

# ERRORS & OMISSIONS

## RISK MANAGEMENT ALERT

### Could your agency website be an E&O target?

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When a potential E&O matter is brewing and the plaintiff's attorney is doing their due diligence to determine any potential liability, agencies can be assured that their website will be reviewed and heavily scrutinized. Its content has a significant possibility to be a key issue in determining the direction of E&O claims. In many actual E&O claims, the language in the website has impacted the degree of legal liability the agency has been held to.

Agencies often contract with a marketing firm to design their website. In the vast majority of instances, the website is impressive and may play an important role in attracting new business opportunities. So what's the problem? Many websites include language that sounds like "promises" and "commitments," such as:

- "We will make sure you have the coverage you need."
- "Our staff will analyze all of your risks."
- "We will periodically review your coverage to ensure you have the protection you need."

While these statements sound powerful and holistic, there are two basic issues with them. Let's take the first statement, "We will make sure you have the coverage you need." How would your agency actually do that? Can your agency actually ensure that the client has the right protection at the time of a loss? Not really, since at the end of the day, isn't it up to the client whether they want to secure the suggested coverages? Your agency can really only suggest coverages for the client to consider.

In addition, if you commit on your website that you will review the client's coverage to ensure they have the right protection, do you have a process to do that? Is that process performed for *all* clients or only for certain clients based on the size of their premium? Imagine how it would look to find out that the commitments made on the website are not really being performed and are merely "marketing fluff."

How many of the agency staff even know what your agency website says? In many situations, it has been determined that the staff had no actual knowledge and understanding of what the website was committing them to do. So, they were essentially going about their daily tasks without knowing that they were not doing what their website suggested they would. It is highly suggested that all agency staff be required to review the site to be aware of the commitments they are expected to honor.

To impress the public with your agency's expertise, words such as "expert" or "specialist" often appear. Once again, these sound powerful, but are the exact words that could be used by the plaintiff's attorney to allege a "special relationship" between your agency and your client. "Special relationship" is a common allegation in many E&O cases and, if it can be proved, there is a greater potential for a heightened standard of care, which may increase the level of legal liability for your agency.

Agencies should review their website at least annually to determine whether the agency is truly doing what their website says they are. This does not mean "some of the time." It is best to put yourself in the client's position to determine whether "the agency did what their website said they would." But don't stop with your website. All agency marketing material should be reviewed periodically for this same level of scrutiny.

**The commitments your agency makes on your website are much more than just "marketing fluff." They are commitments your clients may look to hold you to.**

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