

# E&O Claims Advisor

An exclusive risk management service for Big “I”  
Professional Liability Program Policyholders

Swiss Re  
III



April 2008

## Big “I” Professional Liability Program Introduces Risk Management Website.

[www.independentagent.com/EO](http://www.independentagent.com/EO)  
HAPPENS is the new Swiss Re policyholder-only risk management website with valuable tools including:

- ◆ E&O claims frequency data
- ◆ Real-life case studies and analysis
- ◆ Sample client letters
- ◆ Sample agency procedures
- ◆ Agency E&O self assessments
- ◆ Podcasts on important E&O topics
- ◆ E&O tips for agency managers, procedures and CSR’s
- ◆ Agency E&O related articles to share with employees
- ◆ And much more.

The Big “I” Professional Liability Program and its endorsed Agents E&O carrier, Swiss Re, would like to introduce the latest exclusive, value-added policyholder benefit of the national program: The Big “I” Claims Advisor Newsletter. It is FREE to Swiss Re/Westport policyholders. The newsletter is designed to provide practical E&O risk management tips to all positions in the agency, including agency management and those employees most likely to be involved in an E&O claim - producers and CSRs. A survey of Big “I” members revealed that an

emailed newsletter with practical guidance and quick, hard hitting tips for all positions in the agency was how you wanted to receive E&O risk management information. So, we are giving you what you want!

Our goal is simple: to facilitate the improvement of agency business practices while reducing exposure to E&O claims by providing practical tips to all agency staff. The first step in reducing your agency’s risk of being evolved in an E&O claim is increasing the awareness of agency staff that their actions have a direct impact on the agency’s possibility of being involved in an E&O claim.

Published quarterly, the E&O Claims Advisor is emailed to staff of Swiss RE policyholders that are included in our member/policyholder database. Your agency administrator can go to [www.independentagent.com](http://www.independentagent.com) and once logged in can click on “XXXX’s Info” to add staff (especially producers, CSR’s, account managers, office managers) to the database. Adding agency staff to the database so that they can receive the newsletter will maximize its effectiveness in helping your agency to avoid E&O claims. If your system administrator does

not know their email address and password please use the “Forgot user name or password?” feature of the website.

The newsletter will include specific sections targeted to producers and CSRs, and actual data from Swiss Re on where E&O claims come from to help you identify important trends and stay safe from claims.



**Safeguard your agency against E&O claims.**



This icon indicates a practical agency risk management tip.



**Step One of E&O risk management:**

**Understand that the actions of all agency staff can have a direct impact of the agency’s possibility of being involved in an E&O claim.**

*For questions or comments about the E&O Claims Advisor please email [EO@iaba.net](mailto:EO@iaba.net).*

# Agency Staff News

## *Why is agency E&O risk management important to my agency?*

Approximately one in 12 policyholders report an E&O incident each year. The good news is half of those are closed with no loss payment or defense costs. The bad news is half of them are not and being involved in an E&O claim is not a pleasant experience for anyone in your agency.

EVERYONE in the agency needs to be aware of the ramifications of being involved in a claim so they understand the importance of following the agency procedures. As Swiss Re likes to say, paying your E&O policy's deductible is just the tip of iceberg. The below chart looks at the true costs of having an E&O claim.

Understanding why your agency does not want to be involved in an E&O claim needs to be shared with the ENTIRE agency staff. After an incident has occurred is too late.

