

## The Ins and Outs of E&O Coverage

by

*Pete S. Michaels, Esq.*

Let's start with a true story. At a party, a broker introduced a client to another client, a developer who was building a shopping mall. Later, after the broker leaves the room, the developer asks the client to loan him money to complete construction. The client loans him \$300,000. Two years later, the mall fails and the client's \$300,000 is lost. Whom does the client sue? The builder, of course, but also the broker. Why? The client claims that the broker recommended the investment in the mall.

The financial advisor isn't too concerned because the case seems frivolous, and he has an errors and omissions (E&O) policy. The carrier denied coverage because the act took place before the policy was written. Even though the suite was meritless, the financial advisor had to pay more than \$60,000 in attorneys' fees to defend himself.

E&O coverage is a hot topic, especially in a down economy like this one where customer claims are multiplying like rabbits. More registered representatives are purchasing it and many independent brokers/dealers require it. Most E&O coverage is worthwhile, with a few caveats.

Policy premiums can start at around \$2,000 a year and go up from here. Factors that affect the price of the policy include the type of coverage chosen, the amount of coverage, the deductible and the number of exclusions to coverage. The normal amount of coverage ranges from \$250,000 to \$1 million per occurrence.

More importantly, and as illustrated in the story above, a policy that covers your attorneys' fees and the cost of any settlement or award may be the best investment you will ever make.



## Policy Tips

How can you get the best policy? First, shop around. Obtain competitive bids on different policies – prices can vary. Second, examine the policies closely. Have your attorney look them over. You need to completely understand how each policy works if the worst-case scenario happened. For example, make sure you understand the timeline for which you are covered, since there are “date of occurrence” policies and “claims made” policies.

Also, check to see if the policy gives you the right to counsel of your choice. Your carrier should allow you to choose a securities litigation attorney. You will want counsel who is knowledgeable about the industry and the E&O claims, since claims against you can adversely affect your securities license. Not all insurance defense lawyers are created equal. You don’t want a “slip and fall” defense lawyer standing next to you at a securities arbitration, when your reputation and license are on the line.

OK, now you have your policy. What do you do? First, make sure that your premiums are always paid on time. Don’t risk your coverage. Make the premium check the first bill you pay. Second, have your attorney give you a quick checklist of the features of your policy: deductible, policy limit, how to contact the carrier if you are sued (for example, is regular mail sufficient?). Make sure that you send your counsel copies of all policy changes and riders as they come to you as well.

What happens if you get sued? First, contact your insurance broker immediately, as well as the contact person specified in the policy. Second, gather all relevant documents as quickly as possible, both for your insurer and your compliance department. Third, make sure you have satisfied any and all other requirements under the policy to trigger coverage. These requirements can be complicated, and you should follow them to the letter. For example, most insurance policies require you to report the claim within 30 days “or as soon as is practicable.” The worst error you can make is an oversight that risks your coverage.

*Mr. Michaels is a partner at Michaels, Ward & Rabinovitz, LLP with offices in West Palm Beach, New York City, Boston and Boulder, Colorado.*