

# E&O Claims Advisor

An exclusive risk management service of the  
Big “I” Professional Liability Program



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The extensive flooding in the Midwest is very likely going to drive up the number of potential claims made against agents. That's not to say that the agents did anything wrong but it is just a fact of the business environment. Should your agency be faced with a claim or potential claim, there are a few simple rules. It is very important that all agency staff understand these because their actions could jeopardize E&O coverage for the agency.

1. **DO** create an agency culture where personnel can feel comfortable letting agency managers know that there may be a potential E&O claim. Let staff know that it's not about pointing fingers of who did what, but instead about understanding the issues involved and getting relevant information in the hands of the E&O carrier.

2. **DON'T** make coverage decisions for carriers. An insurance policy is a contract between the carrier and the policyholder. It is the responsibility of the carrier to determine if coverage applies and agency staff should not make coverage decisions on behalf of the carriers. Instead focus on making sure the customer has fulfilled his obligations under the policy and promptly submitting the claim to the carrier.

3. **DON'T** admit liability. This is major issue. Agents see first hand the stress that their clients are under during the claims submission

process. It's easy to say, "I'm sorry...I messed up." It's good to have empathy, but bad to admit wrongdoing.

4. **DO** report claims or potential claims to your carrier in writing as soon as you become aware of them. Contrary to popular belief, agencies that submit claims are not subject to adverse underwriting simply for submitting a claim. Getting the potential claim reported to the carrier promptly can often prevent it from developing into a lawsuit, and will eliminate any question of late reporting.

5. **DON'T** participate in settlement discussions without the E&O carrier or make any payments. While small claims settlements may seem like a no-brainer, they can lead to bigger ones without the proper release. If you then decide to engage your E&O carrier, you will have likely jeopardized the case by implying liability and coverage under your E&O policy.

6. **DO** get together with the agency's assigned E&O risk management champion and those involved in the potential claim. Analyze the who, what, where, when, and how of the incident and thoroughly review the client file to understand what kind of documentation exists.

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**Shield your agency  
from E&O claims.**



Each month pass around the office a form to all staff asking them to submit any accounts/incidents that could lead to an agency E&O claim down the road. Have them sign the form.



Assign someone in the agency to be the E&O risk management champion. This person should be a good insurance technician and familiar with agency procedures. Their responsibilities will include updating agency procedures, performing periodic client file reviews, training staff members on E&O issues, and handling E&O claims against the agency.



About 50% of E&O claims submitted are closed with no defense cost or loss payment.

*For questions or comments about the E&O Claims Advisor email EO@iiaba.net.*

# Agency Staff News

## What underlying lines of coverage drive E&O claims?

In the April 2008 edition of the *E&O Claims Advisor* we looked at recent claims statistics. Here's what we know about the frequency of E&O claims:

- ▶ **Producers are most often involved in E&O claims at around 40% with CSR's coming in second.**
- ▶ **Errors from new business transactions make up 40% of claims.**
- ▶ **Recommendation errors are the most frequently seen process step error.**

Now that we know who is most often involved in claims, what underlying lines of coverage are most frequently involved in E&O claims? The claims data from 2005 through 2007 shows that between 20 and 25% of claims involve commercial general liability as the underlying coverage.

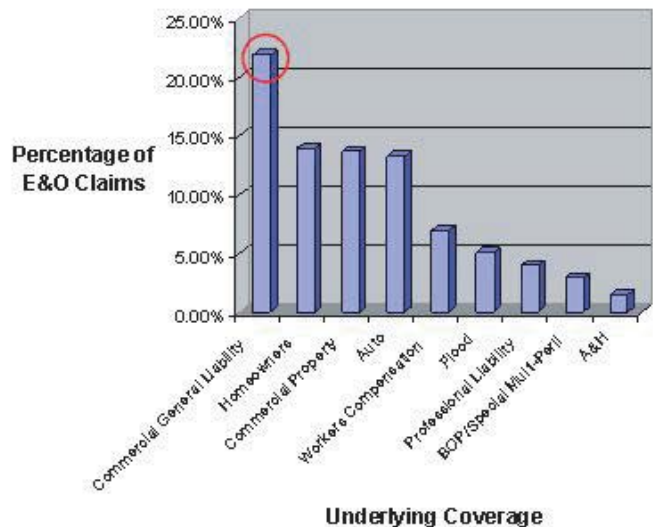
To give you a flavor of the types of errors being made when writing CGL, listed below are those most commonly seen:

1. **Failure to procure coverage.**
2. **Failure to provide timely notice of a claim to carrier.**
3. **Failure to add or properly identify Additional Insured/Loss Payee.**
4. **Failure to adequately identify exposures.**
5. **Failure to adequately explain policy provisions.**
6. **Failure to recommend coverage type.**
7. **Failure to duplicate prior coverage.**

You'll also note from the graph that around 13% of claims involve automobile as the underlying coverage. Upon further analysis that 13% breaks down further into 65% personal auto and 35% commercial auto.

