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Good Filing Minimizes Claims

A major step in avoiding a costly errors-and-omissions claim is to ensure that employees collect the right information from clients and file it properly. Furthermore, your filing system should be orderly enough that someone in your office who doesn't normally handle an account can navigate the system easily. Here are five items to include in every client's file:

Personal Information — Client names, addresses and other contact information should be kept secure, up-to-date and easily accessible to those who need it.

Business Information — In addition to personal contact information, the file should include business contact information.

Relationship Information — Make the relationship clear. Be sure to indicate if the individual is a customer or a prospect. If the former, to what extent? If the latter, for how long? This information is essential in determining why the file exists in the first place.

Dates — Important dates such as service visits, recent contacts and contract inceptions should be easily accessible. Knowing when an event occurred may prove crucial later.

All Contacts — Record all contacts in the customer's file. The file should also include letters, notes from meetings and phone calls, and e-mails. ■



E&O Helps with Defense Costs

The two most important words for employers hoping to avoid errors and omissions claims are "consistency" and "rationality." Procedures must be consistent for all employees and clients, and they must make sense in the situations in which they are being applied.

If your procedures meet those two criteria, an errors and omissions claim against your firm will probably not result in significant damages paid by your company. However, the price to defend against a lawsuit (rather than coverage for judgments or damages)

could be the most costly aspect of a claim. Errors and omissions (E&O) liability insurance will assist you with the costs to defend yourself.

Professionals who follow best practices significantly reduce their exposure to claims — but a review of defense costs and your preparedness for them might indicate that your exposure to E&O claims on legal expenditures alone may merit purchasing E&O insurance.

Call one of our service representatives for information on E&O insurance that's right for your business. ■

Who Needs Errors and Omissions?



Many service providers need errors and omissions (E&O) insurance, commonly called professional liability insurance. You may be one of them!

Professionals — E&O insurance is similar to medical malpractice for doctors — the difference being the latter deals with cases involving bodily injury. Professionals, such as lawyers, accountants, consultants, contractors and designers, are involved in activities in which an error could result in significant property and/or financial loss to a customer.

Technology Experts — With so many businesses requiring advanced technical assistance to maintain operations, businesses and individuals providing such services have a significant E&O risk.

Self-Employed — Employers commonly provide E&O coverage to staff, but if you are self-employed, the buck stops with you. Consultants and other self-employed individuals should not forget the benefit of obtaining E&O insurance protection.

Contractors — As contractors involved in construction take on a greater role in design/specifications work, the need for E&O insurance increases. Traditional commercial general liability policies often exclude coverage for such claims. ■

D&O Checklist

Navigating through a directors and officers (D&O) liability insurance policy can be difficult. For a better understanding of your D&O coverage, consider the following checklist produced for for-profit businesses and organizations by the National Alliance Research Academy, a leading provider of insurance education and research.

- Is the policy non-cancelable, except for non-payment of premium?
- Are “punitive damages” covered? You may have to review the policy’s definition of “loss” for the answer.
- Does the policy specifically define “subsidiary”? It is extremely important to understand how this policy may or may not apply to subsidiaries of the organization or company.
- Are policy limits for settlements,

judgments and defense expenses clear?

- Is there an exclusion for “errors and omissions” or “professional services”?
- Is coverage for newly acquired or created organizations automatically provided?
- Is there an exclusion for “failure to maintain insurance”?
- Is there coverage for non-officer employees if they are named in a covered claim along with officers and/or directors?

There are many other issues to consider when purchasing insurance for your professional endeavors, but answering the above questions will help you better understand this important coverage. For further assistance in understanding your D&O coverage, call our service team. ■

Covering Your Leaders

You want the best directors and officers available to guide and manage your business. To attract and retain such talent, you need to offer protection for them in the execution of their professional duties. A directors and officers (D&O) insurance policy indemnifies those covered from a wide set of claims and protects their personal assets.

Directors and officers of companies may be held liable for claims related to errors in judgment, breaches of duty and wrongful acts in connection with company business. Other claims against directors and officers may include:

- Misappropriation of company assets for personal use or use elsewhere;
- Failure to disclose conflicts of interest, both potential and actual;



- Commingling business and personal assets.

There are some exclusions to actions that D&O insurance will cover, so don’t assume all actions by your company’s leadership are insured. Check your policy and make sure you have the coverage that you need. If you would like further information, please call us. ■

Application Disclosure

Most professional liability insurance companies ask during the application process about knowledge of information that could result in a claim. Failure to disclose this information may result in a lack of coverage under the policy after issue. Consider the following example:

A realtor sells a home to a buyer interested in converting the property to a six-apartment rental. Upon learning of the buyer's intention, neighbors cite zoning laws prohibiting such conversions in the neighborhood. The buyer sends a letter to the realtor about the discrepancy, alleging the realtor should have informed the buyer of the law prior to the sale.



Several months later, the realtor's renewal application for

professional liability insurance asks if the realtor has any knowledge of an incident or event that may result in a claim. The realtor answers no. After renewal, the buyer sues the realtor. The professional liability provider denies coverage, citing the failure to disclose prior knowledge of an incident or event that may result in a claim.

That was a costly lesson for the realtor! Always make sure your applications are completed truthfully and thoroughly. If you are unsure about an issue, feel free to ask one of our agents. ■

The Errors and Omissions Claim Process

Here are three key steps you should take if an E&O claim is filed against your company.

1. Inform your E&O provider immediately.

General rule: When it comes to defense preparation, the sooner the better. In addition, immediate notification of an E&O claim is a condition of coverage.

2. Stay involved in and out of the process.

The E&O provider will fully explain the claim process for you. Upon submission, this process will include information about what you and your staff can do to assist coun-

sel, as well as information about the status of the claim. Remember that handling the claim is the job of your E&O provider — not yours. As difficult

Discuss possible procedural changes with your provider before implementing them.

as it may be, your priority is to let the provider act in a manner consistent with the terms of your policy, so do not

try to fix the problem yourself.

3. Seek advice about procedural changes.

Discuss possible procedural changes (such as changes in your filing system, customer contact policy and service agreements) resulting from the accusation of an error or omission with your E&O provider before implementing them. Changes, if instituted without your provider's knowledge, may disrupt your E&O counsel.

Adhering to these rules will help keep the claim process running smoothly and in an orderly fashion and will benefit your business in the long run. ■

**Thank you for
your referrals.**

If you're pleased with us, spread the word! We'll be happy to give the same great service to all of your friends and business associates.

Hammer Clause

A common provision of professional liability policies is allowing the insurance provider the right to settle a claim with or without the policyholder's consent. But sometimes policyholders would rather see the claim through. Some policies allow the policyholder to veto a proposed settlement who does so by informing the insurance provider of their preference to proceed with the claim.

Watch out, though. Policyholders exercising such authority should be aware of the so-called "hammer clause," the likely response from the insurance provider. Versions of this clause vary, but their purpose is the same — to limit the provider's liability if a policyholder vetoes a proposed settlement. A common version of the clause limits the provider's liability to the amount of the proposed settlement. Thus, upon policyholder veto of a possible settlement, any additional costs associated with the claim will be the responsibility of the policyholder. ■
