The Liability Insurances in Algeria- an analytical study of professional liability

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Abstract:
The article will explain the Principles of an insurance contract and important concepts relating to liability insurance. These concepts include the coverage commonly provided by liability insurance policies and answering the following questions: Why are companies exposed? What's covered under a professional liability insurance? Who would have the need of a professional liability insurance?
As a result, we found that there is a complex relationship between liability and insurance is of importance for proper policy-making, especially for proper regulation of liability insurance.
Keywords: insurance, insurance policies, liability insurance, regulation, professional liability insurance.

الملخص:
يتمثل الهدف من المقال في توضيح مبادئ عقد التأمين والمفاهيم الهامة المتعلقة بالتأمين ضد المسؤولية وخاصة تأمينات المسؤولية المهنية منها. كما يتطرق الى مفاهيم التغطية التأمينية التي توفرها عادة بوليصات التأمين على المسؤولية المهنية، وهذا من خلال الإجابة على الأسئلة التالية: ما الذي يتم تغطيته أو تأمينه بموجب عقود تأمين المسئولية المهنية ؟ ومن سيكون بحاجة إلى تأمينات المسؤولية المهنية؟
ونتيجة لذلك ، وجدنا أن هناك علاقة معقدة بين المسؤولية والتأمين ذات أهمية لصياغة السياسة المناسبة ، وخاصة بالنسبة للتنظيم الصحيح لتأمين المسؤولية.
الكلمات المفتاحية: التأمين ، عقود تأمين ، تأمين المسؤولية ، التنظيم ، تأمين المسؤولية المهنية.

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Introduction

As society becomes more concerned with consumer protection and related concepts, professionals are becoming increasingly accountable to their clients for the quality of services they provide. No longer is the practice of a professional subject only to the scrutiny of his peers or his professional association. The actuarial profession is not unique in this regard. Litigation against members of the actuarial profession has been extremely rare. Nevertheless, members of our profession should recognize that the general trend is in the direction of increased litigation against professionals. There are many risks that can jeopardize the future of one's practice, one's firm, and one's own financial well-being. This article is intended to familiarize the professional liability insurance as an insurance policy (sometimes called errors-and-omissions or E&O insurance) agrees to defend and pay on behalf of the professional for claims alleging an error or negligence in the performance of professional duties, in exchange for the premiums paid to the insurance company. Some firms decide not to purchase professional liability insurance, a business decision usually based on the cost of the coverage, which could ultimately put the firm or the professionals in jeopardy.

Embedded options pervade the wide range of products offered by funds and insurance companies. Liability insurance ,is one of standard type policies issued in the insurance markets.

This article will provide an overview of liability insurance. With reference to Algerian PROFESSIONAL LIABILITY INSURANCES.

1. Insurance Principles

The Definition of an Insurance Contract: A legal definition of insurance that appears in many insurance laws is the following: A contract of insurance is that whereby one party, the insurer, undertakes, for a premium or an assessment, to make a payment to another party, the policyholder or a third party, if an event that is the object of a risk occurs. It is often defined as a contract of indemnity. The insured is not to make any profit out of the insurance but should only be compensated to the extent of the pecuniary loss. Although various definitions have been offered, one of the most helpful is to define insurance as a mechanism (or a service) for the transfer to someone called the insurer of certain risks of financial loss in exchange of the payment of an agreed fixed amount. The payment is due before the contingent claim is serviced by the insurer. If from the insured's point of view, insurance is a "transfer," from the insurer's point of view, insurance as a "pooling" mechanism. It is possible for the insurer to reduce the risk which he faces by offering an "insurance service," by pooling together a large number of exposure units or risks (outreville, 1998). we can add that, the insurance is one means to manage risks by transferring them to an insurance company. Other methods of managing risks include transferring risk by contract and avoiding the risk entirely if it is judged potentially too costly (Schultz, 2011, p. 03). Prior to considering various specific issues relating to professional liability insurance, it will assist to review some general principles which apply to all insurance contracts subject to Algerian law. Notably, and in contrast to some other jurisdictions we have considered, these general principles tend to provide a degree of protection to the insurer both prior to the formation of the insurance contract and during the period of the insurance itself (Leduc, 2017, p. 01). In addition of that, insurance is considered as a manage risks by transferring them to an insurance company (Schultz, 2011, p. 02).