"How can you use this information in my agency?" you might wonder. Knowing the claims data simply provides you with direction on where your agency may be more exposed to E&O claims. There are several actions you can take with this information. First, discuss it with agency staff, especially producers. Ask them to take increased time and attention on CGL accounts, particularly new business accounts. Second, periodically review with the producer and the account manager some client files having these lines of coverage. It is a healthy exercise for preventing potential errors and omissions, and one that may also lead to the opportunity to cross-sell additional coverage or higher limits.

Claims Frequency by Type of Underlying Coverage



**Pay attention to the lines of business your agency writes and focus your risk management efforts on those most frequently involved in claims.**

## EVER WONDER HOW LONG YOU SHOULD KEEP CLIENT FILES OR AGENCY/CARRIER CONTRACTS?

A records retention schedule is available at [www.independentagent.com/EOHappens](http://www.independentagent.com/EOHappens), the Big "I" Professional Liability Program's risk management website. Also, if you like to read about what other agencies are proactively doing to avoid E&O claims check out the new featured agency article on Fox and Fox, Inc., an Indiana agency.

Available as a complimentary benefit, the website includes valuable agency risk management tools including sample client letters, sample procedures, tips for all agency staff, loss control podcasts, and data on where claims come from. The April edition of the *E&O Claims Advisor* is also stored there. The website has something for everyone so make sure all agency staff knows their user name and password to enter the website. These are the same ones you use for other Big "I" websites. If you don't know your password, visit the website and use the "Forgot your password?" tool.

# Producer Tips

A producer is defined as the person who solicits insurance from the buyer and places it with the insurer. It's the hardest job in the business. When you think of producers you instantly think about the new business that they generate. When it comes to agency E&O claims, new business transactions drive frequency. The data also reflects, however, that producers names are attached to a large number of E&O claims during the renewal transaction.

**Below are some best practices E&O tips that may help reduce your exposure to E&O claims from renewing accounts.**

## **E&O Tip #1: Consider using risk analysis checklists on renewal accounts.**

Although it is a best practice to use risk analysis checklists on new business accounts to help identify exposures and selling opportunities, in reality that likely does not happen on every account. For those accounts whose files don't contain a checklist consider, going through the formal risk analysis process with the client upon renewal. When it comes to complex accounts you may want to handle renewals like new business, with a thorough risk analysis process every year.

## **E&O Tip #2: Notify the customer to periodically re-evaluate property values for replacement cost.**

Upgraded rooms, additions to property, custom features and materials, and cost of construction are all factors that influence the replacement cost of property. You can protect yourself by making sure the customer considers this upon renewal. The customer should make discussion on the replacement cost of the property and you can direct them to a professional appraiser or a building contractor. In addition, you can share with them the difference between replacement cost and market value and point out the impact of the policy's coinsurance language.

## **E&O Tip #3: Set an appointment with the client to review their account approximately 90 days prior to effective date.**

This is an excellent opportunity to build the relationship with the customer and to advise them of how the renewal process will work. Regardless of the size of the account, clients generally appreciate being contacted to determine if any significant changes in their exposures have occurred that will impact their need for insurance coverage.

## **E&O Tip #4: Establish a procedure for when accounts will be marketed to other carriers.**

There are a multiple goals to consider when marketing accounts. The first is the need to make sure your client has the best value for their insurance needs. This may require remarketing the account every so often. Do, however, consider the goodwill built with the existing carrier through years of earned premium. The second thing to consider is that every time you move an account there is a possibility of an error or omission occurring during the process - a mistake in the application process, unintended changes to coverage, and changes in the carriers claims reporting process.

## **E&O Tip #5: Consider including previous coverage recommendations and offering increased limits at every renewal.**

Not only is there an opportunity to write more insurance, more thoroughly protecting the client, but this is an extremely effective way to document the clients file should an uncovered claim arise from a coverage that was offered and rejected by the customer several times. If you don't plan to do this, another option is to specify in writing at the original policy delivery that you will not be offering the original recommendations unless requested by the insured in writing.



# The Real World: Producer Case Study

Ben is a producer for an agency that writes about \$6 M in gross annual premiums a year. One day he was contacted by a jewelry store owner that was dissatisfied with their current agent and was seeking quotes through several agencies. The owner of the jewelry store felt as though he was insurance-savvy enough to provide a list of existing insurance coverages and limits, including business interruption, to be quoted. Ben put together quotes based on the coverages and limits information supplied.

