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A Newsletter from Chicago Underwriting Group, Inc.
Underwriters of D & O and Professional Liability Insurance

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Binder Conditions: Why They Are important



Introduction

At the end of most of our written quotes and binders, following the limits, premium, commission, policy forms and endorsements, is a list of additional information that we need before coverage can be confirmed. The preamble to the list usually reads something like: "The foregoing is subject to receipt and approval of the following." Because of the words "subject to," the insurance industry commonly calls the list, "subjectivities," a word with little or no meaning outside this narrow context. But in reality, they are conditions attaching to the quote or binder. The coverage offered is predicated upon these conditions being satisfied, and so we will be changing the language of our quotes and binders to reflect this.

What Generates These Conditions?

Quote or binder conditions are generally imposed under three circumstances:

1. **Application Related** Our application is sometimes not completed or included with the underwriting material provided by the broker. The underwriter will require the application to be fully completed and will make this a condition of the terms offered. We will sometimes accept another carrier's completed application form, as long as it provides all the information we need; if not, we will require this additional information separately.

2. **Omission of Routinely Requested Information**

With public company D&O liability, for example, in addition to the completed application, we will almost always ask for a copy of three internal documents not available from public records. These are: (a) insider trading policy, (b) corporate disclosure and communication policy and (c) revenue recognition policy.

(a) **Insider Trading Policy**

Every public company should have a written policy that describes the times and circumstances when a corporate "insider" can buy or sell company stock. Insider stock trading is a strong signal to professional analysts and outside investors, and so it is important that corporations carefully control it. The existence of and adherence to a well-crafted insider trading policy can also defeat or reduce allegations of insider trading.

(b) **Corporate Disclosure and Communication Policy**

For a public company, privileged and restricted information about its operation is also valuable information. How it is disseminated to the public is very important; having a written policy that clearly stipulates who has this responsibility and how it should happen is essential. This is more relevant than ever in today's business environment with the Internet looming over everything and SEC Regulation FD (Fair Disclosure) setting a standard that previously had not existed.

(c) **Revenue Recognition Policy**

Financial restatements are a prime cause of D&O lawsuits. They often result from a company booking or recognizing revenue in a way that is allegedly inappropriate and misleading. Clear, written guidelines on how a company recognizes revenue are therefore crucial for how a company conducts and measures its business and subsequently reports its numbers for public review. Unlike the insider trading and corporate disclosure policies, which can be similar throughout many industries, revenue recognition practices can differ among

industry segments and among firms.

3. **Specific Information Requests**

Whether for D&O or Professional Liability, we may need more information on something that might not be mentioned in the application. We could have learned about it from a news service or from our independent research.

Summary

Failure to expedite the removal of these conditions may cause problems and can waste everyone's time with extra work. But it is important. We've even thought about putting them at the beginning of our quotes and binders to help focus attention, because unless they are met the rest of the terms are meaningless. We need your help in following through with these binder conditions so we can all work more effectively. Thanks!

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