

ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

Agency Producers: We Need Your Total E&O Commitment

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Without a doubt, the agency sales producers are “the key” for an agency to have a solid commitment towards preventing possible errors and omissions (E&O) claims. This means a 100% buy-in from every producer, every day.

Insurance producers are at the heart of most E&O claims. Essentially, one out of every two E&O claims alleges an “error or omission” from the ranks of the insurance producer.

Here are some key issues for producers to be aware of:

- **The need to listen.** In many, if not all, states an insurance producer (agent/broker) has a common-law duty to obtain the coverage the client specifically requests within a reasonable time period. Thus, listening to the words of your client/prospect is extremely important. Since there may be situations where the producer can't secure the coverage requested, they also have a further duty to inform the client the reason why the coverage cannot be secured.
- **Note taking.** As producers interact with customers, it should be a practice to be taking notes of the discussions. When clients make decisions on the coverages they want and don't want, the producers are typically requested to get the clients' signature. While putting this information in the file or agency management system is a positive step, it is just as important that these conversations and the decisions made be “memorialized” back to the customer. For example, if the client calls to advise they are not interested in a coverage proposed, the best approach is for the producer to send the client a note recapping the discussion. The goal of this extra step is to ensure there is no misunderstanding between the parties. The extra time spent on documentation may very well be the key in the direction of the next E&O claim.
- **The need to document.** While producers may possess a very good skill set, including strong technical knowledge and solid sales skills, there is one thing, that very honestly, they seem to struggle with: documentation. The lack of quality documentation is a key issue in E&O claims. Documentation truly is the one critical piece that may determine the success of the agency in prevailing in an E&O matter.
- **Don't rely on your memory.** Let your documentation tell the story. It is not uncommon for the courts to take the position that, “if it's not in the file, it didn't happen.”
- **Sell what you know and know what you sell.** It is imperative for producers to possess strong technical knowledge for interactions with prospects and customers. In addition, due to the evolution of our industry, keeping up with that level of knowledge is critical. Current issues such as drones, cyber, and others require the producer to keep with their commitment to learning.
- **Be honest with the carriers you use.** In the completion of applications, it is critical that the markets be provided with a full and accurate disclosure of the risk. The relationship between your carriers and your agency is built on trust. Being totally honest is a key part of that relationship. The downside of being “less than honest” is extremely significant and is not a place you want yourself in.
- **Watch your words.** Due to the tremendous pressure to sell, producers may be inclined to position themselves and their agency in the best favorable light. While various marketing “puff” may enhance the ability to be successful, producers must be careful and deliberate in the words and phrases used for promotion. Avoid stating you are an “expert.” Also avoid phrases such as, “we make sure you are properly covered,” or, “this coverage is definitely better than what you have.”

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