



Navigating the New

How to avoid E&O claims from new products

By Barbara Rocco & Kristina Miller

An ancient proverb would have us believe “there’s nothing new under the sun.” That may have been true once upon a time, but it doesn’t apply to modern insurance markets.

As new risks continue to emerge at a dizzying pace, new insurance products are cropping up constantly. And even a veteran insurance agent can run into trouble placing these new coverages.

Here are three ways to protect yourself from an errors & omissions claim when dealing with new products:

Understand your client’s changing needs. This means asking the right questions, listening to the answers and following up appropriately.

It also means documenting every time you recommend a new insurance coverage or limit to a client, along with the client’s response. Clients often use questions left hanging to hang E&O claims on agents.

Study the policy terms and conditions. How do they affect the insured’s business? In jurisdictions and situations that involve a “duty to advise,” the agent-insured relationship cannot operate in a vacuum. Communication is always a two-way street. Context is key here. Is this a new business or an ongoing concern? A new policy or a replacement? If the latter, think about how the new policy will address old business. Review coverage differences between the expiring and new policies, paying particular attention to gaps and changes. Then, communicate and document that you discussed these differences with the client, and that they selected them.

For example, when dealing with “claims made and reported” professional liability policies, encourage clients to list all incidents on the application. That way, if an incident needs to be reported to an expiring carrier, such notice is timely. In order to keep lines of communication open with clients, be responsive and helpful to all client inquiries.

Report claims to all carriers. What if you and your client only meet about a new risk after a loss has already occurred? Existing coverages and policy forms can be slow to adapt to new

exposures, so even after a loss has occurred, it can be hard to determine what will cover it and what will not.

Don't try to answer those questions yourself. Instead, simply direct the insured to submit the claim to every carrier that might provide coverage.

Barbara Rocco and Kristina Miller are assistant vice presidents and claims specialists with Swiss Re Corporate Solutions and work out of the Chicago office. Insurance products underwritten by Westport Insurance Corporation, Overland Park, Kansas, a member of Swiss Re.

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