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MAIN ASPECTS OF PROFESSIONAL LIABILITY INSURANCE FOR EXPERTS, LAWYERS AND ADVOCATES IN THE FEDERAL REPUBLIC OF GERMANY

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***The purpose** professional liability insurance is an important component of risk management for professionals in various fields. This insurance protects professionals against claims arising from negligence, errors or omissions in the performance of their duties. In Germany, this type of insurance is mandatory for lawyers, attorneys and experts, due to the nature of their work, which often involves significant legal and financial liability. **Research methods:** the study is based on general scientific methods as well as specific legal methods, with the help of which various scientific positions and doctrinal approaches to the development of ideas regarding understanding the concept and essence of legal fictions, as well as their significance in legal sphere, have been analyzed. **Results:** we will look at the specifics of professional liability insurance for experts, attorneys and advocates in Germany. This includes the legislative framework, the role of insurance in professional practice and the specific rules that apply to these professions. **Discussion:** professional liability insurance is an important guarantee for lawyers, attorneys and experts in Germany. The Federal Lawyers Act (BRAO) and the Professional Code of Conduct for Lawyers (BORA) provide for mandatory liability insurance for practicing lawyers, guaranteeing their financial protection against claims caused by negligence or errors. The German Civil Code (BGB) further clarifies the principles of liability, providing a legal basis for claims. Industry regulations ensure that experts also have insurance to protect their clients. For lawyers and experts, professional liability insurance is not just a legal obligation; it is an obligation to their clients, ensuring that they can trust the advice and actions of the professional. By adhering to legal and ethical requirements, these professionals reduce the financial risks of abuse and ensure the integrity of their services.*

***Key words:** insurance; liability; error; insured event; compulsory insurance; losses.*

Introduction to Professional Liability Insurance. Professional Liability Insurance (Berufshaftpflichtversicherung) is a crucial component of risk management for professionals across various fields. This insurance protects professionals against claims arising from negligence, errors, or omissions in the performance of their duties. In Germany, this type of insurance is mandatory for certain professionals, including lawyers, attorneys, and experts, due to the nature of their work, which often involves significant legal and financial responsibility.

Purpose of the study. The purpose of this study is to analyze the legislation regulating mandatory professional liability insurance for experts, lawyers and advocates in the Federal Republic of Germany in order to implement a legal model for Ukraine.

Status of the issue. It is worth noting that in most countries of the world the institution of professional liability insurance was introduced many years ago, so usually foreign scientists conduct research aimed at finding ways to solve problems that exist within the institution of civil liability insurance within a particular country [3; 4]. Individual issues and problems of professional liability

insurance have already been considered by such scientists and practitioners as Arkhipov A.P., Bazylevich V.D., Vobliy K.G., Gomelya V.B., Grishchenko N.B., Dyuzhikova E.F., Orlanyuk-Malytskaya L.A., Raicher V.K., Reitman L.I., Spletukhova Y.A., Turbina K.E., Shakhov V.V., Shynkarenko I.E., Fedorova T.A. and others. Their works give a concept of the essence of liability insurance, highlight foreign experience in implementing certain types of liability insurance.

In foreign literature, the degree of scientific development of issues of liability insurance in the performance of professional activities is not deeper than in domestic literature, but it is compensated by the perfect practice of such insurance and the long history of the functioning of democratic states governed by law with a stable market economy system and the definition of the limits of personal liability. Among foreign authors who study the problems of such insurance are scientists Peter Madge, Albert Rogers, Ichel W. David, Ray W. Hodgins, Frank A. Sloan and others. At the same time, most of these works are devoted to applied aspects, and insufficient attention is paid to methodological issues of such insurance.

We will explore the specifics of professional liability insurance for experts, lawyers, and attorneys in Germany. This includes the legal framework, the role of insurance in professional practice, and the specific regulations that apply to these professions.