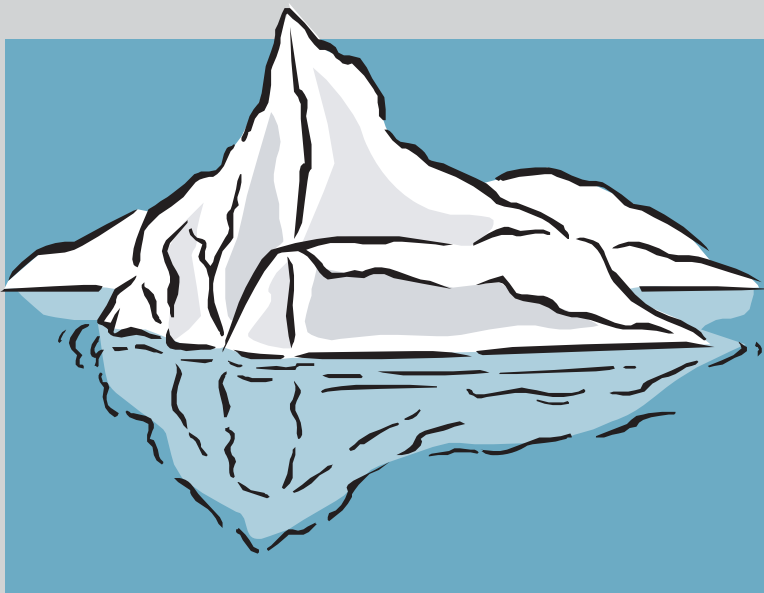


**Reporting incidents that may result in an E&O claim is encouraged by Swiss Re to get their claims team involved early and simply reporting incidents does not adversely affect the renewal.**



**Share the true costs with agency staff and engage in a frank, candid discussion about them at the next staff meeting. Also talk about your E&O coverage: how much it costs the agency, your limits, your deductibles, what it covers, and why it is critical for the continued operation of the agency to have this coverage.**

### The Iceberg of Errors and Omissions Loss Costs



#### Direct Costs

- Deductible on E&O policy
- Loss of the account involved
- Loss of productive sales and service time
- Loss of credit on your E&O policy (possible loss of up to 30% in credits)
- Increase in E&O premium

