Feel Self-Assured with Self-Insured Funds

This summer and early fall brought hurricanes that rocked the southeast with devastating force and left the country hoping that Mother Nature would show some compassion for Floridians. One hurricane after another—Charley, Frances, Ivan and Jeanne—ravaged the southeast states with overwhelming force, leaving billions of dollars in damage behind.

Anyone in the insurance field couldn't help but think about the impact of multiple severe hurricanes on the insurance industry. Could this bring accessibility or affordability issues to the insurance marketplace? When markets are difficult to find, agencies often turn to alternatives to find client coverage, such as group self-insured funds. Agents should be aware of the potential E&O exposures of placing business with group self-insured funds and proactively discuss the pros and cons with clients.

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Group self-insurers operate differently than most private insurance carriers. Every member of the self-insured fund is a partial owner of the fund. In exchange for potentially lower premiums than are available in the marketplace, each member can be held assessable if there are insufficient funds for claims. In some cases, members must agree to be *jointly and severally* liable for assessments, leading to potential E&O claims if you do not make clients aware of the downside. Recently, a group self-insurance fund providing workers' compensation was placed in rehabilitation under the state's department of insurance because of a plan to assess members for many millions of dollars in retroactive premiums. You can imagine the potential impact on fund members when assessments reach that level, especially if the *joint and several* aspect were invoked.

If you do have business placed with a group self-insurance fund that has the need to assess its members, there are some steps that you can take to mitigate your E&O exposure. First, keep your client informed on the financials status of the fund. A proactive call to clients explaining the situation can go a long way to softening the effect of an assessment. If a self-insurance fund provided dividends to members in the past, remind your clients of the amounts. The net effect of any assessments may seem more palatable if viewed in total with dividends. Make sure that you gather and review the files of affected insureds if an E&O claim against the agency is possible. Pay particular attention to any signed disclaimer and additional quotes that were offered prior to binding with the fund. If the fund is going through liquidation as opposed to rehabilitation, make sure that you understand any obligations or responsibilities your agency is required to perform under the state insurance code.

It is also a good idea to check with your E&O carrier to find out if there is coverage in your policy for placing business with self-insured funds and claims that may result from insolvency. After taking these steps, you can feel self-assured about your self-insured fund clients. IA

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Minimize Self-Insurance Risk

To minimize the E&O exposure from offering clients group self-insurance coverage, agents should:

1. Explain to clients the differences between an insurance company and a group self-insurance fund. Pay particular attention to the "assessable" language in the fund agreement and be extra wary of a *joint and several* provision.
2. Determine if the group self-insurance fund is eligible for any benefits under the state guaranty fund. Does your state have a guaranty fund specifically for group self-insurance funds? Have the insured sign off and acknowledge your discussion of this.
3. Provide a quote from another market in addition to the quote from the group self-insurance fund, if possible. Retain a signed declination of the declined quote in the file.
4. Have the insured sign a disclaimer that states something similar to this: "At your request, our agency is placing your coverage with *the XXX self-insured fund,* and we have explained the advantages and disadvantages of securing coverage through the fund. You release XXX agency from all claims that may arise against it (or its successors) in the event that the fund fails to honor a claim or in the event assessment is needed."
5. Stay current of the status of self-insurance through news publications.

—D.H.