

ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

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

Failure to Obtain/Maintain Proper Coverage

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In our last article we identified [6 common causes of E&O claims](#) ». A frequent cause of Agents' E&O claims is failure to obtain/maintain proper coverage. Claims of this nature stem from a claim being submitted and the policyholder discovering they do not have the coverage they expected. **Agents who fail to ask the right questions and review coverage regularly are leaving themselves open to E&O claims.** What can you do to avoid these claims?

Risk Analysis

It is crucial for agents to perform thorough risk analysis when placing coverage to avoid E&O claims.

- **Use Checklists:** Checklists are a great tool to ensure you are not missing vital information on new and renewal business. If possible, have the client review the checklist and acknowledge that all information has been provided. *Note: Checklists are available through Rough Notes Pro. The Utica National companies provide a discount to policyholders for this service.*
- **Contact person:** Are you speaking to the person who can best supply the information needed to accurately cover the risk?
- **Mirroring coverage:** When changing carriers, review the current policy carefully to ensure you are mirroring coverage and point out any coverage differences to the client. Not matching coverage is the most frequent cause of E&O claims on new business.
- **Renewals:** Review the policy with the client to determine if any adjustments need to be made due to a change in circumstances. If there are any changes to coverage, this should be pointed out to the client and alternatives offered if necessary. **DO NOT** depend on your carriers to inform you of changes to the coverage.

Managing Client Expectations

Clients often expect their insurance to cover everything. They don't want to take the time to understand the coverage and will try to put the burden of properly covering their risks on the agent.

- **Point out** significant exclusions or restrictions to coverage.
- **Avoid using language such as** "apples to apples," "comprehensive" or "fully covered." This can give the impression of broader coverage than a policy provides.
- **Use disclaimers on your coverage proposals** to put more responsibility on the client. Looking for guidance on disclaimers? See our article ["Do your agency proposals have these?"](#) »

Documentation, Documentation, Documentation

Thorough documentation of the transaction is critical to defending yourself in the event of an E&O claim. In a "he said, she said" scenario, the agent will lose.

- **Signed, fully completed applications.** If possible, have the client initial each page to confirm the information.
- **Coverage refusals.** Rejections of optional coverages, refusals of higher limit offers, when a client chooses to self-insure parts of a risk, etc.
- **If you are unable to obtain the coverage the client needs,** this needs to be communicated clearly in writing as soon as possible.
- **Back up any verbal communications with an insured in writing.** This will help avoid miscommunications and it gives the client an opportunity to respond.

Continued

Could this happen to you?

An agency placed a commercial property policy for the customer which contained a vacancy exclusion. The structure became vacant. The policy renewed several times. The structure remained vacant and the property policy continued to contain a vacancy exclusion. The structure suffered damage. The carrier disclaimed based upon the vacancy exclusion. Litigation ensued involving the customer, agency and property carrier that was resolved via settlement. Over \$400,000 was paid by the agent's E&O.

LESSON: Always query your renewals to see if their circumstances have changed.

A customer was engaged in the renovation of an existing structure and requested a builder's risk policy from the agency. The agency submitted an application to a wholesaler requesting coverage for the existing structure and renovations. The wholesaler provided a quote for a builder's policy that covered renovation, but not existing structures. The agency accepted the quote, but did not notice that the existing structure was excluded. The building then suffered a fire loss during the renovation. The carrier disclaimed for any damage to the existing structure. Litigation ensued involving the customer, agency, wholesaler and builder's risk carrier that was resolved via settlement. Over \$200,000 was paid by the agent's E&O.

LESSON: Always double-check your quotes to ensure that the coverages requested were included.

**Applying these practices can help mitigate your exposure to E&O claims
while also providing better service to your clients.**

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