



Information for Insurance Professionals In the Know

Knowledge Nugget – 10/8/09 – D&O Policies for Professional Exposures?

Well, now, this was a new one on me....

One of my agents writes a management liability policy for an insured who is an association manager. Naturally, as an association manager, they have a professional exposure, as well as the usual executive protection exposures.

When I talked to the agent about the professional exposure, she said "The D&O policy covers the employees. Why do they need an E&O policy?"

I have to admit that's a first. Granted, with the entity being an insured, and the employees as insureds under the policy, many, many things that transpire in the course of business can be and are covered under a D&O policy. But I don't know of any D&O underwriters that willingly take on an E&O exposure in a D&O policy (or even any whose treaty would allow it).

So I asked her for a copy of the D&O policy, and I'll be darned if the underwriter hadn't omitted the usual and expected (at least by me) Professional Services Exclusion.

However, I don't think the policy provides substantial coverage, due to the extraordinarily broad contractual exclusion in the policy. This particular policy has an "arising from" contract exclusion, not even limited to contractual breaches, but for all matters arising from contract, express or implied. Since the rendering of a professional service must be the result of some kind of agreement, I'm thinking that this exclusion will effectively bar virtually all possible E&O claims.

I advised the agent to go back to her underwriter for clarification before she decides that this D&O policy is fully capable of providing the type of E&O protection the insured would get from a professional liability policy. The carrier is one I use, but the insured is not my client, so I wouldn't want to ask any questions that might upset an apple cart.

I'm interested in what response she will get if she does discuss with her underwriter. I expect at least one of two things: 1. Addition of a professional services exclusion on renewal; 2. Confirmation that their intent is not to cover claims arising from any services rendered to clients, per the contractual exclusion. What I don't expect is for the underwriter to say "Sure, this is an all-purpose policy -- D&O, Professional, we don't care. Bring it on."

Chris Christian, CIC, RPLU
Vice President/Senior Broker
US Risk Brokers

760-415-4213 or for TN agents 615-273-3451



Chris Christian, CIC, RPLU

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Chris can be emailed at: chrisc at usrisk dot com