THE E&O BASICS

1. What is an Errors & Omissions policy and why do I need it?

Errors and omissions (E&O), or professional liability, is the insurance that covers your company, or you individually, in the event that a client holds you responsible for a service you provided, or failed to provide, that did not have the expected or promised results. For doctors, dentists, chiropractors, etc., it is often called malpractice insurance. For lawyers, accountants, architects or engineers, it may be called professional liability. Whatever you call it, it covers you for errors (or omissions) that you have made or that the client perceives you have made.

Most E&O policies cover judgments, settlements and defense costs. Even if the allegations are found to be groundless, thousands of dollars may be needed to defend the lawsuit. They can bankrupt a smaller company or individual and have a lasting effect on the bottom line of larger companies.

In short, E&O coverage provides protection for you in the event that an error or omission on your part has caused a financial loss for your client.

Today, E&O is usually provided on claims made or claims-made and reported policy forms, meaning the claim must be made (or made and reported) during the policy period. For coverage to apply, the act, error or omission could occur during the policy period, or, if the policy provides "retroactive coverage," prior to the policy period. Most retroactive coverage is limited, meaning the act, error or omission must have occurred on or after the retroactive date specified in the policy and the professional must have no knowledge of the claim or a circumstance that could give rise to the claim prior to the inception of the policy.

2. What are the coverages and what do they mean?

E&O policies respond to claims alleging that a professional has caused damage to the claimant by providing or failing to provide professional services in accordance with applicable laws and regulations, or by delivering a service that fell below the standard of care for their profession. Examples of typical allegations are listed

3. What is the difference between Claims Made and Occurrence Basis?

There are several important differences between Claims-made and Occurrence coverage. Key among them are:

a. Timing of claim filings required to trigger coverage, and

b. How the limits work.

Occurrence Coverage

Timing:

An Occurrence policy protects you from any covered incident that "occurs" during the policy period, regardless of when a claim is filed. An occurrence policy will respond to claims that come in – even after the policy has been canceled – so long as the incident occurred during the period in which coverage was in force.

In effect, an Occurrence policy offers permanent coverage for incidents that occur during the policy period.

Limits:

Occurrence limits "restore" each year so that claims paid for incidents arising from one policy year do not deplete limits available to cover claims from other years. Each year an Occurrence policy is in force represents a separate set of limits. Ten years of coverage under a $1M/$3M Occurrence policy could provide the insured protection for up to $30MM in claims (ten year combined annual aggregate limit).

Claims-made Coverage

Timing:

Claims-made policies provide coverage for claims only when BOTH the alleged incident AND the resulting claim happen during the period the policy is in force. Claims made policies provide coverage so long as the insured continues to pay premiums for the initial policy and any subsequent renewals. Each succeeding year the policy is continuously renewed, the "coverage period" is extended. Once premiums stop the coverage stops. Claims made to the insurance company after the coverage period ends will not be covered, even if the alleged incident occurred while the policy was in force.

A Claims-made policy will cover claims after the coverage period ONLY if the insured purchases extended reporting period or "tail" coverage.

Limits:

Claims-made limits DO NOT "restore" each year the way Occurrence Coverage limits do. The policy limits in place when the policy is purchased remain the single set of limits available to protect the insured from all claims that could arise from care provided during the years the policy is continuously in force. The insured does not have a separate set of limits for each year the policy is in force.

Step Factor:

Because both the incident and the claim have to be filed during the coverage period, the Claims-made insurer has little risk of loss the FIRST year a new policy is in force. That is why the first year premium for Claims-made coverage is lower. Each year the policy continuously renews, the coverage period expands, and the insurance company's exposure to loss increases. For the first four

years a Claims-made policy is in force, the premiums increase incrementally to reflect this increased risk. This process is known as the “Claims-made step factor.”

Usually by the fifth year of Claims-made coverage, the risk of loss levels off and the “step factor” reaches a “mature” Claims-made rate. “Mature” Claims-made rates are typically very close to normal rates for Occurrence Coverage.

4. Are defence costs included in coverage?

Refer to the policy wording for confirmation. Most E&O policies do not include defence costs but can be purchased.