

ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

Do You Have 375 Hours* to Dedicate to an E&O Claim?

We often hear that time constraints and the fast pace in an insurance agency make it difficult to take the proper precautionary steps that could prevent, or help mitigate the time and expense of, an Errors and Omissions (E&O) claim. However, as indicated in the chart below, and further detailed in the Anatomy of an E&O Claim on the following page, **the estimated time spent on an E&O claim that results in litigation is approximately 375 hours***, which is substantial. In man-hours that is equivalent to losing one (1) of your staff for over 48 work days, which translates to over 2 calendar months [business days].

Moreover, what is unquantifiable is the impact to you personally, as you will be distracted during your home-life and work activities by the looming specter of litigation, and the reputational harm to your agency that you worked so diligently to build.

Time Requirements of an E&O Claim					
Stage	Activity	Est. Time (hrs)		Est. # of Employees	Total (hrs)
<i>Initial Response to Demand</i>	Review of file with CSR and Producer	5	x	2	= 10
	Notice to the E&O Carrier	3	x	1	= 3
	Copying and Sending Agency File	4	x	1	= 4
<i>Early Stage of Litigation</i>	Initial Meeting with D/C	4	x	3	= 12
<i>Written Discovery</i>	Assisting with and providing Responses	12	x	2	= 24
	Reviewing Plaintiff Responses	6	x	1	= 6
<i>Depositions</i>	Deposition Preparation	6	x	3	= 18
	Deposition of Key Members of Agency	8	x	3	= 24
<i>ADR</i>	Mediation or Arbitration	10	x	1	= 10
	Court Order Settlement Conferences	8	x	1	= 8
<i>Trial Preparation</i>	Multi-Day Preparation of Each Key Member	4	x	4	= 16
<i>Trial Testimony</i>	Attendance at Trial	80	x	3	= 240
Totals					375

Document communications with your customers. This takes a few extra minutes per account, but will save you ample time, and a lot of grief, in the end. Taking the time to ensure that your employees are knowledgeable in their respective areas and are made aware of E&O exposures and how to avoid them can save you a significant amount of time. The first line of defense is ensuring that your licensed employees are earning Continuing Education ("CE") credits on topics designed to address areas of E&O exposure. These can be through your state's insurance association and other organizations. Knowing areas of concern is key to avoiding the risk in the first place. This requires no additional time, as the CE credits are required. It is merely a matter of selecting courses that would benefit the group. Sharing of knowledge is another crucial means of ensuring that your personnel are staying current and communicating about E&O exposures.

Auditing files to ensure that the coverages requested by the customer were quoted and bound, and that any declinations by the customer were clearly documented, will help to reduce E&O exposure and alert you to areas of concern.

To assist our insureds, the Utica National E&O Customer Care portal has a Risk Management webpage that has E&O tips, loss control articles, Lessons Learned claim examples, online courses and training videos, and a Self-Assessment Tool that can be used to inform your agency's personnel on trending issues and methods for avoiding E&O exposure. These can be accessed and shared within your organization to help build a robust E&O risk management program. For example, discussing trends and loss control articles during your staff meetings or lunch-and-learn events can be an effective way of introducing these tools.

Continued

If you are currently finding it difficult to allocate time for activities that will help prevent or mitigate the time and expense of an E&O claim, you will definitely find it difficult to allocate the time and resources for an actual E&O claim. **Proper planning and action can reduce the time you and your agency spend responding to an E&O claim, which will result in a more profitable agency.** Taking the time to properly review, discuss and document the coverages with your customers will ultimately save you copious amounts of time and, as the adage goes, "Time is money."

ANATOMY OF AN E&O CLAIM

The time that an E&O claim consumes starts when the agent first learns of an alleged error from the agency customer. This is often in the form of a demand for money or services from the agency customer's legal counsel. This should prompt an internal investigation, which will include, at a minimum, the following:

Review of the agency customer's file. Depending on how long this customer has been with the agency, this may require a significant amount of time to review. *(Est. 10 hours);*

Notice to the E&O Carrier. This will require the agent to fill out the First Notice of Loss form and provide the relevant documentation and claim background to the claim specialist. *(Est. 3 hours);*

Copying the agency file and sending it to Utica National and defense counsel. This may be a voluminous amount of documents held in archives or, if the agency document system is completely electronic, may involve printing a significant amount of material. *(Est. 4 hours)*

Once a complaint is filed, defense counsel will need to meet with you and your employees, normally at least three; the producer, the office manager and the CSR that handled the account, in addition to the principal of the agency, to prepare a responsive pleading. This can range from a couple hours via telephone to several days of in office interviews. *(Est. 12 hours)*

The discovery phase of litigation, where the attorneys gather and exchange information relevant to the allegations at issue, starts almost immediately after the answer is filed. This is often very time consuming depending on the agency management system (archived paper documents vs. electronic document retention), how long the plaintiff had been a customer of the agency (new customer vs. 20-year customer), the nature of the allegations (certificate of insurance with incorrect information vs. dispute on valuation of property that has allegedly been underinsured for several years), and the date of loss (current policy period v. alleged errors spanning several policy periods). *(Est. 24 hours)*

You will also be asked to review the discovery responses of the plaintiff. *(Est. 6 hours)*

After written discovery is completed deposition testimony will be taken of the key parties and witnesses. This will require several meetings with defense counsel to prepare for the examination under oath. You should plan on a day of preparation for each member of your agency that will be required to testify. *(Est. 18 hours)*

The actual depositions may range in length from half-day to 3 days, depending on the legal counsel conducting the examination and nature of the allegations. *(Est. 24 hours)*

In most jurisdictions, the Court will require that the parties attempt to resolve their issues through Alternative Dispute Resolution ("ADR") such as mediation, arbitration or court ordered settlement conferences, prior to scheduling the matter for trial. These will require the attendance of the principal of the agency and their legal counsel, at a minimum, and can range in length from a half-day session to several days. *(Est. 18 hours)*

If the case is not resolved via ADR, then your defense counsel will need to prepare the case for trial. This may take several weeks with frequent interruptions to your business as your staff are pulled away to prepare for their part in the litigation. *(Est. 16 hours)*

Trials can run anywhere between three days and three weeks [or longer], the average trial lasting about one to two full weeks, at which the principal will need to be in attendance, in addition to any personnel that will be examined and cross-examined under oath. *(Est. 240 hours)*

**The estimated figures for time and number of employees consumed for the various tasks associated with the Time Requirements of an E&O Claim were estimated based on a review of fifteen (15) litigated E&O claims and are intended to be representative of the time that may be required should your agency have a litigated E&O claim; however, every E&O claim is unique to itself and the parties to the matter and may result in more, or less, time being consumed depending on factors including, but not limited to, the nature and value of the claim, age of the claim, agency size, number of parties to the litigation, motivation of the parties and the legal complexity of the issues presented.*

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