2. Type of insurance:

Life Insurance
Non-Life Insurance
Property insurance
Property insurance by category
Motor insurance
Motor insurance by category
Liability insurance
Marine, aviation and transit insurance
Personal Accident and Health Insurance
Policies and premium
Claims and expenses
Personal accident insurance
Health insurance
Travel insurance.

The Algerian insurance market:

The Algerian insurance market is structured by institutions that are in charge of insurance and insurance and reinsurance companies.

The Algerian insurance sector can be presented in two segments, namely: segment of institutions regulating the insurance business and the operating procedures of the various insurance stakeholders; and, segment of insurance and reinsurance companies, which themselves can be segmented into several sub-segments (Dalila, 2022, p. 98). At the end of the 2020, the insurance market recorded a decline of 6.1%, thus recording a turnover (excluding international acceptances) of nearly 137.5 billion DA, against 146.3 billion DA in the same period of the 2019. As for international acceptances, they mark an increase of 64.8%, compared to 2019, representing an additional revenue of 3.8 billion DA. Table 3. Insurance Market Production during COVID19 (Dalila, 2022, p. 102).

Table 1. Insurance Market Production

EN DA	CHIFFRE D'AFFAIRES		STRUCTURE DU MARCHÉ		ÉVOLUTION	
	31/12/2019	31/12/2020	2019	2020	En %	En valeur
Assurances de dommages	132 239 190 311	125 509 890 228	86,9%	85,28%	-5,1%	-6 729 300 083
Assurances de personnes*	14 101 889 300	11 957 011 743	9,3%	8,12%	-15,2%	-2 144 877 557
Marché direct	146 341 079 611	137 466 901 971	96,1%	93,4%	-6,1%	-8 874 177 640
Acceptations internationales	5 888 465 865	9 701 807 498	3,9%	6,6%	64,8%	3 813 341 633
Total	152 229 545 476	147 168 709 469	100%	100%	-3,3%	-5 060 836 007

Source: Taleb Dalila, The Critical Role of Insurance Sector in Algerian Economy during period 2014-2021, Review MECAS, V° 81/ N° 8/ June 2022, University of Abou Baker Belkaid Tlemcen, Algeria, p:102.

Insurance is generally thought of as a risk-sharing mechanism which allows after-the-fact indemnification for losses, and a mechanism for transferring the financial component of risk from risk-averse actors to larger, more risk-neutral actors (Kaminski, 2017, p. 01). Here comes professional liability insurance that protects the insured against lawsuits from related injury or accidents. **So, What's covered under a professional liability insurance ?** Professional liability has been a topic for discussion by the actuarial profession in recent years. During the formative period of most of the current doctrines of negligence law, liability in tort was looked on as shifting a loss that had already occurred from one individual to another generally from the person who suffered the loss to the person who caused it. It is against the background of this way of looking at things that nearly all of our conventional reasoning about the objectives of tort law has developed and that nearly all of our conclusions have been drawn and our rules formulated (JAMES, p. 449). professional liability insurance protects and covers the legal liability to pay compensation in respect to claims for loss or damage made by a past or present client or a third party based on mistakes or neglecting by the insured's business in some or all of the services provided and for error, omissions, professional neglect both for principles and employees. PI insurance also covers legal costs involved. Risk Point will provide and offer a custom made solution for the company and insert extensions when needed to make the insurance as wide as possible to cover all needs of the business (www.riskpoint.eu). Otherwise, All business face multiple kinds of risk within professional liability and responsibility. Professional and other liability claims can be devastating for companies and as long as a company conducts business, it will always be exposed to cause injury or loss. If you are a business selling knowledge or skills then professional liability insurance, also referred to as PI insurance, must be taken out to protect the business from loss or damage (stubkjaer, 2021, p. 01).

