This is the second part of a presentation by Sanford (Sandy) Goffstein, JD to a group of E&O Insurance professionals in May 2015 in St. Louis, Missouri. Mr. Goffstein presented examples of claims brought against Missouri independent agents. Mr. Goffstein has represented Swiss Re Corporate Solutions insured insurance agents and agencies in errors and omissions matters for more than 30 years. A graduate of Washington University Law School, Mr. Goffstein, along with his partner, Lori R. Koch, and his law firm, Goffstein, Raskas, Pomerantz, Kraus & Sherman, LLC, are actively involved in protecting the interests of insurance agents in Missouri and Southern Illinois.

THE RELATIONSHIP BETWEEN INSURANCE AGENTS AND BROKERS, DEFENSE COUNSEL AND CLAIMS HANDLERS

Prepared and Presented by Sanford Goffstein with the assistance of Lori R. Koch

E&O CLAIMS EXAMPLES

FAILURE TO REPORT A POTENTIAL CLAIM TO THE CARRIER

The client of an insurance agent received a letter from an attorney threatening to sue the client for poor work in a design for a concrete floor. The letter further advised the client to turn this matter over to his professional liability insurer. The client presented this letter to his insurance agent and advised the agent that his design was perfect and the damage was caused by the company who poured the concrete. The client said he did nothing wrong. The agent then advised his client not to turn this claim in at that time, but wait and see if he is eventually sued.

At renewal time in response to the routine question, “Are you aware of any facts that could lead to a claim or lawsuit,” the agent put “No,” and the client signed the application form. Both the agent and the client knew this information was incorrect.

After the new policy was issued, the client was sued for professional negligence along with the company who poured the concrete. The suit was turned over to the client’s insurance carrier who denied coverage for failure to advise them of the possible litigation or claim of which the client was aware. As a result, the agent’s insurance carrier had to drop down and defend the client.

This problem could have been avoided if only the agent had advised his client to turn in this claim immediately after receiving the threatening letter from the attorney.

TRYING TO HELP YOUR CLIENT OBTAIN INSURANCE COVERAGE WHERE NONE EXISTED, AFTER THE LOSS OCCURS

This agent had a client who owned a fleet of cars. This client had historically been late in payment of premiums. At times, the agent advanced the payment of premium for the client until the agent finally advised the client he would no longer advance premium payments.

The following scenario took place: On March 15, the client sent paperwork to the agent to add additional vehicles to the fleet policy. On April 4, the agent sent a

letter to the client advising that he would not add these additional vehicles to the fleet policy until he has received the past due premium. The letter went on to state, “These vehicles are out on the street without insurance coverage.” On May 4, as you would guess, one of the vehicles which the client had requested to be added to the fleet policy on March 15 was involved in a crash. The passenger sustained serious injuries with over $600,000 in medical bills.

The claim was turned in to the client’s insurance carrier and coverage was denied since that vehicle was not listed on the policy. The client asked the agent for his assistance in trying to get coverage for this uninsured vehicle, by having a policy backdated to the date insurance was requested. The agent, in trying to assist a long-time client, contacted the specialty broker through which he placed coverage and asked to have the insurance carrier backdate the policy to March 15, the date that the client first requested coverage for that vehicle. In support of that request, the CSR for the agent sent the March 15 letter requesting to add additional vehicles to the fleet policy, including the one involved in the accident, **but** intentionally left out the agency’s response sent April 4 wherein they advised the client that there would be no coverage without the payment of a premium. The insurance carrier not only refused to backdate the coverage to March 15, they pointed out that the agent sat on the request for coverage and they should turn this matter over to their professional liability carrier.

The agent in this case was sued by his client for failure to provide coverage for the vehicle listed in the March 15 letter. The client, again as you would guess, denied receiving the April 4 letter advising him that there would be no coverage until the premium was paid.

Fortunately, we were able to resolve this case with no payment by our agent or his insurance carrier but the agency spent a lot of its valuable time in meetings with me and retrieving documents, as well as responding to voluminous interrogatories and requests for production of documents sent by his client's attorney. This was time that obviously would have been better spent on furthering his business and was caused primarily by the agent's actions after the loss trying to assist his client in obtaining coverage for the claim.

AGGRESSIVE INVOLVEMENT IN CLAIM ON INSURANCE POLICY FOR CLIENT

An agent wrote a policy for insurance on a building that housed a bar and restaurant.

