

Who are you carrying on your E&O Policy?



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When reviewing E&O policies, I often reflect on the lists of names on the named insured schedules. Most belong there. Some do not.

The categories of entities particular to your professional liability are First Named Insured, Named Insured and Additional Insured.

- The First Named Insured is a named insured and also the keeper of the E&O, this is the entity that will receive notices and have the authority to make changes to the policy.
- Named Insureds are insured under the policy but do not control the policy or have authority to make changes.
- Additional Insureds are entities who are only granted rights as an insured under limited scope, such as a broker you place business through. You want to ensure that they are covered only for liability where you are responsible.

Additionally most E&O policies include coverage for groups such as owners as individuals, employees, estates of owners. You will find coverage for independent contractors in many policies. Coverage for entities such as temporary workers and interns can vary so you want to check those as well in the policy definitions.

Of the names that do not belong, some are there just because they have always been there. Often they no longer belong but just have not been removed. Some never belonged there. Some are there because no one knew what to do with and them and they just got added.

We receive many requests to add entities to the professional liability policy. Some are parts of schedules of named insureds; some are part of new mergers and acquisitions. Agents are entrepreneurs at heart. In the history of many agencies there are many initiatives into different market segments. As part of these sortouts, agencies set up new trade names. Sometimes they were joint ventures that didn't pan out but there was some business written under these trade names.

There is a cost to listing those names. Each entity is a potential portal to your E&O limits and loss history.

Your insurability in the market is impacted by the extent that you open it to claims. In the height of a soft market this may not seem to be a priority.

When cycles shift, loss history is traditionally one of the determinants as to which markets will be open to an agency for professional liability.

Do you have a legal or ethical duty to list each name on your errors and omissions liability policy for coverage?

Will you be economically harmed if that name receives a written demand for damages? If not, why add it?

Independent Contractors are a classic way for names to appear on a policy. A producer controls some business under a corporate name or trade style. The name gets added to the E&O to ensure that there is coverage.

Should it be there? Maybe. Here is something to consider. Our program includes coverage as an insured for independent contractors. The program also includes contractual liability. If you have an independent contractor relationship with the producer, there is coverage for the producer in the policy if that name is sued. You do not have to add them by name. In fact you do not want to. Under the terms of the policy they have coverage only for business placed as an independent contractor. If you add them by name you are adding coverage for anything that they do, even if it is business placed outside your agreement.

I recommend that periodically you review the schedule of named insureds on your policy. You will want to have a copy of your E&O policy with the description of who is covered. Some questions to ask:

Were there any contracts signed such as agency agreements?

Did you provide any compensated services under this name?

Are there any current customers under this name?

Is the entity licensed in any state?

If after careful review of the policy and form against the scheduled named insureds you do not see a requirement to list them, consider a review with your legal counsel.

You may want to remove them from the list. In the long run it may save you many headaches.