In Germany, the legal framework governing the professional activities of lawyers, attorneys, and experts is strict. According to the Federal Lawyers' Act (Bundesrechtsanwaltsordnung, BRAO) [1], every practicing lawyer or attorney is required to have professional liability insurance. The insurance must meet certain minimum standards to ensure adequate protection for clients and the general public.

For experts, particularly those working in specialized fields such as engineering, accounting, or tax consulting, professional liability insurance is also important, though it is not as universally mandated as for attorneys. However, many professional organizations and regulatory bodies within these fields recommend or require liability insurance for their members.

The role of professional liability insurance is to protect individuals and firms from the financial

fallout of legal claims. This can include defense costs, compensation for damages, or the cost of settlements. For lawyers, for example, a simple error in advice or failure to meet deadlines can lead to significant legal consequences. Insurance helps mitigate these risks, ensuring that professionals can continue to operate without fear of financial ruin due to isolated mistakes.

For experts, the risks might include providing incorrect assessments, faulty advice, or errors in reports that could lead to financial loss for clients. The insurance serves as a financial safety net, covering claims arising from these potential failures.

Regulations and Compliance. In Germany, the Professional Code of Conduct for Lawyers (Berufsordnung für Rechtsanwälte, BORA) [2] stipulates that attorneys must carry professional liability insurance. The coverage must be sufficient to protect clients and cover the risk of claims, and the insurance must meet specific requirements:

Minimum Coverage Amount: The minimum coverage amount for professional liability insurance is set at €1 million per claim and €3 million per year. This requirement ensures that even in the case of severe errors, the attorney can provide financial compensation to the affected parties.

Scope of Coverage: The policy must cover the attorney's professional activities, including the work carried out both within Germany and abroad if applicable. This is particularly important as many lawyers in Germany handle cross-border cases, especially within the European Union.

Exclusions: Common exclusions for legal professionals include damages caused by intentional misconduct, criminal activities, or activities outside the professional scope (e.g., personal matters or activities not related to the legal profession).

For experts, the German Civil Code (Bürgerliches Gesetzbuch, BGB) [3], alongside industry-specific regulations, may provide guidelines on the types of insurance that are recommended or required based on the nature of the expertise provided. Although professional liability insurance is not legally mandated for all experts in Germany, many industry organizations strongly recommend it, particularly in fields such as architecture, engineering, and auditing.

Types of Coverage. Professional liability insurance for lawyers, attorneys, and experts typically offers several types of coverage, including:

Indemnity Coverage: This covers the damages that a professional may be legally obligated to pay due to negligence, errors, or omissions. This includes compensation for loss of business or personal harm suffered by clients as a result of the professional's actions.

Defense Costs: In the event of a lawsuit, the insurance will cover legal defense costs, even if the professional is ultimately found not guilty. Legal costs can be significant, and this aspect of the policy provides crucial protection.

Loss of Documents or Property: For legal and expert professionals dealing with sensitive documents, insurance can also cover the cost of losses or damage to client property or documentation.

Breach of Confidentiality: For legal professionals, the breach of client confidentiality can have serious legal consequences. Coverage often extends to include claims of confidentiality violations, ensuring that clients are protected against unauthorized disclosures.

Importance of Professional Liability Insurance for Legal and Expert Professions. For both lawyers and experts, professional liability insurance serves several vital functions:

Client Trust and Confidence: The presence of liability insurance instills confidence in clients, knowing that if an error occurs, they will be compensated fairly. This trust is vital for the ongoing success of any professional practice.

Risk Mitigation: Professionals, especially those who provide specialized services or complex legal advice, are at a higher risk of making errors. Insurance helps mitigate these risks, reducing the financial burden that comes with litigation.

Professional Reputation: Maintaining professional liability insurance can enhance a firm's reputation. Clients are more likely to choose professionals who have adequate insurance coverage because it shows that the professional takes their responsibilities seriously.

