Understanding E & O Reporting Guidelines

Agents who provide their errors & omissions carrier with prompt notice of claims made against their agencies are already one step ahead of their colleagues who fail to report such professional liability claims. In a litigation-driven society where agents are routinely sued for failure to procure adequate coverage for their clients, many agents fail to report errors & omissions claims to their professional liability carriers until their clients have already filed suit against them. When does a demand constitutes a "claim" under an agent's professional liability policy? When should you provide notice to carriers of claims made against insurance agents?

Contrary to popular belief, a lawsuit is not the only type of claim insurance agents should report to their errors & omissions carriers. Consider the following examples:

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

While no one has directly sued the agent in the instances above, the scenarios nevertheless constitute "claims" under most professional liability insurance policies. While agents should read their own errors & 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 agency in question.

After an agent promptly notifies his errors & 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 agent if coverage exists. In the examples outlined above, if such claims were covered under the agent's professional liability insuring agreement, the carrier might have hired defense counsel to prepare the agent for his deposition, to review the agent's file to produce to the department of insurance and to aid the agent 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 agency's interest. Rather, such analysis is better left to an attorney hired by the E&O carrier to represent the agency.

Followed correctly, these errors & omissions reporting tips can help agents avoid putting themselves and their agencies at risk of an adverse exposure. IA

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Utilizing E&O Carrier Resources

It is imperative that agents read, in full, their professional liability policies to completely understand what constitutes a "claim" under the insuring agreement.

If an agent receives notice of an error & omissions claim, he or she should promptly notify her carrier as soon as reasonably possible. If professional liability coverage is afforded, the agent should work with defense counsel hired by the carrier to resolve the claim in an effective and efficient manner.

Failure to report claims and potential claims promptly not only loses the opportunity to take advantage of the E&O carrier and counsel's expertise, but could additionally jeopardize coverage under the terms of the agent's policy.

—A.V.