

Surplus Lines – a potential E&O NIGHTMARE?



a Although most agents would characterize the current marketplace, as somewhat soft, there is no doubt that a significant amount of business is still placed with Excess and Surplus lines companies thru the wholesaler community. Whether the needed coverage is property or general liability or umbrellas as well as professional liability and Directors & Officers Liability, the E&S marketplace today serves a vital need for virtually every insurance agent.

To effectively deal in this marketplace requires knowledge of some distinctive differences as compared to the admitted marketplace. Without knowledge of these differences, dealing in this marketplace could be your biggest nightmare.

First, let me clarify that any E&O concerns that I have about this segment of the marketplace should not be construed as a negative comment towards the carriers that write business on a non-admitted basis. There are a tremendous number of top notch "A" rated E&S carriers that have tremendous stability and exhibit unbelievable creativity in writing what could be characterized as tough business. The industry is better because of these markets.

Essentially, E&S or companies that write business on a non-admitted basis means that in most state jurisdictions, the carrier can write the business free of rate and free of form. While most carriers have set rates for the business they write, these rates do not have to be filed with the Insurance Departments. One advantage of this is that the carrier can change the rates very quickly since they do not need state Ins Dept approval. In fact, this is what you are probably seeing today. As the standard markets look to grow, much of the business that they are targeting is business previously written in the E&S market. So the E&S carriers are dropping their rates to keep these accounts and they can do this fairly quickly.

As stated above, the forms typically do not need to be filed. This is actually one of the areas that has the potential to cause a problem and that you should look out for. Most of the E&S companies use their own policy language. The language may have some resemblance to ISO but don't count on it. As a result, the coverages can be modified without department approval. **So when placing business in the marketplace, be sure to request a specimen copy of the forms from the**

wholesaler that you are dealing with and include them in the proposal to your client. Don't assume that when you get quotes from a wholesaler with 3 different carriers that the coverage is identical with all three. Be certain that you are dealing with a wholesaler that will advise you of the exclusions. This will enable you to guide your account accordingly. **It is also important to understand that E&S companies are not required to send out conditional renewal notices when the renewal coverage is going to be different from the expiring coverage.** Once again, it would be advantageous to ask your wholesaler if the coverage in the renewal proposal is different from expiring. Without this knowledge, you will need to do a policy comparison to identify the differences. Do you have the time?

Oftentimes in the standard marketplace, circumstances arise where you are asked to bind an account effective today but due to your workload, you do not get to the actual task until tomorrow. Well, in the standard market, these may not cause a problem since you are probably acting as an agent and thus have the authority to bind on the carrier's behalf. In the E&S market, this can be your biggest headache. **In the E&S market, you are not acting as an agent and you should understand that carriers will bind the risk the day they are asked to bind, not a day before.** No backdating. I can guarantee that not binding on time will cause you significant anxiety; praying that a loss does not happen. Also it may not be just an issue of calling to bind. With many wholesalers, binding a risk may require money and the necessary affidavit forms prior to binding. In some situations this may be virtually impossible. Once again dealing with a wholesaler that looks to make dealing in the E&S marketplace somewhat customer friendly is a must.

Sound like dealing in this E&S marketplace can be a nightmare? Yes, it can but by better understanding the uniqueness of it, you can adjust your procedures/workload accordingly. Also, having a relationship with the wholesaler that you do business can play a key role.

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