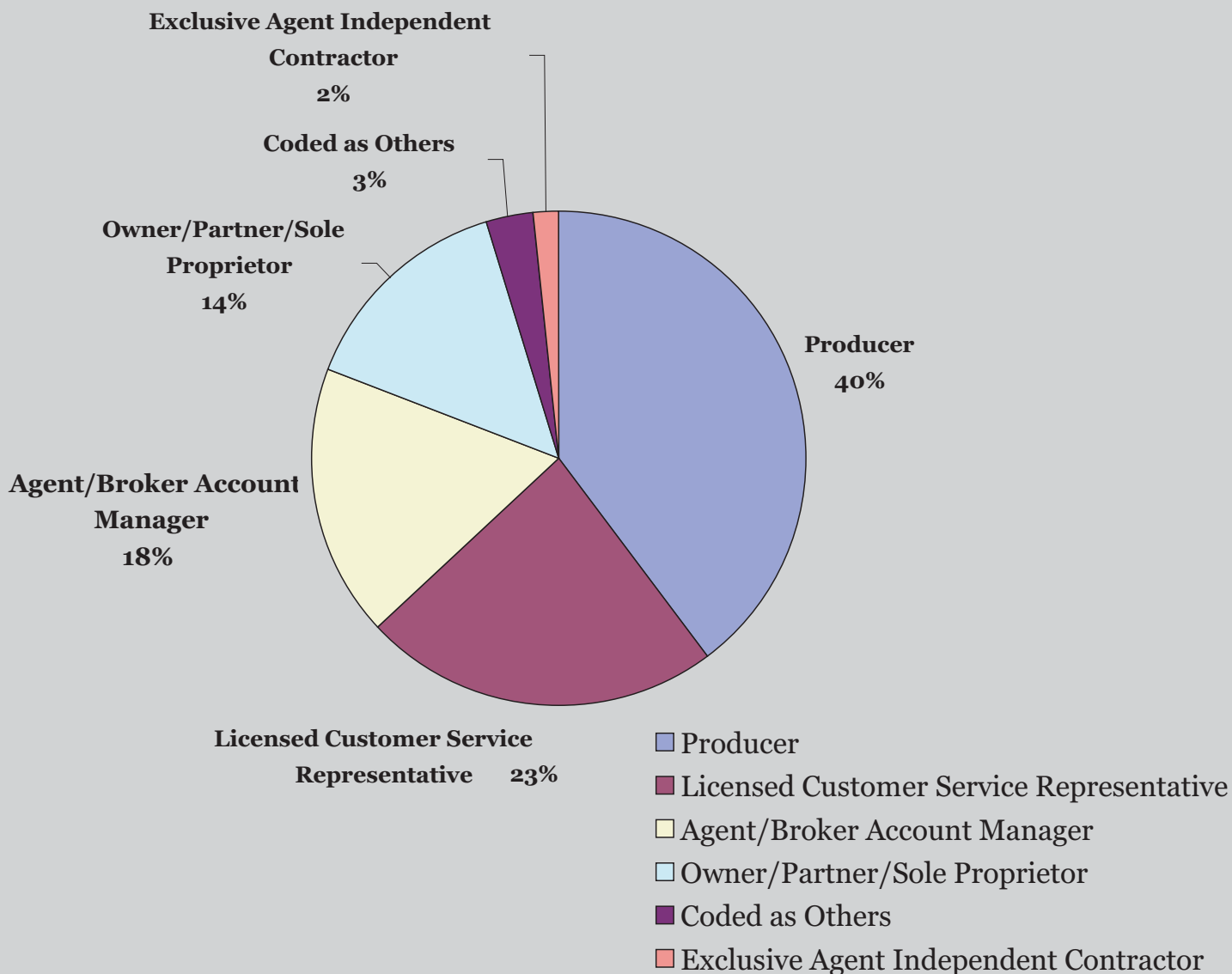
#### Indirect Costs

- Impact of stress on agency morale
- Potential loss of E&O coverage
- Cost of replacing lost account
- Possibility claim may not be covered by E&O policy

# Who in the agency is most likely to be involved in an E&O claim?

Swiss Re claims data reveals producers as the dominant driver of frequency of E&O claims. CSRs, don't pat yourself on the back yet because you are next. Do you consider yourself an E&O claim waiting to happen? Or have you even thought about it? The below graph shows nationally the breakdown of who's most frequently involved in E&O claims.

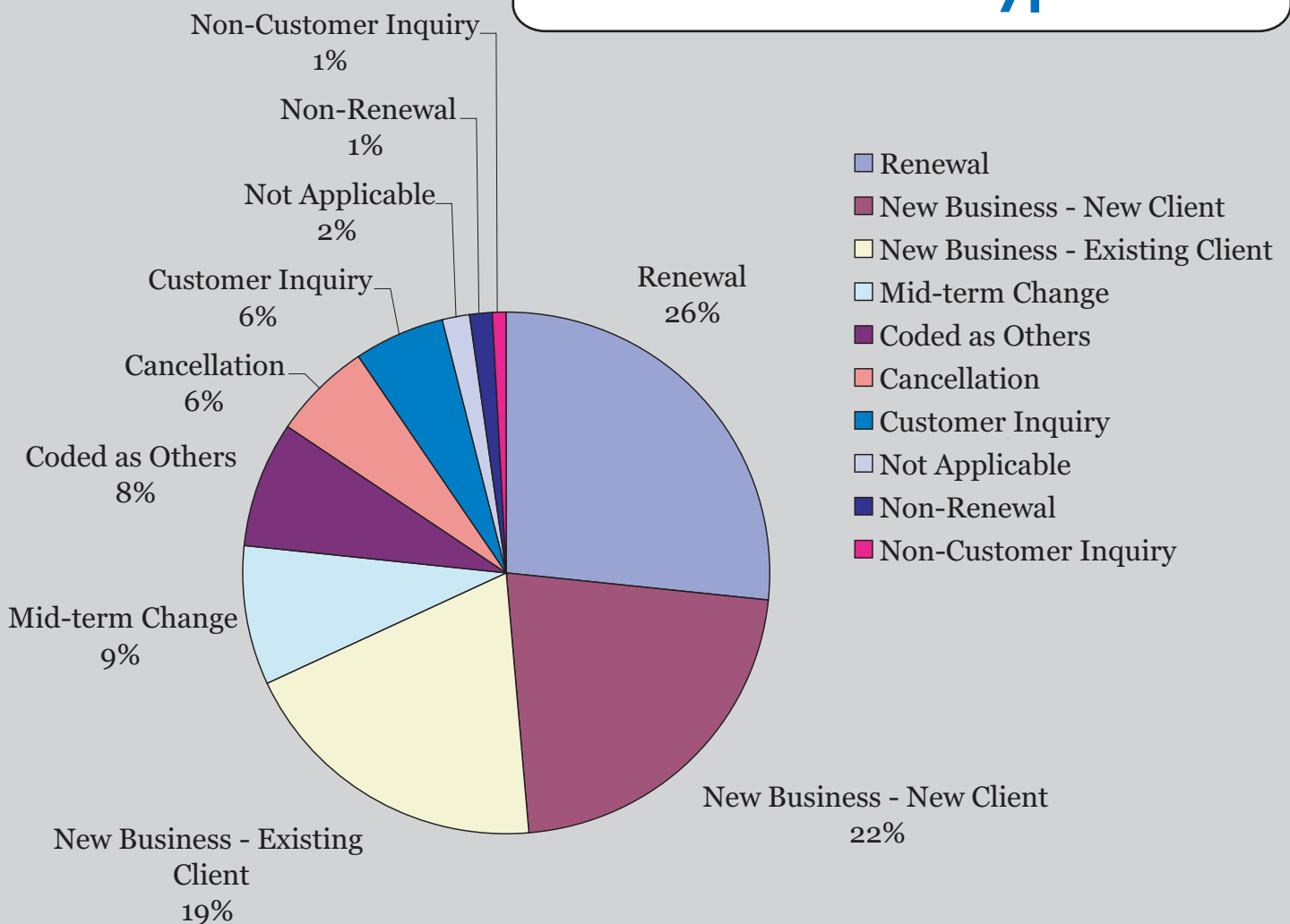
## Claims Frequency by Person in the Agency