3. Definitions

Liability is a legal requirement to compensate another because of an unlawful injury to their person or property. The implementation of this requirement varies considerably between countries: common law jurisdictions such as the United Kingdom and the usa apply tort law, a body of doctrines applied by the courts to the specific facts of each case brought by a plaintiff, whereas in other countries based on civil law, legislation usually provides the doctrines to be applied by the courts or administrative bodies to determine civil liability. The most common form of liability arises from evidence of negligence: if the injured party can prove that the person believed to have caused the injury acted negligently - without fulfilling their duty of care - then liability law will allow compensation (Marsden, p. 03). we can explain more by giving Who would have the need of a general- and products liability insurance, as follow. The Professional Liability Insurance policy is essential for anyone operating a business that provides a professional service. No matter what services your business provides, a Professional Liability policy is designed to cover you if an allegation of negligence is brought against you for actions resulting from your work. we can find the liability insurance in all types of insurance product, however the professional liability insurance can be found side to side with the Non-Life Insurance (stubkjaer, 2021, p. 01). So, Professional indemnity insurance covers you for compensation you have to pay to your clients or any other third parties caused by problems with your work, including compensatory damages and claimant’s legal costs awarded against you in relation to a covered claim. We will pay for claims made during the period of insurance, up to the limit of indemnity shown in the schedule. We will also pay your legal defence costs incurred with our agreement for covered claims, which are included within the limit of indemnity.

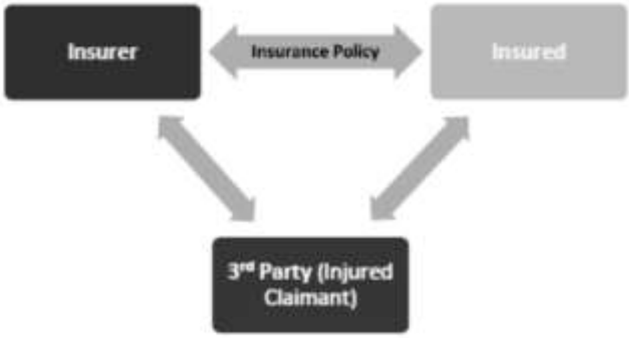
The limit of indemnity will be on an aggregate basis. This means that the limit of indemnity applies to the total of all claims made against you during the period of insurance. You will be liable to pay the excess in relation to each claim, which is shown in the policy schedule. we can add the Auto liability insurance as liability insurance in generally pays another driver’s medical, vehicle repair, and other costs when the policyholder is the at-fault driver in an accident. It covers bodily injury per person and per accident and property damage (Kaminski, 2017, p. 01). There are three separate parties involved in the liability insurance triangle:

•The first party (the insured).

•The second party (the insurer).

•The third party (the injured party or claimant) (Sarah, 2018, p. 06).

figure 01. Liability Insurance triangle



Source: Sarah Fay, Overview to Liability Insurance, insurance institute CII, Zurich, 2018, p:10.

4. The Product Liability Insurance Contract

4.1 The Insuring Clause

The insuring clause in a product liability insurance contract typically provides that the insurer will indemnify the insured for:

“all sums which the insured shall become legally liable to pay as damages or compensation **in respect of** accidental death or bodily injury of any person and/or accidental loss of or **damage** to property in the course of or in connection with the insured’s business caused by or arising out of the insured’s products”.

Most product liability insurance contracts contain definitions of terms such as “products” (usually to include labelling, packaging, instructions etc.) and “property” (usually to include only tangible property). If there is no relevant definition, or the definition is unclear, the court will construe such terms with the aim of giving them the meaning intended by the parties.

4.2. Damage

“Damage to property” will usually be defined in the insurance contract. The definition, however, can be tautologous and may do little to elucidate what is actually meant. As a result, what constitutes “damage”, particularly in the context of the mixing of different products and the contamination of one product by another, has been the subject of several recent court decisions.

4.3 . “In respect of”

Most product liability insurances cover only claims for bodily injury and property damage caused by defective products. There is generally no intention to cover claims for “pure economic loss”, that is to say financial loss which is not consequent on bodily injury or damage to property.

