

# ERRORS & OMISSIONS

## RISK MANAGEMENT ALERT

COMMON CAUSES OF AGENTS' E&O CLAIMS – PART V

### Failure to Notify of Cancellation of Coverage, Replacing Cancelled Coverage, and Reporting of Claims

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The final installment of the [6 common causes of E&O claims](#) » series addresses the failure to notify policyholders of the cancellation of coverage, replacing cancelled coverage, and the reporting of claims.

#### FAILURE TO NOTIFY OF CANCELLATION/REPLACING CANCELLED COVERAGE

**Some clients are not good at paying their premiums on time. Chasing bad-pay clients creates an exposure for your agency if a client has a claim post-cancellation and you did not provide additional notification.**

- **Do not** set the precedent of notifying clients of pending cancellations.
- **Do not** make payments on behalf of clients to avoid their policy being cancelled.
- **Do** offer to obtain replacement coverage as soon as possible once coverage is cancelled – and let the insured know as soon as possible if you may not be able to provide an acceptable replacement.
- **Do not** advise that you will be able to cure a gap in coverage due to a cancellation.

#### REPORTING OF CLAIMS

**Educate your staff on what they should and shouldn't say when they receive a notice of claim from a client. Create a clear process with an emphasis on documentation to help you avoid E&O claims.**

- **Do** have a process to ensure that any claims notice received from an insured is forwarded to the carrier within 24 hours.
- **Do** confirm receipt of the claim with the carrier.
- **Do** ensure you report the claim to all policies that may have coverage, being particularly aware of excess or umbrella coverage in place as this is often overlooked.
- **Do not** advise a client that “you will be covered” or “there is not coverage.” The carrier should determine claims coverage.
- **Do** communicate in writing to your client if you do not accept notices of claim, with details on where they should report the claim. If this is discussed verbally, back it up with a written communication.

**IMPORTANT:** If you believe there is a potential E&O claim against your agency, report it to the carrier immediately and do not admit liability. Read [What Should You Do When a Customer Makes an Allegation of an Error or Omission?](#) for additional guidance on handling a potential E&O claim.

*Continued*

## COULD THIS HAPPEN TO YOU?

An agent received a notice of potential claim from their client, and the agency has a policy of not accepting notices of claim. The agent advised the client that the client would need to submit the claim directly to the carrier, supplying the client with the claim-reporting details. The client did not report the claim to the carrier at that time. A few months later, the client further contacted the agent with a notice of summons and was again advised to report the claim to the carrier. Again, the client did not report the notice to the carrier. Subsequently, a default judgement was made, and the claim was then reported to the carrier by the agent. There was no documentation of the instruction from the agent to the client regarding reporting the claim. This E&O claim resulted in a payout to the client exceeding \$100,000.

**LESSON:** Document in writing if you advise a client to report a claim directly to a carrier.

An agent made a habit of making premium payments on behalf of a client and then billing the client for those payments. The agent later stopped fronting payments for their client and one of the client's policies was cancelled for non-payment. A loss occurred that would have been covered under the cancelled policy and an E&O claim was pursued against the agent. The case went to trial and the jury ruled in favor of the plaintiff on the theory that the agent created a duty by paying the client's premium, creating an ongoing duty to continue paying the premium on behalf of the client. This claim paid over \$500,000.

**LESSON:** Do not accommodate bad pay clients by fronting their premiums or chasing them to make payment.

## FOR MORE INFORMATION, REVIEW THE PREVIOUS ARTICLES IN THE SERIES:

[Part I: 6 Common Causes of Agents' E&O Claims »](#)

[Part II: Failure to Obtain/Maintain Proper Coverage »](#)

[Part III: Failure to Give Accurate Information/Advice »](#)

[Part IV: Certificates of Insurance and Failure to Place or Renew Coverage »](#)

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