

ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

6 Common Causes of Agents' E&O Claims

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Why do insurance agents receive errors and omissions (E&O) claims? Often it is for failing to execute basic transactions that take place many times each day in your agency. The following are some of the most common reasons that agents experience E&O claims:

- 1 FAILURE TO PLACE/RENEW COVERAGE**
For a variety of reasons, an account can “fall through the cracks,” leading to coverage not being bound. Often, this is only discovered once a client submits a claim and realizes there is not coverage in place. Alternatively, coverage may be bound, but not at the terms expected.
- 2 CERTIFICATES OF INSURANCE**
Many claims begin with a mistake made on a certificate of insurance. This can be the result of listing incorrect limits, including additional insureds that are not covered under the policy, or confirming coverage when the policy has been cancelled.
- 3 FAILURE TO OBTAIN/MAINTAIN PROPER COVERAGE**
For P&C agents, this is the most common source of E&O claims. When a client doesn't receive the coverage they requested or expected, they look to the agent for relief. A lack of a thorough risk analysis is often the root cause of these problems. For renewals, failure to recognize and communicate coverage changes can result in a coverage gap for your client.
- 4 FAILURE TO GIVE ACCURATE INFORMATION/ADVICE**
When an agent is not effectively communicating the product they are selling, a client may believe that they were not provided with adequate information to make an informed decision on coverage. This can be of particular concern when an agent works with a wholesaler on a product they lack expertise in. Limit recommendations can be a pitfall for agents when a client finds out they do not have sufficient coverage for a claim.
- 5 FAILURE TO NOTIFY OF CANCELLATION/REPLACE COVERAGE**
When agents set the precedent of notifying clients of pending cancellations, failure to do so can result in a claim when a client has a loss after the cancellation. Failing to offer to assist the client in replacing the cancelled coverage can be another area of exposure.
- 6 REPORTING OF CLIENT CLAIMS**
Claims that are reported to the agent, but not forwarded to the carrier in a timely manner can result in a denial of coverage. Additionally, an agent may not report the claim under all policies that could respond. This is often an issue when excess or umbrella coverage is in place. An agent may advise a client that “they will be covered” or “there is not coverage” rather than instructing the client to submit the claim to the carrier for coverage determination.

Many claims can be successfully defended with good, uniform procedures and thorough documentation. Instituting appropriate loss control measures can help agents avoid claims while better servicing their clients.

In upcoming articles, we will explore each of these common causes of E&O claims in more depth and provide guidance on loss control measures. For now, check your office procedures to make sure your agency is not making any of the mistakes noted above.

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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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RISK MANAGEMENT ALERT

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

Failure to Give Accurate Information/Advice

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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 »

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RISK MANAGEMENT ALERT

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

Certificates of Insurance and Failure to Place or Renew Coverage

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This installment of our series on [6 common causes of E&O claims](#) » addresses claims related to certificates of insurance and failure to place or renew coverage. What can you do to avoid these claims?

Certificates of Insurance (COIs) are a frequent source of easily preventable E&O claims.

- **Don't** issue a COI until you've checked whether the policy has been cancelled or if any endorsements have been added that may modify coverage.
- **Don't** issue a COI listing an additional insured who has not yet been endorsed to the policy.
- **Don't** assume the carrier will approve the additional insured.
- **Do** have a second person review the COI for accuracy prior to release.

An account can slip through the cracks for a variety of reasons – resulting in new business not being bound, policies not renewed, or unprocessed endorsement requests.

- **Do** confirm that the carrier received your coverage request. Follow up as needed.
- **Do** review the binder and policy carefully when you receive them to ensure they match the terms quoted.
- **Do** have a process to ensure that premiums are quickly provided to the appropriate carrier.
- **Do** handle mid-term requests to change coverage quickly, and follow-up frequently until the request is completed.
- **Do** be clear to the client that coverage is not in effect until the carrier confirms coverage and, if applicable, **do not** promise that the coverage will be back-dated.
- **Do** treat accounts that are being non-renewed as a priority, keeping a short diary to ensure coverage is replaced prior to the non-renewal date.
- **Do** let the insured know as soon as possible if you may not be able to provide an acceptable replacement, allowing them sufficient time to shop the coverage.

Continued

COULD THIS HAPPEN TO YOU?