4.4 . Financial Loss Extensions

A financial loss extension, covering the insured's liabilities in respect of claims for pure economic loss (generally loss of profits or loss of goodwill) caused by the insured's products, is commonly offered with product liability insurance. Such liabilities usually arise from claims against the insured for breach of contract, pure economic loss not being recoverable for negligence save in limited circumstances. A number of exclusions are applied by insurers to financial loss cover including loss arising from liability assumed by contract and from failure to supply. Financial loss extensions are available in many other jurisdictions on similar terms.

4.5 Claims Made / Losses Occurring

Product liability insurance may be offered either on a "losses occurring" or a "claims made" basis.

4.6. Exclusions

Product liability insurance contracts in all jurisdictions contain a variety of common exclusions. These generally relate to risks which are likely to be covered by other insurances, risks arising from the deliberate conduct of the insured, uncertain or potentially catastrophic risks or damage to the product itself. The standardisation of these exclusions is, to a large extent, driven by the requirements of international reinsurers.

4.7.Conditions

Product liability insurance contracts in the Algeria commonly contain terms governing how the insured should conduct itself both generally during the period of the insurance and in the event that a claim is made against it. Similar obligations are placed on the insured in most other jurisdictions, whether by the terms of the insurance contract or by law, with varying sanctions for breach (Chamberlain, 2013, p. 05).

5. Overview of insurance markets in Algeria:

The following section provides a brief overview of the insurance market in Algeria:

The insurance sector in Algeria has witnessed two important terms are: the colonial period and the independence period (Tafian, 1987, p. 61). The later period can be divided in two major phases:

Pre-reform phase (including the pre-state monopoly, as well as the monopoly of the state), and the phase of reforms that characterized the abolition of the state monopoly of the insurance sector through the issuance Order No. 95-07 dated 25/01/1995, which spent the abolition of Article No. 278 among the relevant laws monopoly, opening the field of national and foreign private companies to exercise all insurance operations in Algeria, and amended by Law No. 06-04, dated 20/02/2006.(Revue Algérienne des Assurance) (CNA, 2006, p:02).

Now , Algerian insurance market includes 18 companies, six companies operate before the issuance of the order 95-07 dated 01/25/1995, namely: Algerian Insurance Company (SAA), the Algerian company of Insurance and Reinsurance (CAAR), the Algerian Insurance Company transportation (CAAT), the Central reinsurance Corporation (CCR), National Fund for Cooperation on Agriculture (CNMA), Algerian and collaborative to ensure the education and culture workers

(MAATEC). The rest of the companies have been established at the issuance Order No. 95-07, including:
Algerian company to ensure exports (CAGEX), the Algerian company to ensure that the mortgage loan (SGCI), the Algerian company to ensure the investment loan (AGCI), Trust Algeria Company (Trust Algeria), international Company for insurance and Reinsurance (CIAR), Algerian Company insurance (2A), securing fuel company (CASH), safety Company (Assurance SALAMA), the General Company for insurance Mediterranean (GAM Assurance), and the company Alliance insurance (ALLIANCE assurances)(Rapport: situation of insurances sector in Algeria , 2014, p: 03).
There are various Algerian insurance sector products including: auto insurance, insurance of various hazards, transport insurance, insurance people.
The most important characteristic of the Algerian insurance sector during the period from 1995 to 2013 are (Reports on insurance activity in Algeria, 1995-2013, p:08):
- An increase in the production of the insurance sector from 13 224 million dinars in 1995 to 54 159 million dinars in 2013, an increase of 3%.
-The dominance of three products represented in: Branch auto insurance by an average of 41.60%, a branch of the various insurance risks by an average of 35.60%, and a branch of Transport Insurance by an average of 12.11%, while the other branches remains less sophisticated private insurance subsidiary internal loans and export-oriented.
- The dominance of the public insurance companies on the Algerian insurance market by an average of 73.2%, and ranked first is the company's Algerian Insurance (SAA) market average of the share of 27.7%, followed by the Algerian company of Insurance and Reinsurance (CAAR) market share with an average of 18.1 %, the company's Algerian Insurance transport (CAAT) average of 18%, followed by the insurance company with a market share of hydrocarbons (CASH) market share and an average of 8.7%. In addition to mutual societies which are estimated market share of moderation to 8.2%. While the private insurance companies are estimated market share of moderation to 18.6%, and come in the forefront of Trust Algeria Insurance and Reinsurance (Trust Algeria) market average of part of 4.8%, International Insurance and Reinsurance (CIAR) market average share of 4.2%, followed by the Algerian Insurance Company (2A) and the General Insurance Company of the Mediterranean (GAM assurance) market share and an average of 3.7% and 3.6% respectively (Lalmi, 2015, p. 12).

