Finding Solutions for Emerging E&O Risks

Excess and Surplus Lines Market Offers a Place For Challenging Risks

By Nancy Cerino

Since all service providers face the potential of law suits related to real or perceived "errors and omissions," E&O coverage has become a necessity for nearly every service profession — from established architects, lawyers and computer consultants to emerging professions that present a new and unique set of E&O risks. The challenge in E&O can be getting your arms around an emerging or unfamiliar risk, or filling a unique gap in coverage.

Green contractors are a good example. This new breed of engineers and consultants provide services such as testing the energy efficiency of a building and outlining what steps can be taken to "green" the building environment. For such a new line of business, there's no one size fits all form for their exposures. In fact, there is no track record for green contractor claims and little if any statistical data on what type of claims would emerge.

Most standard lines markets would not touch this business — it's simply too unpredictable. A wholesale broker who specializes in E&O, on the other hand, is equipped to handle this type of account and find a market with any number of leading excess and surplus (E&S) lines carriers. Because of the sheer number of accounts that cross our desks, we have the tools and experience to ask the right questions and find the right carriers. In fact, wholesale brokers write about one in every 10 E&O policies.

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E&O in a Difficult Economy

In today's economy, most companies are tightening their budget and among the areas they often try to cut is their E&O coverage. But they should be aware that in an economic downturn also comes an increase in E&O claims for most service providers. The unfortunate truth is that when times are tough, companies are more apt to be sued for a real or perceived error or omission.

Companies in many industries recognize this potential liability and as a result require their service providers to carry E&O coverage before awarding them a contract. Simply put, they want their risk to be transferred to the consultants who are providing them with expert opinions and materials.

Large pharmaceutical companies, for example, are believers in requiring consulting and research firms, medical/pharmaceutical writers, marketing firms and others to have E&O coverage. The reason is simple. These firms are providing the pharmaceutical firm with materials that are used in presentations to doctors and hospitals, and mistakes can be very costly. In fact, we just worked with a Web site provider that was required by a pharmaceutical company to have a $5 million E&O policy.

Some of these service providers decide to buy the minimum E&O required to secure a contract and then drop the coverage as soon as the contract is up. This strategy may save them a little in the short term, but it could hurt them in the long run. Remember, E&O claims are usually completely unexpected. The service providers should really be asking, "Do I have the time and the money to defend myself if I were to get sued?"

Placing Unpredictable Risks

Even though there are relatively few E&O claims compared with other lines, it's tough to predict which types of new businesses will or will not have any type of claim frequency. Standard lines will write E&O in certain cases, such as coverage for travel agents, because it's a more predictable class of business. Generally, standard carriers want to see an established track record in a specific industry before moving forward, and then may try to lock up an association relationship and establish a name in that niche.

Wholesale brokers who specialize in E&O, on the other hand, write coverage across many different industries. To help us do that, I spend as much time talking to our E&S carriers as I spend with our retail agents. These carriers, many of which work exclusively through wholesalers, broaden our perspective. They, too, see a broad spectrum of new accounts and also serve as problem solvers. Together we see the big picture and innovate when it comes to new businesses.

In addition, wholesalers can often identify coverage gaps and provide the complex mix of coverages that are required. For example, some high technology firms may think their general liability insurance will protect them from lawsuits alleging failure of a product to perform or losses to intangible property. But GL does not cover such emerging vulnerabilities and losses, so E&O should be an integral part of a high tech company's coverage.

Since many agents don't see a lot of accounts that need E&O coverage, they often are not comfortable placing it. But that should not deter them from a potentially lucrative account in a new or unfamiliar industry. IJ

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