Certificate of Insurance – In this E&O claim, the Personal Lines carrier for the agency's client found out the client's car was being used for commercial purposes and decided to non-renew the policy. Non-renewal notices were sent to the agency and the client. Sometime after the notice was sent, the agent sent certificates of insurance to the client indicating coverage was in force. The client had an accident and damaged another car, claiming he never received the non-renew notice and stating that he believed he had coverage because the certificate indicated he did. The carrier disclaimed and the client sued the agency. The case settled for \$3,500.

LESSON: Do not issue a certificate of insurance unless there is an in-force policy in effect.

Failure to place/renew coverage – In this E&O claim, the agent let a client's Workers' Compensation coverage lapse, even though the client (a subcontractor) had given the agency a check for the premium. This caused the general contractor's insurance rates to increase, as the laws of that state mandate if a subcontractor has no coverage, the general contractor becomes responsible for the Workers' Compensation. The general contractor had to pay the additional costs for Workers' Compensation to cover the client's employees. A claim was made against the agency's client by the general contractor for the increased costs. In turn, the agency's client made a claim against the agent for failure to have the coverage in place. The claim against the agent was settled for \$132,540.

LESSON: Give renewals top priority, especially if the agency has received the client's renewal premium.

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 »](#)

[Part III: Failure to Give Accurate Information/Advice »](#)

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

Failure to Notify of Cancellation of Coverage, Replacing Cancelled Coverage, and Reporting of Claims

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The final installment of the [6 common causes of E&O claims](#) » series addresses the failure to notify policyholders of the cancellation of coverage, replacing cancelled coverage, and the reporting of claims.

FAILURE TO NOTIFY OF CANCELLATION/REPLACING CANCELLED COVERAGE

Some clients are not good at paying their premiums on time. Chasing bad-pay clients creates an exposure for your agency if a client has a claim post-cancellation and you did not provide additional notification.

- **Do not** set the precedent of notifying clients of pending cancellations.
- **Do not** make payments on behalf of clients to avoid their policy being cancelled.
- **Do** offer to obtain replacement coverage as soon as possible once coverage is cancelled – and let the insured know as soon as possible if you may not be able to provide an acceptable replacement.
- **Do not** advise that you will be able to cure a gap in coverage due to a cancellation.

REPORTING OF CLAIMS

Educate your staff on what they should and shouldn't say when they receive a notice of claim from a client. Create a clear process with an emphasis on documentation to help you avoid E&O claims.

- **Do** have a process to ensure that any claims notice received from an insured is forwarded to the carrier within 24 hours.
- **Do** confirm receipt of the claim with the carrier.
- **Do** ensure you report the claim to all policies that may have coverage, being particularly aware of excess or umbrella coverage in place as this is often overlooked.
- **Do not** advise a client that “you will be covered” or “there is not coverage.” The carrier should determine claims coverage.
- **Do** communicate in writing to your client if you do not accept notices of claim, with details on where they should report the claim. If this is discussed verbally, back it up with a written communication.

IMPORTANT: If you believe there is a potential E&O claim against your agency, report it to the carrier immediately and do not admit liability. Read [What Should You Do When a Customer Makes an Allegation of an Error or Omission?](#) for additional guidance on handling a potential E&O claim.

Continued

COULD THIS HAPPEN TO YOU?

An agent received a notice of potential claim from their client, and the agency has a policy of not accepting notices of claim. The agent advised the client that the client would need to submit the claim directly to the carrier, supplying the client with the claim-reporting details. The client did not report the claim to the carrier at that time. A few months later, the client further contacted the agent with a notice of summons and was again advised to report the claim to the carrier. Again, the client did not report the notice to the carrier. Subsequently, a default judgement was made, and the claim was then reported to the carrier by the agent. There was no documentation of the instruction from the agent to the client regarding reporting the claim. This E&O claim resulted in a payout to the client exceeding \$100,000.

LESSON: Document in writing if you advise a client to report a claim directly to a carrier.

An agent made a habit of making premium payments on behalf of a client and then billing the client for those payments. The agent later stopped fronting payments for their client and one of the client's policies was cancelled for non-payment. A loss occurred that would have been covered under the cancelled policy and an E&O claim was pursued against the agent. The case went to trial and the jury ruled in favor of the plaintiff on the theory that the agent created a duty by paying the client's premium, creating an ongoing duty to continue paying the premium on behalf of the client. This claim paid over \$500,000.

LESSON: Do not accommodate bad pay clients by fronting their premiums or chasing them to make payment.

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 »](#)

[Part III: Failure to Give Accurate Information/Advice »](#)

[Part IV: Certificates of Insurance and Failure to Place or Renew Coverage »](#)

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