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Information for Insurance Professionals In the Know

Knowledge Nugget – 3/5/09 – Wherefore Art Thou, Tail?

In these troubled times when some insureds may be entering a death spiral, and others may be dropping their professional liability coverages, it's wise to consider offering individual insureds the opportunity to buy an Extended Reporting Period (aka "tail").

Especially in the case of D&O coverage, where the primary purpose of the coverage is to protect individuals against their personal liabilities arising from participation in the business of the insured entity, an organization's inability (or unwillingness) to pay for coverage should not stop an agent from offering that coverage to the individuals who benefit most from it. (This applies to funding continuation of the policy as well as purchasing tail.)

Although I have not yet had to deal with the issue of an individual insured requesting ERP when the Named Insured does not, I can say with confidence that a carrier does not seem to be too picky about from whence the tail payment comes. So if your insured's board of directors, or professional staff, want to pitch in and fund an ERP, few carriers will turn down that money or the request for tail.

This is also the time you will become acutely aware of any insureds for whom you have placed a policy that contains a unilateral ERP provision, i.e., one in which only cancellation or nonrenewal by the carrier triggers the option to request tail.

If you find yourself faced with a unilateral tail provision, and an insured that's going belly up and wants to purchase tail, you will need to find some way, any way you can, to incent the carrier to cancel or nonrenew coverage -- other than nonpayment of premium, which generally negates the ability to trigger the ERP.

One ray of hope is that entering bankruptcy may trigger "change of control" language in some policies, which may convert the existing policy to run-off, which then may lock in the option to purchase tail at expiration, because the carrier must nonrenew.

It's infinitely better to have coverage that includes bilateral tail options in the first place, but this detail is frequently overlooked, or ranked well below pricing, coverage grants, and other attributes, when coverage is initially placed.

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