Legal Protection: Lawyers, in particular, face a high risk of malpractice suits. Professional liability insurance is a safeguard that provides financial protection and legal defense in the event of a claim.

Claims and Coverage Exclusions

While professional liability insurance offers significant protection, there are also several common exclusions that professionals should be aware of:

Intentional Wrongdoing: Insurance policies typically do not cover claims arising from intentional acts or fraud. If a professional acts maliciously or negligently on purpose, they may be personally liable for the damages.

Criminal Actions: Insurance will not cover legal costs or damages resulting from criminal conduct. If a lawyer or expert is involved in illegal activities, they cannot expect to be covered under their liability insurance.

Personal Liability: Personal acts unrelated to the professional's duties are usually excluded from coverage. For example, an attorney's personal injury or a property dispute unrelated to their practice would not be covered.

1. **Federal Lawyers' Act (Bundesrechtsanwaltsordnung – BRAO).** The Federal Lawyers' Act (BRAO) is the cornerstone of the legal framework that governs the practice of law in Germany. One of the primary aspects of this act is the requirement for professional liability insurance for lawyers, attorneys, and legal consultants.

Section 51 BRAO – Professional Liability Insurance Requirement. According to Section 51 of the Federal Lawyers' Act, every lawyer who practices law in Germany must maintain professional liability insurance. This insurance must be in place prior to commencing any legal activity as a practicing lawyer.

Section 51 (1) clearly states: "A lawyer must have insurance that guarantees coverage for damages arising from professional activities. The amount of coverage must be at least 1 million euros for each individual claim and 3 million euros for all claims within a year."

This section explicitly outlines the minimum coverage limits, ensuring that lawyers are financially equipped to handle claims arising from their professional actions. The primary goal of this provision is to protect clients from financial loss due to legal errors and negligence.

Key Points of Section 51: Minimum Coverage: Lawyers are required to have at least €1 million for each individual claim and €3 million annually.

Professional Coverage: The insurance must cover damages resulting from professional negligence, errors, or omissions.

International Scope: The insurance policy must cover legal work conducted not only in Germany but also in other jurisdictions, especially within the European Union.

Section 51 (2) - Exceptions to Insurance Requirement. In specific cases, lawyers may be exempt from having professional liability insurance. These exemptions typically apply to part-time lawyers or in-house counsels, where the need for insurance may be reduced due to the limited scope of their legal services. However, these exceptions are rare, and the general rule mandates insurance for active practicing lawyers.

2. Professional Code of Conduct for Lawyers (Berufsordnung für Rechtsanwälte - BORA). The Professional Code of Conduct for Lawyers (BORA) complements the BRAO by detailing the ethical and professional standards lawyers must uphold. It also addresses the importance of professional liability insurance in maintaining the integrity of legal practice.

Section 5 BORA – Professional Liability Insurance as a Responsibility. Section 5 of BORA emphasizes the importance of having professional liability insurance as part of a lawyer's ethical obligations. It stipulates that lawyers must take measures to ensure that they can compensate clients in the event of professional errors that lead to damage. This aligns with the goals of the BRAO, ensuring that a lawyer's clients are financially protected.

Section 5 (1) BORA states: "Lawyers must ensure that they maintain insurance that covers the risks inherent in their professional activities."

Practical Significance: This provision underscores the idea that insurance is not only a legal requirement but also an ethical responsibility to clients. By ensuring that clients can claim compensation for damages, lawyers fulfill their duty of care.

Section 5 (2) BORA further stipulates that if a lawyer fails to maintain the required insurance, they must notify the Bar Association (Rechtsanwaltskammer) and provide an explanation. This ensures transparency and accountability within the legal profession.

3. German Civil Code (Bürgerliches Gesetzbuch – BGB). The German Civil Code (BGB) is the primary body of private law in Germany. Although it does not directly regulate professional liability insurance, its provisions significantly impact how professionals are liable for errors, omissions, and negligence, providing the legal framework within which insurance policies operate.