4. The Liability Insurances - case of the - PROFESSIONAL LIABILITY

Is a form of the payment on behalf of the Assured:
(a) those sums which the Assured shall become legally obligated to pay as “damages” by reason of a claim first made against the Assured during the policy period and reported in writing to the Underwriters either during the policy period, or within sixty (60) days after the expiration of the policy period arising out of any negligent act, error or omission in rendering or failure to render professional

services by the Assured or by any person for whose negligent act, error or omission the Assured is legally responsible.
(b) Claims expenses: provided always that such negligent act, error or omission was committed:
(1) during the policy period; or
(2) prior to the commencement of the policy period and subsequent to the Retroactive Date specified in Item 6 of the Declarations.
- Professional liability insurance is a form of protection for both the firm (the “professional”) and their client. This specialized coverage considers the potential risks of a given profession, situation or activity.
This insurance coverage, which is also commonly known as errors and omissions (“E&O”) insurance, is designed to provide coverage for claims for damages alleged to be the result of the negligent performance of professional services for others as defined in the policy. These “claims made” policies can provide extremely broad coverage that may be triggered simply by a demand for money or services as the result of an alleged negligent act, error or omission in the performance of professional services.
Professional Liability policies are usually designed to provide coverage to the insured for both the cost of defending the claim as well as the damages. Claims for professional liability frequently involve an “economic loss” without the existence of any accident or occurrence causing injury or physical damage. The policy will also defend against any frivolous allegations of negligence or wrong doing, and in doing so, assists in protecting the assets of the individuals or company.
General Liability insurance is designed to provide coverage for the insured’s legal liability for third party bodily injury and property damage. Such claims are usually the result of accidents or other event that could not be foreseen. These are commonly referred to as “occurrences.” Coverage under these general liability policies are triggered at the time the “occurrence” takes place. Any resulting claim from the “occurrence” for bodily injury and property damage will likely be subject to coverage under the policy that is in force at the time of the “occurrence” (Heuchert, 2010, p. 02).

- Liability insurance covers individuals and corporations against the risk of being responsible for the costs of accidents borne by other parties and caused (under the law) during the policy period. Liability lines now account for more than half of the insurance premiums, excluding life insurance, in the United States. The largest lines of liability insurance are automobile liability and workers' compensation (Danzon and Harrington, 1991). The lines that attracted attention in the mid-1980s, however, were medical malpractice and general liability insurance, which includes product liability, municipal liability, and smaller but prominent classes such as corporate directors' and officers' liability insurance.
- **Professional liability insurance** (**PLI**), also called **professional indemnity insurance** (**PII**) but more commonly known as **errors & omissions** (**E&O**) in the US, is a form of liability insurance which helps protect professional advice- and

service-providing individuals and companies from bearing the full cost of defending against a negligence claim made by a client, and damages awarded in such a civil lawsuit. The coverage focuses on alleged failure to perform on the part of, financial loss caused by, and error or omission in the service or product sold by the policyholder. These are causes for legal action that would not be covered by a more general liability insurance policy which addresses more direct forms of harm. Professional liability insurance may take on different forms and names depending on the profession, especially medical and legal, and is sometimes required under contract by other businesses that are the beneficiaries of the advice or service (wikipedia, 2018, p. 01).

