

# Client Alert: Management Liability Broking Best Practices

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The COVID-19 pandemic has created unprecedented uncertainty with regard to the business environment and global operating conditions. With the vast majority of insurance industry professionals working from home, and the potential for individuals to be less available than usual due to a myriad of reasons, it is more important than ever for insureds and brokers alike to focus on the basics of insurance best practices. This Client Alert examines selected best practices that are relevant in normal times – and can be crucial in the current times.

## Allow More Time for All Insurance Processes

Expect that each step of the process will take longer than customary, attributed not only to remote working conditions, but also to the volume of insurance transactions and inquiries. Owing to this reality, we recommend that insureds seek to complete renewal syndications early, get the coverage bound early, and finalize formal documentation early.

## Proactively Communicate an Insured's Story

With unprecedented economic tumult, management liability insurers are concerned about the impact across most lines of coverage. Further, many insurers are requesting COVID-19-related questionnaires in order to evaluate the potential impact of this pandemic. With that as background, insureds and brokers should strategize about the most effective approach to articulating an insured's key risk factors and mitigating considerations. This recommendation applies across public and private companies, and to multiple lines of coverage including directors' & officers', employment practices, fiduciary, fidelity, and cyber liability coverages.

## Obtain Written Documentation of Key Items

The insurance industry is built on trust; trust that insurers will honor terms provided, and trust that insurers will pay legitimate claims as they are tendered. However, undocumented, verbal, and informal commitments from insurers can create opportunity for uncertainty, confusion, and ambiguity. As always, we recommend obtaining written documentation

with respect to all aspects of insurance coverage, via a formal quote, binder, and policy. Especially in times of firming market conditions when many programs are experiencing significant adjustments, it can be tempting to pursue a "soft" (i.e., not formally documented) extension in order to allow more time to obtain alternatives. Avoid this approach, as it creates significant coverage uncertainty.

## Recognize the Value of Certainty

In uncertain times, there is value in certainty. When considering insurance, certainty can take the form of continuity, the time period of coverage, and "locking in" coverage as early as possible. While many programs will be marketed, and insureds will consider changing insurers due to firming market conditions, special consideration should be given to continuity of coverage and relationship with a carrier. In management liability claims, there is a strong likelihood that alleged wrongful acts span multiple policy periods, which creates uncertainty regarding the appropriate policy period for coverage, and highlights the advantage of maintaining continuity with an incumbent carrier. Further, if clients are considering changing the length of the policy period or purchasing higher limits now, there is absolutely an advantage to locking in that coverage as long as and as soon as possible. Also, recognize that many insurers are unwilling to provide policy extensions at this moment, so plan accordingly.

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If you have any questions about your specific coverage or are interested in obtaining coverage, please contact your Aon broker.

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## About Aon's Financial Services Group

Aon's Financial Services Group (FSG) is the premier team of executive liability brokerage professionals, with extensive experience in representing buyers of complex insurance products including directors' and officers' liability, employment practices liability, fiduciary liability, fidelity, and professional liability insurance. FSG's global platform assists clients in addressing their executive liability exposures across their worldwide operations. Aon's Financial Services Group manages approximately \$2.9 billion in annual premiums, assists with average annual claim settlements of approximately \$700 million, and uses its unmatched data to support the diverse business goals of its clients.

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## Remit Premium Payments Early

The possibility for delays in premium payments exists, and those delays can arise from the insured, the insurer, or the banking/processing systems. While many insurers have recognized this reality and are proactively extending premium payment due dates, it is advisable to remit premium payment as early as possible in order to allow as much time as possible for receipt by the insurer to avoid cancellation of the policy due to non-payment of premium.

## Clear Subjectivities Early

Addressing subjectivities prior to binding has always been a key recommendation. However, given the additional time necessary for many steps in the renewal process, and unpredictable schedules of insurance professionals in the current environment, it is critical to satisfy subjectivities referenced on quotes early, and most preferably prior to binding coverage. Leaving subjectivities outstanding creates the potential for significant coverage gaps, as binders often expire if subjectivities are not addressed within a relatively short timeframe (i.e., fourteen (14) days) post-inception.

## Submit Timely Notice of Claims

Management liability policies often are claims-made and reported policies, and timely notice of claims is paramount to realizing insurance coverage. While many businesses are staffed and operating remotely, it is more important than ever to poll internally for claims that need to be noticed under claims-made and reported management liability policies. Key internal stakeholders should be aware of reporting requirements and what constitutes a claim, and risk managers and general counsels must be diligent in ensuring those matters are noticed timely. Consult with your Aon broker and claims professional to review matters that may require careful consideration.

## Evaluate Notice of Circumstance Policy Conditions

In this tumultuous environment, many matters are rising to a threshold that is not a claim as defined in the policy, but may give rise to a claim. Especially in situations where renewal terms and coverage may be more restrictive than the prior management liability program, insureds may wish to evaluate whether a notice of circumstance is appropriate. Submitting a notice of circumstance may serve to preserve coverage under the existing program for the circumstance submitted. Note, the threshold to submit a notice of circumstance can be somewhat burdensome. There is no guarantee of future coverage as each situation is highly dependent on the specific facts at hand, and certain downsides can exist relative to a notice of circumstance. Consult with your Aon broker and claims professional to identify the information necessary for a notice of circumstance, and to determine whether it is appropriate to evaluate further.

## Conclusion

In these unprecedented times, it is easy to lose sight of the management liability insurance best practices required to maximize the potential for a successful program renewal or claim submission. Aon's Financial Services Group seeks to execute these strategies for our clients, with a keen focus on items of critical importance in the current economic and work environment and dynamic insurance marketplace. As always, do not hesitate to contact your Aon team with any questions.

## About Aon

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