

*Potential Cost: A\$20M*

The Australian arm of a global company sued their technology software developer for failing to deliver the promised software solution and is seeking up to \$20m in lost revenue and compensation after the developer could not produce the customised software that was core to the clients operations.

#### **NETWORK CONFIGURATION**

*Potential Cost: A\$2.6M*

Following the installation of a software solution upgrade the client encountered problems. The client alleged that the software provider failed to properly configure the network and install the file server according to their agreement. The contract price was \$175,000 and the subsequent rectification work was \$140,000. The client however sued for \$2.6m, this figure is largely made up of alleged subsequent lost business profits.

#### **TECHNICAL FLAWS**

*Potential Cost: A\$1.06M*

A software developer provided a Human Resource solution to a government agency. The client found technically defective components in the solution and claimed for return of fees paid to the developer, consequential damages suffered and the cost of replacing the system.

#### **CONSEQUENTIAL LOSS**

*Potential Cost: A\$2M*

After a lengthy tender process a company engaged a software developer to supply and implement a system that would become integral to their business. When the system did not run according to expectations they commenced legal action alleging misleading and deceptive conduct in relation to the sale, negligence and breach of contract in respect of the implementation. Damages in the order of \$2m were sought, this sum includes significant consequential loss.

## TRADE PRACTICES ACT

**Potential Cost: A\$46,000**

A client, having no knowledge of computers, engaged a software developer to provide a computerised solution to calculate and record estimates and invoices for print jobs. The supplied hardware and software solution failed to provide the capabilities the software developer claimed they would. The developer was found to have engaged in misleading and deceptive conduct.

## TERMINATED CONTRACT & RETURN OF FEES

**Potential Cost: A\$1.8M**

A company was hired to install a new automatic vehicle location control system in 30 buses. Towards the end of the 18 month contract the third party terminated the \$4.3m agreement as it became evident the system did not operate and are seeking a return of their \$2m paid to date plus \$1.8m in additional expenses.

## E-COMMERCE

**Potential Cost: A\$280,000**

A company along with their business partner entered into a series of software license and service agreements to customise and install an e-commerce software system. The project failed and the parties could never bring the system on line. It is alleged the company made errors in customising the software and used contaminated code.

## DID NOT MEET SPECIFICATIONS

**Potential Cost: A\$2M**

A software company was sued for breach of contract, negligence and misrepresentation when the software solution did not meet the specifications of the contract. Even though the contract between the software company and the buyer contained a "consequential" damages exclusion and a limitation of liability clause, the defense expense for the claim and damages were over \$2m.

## COUNTER CLAIM LEGAL COSTS

**Potential Cost: A\$2.3M**

An IT company sought to recover damages from a client by commencing legal action for \$365,000 owing in outstanding invoices for computer goods and services. The client submitted a cross claim of \$2.3m for liquidated damages for late and incomplete delivery of the system, expenses incurred in rectifying the system and for loss of revenue and loss of opportunity. The client was required to pay the amount outstanding however the IT company was required to pay their own costs in bringing the matter before the court which were in the region of \$250,000.

## INTEGRATION ISSUES

**Potential Cost: A\$1.5M**

An integrator supplied a system that was supposed to be capable of handling input from at least 200 PC's. The hardware supplier indicated to the integrator that the hardware was capable of meeting the specifications. The buyer used the system for several months, during which time additional PC's were tied in, but still below the 200 capacity. However, the system would not accept any additional tie-ins and the integrator was sued. Defence costs for the claim and damages were almost \$1.5m.

## LOSS OF DATA

**Potential Cost: A\$2M**

A transport courier company hired a software developer to build and design a solution to automate their business activities. A customised solution was developed and installed. A few years later the system crashed and it was found that there was no backup copy of the program. The customer sued the developer for \$2m which included return of fees, loss of profits, consequential damages and cost of a replacement system.

*Million dollar court awards and costly legal fees provide clear warning that a lawsuit can destroy your bottom line. . . if you are not properly protected. Talk to your Chubb underwriter or broker about our insurance solutions. Get the protection you need now.*

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