Claims-made contracts are mostly popular in liability lines where the damage has been caused by an individual who exercises his profession. In particular CMR contracts are highly popular, or even the norm, is the case of medical malpractice liability insurance contracts, directors' and officers' liability insurance contracts and other situation of professional liability insurance contracts designed to protect lawyers and architects in case of a professional error (Gobert, 2012, p. 254). Despite the reforms , the Algerian insurance sector is still suffering of several difficulties , including the length of compensation in some cases, non-payment of compensation payable to the owners at other times, due to adoption of the companies in this sector to traditional methods (experience) to detect and measure the risks as well as the selection of appropriate means to counter these threats ,while it should have to rely on scientific modern methods.

At the conclusion of our study, we made a number of proposals, including :

- The development of insurance services offered by insurance companies of Algeria improved to the level of services offered by international insurance companies through:
- To care of the compensation as a sensitive element in the relationship between the insurance company and their customers by facilitating procedures for obtaining it, as well as speed in the payment of compensation.
- Rehabilitation and training of the staff of a Algerian insurance companies, specially officials including the discovery and evaluation of the risks and choose the appropriate way to face them.

Conclusion:

In the light of developments in professional safety regulation and legislation, at both national and international levels, appropriate and effective professional liability insurance has become increasingly important. So, the insurance is all about risk management and monitoring. and in the very nature of the profession, professional are vulnerable to liability under civil and criminal law. The evidence indicates that compulsory insurance rules do deliver their intended effect, which is a significant reduction in the incidence of uninsured. The purpose of this paper is to provide an overview of product liability insurance principles in the Algeria, including certain common terms of cover, and to highlight some of the differences of law and principle in insurance. moreover, the point of departure for our thinking about professional liability insurance is what practical reality suggests, namely, that such insurance is socially desirable and its an obligatory by the Algerian law. The reason that liability insurance is socially desirable can be expressed in two ways. One is that the incentives to reduce risk are not subverted by liability insurance in the manner that some writers too readily assume. For insurance policies tend to be structured in order to induce insureds not to cause losses. The other way to explain the desirability of liability insurance is to observe that, by setting the level of liability equal to harm, society accomplishes the internalization of harm (at least under strict liability). Having done that, liability insurance contracts can be regarded as contracts that are made in the absence of externalities; as such, I have argued here that the point of departure for our thinking about liability insurance is what practical reality suggests, namely, that such insurance is socially desirable. The reason that liability insurance is socially desirable can be expressed in two ways. One is that the incentives to reduce risk are not subverted by liability insurance in the manner that some writers too readily assume. For insurance policies tend to be structured in order to induce insured not to cause losses. The other way to explain the desirability of liability insurance is to observe that, by setting the level of liability equal to harm, society accomplishes the internalization of harm (at least under strict liability). Having done that, liability insurance contracts can be regarded as contracts that are made in the absence of externalities; as such, liability insurance contracts should raise social welfare for the reason that contracts in general raise social welfare, namely, that parties want to make them. liability insurance contracts should raise social welfare for the reason that contracts in general raise social welfare, namely, that parties want to make them. Moreover, the insurance sector contributes, among other things, to the development of the national economy of a country. That said, insurance plays a major socio-economic role both at the level of individuals and that of the State. However, this role is not always well understood and assimilated, especially in less developed countries. In the case of Algeria, the hydrocarbons sector represents a central industry for the country's foreign exchange earnings. However, it depends on the global market context. In other words, if a sector of activity does not work at the desired pace, it is not necessarily linked to its own mechanism. This rule of interaction can also impact the insurance sector than other sectors. Indeed, the Covid-19 pandemic has caused a sharp slowdown in economic activity around the world, including in Algeria. Like this pandemic health crisis, many sectors of activity, such as tourism and transport, have been strongly impacted. On the other hand, other sectors such as agri-food are managing to resist this crisis. The Algerian insurance market, meanwhile, resisted the financial crisis of 2014 and operated for a long time with positive double-digit growth. However, the scope for its development has narrowed considerably.

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