Section 280 BGB – Breach of Duty. Section 280 of the German Civil Code outlines liability for damages resulting from a breach of duty. This is relevant to the legal and expert professions, as professionals are liable for any breach of their contractual duties to clients.

Section 280 (1) BGB reads: "If a party fails to fulfill their obligations under a contract, they are liable for damages arising from the breach."

Application to Lawyers: A lawyer who fails to fulfill their contractual obligations to a client such as missing deadlines or providing incorrect legal advice may be held liable for damages. Professional liability insurance would cover such damages, ensuring that clients are compensated for financial losses.

Section 823 BGB – Tort Liability. Section 823 of the BGB provides that any person who causes harm to another person through unlawful actions must compensate the injured party for damages. This includes financial harm caused by negligent advice or actions in a professional setting, making it relevant for experts and lawyers alike.

Section 823 (1) BGB states: "A person who unlawfully harms the life, body, health, freedom, or property of another is obligated to compensate the injured party." [3].

Application to Experts: Experts, such as consultants or auditors, can also be held liable under tort law for errors or omissions that cause clients financial or reputational harm. Professional liability insurance would typically cover such liabilities, ensuring that the expert's financial stability is not threatened by individual claims.

4. Insurance Law and Professional Liability Coverage. In Germany, insurance laws are governed by the Insurance Contract Act (Versicherungsvertragsgesetz – VVG) [4], which regulates the relationship between insurers and policyholders,

including professionals who obtain liability insurance.

Section 1 VVG – Formation of Insurance Contracts. Section 1 of the Insurance Contract Act governs the formation of insurance contracts, outlining the legal requirements for insurers and policyholders. This includes the need for clear disclosure of risks and the scope of coverage in the contract.

Professional Liability Insurance Contracts: Lawyers and experts must carefully review their professional liability insurance contracts to ensure that the policy covers all risks associated with their professional duties. Policies must be comprehensive and include coverage for both legal costs and damages resulting from professional errors.

5. Industry-Specific Regulations for Experts. While the BRAO and BORA specifically regulate the legal profession, experts working in fields like

engineering, accounting, and consulting are subject to their respective professional bodies' regulations. For example:

Tax Advisors (Steuerberater) in Germany are required by law to maintain professional liability insurance under the Tax Consultancy Act (Steuerberatungsgesetz).

Engineers (Ingenieure) and Architects (Architekten) are advised or required by their professional associations (such as the Chamber of Engineers and Architects Chamber) to have liability insurance for any errors in their technical reports or project oversight.

Below is a table summarizing the key aspects of the professional liability insurance requirements for lawyers, attorneys, and experts in Germany, based on the legal frameworks discussed:

Aspect	Federal Lawyers' Act (BRAO)	Professional Code of Conduct for Lawyers (BORA)	German Civil Code (BGB)	Insurance Contract Act (VVG)
Legal Basis	Section 51, Federal Lawyers' Act (BRAO)	Section 5, Professional Code of Conduct for Lawyers (BORA)	Section 280, 823 of the German Civil Code (BGB)	Section 1, Insurance Contract Act (VVG)
Mandatory Insurance	Yes, mandatory for all practicing lawyers	Yes, emphasizes ethical responsibility for maintaining insurance	Not directly mandated but outlines liability provisions for professionals	Governs the formation of insurance contracts
Minimum Coverage	€1 million per individual claim and €3 million per year	Specifies that lawyers must maintain sufficient insurance for their activities	Covers liability for negligence, breach of duty, and torts	Ensures transparency and clarity in insurance contracts
Scope of Coverage	Must cover professional errors, omissions, and negligence	Ensures that clients can seek compensation for errors and damages	Covers damages resulting from breaches of contract or torts	Defines the responsibilities and rights of insurers and policyholders
Exemptions	Limited to specific cases (e.g., part-time lawyers, in-house counsels)	No exemption, applies to all practicing lawyers	N/A	N/A
International Coverage	Must cover work within Germany and internationally (especially EU)	Ensures protection for all professional work, including cross-border activities	Applies to both domestic and international activities	N/A
Insurance for Experts	Lawyers are explicitly required to have insurance; experts in some sectors (e.g., tax advisors, engineers) are advised or required by other sector regulations	N/A	Provides a legal basis for tort and professional negligence claims	N/A
Claims Coverage	Covers legal defense costs and compensation for client damages	Emphasizes that lawyers must be able to compensate for professional errors	Liability coverage for financial damages caused by professional negligence or omission	Provides the legal framework for claims in insurance contracts

