

ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

Boost Your Agency's Defense with Disclaimers

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We KNOW
for Insurance Agents



Your agency proposal is an admissible document. This means at the time of an errors-and-omissions (E&O) claim, both attorneys – the one defending your agency and the one suing your agency – have a right to review it, evaluating whether the agency proposal helps or hurts their position.

Disclaimers in your proposal can help provide an element of protection that could be material enough to help determine the outcome of a claim – and are not limited strictly to P&C proposals. Examples include:

Information contained in this proposal is intended to provide you with a brief overview of the coverages provided for reference purposes only. It is not intended to provide you with all policy exclusions, limitations, and conditions. The precise coverage afforded is subject to the terms, conditions, and exclusions of the policies issued. This is designed to alert the client that the proposal is not a substitute for the policy when determining coverage issues.

Specimen forms are available upon request. While it is preferable to include the specimen forms, many can be lengthy. This disclaimer advises the client that the actual forms that will be part of the policy will be provided if they wish to see them. This takes on heightened importance on coverages such as Cyber, Employment Practices Liability, D&O, and E&O, where there is no real standardization of the forms. In addition, coverages written through the E&S marketplace are typically customized to only provide the coverage the carrier desires.

Higher liability limits may be available. Please let us know if you would like a quote for increased limits. When your agency is quoting limits, the client should know that the limits noted on the proposal are not the only limits available.

In evaluating your exposures to loss, we have depended upon information provided by you. If there are other areas that need to be evaluated prior to binding coverages, please bring them to our attention. This disclaimer notes that it is the client's responsibility to notify the agency of other issues of concern. What's more, the client is responsible for providing the agency with accurate information. For example, what if the client fails to advise you that they allow employees to use their personal vehicles for business purposes, or that the client has just bought a dog or put an addition on the house?

Exclusions and Limitations include, but are not confined to, the following: (list some key exclusions). Virtually every insurance policy has exclusions, and many have limitations. Listing them could prompt discussion on what coverage is necessary to address those exclusions. This creates a sales opportunity as the disclaimer notifies the client that not everything is covered.

The rates quoted for these benefits may be subject to change based on final enrollment and/or final underwriting requirements. This is a common disclaimer used in benefit proposals and is designed to place responsibility on the client to notify the agency if there have been any changes to the census data previously provided.

This policy is written by a surplus lines insurer and is not subject to the filing or approval requirements of the (specific state) Department of Banking and Insurance. Such a policy may contain conditions, limitations, exclusions, and different terms than a policy issued by an insurer granted a Certificate of Authority by the (specific state) Department of Banking and Insurance. The insurer has been approved as an eligible surplus lines insurer, but the policy is not covered by the (specific state) Insurance Guaranty Fund. This could be a key disclaimer if the surplus lines carrier becomes insolvent.

BOTTOM LINE: Many agencies are sensitive to the length of their proposals. While lengthy proposals are an issue, including the necessary disclaimers in your proposals can make the difference in whose favor a judgment goes if an E&O claim occurs.

This information is provided solely as an insurance risk management tool. Utica Mutual Insurance Company and the other member insurance companies of the Utica National Insurance Group ("Utica National") are not providing legal advice, or any other professional services. Utica National shall have no liability to any person or entity with respect to any loss or damages alleged to have been caused, directly or indirectly, by the use of the information provided. You are encouraged to consult an attorney or other professional for advice on these issues.