# What types of transactions are most frequently involved in E&O claims?

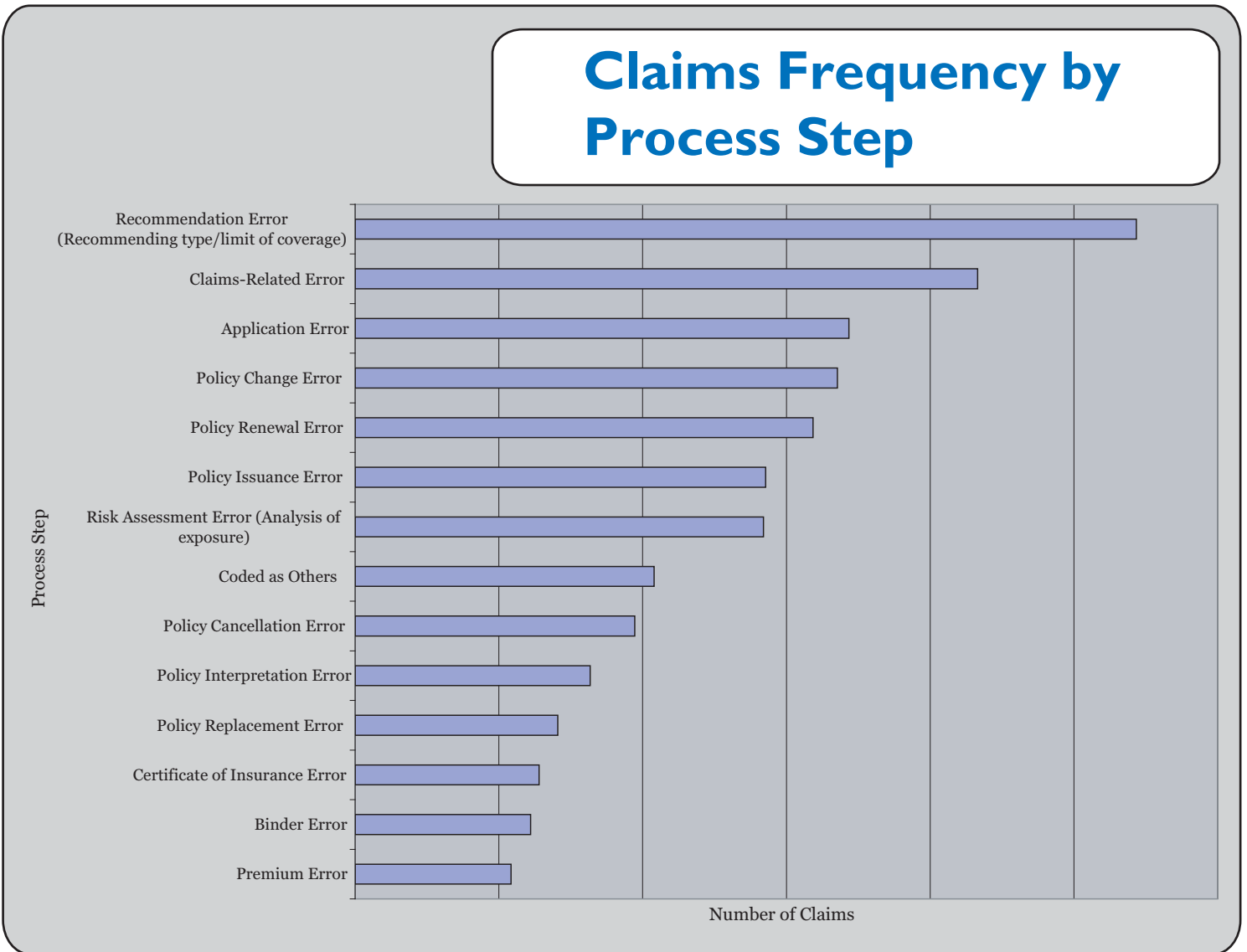
Knowing who is involved in E&O claims is just one piece of the forensic claims picture. Next, we need to know in what type of transactions E&O claims most frequently occur. The answer is on new business transactions. You will see from the graph below that errors made on new business transactions, including when writing coverage on new clients and existing ones, is approximately 40% of all claims. The chart below outlines the types of transactions driving frequency.