Ben dealt directly with employees of the jewelry store while preparing applications and in obtaining supplemental information requested by the insurers as part of the application process. He did not attempt, however, to determine whether all of the jewelry store's risks had been addressed by the coverages requested by the owner, or whether the requested limits were adequate.

Several months after providing the winning proposal and delivering the various policies issued, the jewelry store was destroyed in a catastrophe. The property and contents were fully addressed, workers compensation covered employees injured or killed, but a dispute arose regarding the limits of the business interruption coverage. The jewelry store asserted that its business interruption losses exceeded its business interruption limits by several million dollars and that, as a result, the insurer had asserted a co-insurance penalty. The jewelry store filed suit against the insurer and the agency.

## **I'll take your word for it**

Ben quoted the coverages suggested by the jewelry owner, however, he did not do a thorough risk exposure analysis. An agent's legal responsibility to do this varies by state and its standard of care, however, it is a good idea from a best practices standpoint to perform a thorough risk exposure analysis on all customers. The business interruption limits were not adequate and Ben's proposal did not include options for increased limits.



## **At the root of it all**

If Ben would have explained the co-insurance penalty in general terms what might occur if inadequate limits are obtained, the client to may have made certain to request adequate limits, rather than obtaining lower limits to save insurance premiums.

## **Continuous improvement - What could have been done differently?**

Ben should have independently assessed the client's exposures. Not only can this avoid E&O claims but it can help you sell more insurance. It's not a wise practice to rely on what other insurance agents have done or to simply match prior coverage. How do you know that the previous agent did a thorough analysis and/or made adequate recommendations? Don't expose your E&O claims history to actions of someone else!

If the co-insurance discussion is documented in writing, the client will have a difficult time proving liability against Ben by claiming to be unfamiliar with the co-insurance penalty.

## **Outcome**

The E&O carrier paid in excess of \$500,000 for business interruption damages not covered by the client's primary carrier. While this was Ben's first involvement in an E&O claim it wasn't the first for the agency and they were non-renewed by their E&O carrier. They were forced to purchase coverage in the E&S market with a policy that contained restrictive terms and was quite costly.

# CSR Tips

The CSR's role is vital to the overall success of the agency. From an E&O perspective, CSRs can be the last line of defense in preventing E&O claims. About 1 in 4 E&O claims are generated during the renewal transaction. This is an area where CSRs can prevent E&O claims. Another area that the CSR can make an impact is on transactions involving the writing of new business on existing policyholders. An example of this type of transaction is when a homeowner calls the CSR to let them know that they have started an in-home business for which they need coverage. Errors happen on both renewals and writing new types of coverage on existing accounts. Below are tips that can help these be avoided. How you implement these tips will vary by the specific role you play in the agency's workflow procedures.

**E&O Tip #1: Review renewal lists of all policies well in advance of expiration.** The primary objective is to review and handle all business prior to its expiration. The easiest way to have an E&O claim is to fail to renew coverage unwittingly and for the customer to have a claim that they thought was covered on their in-force policy. Work with your manager to come up with the appropriate number of days prior to expiration to run renewal reports or to review lists of renewals from the company. Generally 120 days in advance will provide the appropriate time to handle accounts, however, be aware of and adjust accordingly for any state specific requirements. Having written workflow procedures for this process is imperative. Review the renewal list on a weekly basis to make sure all renewals have been ordered.

**E&O Tip #2: When accounts are moved to other carriers, thoroughly compare the new policy form against the expiring coverage.** Failure to duplicate existing coverage is a very common error. If coverage has been moved to another carrier be sure that all coverages, limits, deductibles, and other policy terms are the same or better for the insured. Also make sure that additional insureds and loss payees match as well. If there are any limitations or restrictions from the change in carrier advise the customer in writing, and document the file accordingly.

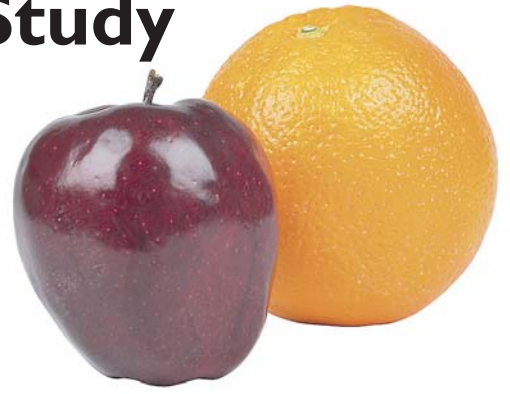


**E&O Tip #3: For existing clients looking to insure new exposures, make sure the information on the application is accurate and provided to the carrier on a timely basis.**

If there is a delay in writing the new business, notify the customer in writing and document the file. Around 6% of claims involve inaccurate information being forwarded to the carrier. Getting accurate information to the carrier is important because it ultimately influences their decision to take on the risk of writing the policy. Also, make sure the insured signs the application and initials each page. The initials can serve as good documentation that the customer reviewed the application for accuracy.

