

# E&O Risk Management Newsletter

Issue 2, December 2023

We KNOW  
for Insurance Agents

E&O

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## When Using Wholesalers, You Don't Want to Assume

Agencies countrywide are reporting a wide variety of issues symbolic of a hard market. These include increased premiums, reduced capacity, restrictive policy terms, and stricter underwriting from carriers, to name a few. While the impact of the current market will vary based on the location of the agency and its customers, all agents are dealing with a different market today compared to 5 years ago.

Many agents are using wholesalers and the Excess & Surplus Lines (E&S) market more due to market conditions. A recent report by the Wholesale and Specialty Insurance Association (WSIA) notes that the U.S. surplus lines market continued to grow in the first half of 2023, rising 15.9% to reach nearly \$36 billion.

Effectively using the wholesale marketplace includes knowing that it has some uniqueness that agents must understand and account for. Putting specific processes and procedures into place can help minimize the potential for errors and omissions (E&O) problems. Wholesalers are a key segment of the industry. Due to how wholesalers do business and the potential differences among wholesalers, agencies must be aware of these differences and not assume that all wholesalers are the same. Dealing effectively with your wholesalers can be a crucial issue to minimize your E&O exposure.

The following tips can help:

- **Get the application.** The markets some wholesalers are willing to quote are based on a standard generic application, while others might require a specific carrier application. Know this information up front to avoid any potential delays. Wholesalers often navigate a high volume of accounts which may impact their turnaround time and may not have the flexibility to backdate coverage if terms are not secured before the renewal date. Review the application when you receive it from a client and address any incomplete information or obvious discrepancies prior to submitting it to the wholesaler to ensure the account can be quoted in a timely manner.

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- **Be diligent in your follow-up with your wholesalers.** The last thing an agency wants is to get the proposal the day before the coverage will be effective. This timeframe does not allow the agency to properly review the proposal and note any pertinent issues/coverage exclusions or limitations.
- **Review proposals from wholesalers for any differences.** When the agency sends in an application to various wholesalers, it is common for there to be a difference in the coverages. Analyze proposals and note any differences. Offer the client multiple proposals to enable them to choose.
- **Clearly know binding requirements.** Procedures and expectations to bind likely differ between wholesalers. For example, say you want to bind a risk at 4:00 p.m. on a Friday. Can you do it or will the wholesaler advise you that they need payment and necessary affidavit forms before they can bind? Clearly know the rules of engagement when working with wholesalers – and factor these rules into your handling of the risk. Look for wholesalers who will provide you with an account current for your business. This will take away some of the potential headaches.
- **Don't assume that coverage is bound.** Your retail agency is not an agent for the markets accessed through the wholesaler and, therefore, you do not have binding authority. Do not advise your client that coverage is bound until you receive confirmation from the wholesaler that it has been bound.
- **Don't assume the policies are correct.** Policy issuance in the industry continues to be a significant area of concern – some agencies cite that there is at least one error on every policy they receive. Check policies to determine if they have been issued per the agency's instructions.
- **Remember that the wholesaler may not have all of the facts.** Wholesalers are essentially only handling a specific issue, a specific coverage. Do they know the entire story of the account? No. For example, with Personal Umbrellas, there is a requirement regarding the amount of the underlying coverages (Auto, Homeowners, Boat, etc.). When an agency asks the wholesaler to write a Personal Umbrella, the wholesaler will provide a proposal that probably stipulates what those underlying limits need to be. A standard market may follow up on this issue, but there is no guarantee a wholesaler will.

### Exercise Caution When Using the E&S Market

You may use wholesalers for admitted products, but you are more likely to use them to access Excess & Surplus (E&S) Lines products. While the E&S marketplace plays a vital role, it is important to understand the uniqueness it presents.

Keep the following in mind when placing coverage with E&S markets:

- E&S markets do not operate the same as admitted markets, which are far more regulated. While this can give E&S markets the flexibility to craft policies for complex risks, it also means they do not have to adhere to the same standards you expect when dealing with admitted markets.
  - **It is critical that you secure and carefully review the specimen policy forms.** Policy language may vary significantly from what you expect. Reach out to the wholesaler for clarification if you are unclear on any aspect of the coverage. Document any coverage discussions you have with the wholesaler, and provide specimen policy forms to the client.
  - **Surplus Lines markets do not have to follow the same notification requirements as admitted carriers when making changes to coverage or rates.** Review renewals carefully for changes to coverage and point them out to your clients. Do not assume that the carrier or wholesaler will advise you of changes to coverage. Be prepared for the possibility of a large rate change at renewal, too.