## Claims Frequency by Transaction Type



# Where in the process is the error being made?

There are numerous steps involved in securing insurance for clients. In most cases, for there to be an E&O claim the client needs to experience damages as a result of a breach of the agent's duties owned to the client. So failing to procure coverage is the leading E&O claim that we see. A misstep in any of the processes to properly procure coverage can lead to an E&O claim. The graph below shows those process steps most frequently involved in E&O claims.



In the spirit of the board game Clue, what would you put in the envelope at the conclusion of the game solving the E&O claim mystery crime? It was the Producer, in the New Business transaction, with the Recommendation Error! The reality of the E&O claim game is you can't simply point the finger at one person, transaction, or process.



**The true underlying culprit is the agency's procedures and workflows. They are so important to being able to prevent and mitigate claims.**

# Producer Tips

As outlined above 40% of all E&O claims come from producers. You have a tough job which includes being the outside face of the agency, generating new revenue for the agency, and knowing the markets that can meet the prospects needs. Probably the most complex part of your job is understanding the exposure of your clients and providing them with the appropriate coverage options to meet their needs. Of course, the standard of care in your state will dictate your legal obligation to provide coverage outside of the coverage simply requested by the client. The good news is following a best practices approach can help reduce your exposure to E&O claims for writing new business.

**E&O Tip #1: Use risk analysis checklists and questionnaires on new clients.** To thoroughly understand the insurance needs of your clients, use a risk analysis questionnaire. Doing this will uncover opportunities to sell more insurance and close gaps in coverage. This is especially important on commercial business involving CGL and professional liability policies.

**E&O Tip #2: Offer increased limits on every proposal.** While you should never make coverage decisions on behalf of the customer, you should offer increased limits on every proposal and have the customer sign-off on limits not taken. This could provide a defense for any client losses that exceed policy limits.

**E&O Tip #3: Always thoroughly document the client file.** E&O claims are often “he said, she said” matches, therefore consistent documentation can make the difference. Documentation is especially important both on the client and customer side. Declinations of coverage and limits, execution on changes to policy coverage, and documentation when a claims situation happens are a must-have in the client file. If the insured will not sign-off on the declination send them a certified letter with an understanding the coverage was declined. Conversations that are documented in the file shortly after they occur are also an E&O deterrent.

