

ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

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

Failure to Give Accurate Information/Advice

by **Tabitha L. DeGirolano, RPLU**
E&O Risk Management Specialist
Executive Commercial Lines Underwriter
Utica National Insurance Group

This installment of our series on [6 common causes of E&O claims](#) », discusses claims for failure to give accurate information/advice. **If you do not effectively communicate about what you are selling, a client may believe they weren't provided with adequate information to make an informed coverage decision.**

WHAT CAN YOU DO TO AVOID THESE CLAIMS?

Know what you're selling

- **Pass** if you don't fully understand the coverage or risk.
- **Don't depend on a wholesaler or MGA** to supply knowledge you don't have.
- **Products, such as cyber insurance, evolve quickly**, so keep up to date on industry news, take courses and ask questions.

Market effectively

- **Review and update your marketing materials regularly.** Inaccurate materials can be used against you if there's a claim.
- **Avoid using language such as "expert" or "specialist"** because you will be held to a higher standard if there's a claim.

Limit Considerations

- **Offer multiple limit options** and advise clients to review them. You can offer guidance, but clients must assess if the limits are sufficient for their risk.
- **Make sure clients acknowledge** that additional limits were offered and they have independently chosen the option they believe best meets their needs.
- **Document discussions about limits** in your file and email the client a summary of what was discussed.
- **Be cautious when using insurance-to-value tools**, which may be outdated and not reflect current conditions.

Present Terms and Conditions of Coverage

- **Point out coverage gaps, limitations, and restrictions.** Explain coinsurance provisions. Provide clients with the form and endorsements and recommend that they review them thoroughly. Have them confirm they understand the coverage and don't have any questions.
- **Know if there are specific rating requirements** for the coverage your client needs and have the client acknowledge the rating if you're placing coverage with a carrier not rated by AM Best or Demotech.

Continued

COULD THIS HAPPEN TO YOU?

An agency wrote a CGL and a Commercial Auto for a client. The CGL had a \$1,000,000 limit, and the Commercial Auto had a \$300,000 limit. One of the client's vehicles struck and killed a motorcyclist, who died 30 days after the loss. The value of the underlying death claim was in the \$1,500,000 to \$2,500,000 range.

After the client was sued by the Estate, the client alleged the agent told him that the CGL would respond in excess of the \$300,000 auto limit, and further alleged the agency should have recommended higher auto limits. The agency denied ever telling the client that the CGL would be excess for an auto loss, and further stated the client had been informed numerous times in the past to increase the auto limits. Unfortunately, there was no paper back up of those discussions and due to the long-term relationship with this client, the claim against the agent settled for \$500,000.

LESSON: Always document in writing any limit discussions you have with your clients.

The agent wrote property coverage for their client who was in the business of refurbishing railroad cars. A hurricane destroyed one of the client's locations, and a claim for Business Interruption was made with carrier. The policy was placed through an MGA and had a 90% co-insurance clause for Business Interruption.

The agent was confused about how to calculate the proper limit of coverage for Business Interruption and assumed the proper limit for Business Interruption was merely profits. In actuality, the proper method to calculate limits for that coverage is profits plus continuing expenses. Following the loss, it was determined the agency's client was drastically underinsured, resulting in an 82% coinsurance penalty. The loss to the client due to the coinsurance penalty was around \$160,000 and the case was settled for \$135,000.

LESSON: When in doubt concerning how to calculate the proper amount of coverage, don't guess – consult various resources, including the carrier.

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 »

This information is provided solely as an insurance risk management tool. Utica Mutual Insurance Company and the other member insurance companies of the Utica National Insurance Group ("Utica National") are not providing legal advice, medical advice or any other professional services. Utica National shall have no liability to any person or entity with respect to any loss or damages alleged to have been caused, directly or indirectly, by the use of the information provided. You are encouraged to consult an attorney or other professional for advice on these issues.

@2022 Utica Mutual Insurance Company



Utica Mutual Insurance Company and its affiliated companies, New Hartford, NY 13413
www.uticanational.com • 1.800.598.8422