

---

# ERRORS & OMISSIONS

## RISK MANAGEMENT ALERT

### Don't be scared of E&O – Respect It!

by **Curtis M. Pearsall**, CPCU, AIAF, CPIA

*President – Pearsall Associates Inc.*

*and Consultant to the Utica National E&O Program*

If one were to ask 100 agency staff members that just came out of an errors and omissions (E&O) class, how many do you think would comment how scary the world of E&O is? How many agency owners would now be tempted to put a “For Sale” sign on the front lawn of their agency? The answer to both questions would probably reveal how scary they find E&O. This is truly unfortunate. While E&O can, at times, be somewhat intimidating to agency staff, embracing it and understanding how the agency can truly minimize its E&O claims potential are key to addressing that fear.

After all, an agency needs to sell insurance. Being petrified of E&O could cause one to hesitate to talk with customers for fear of an E&O claim lurking around the corner. Being scared of E&O is not the answer. Respecting E&O is the answer, working to fully understand the world of E&O, what drives E&O claims, and what the agency can do to meet this challenge head on.

Looking at all E&O claims over the course of any given year, it is common to find that 50%-60% of those claims against agencies are closed with no loss payment. This statistic shows the difference an agency can make in minimizing the potential for it to be found negligent if an E&O claim is made.

#### Make the Commitment

A common theme of E&O classes is “Document, Document, Document.” However, there is much more to the equation.

A great starting point is to understand the legal liability standard of insurance agencies. Just because it is alleged that the agency committed an “error or omission” does not necessarily mean that the agency was negligent, and the legal standard for agencies is heavily built on the premise of negligence. An important element within this legal standard of care includes the agent being responsible for procuring the insurance requested by the agency-customer, or advising the agency-customer of their inability to do so. For example, if the agency-customer did not ask for flood insurance, there is a good chance the agency will not be found to be negligent for not providing it.\*

#### Other fundamental issues include the following:

- **Be aware of the words/phrases you use.** Whether spoken or in writing, as an agent you can be held responsible for what you tell a customer. This also speaks to the importance of knowing your product and accurately representing it.
- **Remember all facets of documentation.** This is not simply documenting the conversation with the customer, but also memorializing back to the customer, in writing, the essence of that conversation. In addition, the documentation in the agency system should be handled promptly and with sufficient detail. Every agency staff member should live by the motto “if it is not documented in the file, it didn't happen.”
- **Perform exposure analysis (for new and renewal business).** This process is designed to identify any changes/issues that your customers are experiencing so there can be a conversation on how to address those exposures. While the agency is technically going to be held responsible for procuring the coverage the customer requests, how much insurance will you sell if you wait for the phone to ring?

*Continued*

- **Execute your role based on the manner in which it is detailed in the agency procedure manual.** Consistency is vital.
- **Customer accountability should be every agency's goal.** This includes requiring the customer to sign the application attesting to the accuracy of the information. What's more, when a customer declines various coverages / limits, confirm their decision back to the customer. This will be key if a customer "changes their story" after a problem develops.
- **Commit to education.** The agency and each staff member should be committed to furthering their education, whether that involves technical information or various soft-skills issues.
- **Be honest.** As Warren Buffett stated: "It takes 20 years to build a reputation and 5 minutes to ruin it. If you think about that, you'll do things differently."

The more one understands E&O and what drives E&O claims, the more they will respect it and not be scared of it. It is up to the agency as a whole and each staff member to make that commitment.

*\*This assumes that the legal liability standard of an insurance agent in the jurisdiction in question is to merely procure the requested coverage in a timely manner, and notify the agency-customer if the insurance agent is unable to procure the requested coverage; and that there is no "special relationship" between the insurance agent and the agency-customer.*

*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.*



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