


## Reducing Liability Exposure in E&S

Working with a broker to obtain an excess or surplus lines (E&S) policy can be an effective way of serving your customers' needs for difficult to place coverages. The agency errors and omissions (E&O) claims landscape, however, is rife with examples of the dangers an agency faces in these types of transactions. When a claim does arise, the dollar exposure to the agency can be quite significant. While most brokers are competent and trustworthy and E&S carriers are valid alternatives, agencies should take additional steps to help insulate themselves from possible liability exposure. There are three areas of potential E&O claims:

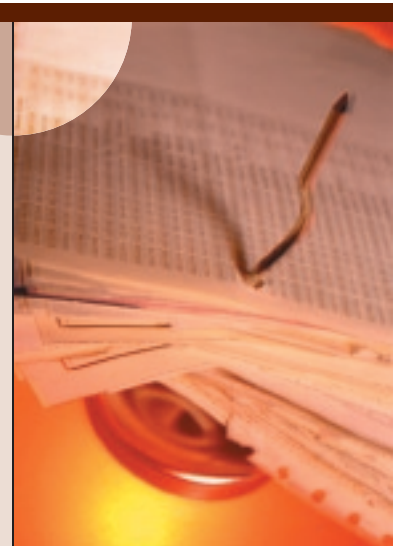
**Check out the broker.** Get to know your E&S broker and verify it is qualified to handle and place the risk. Confirm that the broker has significant experience in the E&S market and check on the broker's reputation. Determine the how much E&O coverage the broker carries before placing coverage. If an E&O claim arises and the broker does not have coverage for its own errors, the focus will always turn to the agency. Carefully scrutinize all written agreements between the agency and the E&S broker to make sure there aren't onerous, hold harmless or indemnification clauses which place the liability on the agency for the broker's misconduct or attempt to exonerate the broker from liability.

**Check the financial viability and stability of the carrier.** Once your agency is comfortable with the broker, become familiar with the carrier. Many E&O claims involve the financial inability of the carrier to pay a claim. The policyholder then attempts to hold the agency and broker responsible for placing the coverage with an insolvent carrier. There are several steps an agency can take to attempt to minimize its exposure. Although the broker should be taking steps to verify the financial viability of the non-admitted carrier, the agency should also confirm the carrier's financial condition. Rely on resources such as A.M. Best, etc. to verify the financial rating or stability of the non-admitted carrier to make sure that the policyholder is protected. Advise the client that the policy is being placed through a non-admitted carrier and confirm this placement, through written documentation, to the policyholder. It's also helpful to notify the policyholder, in writing, of the carrier's financial rating (and its source). When working in a state that has a state guaranty fund, double check that the carrier is eligible for guaranty fund coverage should the carrier become insolvent and, if not, advise policyholder.

**Know your responsibilities.** Become familiar with your agency's duties in this type of relationship. Agents often assume the broker will take care of certain parts of the transaction—for instance, reporting claims. Don't make assumptions. Review the procedures in place for reporting claims in order to determine which party has the responsibility to notify the carrier about claims. This arrangement should be in writing and should be clearly communicated to the policyholder and broker. If the agency reports claims to the broker, there should be a system in place to follow up with the broker shortly after reporting the claim to confirm that the broker has received the notice of claim and has forwarded the claim to the carrier. The verification of receipt of the claim should be in writing so that there is no question that the claim was reported. If the claim is faxed to the broker, save the fax confirmation. There have been cases where the agency sent the notice of claim to a broker who later claimed it never received notice. The carrier disclaimed coverage for late notice and the issue became a swearing match between the agency and broker because there was no written verification.

The key to reducing the potential of exposure to an E&S claim with the assistance of a broker begins with knowledge—know the broker, know the carrier and know your responsibilities in the transaction. 

**Brian Butcher** is assistant vice president, claims and liability management, at Swiss Re.



### Always Get a Receipt

The same verification principles hold true for regular applications and policies for a broker. Have a system in place to ensure the broker confirms receipt of all transmitted applications so that the agency can make sure the application is received by the broker and forwarded to the carrier. Also, have a system in place to confirm timely receipt of a copy of the actual policy requested. In some cases, the carrier can not or does not match the particular type or amount of coverage requested by agency. Hence, the agency should carefully review the policy to confirm that it contains the coverages, limits and deductibles requested and that no important terms or conditions have been changed or eliminated by the carrier. If the policy obtained does not completely match the policy requested, immediately advise the client of this fact, in writing, and instruct the broker to attempt to place the coverage with a carrier that can obtain the requested policy. If the exact policy requested can not be obtained, notify the client, in writing, and set forth the differences in the policy requested and the policy obtained.

—B.B.