E&O Risk Management Newsletter

Issue 2, February 2024

We KNOW E&O for Insurance Agents

In this newsletter:

Benefit from Need-to-Know Info About Extended Reporting Periods

An extended reporting period (ERP), also referred to as tail coverage, extends the amount of time you have to report claims under a claims-made policy. Claims-made policies only cover claims that are reported during the policy period or during the automatic extended reporting period. Keep the following in mind when it comes to ERPs:

What is a basic or automatic extended reporting period? It is a free period of time, typically 30 to 60 days, that you can report claims after your policy is cancelled or non-renewed.

What is a supplementary or optional extended reporting period? It is an endorsement that further extends the timeframe you have to report claims. There is an additional charge to put it in place.

How long does a supplementary or optional extended reporting period last? The amount of time available varies by carrier. It is common to see, at minimum, options for 1-3 years. However, many carriers offer options up to 10 years. An unlimited ERP option may be available in some limited circumstances. It is important to review the terms offered by your E&O policy.

How much does a supplementary or optional extended reporting period cost? ERP rates vary by carrier. The rate is calculated using your most recent full-term premium multiplied by a percentage based on the number of years of ERP coverage you are purchasing.

Example:

- Current Policy Premium: $2,000
- Rate for 3 years of ERP coverage: 150%
- ERP cost: $3,000

Why would an agency need to purchase an extended reporting period? ERP is most commonly purchased when an agency is being sold and it covers the business written prior to the sale. Most buyers are not willing to assume the agency's past liabilities. An agency may also need to purchase ERP if they are unable to secure E&O insurance with Prior Acts Coverage due to a poor loss history.

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When can an extended reporting period be purchased? There is a limited amount of time to purchase ERP coverage – usually 30 to 60 days – from the expiration of the policy or sale of the agency.

Can I add years to an extended reporting period after the initial timeframe purchased runs out? No. You have one opportunity to purchase an extended reporting period.

How many years of ERP should I purchase to protect my agency? In general, it is recommended that you purchase the maximum amount of years available from your E&O carrier. Why? Because it is not unusual for E&O claims to be submitted many years after the error occurred. For claims reported to the Utica National companies between 2019-2021, 25% were for errors that were made more than 3 years prior to the claim being submitted. You do not want to be in a position where you must cover a claim out of pocket because you did not purchase a longer ERP.

What else should I know about purchasing an extended reporting period?

- The premium for an ERP is fully earned and must be paid in full before it will be put into effect.
- If you are currently on a payment plan, you may have earned premium that will need to be paid in addition to the ERP charge.
- It generally takes some time to get an ERP endorsement processed by your E&O carrier – at least two weeks is a reasonable benchmark. If you will be selling your agency, it is recommended that you contact your E&O carrier as early as possible to discuss the ERP options available and the process to get it put in place. This is particularly important if you will need proof of the ERP coverage when closing the sale. *Do not wait until the last minute*
- An extended reporting period is not a new policy. It is an endorsement to your last policy term that extends the amount of time you have to report a claim. It will only cover business written between your retroactive date and the date the extended reporting period goes into effect.
- Some E&O policies include additional coverages such as EPLI or cyber insurance. If you have additional coverages included in your policy, they may have their own unique options and costs for an extended reporting period. Review your coverage form carefully to determine if you will need to purchase a separate extended reporting period for those or any other additional coverages.

CLAIM HIGHLIGHT: The Importance of Mirroring Coverage

Example: In this E&O claim, the agency failed to properly replace Workers' Compensation (WC) coverage for a trucking firm that had "all states" coverage on a previous policy. The new policy only covered losses in the state in which the client was domiciled. The client had an employee who was injured in another state, and because they had no coverage for losses occurring in that state, the client was obligated to reimburse that state's uninsured WC fund for WC benefits paid to the employee.

In this case, the Workers' Compensation Board ruled that the trucking firm's Workers' Compensation carrier does not owe any coverage. The case was settled by Utica National reimbursing the trucking firm for the monies it had to pay the state plus attorneys' fees.

The case settled for $317,000.

Lesson: Whenever you are replacing one policy with another, extra attention is needed to ensure the coverage available in the new policy is at least equal to the coverage available under the old policy. If you

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are unable to obtain equal coverage, point out any coverage differences to the client in writing. Additionally, document any verbal discussion surrounding coverage differences in your agency management system and memorialize it back to the client.

RISK MANAGEMENT RESOURCE HIGHLIGHT: Checklists

Checklists are an important risk management tool that can help agents avoid E&O claims and better service clients, enabling you to conduct a thorough risk analysis on each account.

We have arranged for our policyholders to receive a significant discount on Rough Notes Pro and Rough Notes Advantage Plus, which provide access to checklists for more than 700 types of businesses – and other useful tools – at a great price.

Rough Notes Pro Includes:

- Policy Forms and Manual
- Coverages Applicable
- Commercial Lines Risk Checklists
- Personal Lines Risk Checklists
- Monthly Newsletter
- Rough Notes Magazine

Rough Notes Advantage Plus Includes all the features of Rough Notes Pro plus:

- Property and Casualty Insurance by Gordis
- Training Courses
- Business Building Letters
- Blogs
- Digital Media Tools

Find out more: Save Money on Exposure Checklists and More!

Ready to Help

Are you looking for risk management guidance on a particular topic? Reach out to Tabitha DeGirolano of our E&O team for help at tabitha.degirolano@uticanational.com.