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White Paper

BROKERAGE BINDING PROGRAMS

Protecting your insured (and yourself) through the purchase of an extended reporting period

Suits and claims against insurance brokers for not advising their clients to purchase an extended reporting period ("ERP") have become commonplace. The ERP product is commonly referred to as tail coverage. Uninformed insureds are needlessly exposed to liabilities because no tail coverage was purchased. Historically, tail coverage was inexpensive and was for an unlimited period of time. Driven by losses, the price for tail coverage increased and the length of the time available for purchase has become limited. These factors suggest the value of tail coverage.

When you should consider the purchase of an ERP

- When the insured's claims made policy cancels and/or non-renews and the insured is not replacing their coverage and/or the insured plans to cease operations as a going concern
  Under this scenario, the insured would be going bare should they not purchase the tail. There would simply be no coverage for a new claim (that was not previously reported).
- When the insured's claims made policy is replaced by an occurrence policy
  Switching an insured to an Occurrence policy from a claims made policy without purchasing an ERP leaves the insured with a substantial exposure (depending on the wording of the Policy). Generally, claims arising from occurrences pre-dating the occurrence policy would not be covered under the new occurrence policy as the acts did not occur during the occurrence policy time period.
- When the insured's claims made policy is replaced by another claims made policy from the same insurer
  Replacement policies may have different terms. The Policy's retroactive date may be more restrictive on the new policy, potentially resulting in a gap in coverage.
- When the insured's claims made policy is replaced with a claims made policy from a different company and/or with different terms
  Claims made policies provide coverage for claims received during the policy period. Should a replacement policy have different terms or conditions, the insured may not have coverage under the replacement policy, although with a tail an insured would have an earlier policy that would respond to the loss.
- When the insured merges with and/or is acquired by another company
  If the insured's assets were sold to or were acquired by another entity, there would be no responsibility to cover the insured for any claims/events/incidents that occurred prior to the date of ownership change. The insured (former owners stockholders) would be solely responsible for providing defense/ indemnification with respect to these claims.

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How an extended reporting ERP period works

- Most policies issued on a claims-made or claims-made and reported basis will include the option to purchase an ERP. Once a claims-made policy ends (either through non-renewal or cancellation), any claims received thereafter would not be covered under the non-renewed or cancelled policy.
- This optional coverage allows an insured to report a claim after their claims made policy expires. This only applies to claims that arise out of occurrences that pre-date the policy's expiration. Many people refer to an ERP as transforming an insured's earlier claims-made policies into occurrence policies for the period of the ERP.
- The insured usually has the option of purchasing one, two, three, or a five year ERP. Some policies allow a longer time period. The limit of liability under an ERP is generally the annual limit of liability on the expiring policy. There is only one single limit, regardless of the ERP length purchased.
- Generally, the rates to purchase the ERP is set at the inception of the insured's claims made policy. As there is no underwriting conducted at the time of purchasing the ERP, the coverage is immediate upon purchase and an insured wishing to purchase the coverage cannot be turned down. In addition, an ERP cannot be cancelled.
- There are, however, strict time limits to purchase an ERP. Generally, the ERP must be purchased before the last day the insured's policy is in effect. Failure to act quickly will likely preclude an insured from being able to purchase the coverage.

Victoria Dearing MBA AAI CPCU
RPLU ARM-P, Sr. Vice President/
Professional Liability Broker

vdearing@breckis.com
469.320.4033

Important things to remember about ERP

- Coverage is an endorsement to the existing policy, not a new policy.
- The limits apply ONCE for the entire term of the extended reporting period and do not reset each year if a multi-year extended reporting period is purchased.
- Coverage is fully earned and non-cancellable.
- ERPs must be purchased before the non-renewal or cancellation of the policy.
- ERP's do not provide "going forward" coverage. Any incidents/circumstances that occur after the effective date of an ERP will not be covered. An ERP is only to extend the time to report claims from incidents that occurred during the policy period and within any applicable retroactive date.
- ERP's may have additional terms and conditions/exclusions not on the policy.
- When moving claims made coverage, it is very important to advise the insured of all options and the ramifications of each of these options. A mirror test should also be performed to make sure replacement coverage is equal to or better than the current policy.
- Please read all forms carefully!