



Professional Services: A Critical Element of E&O Insurance

When conducting training for professional lines insurance brokers, underwriters and claims examiners, you will often hear: “No particular word or clause in an insurance policy is very important...until a claim comes in. Then they are all very important.”

Nowhere is this observation truer than when it comes to the definition of “Professional Services” in an Errors and Omissions (E&O) insurance policy. Ensuring that the definition of professional services accurately describes a policyholder’s business activities is critical because it is the basis for all coverage provided by the policy.

Some E&O insurance policies provide a very broad definition of professional services. This can be along the lines of, “acting as an attorney or notary public,” while others can be much more specific, such as “appraising real estate or personal property in connection with soliciting, placing, selling or servicing a covered product.” In this instance, it is essential to know what a covered product is. Ideally, the definition would encompass all products sold by the insured.

CONTACT

To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

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Matching the definition with services provided

It is exceedingly important to ensure that the definition of professional services matches as closely as possible with the services that are actually provided by the policyholder. Let's look at a real-world example.

An insurance carrier wrote an E&O insurance policy for a company that performed website design services. While the company was a start-up when first written, by the third year it had morphed into a rocket design consulting service. Fortunately, the underwriter surveyed the company's website as part of the underwriting due diligence and discovered the new services. As a result, the account was non-renewed.

Focusing on qualifiers accompanying definition

In addition to ensuring that the services performed by a policyholder match up with the services laid out in the policy's definition of professional services, it is also important to focus on what qualifiers accompany the definition. For instance, some policies, especially those providing E&O insurance for financial institutions, require that the professional service be rendered to others, "...for a fee or other compensation." This condition for coverage may seem innocuous enough on its face, but it could potentially exclude a number of services and claims arising therefrom.

For example, a bank's trust department might handle the sale of real estate being held in trust and, as an added incentive to clients to allow the bank to do such work, the bank might provide escrow services for free. If that bank were to commit a negligent act with respect to the escrow services, it most likely would not receive coverage if its E&O insurance required the service to be performed for a fee or other compensation.

To avoid this result, the policyholder, through its broker, should request that the definition of professional services be amended to include language along the lines of, "for a fee or other compensation or to maintain or enhance an existing relationship." **Note:** this exact wording may not be suitable for every policyholder, it should be determined on an account-by-account basis in consultation with your insurance broker.

Why it matters

Some policyholders may prefer vague and general language, e.g., “Professional Services means any service performed as a Certified Public Accountant,” and this may be sufficient in some circumstances.

In general, according to insurance industry custom and practice (and without reference to any specific laws or regulations of any jurisdiction), when language in an insurance policy is vague or ambiguous, it is interpreted in the reasonable manner which is most favorable to the policyholder.

The logic behind this is that the drafter of the policy, the insurance carrier, had an opportunity to write the language in a clear and unambiguous manner. The carrier’s failure to do so results in a penalty of having the vague or ambiguous language interpreted against the carrier’s interests.

However, it is often far better for both sides to know with certainty what professional services are covered and which are not. Ambiguity can lead to a costly, and time-consuming, coverage dispute, which is the last thing a policyholder needs when facing an E&O lawsuit.

Your Amwins broker stands ready to assist you and your retail insurance broker in crafting a precise definition of professional services that will meet your company’s need. Contact them today.

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