

IT Companies: PI Claims

Testimonial about our claims service:

“Having never had a client demand damages from us before it was a traumatic experience when a seven figure breach of contract claim was brought against us by one of our customers for delays on a software development project. Despite obtaining legal advice verifying that we had not breached our contract, our business was still faced with the threat of a costly and time consuming public dispute. AIG's Technology Professional Liability insurance claims team provided us not only with financial peace of mind, but also with guidance and support throughout. AIG defended our business robustly and with their expertise in defending technology disputes we were able to reach a mediated resolution of the dispute with minimal disruption to our business. We bought insurance for situations just like this and AIG were there for our business when we needed them to be”.

CEO of an AIG UK technology client.

The following hypothetical scenarios outline the potential scope of PI claims. The accompanying comments of our own are based on our experience of insuring IT companies. These scenarios are illustrative only, and should not be relied on to justify coverage in any particular situation.

Let down by the Data Provider

An IT company contracts to supply its client with analytical reports based on complex mathematical calculations. However because of an error in the data the IT company received from the data provider, the reports are incorrectly calculated. The client successfully claims damages from the IT company, alleging that they had failed to demonstrate reasonable care and skill in checking the data.

Comment: *However many checks and procedures are in place, mistakes can happen. In this scenario it may have been very difficult to validate every piece of information supplied by a third party, but claims like this can still be extremely difficult for the IT company to defend.*

Escalating Claims

A new system project runs into problems when the client can't provide the data input to the new system. After delays, the client terminates the contract, blaming the supplier's turnover of key staff and poor quality of work. The client demands reimbursement of all their project costs, plus the profits that were expected from the project, as well as the difference between the project price and the next most competitive option at the tender stage.

Comment: *Companies need to be mindful of the required resources at different stages of the project, not just from themselves but from the client as well. As this scenario suggests, some claims could have the potential to exceed the cost of the original contract.*

AIG UK Limited

The AIG Building, 58 Fenchurch Street, London EC3M 4AB. This insurance is underwritten by AIG UK Limited which is authorised and regulated by the Financial Services Authority (FSA number 202628). This information can be checked by visiting the [FSA website \(www.fsa.gov.uk/register\)](http://www.fsa.gov.uk/register). Registered in England: company number 1486260. Registered address: The AIG Building, 58 Fenchurch Street, London, EC3M 4AB. A member company of American International Group, Inc. AI 196419 [02/09]

Tech Services Don't Meet Expectations

A small IT consulting firm recommends a particular piece of hardware and a specific software package to a manufacturing company. The manufacturer claims that software simply fails to perform as the consultants specified in their original recommendation for the project. The consulting firm successfully defends its position after incurring legal defence costs (covered by the PI insurance).

Comment: *Broad qualitative commitments made to clients (e.g. to “deliver substantial efficiencies”) can be open to different interpretations by different people at later stages of a project. Instead, expressing project objectives in technical terms, with commitments to particular speed or capacity levels for instance can be more defensible.*

A Change in Management and a change in attitude

An IT company contracts to supply a bespoke system and back office processing functions. Over time the client's requirements change and it becomes doubtful whether the supplier can deliver. A change in the client's senior management brings a much harder attitude towards the project and the client makes allegations that the IT supplier has breached various contractual terms.

Comment: *It is important to document details of the project including objectives, delivery dates and to formalise any changes to the project specification. Verbal agreements made and understandings reached with managers who have moved on may carry less weight with decision-makers new to the project.*

Virus Transmission

While installing a basic operating system for a client, an IT services company accidentally releases a virus onto the desktop of one of the client's PCs. The virus circulates through the company, including its overseas offices, via the server. The business is effectively frozen for a couple of days causing financial loss to the clients, which they seek to recover from the IT company.

Comment: *TechGuard will respond to negligence claims. Note that in defending a claim we provide legal defence costs from the ground up – i.e. no excess, which can be particularly welcome to small IT companies.*

Intellectual Property

A computer consultant breaches a US company's intellectual property rights by using unauthorised images and designs on his website. This leads to a major US based claim against the consultant.

Comment: *IT companies need to check the content they place on their clients' websites. Although it can be very simple to utilise images or information from other sources, it is essential to check the copyright and origin of such content.*

See our companion document: [“Why Do IT Companies Need PI Insurance”](#)

AIG UK Limited

The AIG Building, 58 Fenchurch Street, London EC3M 4AB. This insurance is underwritten by AIG UK Limited which is authorised and regulated by the Financial Services Authority (FSA number 202628). This information can be checked by visiting the [FSA website \(www.fsa.gov.uk/register\)](http://www.fsa.gov.uk/register). Registered in England: company number 1486260. Registered address: The AIG Building, 58 Fenchurch Street, London, EC3M 4AB. A member company of American International Group, Inc.

AI 196419 [02/09]