The coverage for both the building and its personal property totaled $1,600,000. The agent placed the policy through a specialty broker who was responsible for putting the policy documents together. The policy provided a "mechanical breakdown" endorsement and showed $1,600,000 in coverage. This mechanical breakdown coverage did not give the insured additional limits, but merely provided

broader coverage. When putting the policies together, the specialty broker mistakenly showed the mechanical breakdown endorsement in the space marked "additional coverage." The previous policy had the endorsement in the same space as the limits of $1,600,000.

As you would expect, the building had an extensive fire and burned to the ground—a total loss. The insured had a history of several fire losses, but there was no suspicion of arson. The fire report was unclear as to whether the fire was started due to a mechanical problem or some other cause. In fact, the cause would not have mattered in this case, since the limits for the building and personal property were a total of $1,600,000.

The insurance carrier hired an independent adjuster, and the agent went to the site and met with the adjuster. This was not a necessity, but in this case, the agent wanted to show his client he was providing good service in helping the client with the claim. The site of the loss was over 100 miles from the agent's office.

The client was complaining to the agent that the insurance company was too slow in making payments on the claim, and the client wanted to start to rebuild the business. The agent, on his own, came up with a plan to light a fire under the adjuster and the insurance carrier.

The agent wrote a poorly worded letter to the adjuster telling the adjuster that there was a strong possibility that the mechanical breakdown provided $1,600,000 in

additional limits and that therefore the total amount of coverage was $3,200,000. The agent's client became impatient with the pace of his payments from the insurance carrier and filed suit against the insurance carrier, as well as the agent. Naturally, he sued the insurance carrier on the policy alleging he had $3,200,000 in coverage.

He sued the agent for negligence, negligent misrepresentation, breach of contract, breach of fiduciary duty, fraud, and fraudulent misrepresentation alleging he requested $3,200,00 in coverage, and the agent told him he provided that amount of coverage. Attached to the petition as an exhibit was the poorly worded letter the agent had written to the adjuster. Not only was the agent sued for $3,200,000 in actual damages, but for punitive damages as well.

When I met with the agent, he advised me that he was aware that there was only $1,600,000 in total limits, but he was simply trying to expedite the insurance payments to his client and that he had advised his client of the purpose of this letter prior to sending it to the adjuster. Unsurprisingly, the client denied that he ever had such a conversation with the agent and in fact testified in his deposition, that the agent had showed him how he could double his limits with very little additional premium.

Even with the poorly drafted letter the agent had written, I felt confident that I had several good defenses to the claim for the additional $1,600,000. The insurance

carrier was dismissed from the lawsuit and the case proceeded against the agent only.

Then the unexpected happened. The agent was arrested and pled guilty to a felony and was sentenced to several years in prison. The agent's deposition was actually taken twice in a federal penitentiary. As a result of the conviction of the agent, we were forced to settle this case.

Lesson learned: The agent should never involve himself in the claims process.

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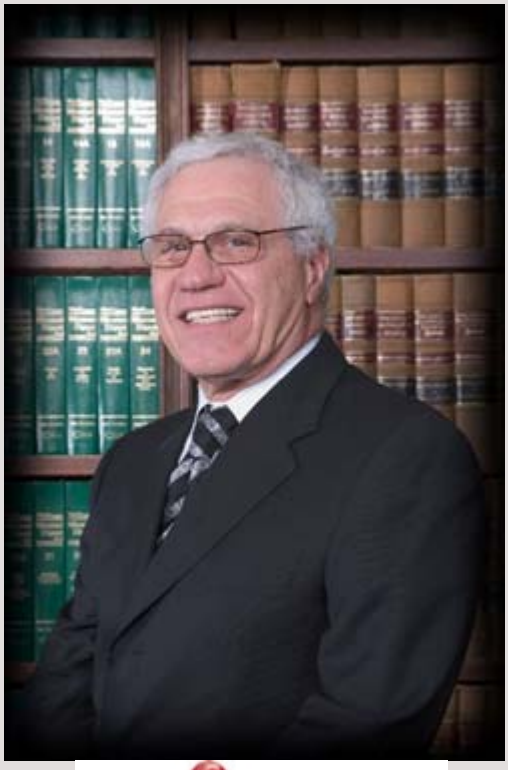

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