

the E&O angle

Errors & Omissions issues and advice

E&O Liability Close to Home

Do you have E&O exposures going unnoticed?

By David Hulcher

When you think about your agency's E&O exposure, you probably primarily think about it in terms of an E&O claim brought against your agency by customers. You focus on implementing procedures that will mitigate the chance of a claim occurring or allow your E&O carrier to successfully defend it should one arise. However, there may be common activities your agency performs that have the potential for uncovered E&O claims. These scenarios involve professional services the agency performs for employees or businesses the agency may own or manage. Depending on your agency's E&O policy, these activities may or may not be covered.

Consider these situations:

1.) As a benefit for your employees, your agency writes their personal insurance, returning 100% of the commission to the employee. Your agency makes a mistake placing the coverage for the employee, which results in an uncovered claim to the employee's property.

2.) A local business associate asks you to join a group investing in another local business. Because of your insurance background, your agency writes the property/casualty for the business. An uncovered claim occurs and the local business sues the agency for failing to provide adequate coverage.

Scope of Coverage

Would you find coverage under your agency E&O policy for the above scenarios? It depends on your policy. The scenarios above illustrate the potential E&O claims for insured vs. insured and for a related business claim. To determine if there is E&O coverage within your policy for the above scenarios, you'll need to review the Insurance Agreement, Definitions, and Exclusions sections of your policy.

The typical Insuring Agreement of an agent's E&O policy covers damages because of errors and omissions committed in performing professional services. At face value, both scenario one and two would be covered under the Insuring

Agreement. However, you will need to also check the Definitions section of the policy for a definition of "professional services." This may be defined as those "professional services" to clients, which creates a gray area because the claim is generated by an "employee" in scenario one and an "owned business" in scenario two.

Insurance Remedies

Attracting and retaining quality employees is important to the success of your business. When looking at scenario one, it is clearly a nice perk for your employees to be able to place their insurance through the agency and receive commission on their accounts. In addition, you don't want your employees working with a competing agency for their insurance needs. Check your agency's E&O policy to see if coverage exists for E&O claims arising from placing your employees' coverage. If it is not clear, contact your agent or the carrier. Be aware that often carriers

may not commit to coverage absent the existence of an actual claim. At least you can get an idea.

There are carriers in the marketplace that provide coverage for scenario one. In their Insured vs. Insured exclusion, they may have an exception for professional services rendered to other insureds, as long as the insured providing the service does not have an interest in the property to be insured. You may also find coverage through an EPL

policy for other types of Insured vs. Insured disputes. Of course, the other options may simply be risk avoidance or to include hold harmless language in the agency's employment manual.

Some carriers also provide coverage for service to related businesses. An example of this is seen in modified exclusions that contain exceptions for the amount of ownership that is permissible before the exclusion applies—such as a 10% interest for both enterprises which are owned by or which own an insured. Of course, the circumstances of the claim will always dictate if coverage exists.

Be sure to think about these E&O exposures that may be lurking close to home. Check your E&O policy and weigh the benefits and the downsides when faced with the scenarios above. Keep in mind that there may be ready-made solutions from carriers which offer liberal exclusions in their policy forms. **IA**

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