



# E&O Risk Management Newsletter

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## In this newsletter:

- ➔ Considerations When Choosing a Limit for Your Agency E&O Coverage
- ➔ E&O TIP: Obtaining Signatures on Applications
- ➔ Risk Management – Carrier Downgrade Resources

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## Considerations When Choosing a Limit for Your Agency E&O Coverage

A common question that we deal with is “What limits should I buy?” The adage “buy until it hurts” is perhaps too simple and not very helpful. Processes that can be useful include:

### The “What’s the worst thing that can happen?” Method

Here it is important to know your book of business. When your normal policy is a Personal Home and Auto, the limits can be fairly predictable and gauged by a review of your agency management system for property and casualty limits. Keep in mind the potential for Umbrella policies and other lines such as Workers’ Compensation and health insurance.

Failure to procure coverage is the most common cause of action against agents. For example, what is the potential loss if you fail to place a health policy or enroll a member who contracts a serious illness or sustains an injury? Focus on what you may have failed to write or place. When you include Umbrella policies, this leads to very high limits for the policy that your office failed to place. This should be kept in mind when choosing a limit for your E&O Coverage.

A commercial agency has more things to consider. Property schedules can be complex, and a serious error in valuation or difference of opinion can reach into the millions of dollars. What’s more, incorrectly reported business income can be costly. Don’t neglect looking at bond penalties, either. Any of these areas, in addition to the usual items such as Umbrellas, can lead to claims of up to tens of millions of dollars.

### The “What is it worth?” Method

In these instances, the agency uses a limit in proportion to its worth.

Agencies that believe their worth to be no more than a million dollars in the early years set their E&O limits, and then often neglect to update it as the years pass. With the pattern for renewing their E&O established, the tendency is to look at price on an “apples-to-apples” basis each year. Often, they can look up after several years of growth and acquisitions to find their value at several million dollars with limits of \$1 million per claim and \$2 million aggregate.

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While most of our claims are settled for under \$1 million, this does not mean an agency should not consider higher limits. Why buy something that probably will not be used? To begin, there's always a first time – we have had \$5 million-plus awards. The other thing to consider is that we don't generally get to the end – settlement or other resolution – very quickly in large claim cases. Having a high-dollar claim over your agency's head for years can be unnerving without adequate limits.

Settlement of professional liability claims is a different process. All of the underlying coverage issues must be decided before the E&O damages can be properly assessed. This process can sometimes take years. In most cases, the plaintiff's attorney has taken special pains to push up the damages as high as possible. You can be looking at a multiple-million-dollar damage potential for years. While the defense can assure you that the final result will most assuredly be a fraction of that monstrous sum, you're the one that has to sleep nights.

Another consideration of the "What is it worth?" method is the matter of whether you will really be ready self-insure the portion of the risk that is not insured. This is true especially if the cost of some additional limits of E&O can be reasonably obtained.

Some agencies are guided solely by the contractual requirements of their agency agreements. This is certainly a basic step. Over the years, we have seen agencies call to increase limits because they are taking on a new carrier with substantially higher limits requirements. Generally, this is a fairly simple and straightforward process, but it is not an automatic. Consider if you have just had a claim – the carrier may not be in a position to increase the limits, at least not quickly.

Yet it's not only carriers that require higher limits. There are times when a potential client, particularly a municipal entity, may require higher limits as standard practice.

Obtaining limit proposals can be a fairly simple process, particularly at renewal anniversary. Most E&O carriers will happily provide an additional \$1 million or \$2 million of limit. The cost can be like lobster, that is, according to market prices. Limits will likely be more easily obtained in a soft market and at a better price.

Discuss the availability of additional limits with your carrier to know what limits are available and what some of the considerations would be for your agency's particular situation. A mix of business, market specialties, and agency claims history can all be factors in the decision. An agency with five to ten employees should carry limits higher than \$1 million. A simple inquiry at renewal can be valuable.

### **It's Your Decision**

The limit of liability your agency chooses for its errors and omissions coverage should be one you are comfortable with. Review it annually using a logic that fits your situation.

### E&O TIP: Obtaining Signatures on Applications

- **When sending the application to your client for signature, provide the full application.** DO NOT only send the signature page.
- **Be clear to clients that they should first review the application and *then* sign it.** Sample language:  
*Please review the attached application for accuracy and completeness and then return it signed and dated. If there are any discrepancies, please contact me.*

### Risk Management – Carrier Downgrade Resources

Do you know what to do if one of your carriers has a downgrade to their financial status? The Utica National E&O Risk Management website now has a number of useful items to help you navigate a carrier rating downgrade, including:

- **an article with guidance on how to handle accounts that are placed with the downgraded carrier**
- **sample letter to communicate to clients regarding the downgrade**
- **sample carrier downgrade acknowledgement form.**

To access our risk management site, log in to our [online Customer Care Center](#), and then click "Risk Management." [CLICK HERE](#) for details on how to sign up for Customer Care.

### Ready to Help

Are you looking for risk management guidance on a particular topic? 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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