Conclusion. Professional liability insurance is an essential safeguard for lawyers, attorneys, and experts in Germany. The Federal Lawyers' Act (BRAO) and Professional Code of Conduct for Lawyers (BORA) mandate liability insurance for practicing lawyers, ensuring that they are financially protected against claims resulting from negligence or errors. The German Civil Code (BGB) further clarifies the principles of liability, providing a legal basis for claims. Finally, sector-specific regulations ensure that experts also maintain insurance to protect their clients.

For lawyers and experts, maintaining professional liability insurance is not just a legal obligation; it is a commitment to their clients, ensuring that they can trust the professional's advice and actions. Through adherence to legal and ethical requirements, these professionals mitigate the financial risks of malpractice and ensure the integrity of their services.

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ОСНОВНІ АСПЕКТИ СТРАХУВАННЯ ПРОФЕСІЙНОЇ ВІДПОВІДАЛЬНОСТІ ЕКСПЕРТІВ, ЮРИСТІВ ТА АДВОКАТІВ У ФЕДЕРАТИВНІЙ РЕСПУБЛІЦІ НІМЕЧЧИНА

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Мета статті полягає в дослідженні основних аспектів страхування професійної відповідальності експертів, юристів та адвокатів, які є важливими компонентами управління ризиками. Даний вид страхування захищає ризикові види професій від претензій, що виникають через недбалість, помилки або упущення під час виконання їхніх обов'язків. У Німеччині цей вид страхування є обов'язковим для юристів, адвокатів та експертів, через характер їхньої роботи, яка часто передбачає значну юридичну та фінансову відповідальність. **Методи:** дослідження базується як на загальнонаукових методах, так і на специфічних правових методах порівняльного аналізу (компаративістики), за допомогою яких розробляються різні наукові положення та доктринальні підходи щодо розуміння поняття та сутності страхування професійної відповідальності, а також їх значення в аналізованій правовій сфері. **Результати:** у цій статті розглянуто особливості страхування професійної відповідальності експертів, юристів та адвокатів у Німеччині. Це включає законодавчу базу, роль страхування в професійній практиці та конкретні правила, які застосовуються до цих професій. **Обговорення:** страхування професійної відповідальності є важливою гарантією для юристів, адвокатів та експертів у Німеччині. Федеральний закон про юристів (BRAO) і Професійний кодекс поведінки юристів (BORA) передбачають обов'язкове страхування відповідальності для практикуючих юристів, гарантуючи їх фінансовий захист від претензій, спричинених недбалістю чи помилками. Цивільний кодекс Німеччини (BGB) додатково роз'яснює принципи відповідальності, надаючи правову основу для позовів. Галузеві правила гарантують, що експерти також мають страхування для захисту своїх клієнтів. Для юристів та експертів страхування професійної відповідальності є не просто юридичним обов'язком; це зобов'язання перед своїми клієнтами, гарантуючи, що вони можуть довіряти порадам і діям професіонала. Дотримуючись юридичних та етичних вимог, ці професіонали зменшують фінансові ризики зловживань і забезпечують цілісність наданих послуг.

Ключові слова: страхування; відповідальність; помилка; страховий випадок; обов'язкове страхування; збитки.

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