



UNDERSTANDING ERRORS AND OMISSIONS REPORTING GUIDELINES

Brokers who provide their errors and omissions carrier with prompt notice of claims made against their brokerages are already one step ahead of their colleagues who fail to report such professional liability claims. In a litigation-driven society where brokers are routinely sued for failure to procure adequate coverage for their clients, many brokers fail to report errors and omissions claims to their professional liability carriers until their clients have already filed suit against them. In an effort to better understand when a demand constitutes a “claim” under a broker’s professional liability policy, this article will address when to provide notice to carriers of claims made against insurance brokers.

Contrary to popular belief a lawsuit is not the only type of claim insurance brokers should report to their errors and omissions carriers. For instance, consider the following examples:

- A broker’s client files suit against its carrier for declination of coverage. The client does not sue the broker. Either the client’s or the carrier’s lawyer requests, via subpoena, to take the broker’s deposition during course of litigation.
- A broker receives a department of insurance notice to produce a copy of her file to a state regulatory agency.
- A broker procures coverage for his client. After the carrier denies coverage for the underlying loss, the carrier demands that the broker provide it with an oral/written statement regarding how the broker serviced the account.

While no one has directly sued the broker in the instances outlined above, the scenarios nevertheless constitute “claims” under most professional liability insurance policies. While brokers should read their own errors and omissions policies to better understand how “claim” is specifically defined, it is noteworthy that many policies define “claim” as a request to take a recorded statement; a demand for money or services; and /or service of a summons, a subpoena, or any other notice of legal process. Hence, many policies define claim in a much broader sense than a mere lawsuit filed against the brokerage in question.

After a broker promptly notifies his errors and omissions carrier of a claim, the carrier, pursuant to the policy, is generally obligated to render a coverage determination and to provide a defense to the broker if coverage exists. In the examples outlined above, if such claims were covered under the broker’s professional liability insuring agreement, the carrier might have hired a defense counsel to prepare the broker for his deposition, to review the broker’s file to produce to the department of insurance and to aid the broker in preparing an oral/written statement to submit to the carrier. Agents, although insurance professionals, are not always in the best position to fully appreciate how statements regarding procurement of coverage could adversely affect their brokerage’s interest. Rather, such analysis is better left to an attorney hired by the E&O carrier to represent the brokerage.

It is imperative that brokers read, in full, their professional liability policies to completely understand what constitutes a “claim” under the insuring agreement. If a broker receives notice of an error and omissions claim, she should promptly notify her carrier as soon as reasonably possible. If professional liability coverage is afforded, the broker should work with defense counsel hired by the carrier to resolve the claim in an effective and efficient manner. Failure to

** The above example is provided by the program underwriter Swiss Re/Employers Reinsurance Corporation*



report claims and potential claims promptly not only loses the opportunity to take advantage of the E&O carrier's and counsel's expertise, but could additionally jeopardize coverage under the terms of the broker's policy. Followed correctly, these errors and omissions reporting tips can help brokers avoid putting themselves and their brokerage at risk of an adverse exposure.

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