



Finding an E&O Policy that Covers Your Markets: E&O Carriers are Updating Their Insolvency Exclusions to Better Help Agents

By Robert Hansen

Prudent agents make sure they are covered by an errors and omissions (E&O) policy. E&O policies are professional liability policies covering the acts, errors and omissions of insurance agents and agencies during the course of their providing professional services. Most E&O policies will cover judgments, settlements and defense costs; this latter point is an important consideration especially for smaller agencies who may not have the resources to defend against allegations, even when such allegations are unfounded. Claims against an agent may arise where agents fail to obtain the coverage requested by a client, fail to renew coverage, miss a deadline, mistakenly drop a vehicle from an auto policy, and other instances where an agent is accused of failing to meet professional standard of care. It is important for agents to protect themselves with E&O coverage.

Agents are experts at assisting others. So how does an agent go about finding an E&O policy that protects them while facilitating agency growth?

Finding an E&O policy to best fit the needs of an agent is not easy. The coverage offered often varies by E&O carrier and there may even be differences between E&O policies from the same carrier based on which state(s) the policy is offered within. Agents need to thoroughly review a policy to be sure that it offers him the protection he requires.

One area that needs careful attention when looking for E&O coverage is the level of protection provided in cases

where an insurance company with whom an agent has placed business goes bankrupt. For example, if an agent sells a homeowner's policy and the house later is destroyed in a fire but the homeowner can't collect from his insurance company because the company is insolvent and not

carriers suggest that an agent who placed business with a company that was acceptably rated at the time would have no reason to suspect that the company would become insolvent and unable to pay claims at a later date and, therefore, took reasonable precautions to protect the interests of his client.

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paying claims, the homeowner may try to place blame on the insurance agent for offering the policy through that particular insurer. While the agent may or may not be responsible, depending on his conduct in placing the policy and on the laws of the state, the defense costs for such a claim can quickly escalate. Whether the agent's E&O carrier can help depends on the specific language of the policy.

Many E&O policies exclude coverage for an insurer's bankruptcy, which would preclude the E&O carrier from defending the agency or paying a claim in cases where an insurance company goes bankrupt. However, many, but not all, E&O policies offer an exception to the exclusion, restoring coverage in certain instances. The exception is usually worded in such a way that if an agent places business with a company that is rated at an acceptable level, as determined by the E&O carrier, at the time the business is placed, then the agent is covered by his E&O insurance. Many E&O

E&O carriers vary on what is considered an acceptable rating level, with some setting higher rating level standards than others, but traditionally these exceptions to the bankruptcy exclusion have referenced some level of rating by A.M. Best while ignoring ratings by other reputable rating agencies. For agents looking to place business with companies not rated by A.M. Best, this emphasis on only one rating agency can prove problematic; especially for agents working in particular markets or for agents who place business with smaller, regional or specialty insurance companies.

The property and casualty insurance market in Florida has brought this issue to the forefront. Many companies doing business in Florida are not rated by A.M. Best. However, many are reviewed and rated by Demotech, Inc., which specializes in rating regional and specialty insurers and have reviewed Florida domestic property insurers for the last 20 years. But, because of the traditional reference

of only A.M. Best in the bankruptcy exclusion, agents doing business in Florida initially had trouble finding E&O coverage suitable for their markets even while placing business with financially stable companies.

Fortunately, some forward-thinking E&O carriers have recognized that using the traditional language in exceptions to insolvency exclusions does not adequately address the needs of agents. These E&O carriers have expanded the language of their policies. Navigators Insurance Company, for instance, first offered a Florida Amendatory Endorsement that includes coverage for defense of insolvency in cases where an agent placed business with a company rated A or better by Demotech. Navigators is now in the process of making a nationwide filing to clarify that their insolvency defense also will apply to carriers with a Demotech rating of A or better.

Houston International Group also specifically recognizes Demotech. The exclusion in their policy requires an A.M. Best rating of B+ or higher or a Demotech rating of A or higher at the time the insured (the agent) place insurance with such entity. Specifically, their policy excludes coverage for claims against an agent relating to:

The insolvency, receivership, bankruptcy, liquidation or financial inability to pay,

of any insurance company, reinsurer, risk retention group or captive (or any other self-insurance plan or trust by whatsoever name) in which the Insured has placed or obtained coverage for a client or an account; provided, however, this exclusion shall not apply if the insurance company, reinsurer, risk retention group or captive (or any other self-insurance plan or trust by whatsoever name):

1. held an A.M. Best rating of B+ or higher at the time that the Insured placed insurance with such entity; or
2. held a Demotech, Inc. FSR rating of A or higher at the time the Insured placed insurance with such entity; and
3. was neither owned by, controlled, managed or operated by the Insured or an affiliate or subsidiary of the Insured, or the Insured's parent;

Endurance Insurance Company has also added a State Amendatory endorsement that includes Demotech. The exception to their insolvency exclusion states:

However, this exclusion shall not apply if at the time of the placement of such coverage: (1) any such insurer was rated B+ or better by A.M. Best Company, "A" or better by Demotech, "AA-" or better by Standard & Poor's, or Aa3 or better by Moody's; or (2) any such insurer,

trust, organization or other vehicle was guaranteed by a governmental body or bodies and/or operated by a governmental body or bodies . . .

As to the E&O carriers that are not yet willing to update the language in their insolvency exclusions to include other reputable rating agencies, agents who have a company or two that are rated by Demotech, the E&O carriers are often willing to provide an endorsement extending coverage to the Demotech-rated carrier. Agents should check their E&O policies and ask their carriers for an exception for Demotech-rated companies. If the agent cannot get what is generally referred to as a "carve back" for an insurer rated A or better by Demotech, they should shop elsewhere for their E&O coverage. Numerous E&O carriers are willing to cover all of an agent's markets to address the agent's needs.

Agents should take care to understand their E&O policies and ensure that an insolvency exclusion does not leave them exposed. Many E&O carriers include reasonable exceptions to their insolvency exclusions, and are willing to work with agents to provide coverage for the agent's desired markets. With increasing numbers of E&O carriers recognizing Demotech and other rating services, your E&O carrier should be contacted before you assume you cannot get the carve back that you need and deserve.

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Affinity Insurance Agency specializes in professional liability insurance/ E&O, with a focus on insurance agents, lawyers, accountants, title agents and personal care homes. Affinity Insurance Agency may be reached at 770-974-5502.



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