**E&O Tip #4: Pay particular attention to policies placed with E&S markets.** E&S policies commonly contain restrictive policy provisions not found in policies written by admitted carriers, and often change at renewal. Review the policy to make sure nothing has changed from the expiring policy. It is a best practice to advise the policyholder that a non-admitted carrier is usually not subject to the state guaranty fund, thus unpaid losses resulting from any insolvency of that carrier would not be compensated by the state guaranty fund. Be familiar with and practice strict compliance with all insurance regulations regarding placement with non-admitted carriers. In some states, even a minor violation of non-admitted regulations can result in strict liability against the agent.

# The Real World: CSR Case Study



Martha is a CSR with a rather large agency that writes business in four states. She'd been in the insurance business for about five years and was starting to think of herself as a more seasoned professional. Martha worked closely with Dan who was one of the agency's top producers. Dan often went to Martha for help on accounts when he was swamped with submissions and preparing proposals. The accounts Martha worked on varied in size and type.

One day Martha received a phone call from one of the agency's customers, a local accounting firm. They were inquiring why their renewal premium had nearly doubled from the previous year. Martha had just delivered their renewal and told them she would check with Dan as to the reason for the premium increase. Dan felt like with the renewing carrier was no longer competitive for this class of business, and asked her to get a quote from another company. To everyone's surprise, and the customer's delight, she was able to get a quote with another carrier for about the same as they had paid the prior year.

When she sent the quote to the customer, Martha's letter indicated that "the coverage was nearly identical" to the expiring policy and that there were only one or two differences. She did not indicate what they were. Since she was changing carriers, she also sent out applications to the customer to have them complete and update them, based on the agency's files.

The new policy was received and was mailed to the customer. The cover letter indicated that Martha would be servicing their account

and that she was "very familiar with their account." Two weeks following the receipt of their new policy, the customer called to advise that one of their employees, using his own vehicle on company business, had struck a pedestrian. The claim was turned in to the insurance company, but was quickly denied due to the fact that non-owned auto coverage was not provided.

## Sometimes good things turn bad! What are the issues?

When the customer called to inquire about their renewal premium, which was much higher than the previous year, Martha was correct in seeking the producer's input. This is a perfect example how errors can occur when remarketing coverage. Although she was able to get a quote at a lower price from another carrier, she did not spend the necessary time comparing the coverage provided by each company and sharing the specifics in writing with the insured.

## Live and Learn

If Martha had taken the time to compare coverage, she likely would have noticed that the new policy did not include non-owned auto coverage-crucial for an accounting firm with employees visiting clients using their own automobiles. The coverage was available from the new carrier, but for an additional premium. Steps should have been taken to offer the coverage to the customer, and if refused, the customer's declination should have been documented in writing in the file.

## Did they live happily ever after?

The letter from Martha was ultimately used to demonstrate that the customer was misled about the new quote ("the coverage is nearly identical") and qualifications ("she is very familiar with your account"). The defense was that the customer should have compared the coverage and discovered the difference-the court did not agree.

The underlying injury to the pedestrian, luckily, was not as serious as it could have been. The injured person did, however, require plastic surgery and ongoing physical therapy. The accounting firm was facing a \$1,000,000 lawsuit, without benefit of insurance coverage. They sued the agency for their loss. The agency's E&O carrier paid \$950,000 on behalf of the agency. The agency was responsible to pay its \$50,000 deductible to the agency firm. The accounting firm did remain a customer of the agency.

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# DON'T GET BITTEN

BY AN E&O CLAIM YOU COULD HAVE AVOIDED.



## DON'T BE ON THE HOOK FOR:

- ✓ Failing to procure coverage requested by the client
- ✓ Not adequately identifying client exposures
- ✓ Failing to provide timely notice of a claim to the carrier
- ✓ Misrepresenting or not explaining policy provisions
- ✓ Providing inaccurate information to carriers
- ✓ Failing to properly add additional insureds or loss payees

Swiss Re policyholders written through the Big "I" Professional Liability Program have exclusive access to the risk management web site [www.independentagent.com/EOHappens](http://www.independentagent.com/EOHappens). Log on today to fish for 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, and much more.

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