- Surplus lines placements are not backed by state guaranty funds. Research the carriers you are placing business with to ensure a stable financial rating. Additionally, E&O policies often restrict coverage for insolvency-related claims to carriers with a certain rating at the time business is placed. These restrictions may also apply differently for admitted vs. surplus lines placements.
- Agents should advise clients that coverage is being placed with a surplus lines carrier that is not backed by the state guaranty fund. Sample disclosure language:

***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.***

### **At Least One-Third of E&O Claims Result from an Agency Moving Coverage to a New Carrier?**

Whether you are moving a client to a new carrier due to hard market conditions, a carrier exiting the market, or for more traditional coverage/pricing reasons, use caution. It is estimated that at least one-third of all E&O claims involve scenarios where an agency moves coverage to a new carrier and the replacement coverage is not as broad as the expiring coverage. It is essential for agencies to have a procedure to address this.

#### **Do an in-depth analysis when proposing a new carrier at renewal.**

1. **Review coverage differences with the client.** Create a side-by-side spreadsheet noting the primary coverage issues and listing how each carrier addresses them.
2. **Note coverage issues in your proposal.** Many agents do this, pointing out differences – especially reductions – and what’s uncovered. Coverage differences could include sub-limits, the definition of who is an insured, what’s covered and what’s excluded, and more.
3. **Advise the policyholder when there is a reduction and note that they agreed to change to the new carrier.** Without this analysis and notification, the client could have grounds to bring an E&O action against the agency if the client had a loss that would have been covered by the expiring carrier, but not by the current one.

In other situations, it could be extremely difficult or even impossible to do a full comparison. When moving coverage to a new carrier, bring reductions to the client’s attention in writing and get the client’s acknowledgment in writing if they are agreeable to the reductions. To help in the agency’s defense if a problem occurs, a suggested approach is to include standard wording such as the following in your proposals:

***In proposing the moving of coverage for \_\_\_\_\_ to a different insurance company, we have reviewed and noted in this proposal some of the coverage differences between your expiring coverage (policy) and the possible replacement coverage. It is important to note that during the review of the coverage differences, there may be other additional coverage differences that have not been noted in this proposal. We encourage you to read the policy completely and contact us with any questions.***

## Claim Examples

**Example 1:** A Commercial General Liability (CGL) policy was written through a wholesaler with pollution coverage included. After a couple of renewals, a pollution exclusion was added to the policy. While this was listed on the quote proposal, no formal notification of the reduction in coverage was provided to the agent or insured. The client subsequently had a pollution claim which was denied by the carrier. The wholesaler had no obligation to specifically advise the agent of the added exclusion. We anticipate a six-figure payout from the agent's E&O for this claim.

**Lesson:** Always check your renewals for changes to coverage.

**Example 2:** A professional liability policy was placed through a wholesaler with a 1999 retro date requested. A conditional quote was provided with retro inception and prior acts excluded. When formal terms were requested, it was again noted that a 1999 retro date was needed. Coverage was bound and the policy was issued with retro inception and prior acts excluded. The client later filed a claim which was denied based on the prior acts exclusion. The agent contacted the wholesaler to question why the 1999 retro date was not provided. While the wholesaler did reach out to the carrier and indicated their intention was to provide coverage with the 1999 retro date, the carrier declined to amend the retro date. The carrier declination was not communicated to the agent. This claim paid \$500,000 from the agent's E&O coverage. Efforts to pursue the wholesaler were unsuccessful.

**Lesson:** Review proposals and policies carefully to ensure the coverage is accurate. Clear up any discrepancies immediately.

## Loss Control Articles

Use our risk management articles to help educate your staff. New articles are released monthly. Here are some of our most popular articles:

- [Boost Your Agency's Defense with Disclaimers](#) (5-R-1389)
- [Are Your Clients Carrying Adequate Limits?](#) (5-R-1297)
- [What Should You Do When a Customer Makes an Allegation or an Error or Omission?](#) (5-R-1320)
- [Be Aware of the Growing Concern of Insurance to Value](#) (5-R-1396)
- [How Long Should an Agency Maintain Its Documents?](#) (5-R-1314)
- [6 Common Causes of Agents' E&O Claims](#)

### Accessing the articles is easy!

We offer articles spanning a broad range of topics, such documentation guidance, using wholesalers, certificates of insurance (COIs), staff training, application handling, navigating limit discussions, and more.

Insureds can access our articles by signing into our online Customer Care Center, clicking Risk Management to go to the site, and then clicking Loss Control Articles.

[CLICK HERE](#) for information on our Customer Care Center and risk management resources.

### Ready to Help

Do you have a client looking for risk management guidance on a particular topic and you aren't sure what to suggest? Reach out to Tabitha DeGirolano of our E&O team for help at [tabitha.degirolano@uticanational.com](mailto:tabitha.degirolano@uticanational.com).

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