**E&O Tip #4: Include appropriate disclaimers on your voicemail greeting and email for handling customers requests and claims.** Here’s a sample:

“You have reached the voice mail of Joe Smith on Monday, December 21, 2007. I will be out of the office all day. Please leave a detailed message, and I will return your call as soon as possible. If you require immediate assistance, please press 0, followed by the pound key and you will be transferred to Mary Jones who can help you. For your protection, coverage cannot be bound or changed via voice mail, email, fax, or online via the agency’s website, and is not effective until confirmed directly with a licensed agent. Thank you for calling and have a great day.”

**E&O Tip #5: Don’t misrepresent the coverage afforded by the policy.** This another leading error we see. Avoid using terms such as “all risk”, “comprehensive,” or “fully covered” which may imply coverage is broader then it is. If you don’t know if something is covered by the terms and conditions of the policy, ask the carrier and document their response and yours to the client.



**The two most important things you can do are thoroughly document the client file in the agency management system and use a risk analysis checklist to uncover client exposures to loss. It is in your best interest to do this because the more insurance you sell, the less likely you are to have an E&O claim.**

# The Real World: Producer Case Study

Dan was contacted by his wife's uncle who was purchasing a business and wanted Dan to handle getting insurance coverages for him. The main activity of the business involved installation, repair, and testing of petroleum storage equipment, including underground tanks. Dan obtained several policies for the business, including commercial auto, workers compensation, property insurance, and a CGL.

Dan did not have other clients involved in this type of business and was unable obtain a CGL that did not exclude pollution claims. Dan went through the coverages with his client and told him that he had not been able to obtain pollution coverage. He recommended to his client that the client try to get pollution coverage elsewhere. Dan suggested pollution coverage might be available through the client's professional association. Dan later followed up with the client in person and the client told him he'd looked elsewhere but had decided not to buy pollution coverage because it was too expensive. At renewals, Dan reminded his client that he did not have pollution coverage.

Three years later, a lawsuit was filed against the client alleged that an underground storage tank it had installed for a gas station had leaked. The CGL insurer undertook to defend the lawsuit under a reservation of rights but took the position that any damages arising out of petroleum that leaked from the tank were not covered and would not be paid by the insurer. The client filed suit against Dan. The client denied that Dan had told him that he had not been able to obtain pollution coverage and denied that he had chosen not to obtain coverage elsewhere due to cost.

## **What is the downside to not documenting in writing important communication with clients?**

You can bet Dan regrets that he told his client verbally that he did not have pollution coverage, but did not follow that up in writing and maintain that writing in his file. That lack of written documentation leaves Dan in a position where his client denies the conversations and Dan has no



written documentation to corroborate his testimony.

This claim also demonstrates that even when a client is a family member or friend, you should document important conversations in writing and not assume that the client—even though a family member or friend—will admit the inconvenient truth.

## **Do you think the fact that Dan didn't do much business with clients who needed pollution coverage was a factor in this claim?**

An agent dealing with a risk he or she doesn't frequently handle often results in problems because the agent is unfamiliar with what coverages the client needs or what is and is not covered by the insurance policy. Here, that was not a problem because Dan recognized that his client had a pollution risk to address, and was aware the CGL did not address the risk. Risk analysis checklists could help on other accounts. However, his lack of involvement in risks of this type likely was a factor in his not having a market available to place pollution coverage.

## **Outcome**

The claim was ultimately settled at the courthouse steps with a substantial contribution from the agent in excess of \$100,000. In addition, the agent's deductible applied to defense costs and they paid an additional \$5,000.

# CSR Tips

While producers dominate involvement of E&O claims, you are not too far behind them at 23%. Depending on your agency structure you may or may not be involved in new business transactions, the leading transaction type of E&O claims. Maybe you work in conjunction with producers, preparing applications, carrier submissions, and client proposals. Or, your relationship with the producers starts with a transition of a prospect to new client or to support changes to the policy. One thing that is certain is you can play a valuable role in preventing E&O claims. You can be the last line of defense in reviewing the file documentation, checking applications against proposals and proposals against policy forms, and endorsements against actual client requests. The CSR's timely, accurate, and well documented work are vital to the agency E&O safety.

