
ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

Do your producers know the rules?

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In any given year, when errors and omissions (E&O) carriers look at their claim statistics, it is common to see that producers have a role in generating a significant number of E&O claims. This should not be a surprise since producers are an integral part of an agency's operation and are, in most cases, the face of the agency when dealing with the client. For this reason, having a strong E&O buy-in from the production staff is an important element for an agency to establish a strong E&O culture. There are a number of areas where it is important that producers know these best practices to avoid E&O claims.

Documentation – As virtually everyone in the insurance industry knows, documentation is one of the most important issues that can make a difference in the direction of an E&O claim, if one is even brought forth. Some key areas involve having detailed notes of:

- meetings with prospects/clients and, to ensure a common understanding, memorializing those discussions back to the client.
- discussions with carriers/wholesalers, especially on underwriting, rating and binding issues.

The key issue: if it is not in the file, it didn't happen.

Claims – The goal of every agency should be to get the client to speak, as soon as possible, either directly with the carrier or with the appropriate agency personnel that has claims handling as part of their duty. This should result in the claim being more effectively and professionally handled. Oftentimes, clients will call the producer they dealt with when securing the coverage to advise them of an actual or potential claim. If the producer is the first contact, they should avoid getting into any degree of discussion on the claim. They should especially avoid any discussion on whether the claim is covered. If the producer has any level of discussion, they should document the essence of those discussions and provide them to the agency's claims staff.

Texting – Whether agencies recognize it or not, texting between the agency (probably the producers) and the clients is happening and is not going away. There have been numerous E&O claims where the direction of the E&O claim was determined by the details of a text message between the agency and the client. Agencies would be wise to have a dialogue with their production force to determine to what degree it is occurring and to emphasize the need for the text messages to find their way into the client file in the agency system. A procedure to accomplish this should be established and implemented.

Watch what you say – Agencies can be held responsible for what they say and what they put in writing. This cannot be overstated enough! Producers need to be diligent in watching what they say, especially with statements such as “don't worry, you are covered,” “this coverage is much better than what you have” or “I am the expert.” If statements like this are made, they had better be true or they could come back to haunt the producer. This goes for verbal and written communications, as well as electronic mediums such as the agency website.

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Know what you are selling – The insurance industry is broad and, in many areas, complex. It is virtually impossible to know the nuances of every coverage form. For example, if you don't know the key issues associated with claims-made coverage, it is best not to be working on accounts where there is a good chance that one of the policies will be on a claims-made form. The other option is to dedicate the time to learn the key issues.

Also, it is advisable for producers to review the policies before they deliver them. This way, they can:

- 1) make sure that the coverage is what was requested and ordered; and
- 2) advise the client of key endorsements/limitations, etc. For example, on policies that contain “protective safeguard endorsements,” these endorsements should be communicated to the client so that they are aware of the limitation and to confirm that the protective safeguards are, in fact, in place. It is suggested to bring this to the client’s attention when the policy is delivered. Don’t just drop off the policies; look to sit down with the client to review the policies to help them understand their coverage.

With a solid commitment by the producer staff, the agency can make tremendous strides in significantly reducing their E&O exposure.

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