

# ERRORS & OMISSIONS

## RISK MANAGEMENT ALERT

### Do your agency proposals have these?

by **Curtis M. Pearsall**, CPCU, AIAF, CPIA  
*President – Pearsall Associates Inc.*  
*and Consultant to the Utica National E&O Program*

A key issue that agencies need to be aware of is that at the time of a problem or errors-and-omissions (E&O) claim, the agency proposal is an admissible document. This means that both attorneys – the one defending your agency and the one suing your agency – have a right to review this document. The attorneys will be evaluating whether the agency proposal helps or hurts their position.

Obviously, from the agency perspective, your goal is for the proposal to help provide an element of protection that could be material enough to largely determine the eventual outcome. An issue that seems to get overlooked in many agencies deals with the use, or lack of use, of disclaimers. Comments such as “Why include disclaimers? The agency-customer never reads them” or “I am trying to sell the account – why would I want to include these legalese disclaimers?” are all too common. However, whether the agency-customer reads them may be irrelevant. The primary issue is that if the proposal included disclaimers and a problem develops, the agency can show that the proposal included the various disclaimers. Another important issue is that the use of disclaimers is not limited strictly to P&C proposals.

#### What are some typical – and necessary – disclaimers?

- *Information contained in this proposal is intended to provide you with a brief overview of the coverages provided for reference purposes only. It is not intended to provide you with all policy exclusions, limitations and conditions. The precise coverage afforded is subject to the terms, conditions, and exclusions of the policies issued.* This is designed to alert the agency-customer that the proposal is not a substitute for the policy when determining coverage issues.
- *Specimen forms are available upon request.* While it is preferable to actually include the various specimen forms, many of these forms can be lengthy. This disclaimer advises the agency-customer that if they wish to see the actual forms that will be part of the policy, those forms will be provided. This seems to take on a heightened importance on coverages such as Cyber, Employment Practices Liability, D&O, and E&O, where there is no real standardization of the forms. In addition, coverages written through the E&S marketplace are typically customized to only provide the coverage the carrier desires.
- *Higher liability limits may be available. Please let us know if you would like a quote for increased limits.* When your agency is quoting limits, it is important for the agency-customer to know that the limits noted on the proposal are not the only limits available.
- *In evaluating your exposures to loss, we have depended upon information provided by you. If there are other areas that need to be evaluated prior to binding coverages, please bring them to our attention.* This disclaimer serves to protect the agency by noting that the agency-customer has some responsibilities to notify the agency of other issues of concern. What's more, the agency-customer is responsible for providing the agency with accurate information. For example, if the agency-customer fails to advise you that they are allowing employees to use their personal vehicles for business purposes, or that the agency-customer just bought a dog or put an addition on the house.
- *Exclusions and Limitations include, but are not confined to, the following: (list some key exclusions).* Virtually every insurance policy has exclusions, and many have limitations of some type. By listing some of the more noteworthy exclusions, this could very well prompt discussion on what coverage is necessary to address those exclusions. This creates a sales opportunity. Bottom line, this disclaimer notifies the agency-customer that not everything is covered.
- *The rates quoted for these benefits may be subject to change based on final enrollment and/or final underwriting requirements.* This is a common disclaimer used in benefit proposals and is designed to place responsibility on the agency-customer to notify the agency if there have been any changes to the census data previously provided.
- *This policy is written by a surplus lines insurer and is not subject to the filing or approval requirements of the (specific state) Department of Banking and Insurance. Such a policy may contain conditions, limitations, exclusions and different terms than a policy issued by an insurer granted a Certificate of Authority by the (specific state) Department of Banking and Insurance. The insurer has been approved as an eligible surplus lines insurer, but the policy is not covered by the (specific state) Insurance Guaranty Fund.* This could be a key disclaimer should the surplus lines carrier become insolvent.

Many agencies are sensitive to the length of their proposals. While lengthy proposals are certainly an issue, including the necessary disclaimers in your proposals could just make the difference in whose favor a judgment goes should an E&O claim occur.

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