**E&O Tip #1: Always thoroughly document the client file.** We can't stress this enough. You often have so much on your plate that it's hard to remember which day of the week it is - try your recollection in front of a judge. Taking the time to document client files is important. Documentation is especially important both on the client and customer side. Declinations of coverage and limits, execution on changes to policy coverage, and documentation when a claims situation happens are a must-have in the client file. If the insured will not sign-off on the declination send them a certified letter with an understanding the coverage was declined. Conversations that are documented in the file shortly after they occur are also an E&O deterrent.

**E&O Tip #2: Verify the application is signed by the customer and that all pages of the application are initialed.** Representations on the application drive the carrier's decision on insurability so the applicant signature needs to be there.



**E&O Tip #3: Do not issue binders in excess of the number of days outlined in the agency agreement or allowable by state insurance regulation.** Follow proper procedures for handling binders. This includes using an up-to-date ACORD insurance binder or one specified by the carrier. It is extremely important to set a follow-up suspense in the agency management system to remind agency staff to check with the insurer on the status of the issuance of the complete policy. If a binder must be extended, document approval to do so from the carrier. In some states approval for extending a binder further than the outlined state regulation may need to be approved by the state department of insurance.

**E&O Tip #4: Always deliver the policy to the insured promptly after reviewing to make sure the policy matches those outlined in the proposal.** Providing a copy of the policy promptly is not only important from a customer service standpoint but from an E&O one as well. This is especially true in state legal environments where policyholders have an obligation to read their policy. A client's review of the policy can help uncover any shortcomings that may have been missed during the policy procurement process. A client can't review a policy they haven't received and this prohibits that use of a defense strategy if a claim arises.



# The Real World: CSR Case Study

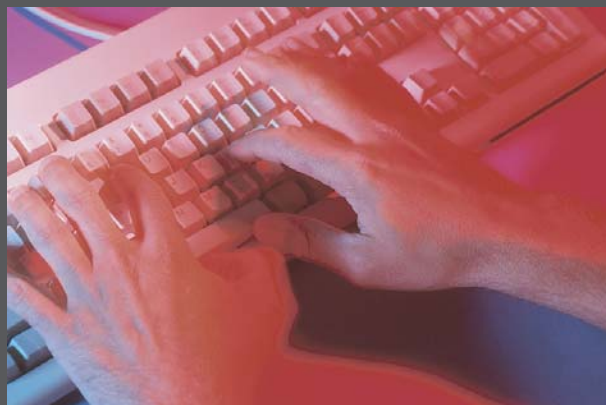
Fred, a CSR with the TNT Agency, placed a minimum-limit personal auto policy for Oliver. The policy had effective dates of 11/1/04 - 5/1/05. The carrier billed Oliver directly and had no practice of copying TNT on any correspondence sent directly to any insured - invoices, cancellation notices or renewal notices. None of this information, on any policyholder account, was ever copied to TNT.

Fred left TNT in late April of 2005. TNT's file contains a copy of the renewal notice that the carrier sent to Oliver on April 15, 2005. On October 27, 2005, Oliver called TNT and was helped by Bob. Oliver reported that he had purchased a new car on October 25, 2005 and wanted it added to his personal auto policy.

The carrier has an agency-facing computer system. Bob entered the online system and added Oliver's newly purchased used vehicle to the policy. He did not confirm that the 5/1/05 - 11/1/05 policy was in effect for Oliver, but assumed it was since the system allowed the endorsement to be added. Bob then mailed Oliver a temporary insurance card with no other correspondence enclosed.

Unknown to TNT, the carrier had cancelled the 5/1/05 - 11/1/05 policy for nonpayment effective June 21, 2005. A refund had been issued to Oliver, but TNT had not received any copy or notice of the cancellation or the refund. There had been no policy in effect at the time Bob logged onto the carrier's system and, he believed, added the newly purchased car to the coverage.

TNT received a Department of Insurance complaint on July 12, 2006 that had been filed by Oliver. Oliver had been in a car accident on February 20, 2006 and was sued for damages by the other driver. The accident involved the newly purchased car that Bob had, he thought, added to an effective policy via endorsement. The carrier denied on the basis that Oliver had not had a policy of insurance in effect since June 21, 2005. Oliver alleges that, although he had paid no premiums to the carrier for the addition of the new car, he reasonably believed he was covered in the vehicle at issue based on TNT's issuance of a temporary insurance card.



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