

Place professional liability in tough times

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While it may not require much effort to buy a professional liability insurance policy—you can simply fill out an application online and pay your premium with a credit card—professional liability insurance policies deserve close attention by the buyer, especially in tough economic times. It isn't a luxury item for a single professional or small professional firm; instead, it is a critical tool required for securing clients and providing protection while rendering professional services. Further, as a professional agent, your reputation is on the line when you recommend a specific product and insurance carrier.

First, during bad times, economic pressures will cause many buyers to consider lower price points and/or alternative coverage scope. Focus on the financial stability and security of the insurer. Will they be around if there's a claim to be paid?

Second, it is important to carefully review the policy. There are a variety of policy forms with different terms and conditions. Insurance carriers tweak policies to offer more or less coverage depending on, among other things, the economic environment, current results and market positioning.

Third, in a market downturn, claims become more frequent. As claims activity increases and price pressures continue, the application of terms and conditions will be more intensive. While not all situations can be effectively mitigated, there are a number of basic elements of purchase the buyer should consider.

To help you get it right, there are three critical areas to focus on when buying professional liability insurance:

- Coverage
- Past activities
- Carrier.

Coverage

In buying coverage, ask these questions:

Is the main insuring agreement broad enough to capture the anticipated work of the policyholder? Look at the definition of covered services in the policy. This will help determine if the policy covers the scope of the policyholder's professional activities. In lawyers' professional liability coverage, for example, the operative definition would be "legal services" or something similar.

What about exclusions? While the insuring agreement may provide broad coverage, it is crucial to review the list of exclusions which restrict coverage. Carefully review this section with the policyholder to make sure that it does not preclude coverage for specific professional services the policyholder wants covered.

Can you customize the policy to add extensions of cover or modify other terms? Additional coverage for "disciplinary proceedings" or reduced retentions may be available to a policyholder if certain requirements are met. Such customization can be important to policyholders and may represent the ultimate reason for purchasing from one carrier over another. If the policyholder is considering changing carriers or making a first-time purchase, consider what extensions or modifications are of importance to your policyholder's business.

Is there an option for an extended reporting period under the policy? It is important to find out what extended reporting period (ERP) options are available to a policyholder. There are many variations of these provisions depending on the insurance product at issue. These provisions offer extensions of time in which to report claims which would otherwise be outside the policy period, so long as the act or omission resulting in the claim occurred during the policy period. Review ERP options with the policyholder to confirm how long a policyholder might need to report a claim in various scenarios.

What happens if there is a merger, sale or other change in policyholder's business? In these challenging economic times, a policyholder must anticipate that a merger, acquisition, sale or change in services is a real possibility. Ask what happens to coverage if the policyholder undergoes such a change during the term of the policy period. Some policies may allow coverage to continue with the approval of the carrier, but there could be additional costs. However, other policies do not provide coverage for claims post such a transaction or change in services.

Past activities

One of the single biggest areas for coverage disputes revolves around notification, timing of notification or lack of notification of circumstances and claims under claims-made policies. There will be considerable scrutiny in this area as terms tighten and warranties and declarations by buyers are subject to close examination.

Rule No. 1: If there is any doubt about whether to notify the insurance company, it is always best to report. It is important for a policyholder to fulfill notification obligations in order to protect its rights to coverage under a policy. Most policies require that claims and matters that may ripen into claims be reported to the carrier. If the carrier needs more information to characterize the matter as a potential claim, then the policyholder will be notified in writing.

Rule No. 2: If a policyholder receives a demand or claim, immediately notify the carrier. There is no time to delay when a policyholder receives notice of a claim. There is no doubt that a carrier will hold a policyholder to the reporting requirements under the policy. It is in the best interests the policyholder to immediately report a claim so that the carrier can assess coverage and assign counsel where appropriate to reduce and/or mitigate potential claim exposure.

Rule No. 3: If a policyholder is asked to sign an application or warranty, ensure that policyholder answers all questions fully. This is especially important if a change of carrier is being contemplated by policyholder. Ensure all matters are notified to the expiring carrier so as not to have a gap in coverage between the old and new carrier. Make sure policyholder understands that it must poll all significant employees (refer to policy for appropriate personnel to poll) for knowledge of any situations which may give rise to a future claim.

Carriers

With professional liability and errors and omissions (E&O) being a long-tail business, you want to make sure the carrier chosen has the financial security to be around tomorrow to pay for the policyholder's mistakes made today. Additionally, you want a carrier that has a solid reputation for writing specialized professional liability products. Therefore, a carrier's financial ratings as well as the quality and experience of its underwriting staff will help confirm the commitment and staying power of the carrier.

Buying professional liability insurance is critical to your client's long-term prosperity. It becomes even more important during tough economic times. Be sure to work with the client to determine exactly what is needed for the client to sleep well at night. Then, work with the insurance carrier to come up with the appropriate policy to effectively protect that professional.