

## A Smattering of E&O Thoughts

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### Claims Frequency

With 2006 half over, there is one observation that is truly remarkable. This deals with the number of claims that we receive, typically measured as a percentage per 100 policies. With over 11,000 customers, there is a fair amount of credibility to our statistics. Through June, claims frequency is at 6.6%. This is the lowest, yes the lowest, that frequency has been going back to 1988 (*this is when Utica assumed the underwriting of the program from Shand Morahan*).

I believe that there are a number of factors for this. Certainly the soft market is a contributing factor. We actually find that claims frequency tracks very close to the combined ratio of the overall P&C industry. Now that the P&C market is softer, are carriers standing behind their agents more? This is probably true to an extent although don't count on it if you screw up and exceed your binding authority – companies are watching their bottom lines very closely so agency accommodations are not at the level they used to be. I would hope that good underwriting is a contributing factor and I am sure it is. But there is no doubt that the number one reason for claims frequency being down is YOU!!

Agencies are certainly dedicating much greater resources (both fiscal and mental) to preventing E&O claims. Documentation is better, agency staff are trained better, systems are better, etc. For the past 18 years, it has been Utica's goal to help make the agents around the country better agents from an E&O standpoint. While this is somewhat of an idealistic goal, we do take this seriously and look to provide you with the tools to help you get there.

So thanks and congrats to you. Claims frequency is down to an all time low!

### Flood

Many of you may have seen over the past month that Upstate New York has been extremely hard hit by rain causing significant flooding and damage. As a result of this and other events, a number of insurance departments (New York being one) have sent out advisory letters encouraging agents to notify all of their homeowners accounts that flood is not covered.

The recent events have shown that even if you are not in a designated flood zone, floods do occur even outside these high-risk areas. I am sure that you would agree that undertaking an initiative in your agency to advise your customers how their personal and commercial lines policies will/will not respond to flood claims makes good sense.

Also, in reviewing a number of carrier contracts, I noted that in most of the cases, you as the agent do not have the authority to bind this coverage. Do you know how your carrier contracts read in this regard? If you find this to be the case, it is important to communicate to your customer that you cannot bind the coverage until authorized by the carrier to do so. As with all dealings of this nature, make sure that you confirm all verbal conversations in writing.

### Intentional Acts

E&O policies by their very nature are designed to cover the negligence of an agency for loss, which the agency was legally obligated to pay as damages for claims arising out a wrongful act to which the policy applies. Within virtually all Agents E&O contracts is an exclusion for deliberate, dishonest, criminal, fraudulent or malicious acts. In other words, the policy covers the honest mistakes of an agency. If an intentional act is committed and we have received claims where it was clear that the agency personnel committed an intentional act, there is an above average chance that your agency could find itself with no E&O protection.

While business ethics may be something that we take for granted, it is important to communicate to your staff that they are expected to conduct business in compliance with the law and anything less than that will not be tolerated.