



RISK MANAGEMENT

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Common Claims Against Insurance Agents

The types of errors and omissions (E&O) claims faced by insurance agents are wide-reaching, but the majority fall within the categories below, with the largest amount based on the failure to obtain the coverage requested by the client. Below is a brief discussion of the more frequent E&O claims against insurance agents with tips on how to prevent them.

1. Failure to Procure the Coverage Requested by the Client

The most common E&O claim against insurance agents is the alleged failure to obtain the coverage requested by the client. In these situations, the client often sues and expects the agents to stand in the shoes of the carrier for the coverage that was not in place. There are several reasons for these claims, but many times it is failure of the client to adequately describe its needs. Sometimes an agent cannot locate a market to place a certain risk, or delays in finding one, and a claim is made before that coverage is in place. The best way for an agent to manage this risk is to document the communications with the client, especially when a specific coverage is declined.

2. The Agent Should Have Recommended a Certain Coverage

It is easy to predict that insurance agents are frequently sued when the client suffers a loss that is not covered. The client generally alleges that the agent's failure to recommend the proper coverage resulted in the denial of the claim. The client, however, has a tough burden of proof because, generally speaking, the agent is only required to procure the coverages requested by the client. As touched upon below, unless the agent holds him/herself out as an expert or specialist in a specific area of insurance, the agent usually does not have a duty to recommend coverages. However, this is a tough balance for agents as recommending coverages can result in higher revenues for the agency, but comes along with an increased exposure in the event that certain coverages were suggested, but others were not. Again, many times the client does not provide the agent with all of the necessary information to fully understand the risks, which make the continued communication with the client key to managing this risk. This can be done at renewal, ideally each year, but no longer than every two years.

3. Special Relationship with the Client

Agents often have long term relationships with their clients, resulting in policy renewals year after year. This again cuts both ways, because, on the one hand, the agent knows the client's risks very well, but on the other, a court may find that the agent had a heightened duty of care because of the understanding of those risks. Thus, it is important to document in writing that the coverages were procured based on your

understanding of the risks and that the client did not request any additional coverages or, where appropriate, declined them.

4. Agents Claiming to be an Expert or Specialist

This is another delicate balance to maintain. Agents want to market their expertise, but need to understand that claiming to be an expert or specialist comes with increased E&O risk. If the agent claims to be an expert or specialist in a certain area of insurance, the courts will likely hold that agent to a higher standard of care if a claim arises against a client within that specialty. Thus, agents should consider more general marketing or advertising because lawyers bringing E&O claims search the internet for any reference to expertise so they can argue that the heightened duty of care applies.

5. Agent Did Not Adequately Explain Coverage

Although the agency sends a copy of the policy with a cover letter advising the client to carefully read the policy, agents may still face E&O claims by clients alleging that the agent did not disclose everything about the policy. This is sometimes compounded when the agent does not fully understand the coverages or they are complicated and difficult for the client to understand. These types of claims can arise if the agency marketing materials are unclear or misconstrued by the client. Thus, it is important for agents to learn the products that they are selling so that a clear and unambiguous explanation of the coverages can be conveyed to the client.

Conclusion

The above is a sampling of the more frequent E&O claims against insurance agents. The key to managing risk to prevent these claims is being consistent (when able), utilizing checklists, documenting communications and saving them to a file or to the agency software platform, and knowing the products being offered to your clients. Some of these simple steps may prevent the client, or plaintiffs' attorneys, from looking to the agent to provide coverage when the carrier denies a claim.

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