

ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

Replacing professional liability requires attention to detail

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Much has been written about pricing increases, with professional liability probably most heavily impacted. This is prompting agencies to remarket the coverage, hoping to secure better pricing and terms. This can be fraught with problems unless your agency has a strong focus on details.

What makes management of liability troublesome is that there is virtually no standardization of carriers' coverage forms.

Consider these key issues:

The app. Accuracy is critical, so have the client complete the app. At minimum, ask the questions and document the answers accordingly when meeting with the client. **Ask the client to review and sign the app** to ensure the information was taken down correctly. Information may have changed since last year, so be sure the app reflects current information.

Marketing timeframe. **Allow sufficient time** to propose the coverage, as the marketplace is currently difficult to predict.

Review the carrier proposal. **Ensure the coverage requested is the coverage proposed** – which is difficult to do without reviewing the proposal. Secure a specimen form to identify any issues, especially reductions, which need to be brought to the client's attention. Provide the client with the specimen form to enable them to review it and identify any issues of concern.

Concern should be heightened when the coverage is reduced.

Coverage issues that can vary from carrier to another include, but are not limited to, the following:

What activities are covered/excluded? Significant differences involve the description of covered professional services/covered activities. **Providing the client with a specimen form will be especially helpful if a problem subsequently develops.** Just because the activity is mentioned on the application does not mean coverage for that exposure is being provided. Review exclusions with the client to determine, to what degree, those exclusions are of concern.

Who is insured? This is a common area where **professional liability policies can vary from carrier to carrier.**

Is there “full prior acts” or a “retroactive date”? Professional liability is typically written on a claims-made form. **There have been many large E&O claims dealing with a misunderstanding of this coverage form.** The retroactive date will play a key role in whether there is coverage for a specific incident. Secure full prior acts coverage. If the professional liability contains a retroactive date, bring it to the customer's attention and explain the significance.

Defense costs and how they work. Defense costs can apply “in addition to” the limit of liability or “within” the limit of liability. The basic duty is to obtain the coverage requested. The customer makes the decision as to what to purchase. It would be better to offer the options and let the customer decide. **Create a paper trail. Documenting these discussions in an email to the insured is critical.**

Deductible or Self-insured retention. A deductible can apply to defense costs and the judgement, or possibly only require payment of the deductible if the client is determined to be liable. A self-insured retention may require the client to handle their defense until the limit is reached. **Make sure your client understands their obligations at claim time.**

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