

E&O Claims Advisor

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Big "I" Professional Liability Program



Texting in the Agency: A distraction that could result in a wreck?

By David Hulcher, AVP of Agency Professional Liability Risk Management

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OMG! Distracted driving continues to be a serious issue discussed at both the state and national levels. Text messaging while driving is a primary distraction and can have the same effect as driving while intoxicated when it comes to increasing the chances of an accident while behind the wheel. Your agency may be thinking about texting and its effects on the risk exposure of your commercial and personal auto policyholders but have you ever stopped to think of how text messaging may be affecting your agency's E&O exposure? You may want to think about it before you wind up with an E&O wreck on your hands!

The ways agencies communicate with their customers and carriers in today's fast paced world continues to change from the old days of face-to-face meetings. Phone, fax, email, websites, blogs, social media websites, Twitter accounts, and texting are all vehicles of communication. Is your agency staff texting customers or carriers? If so, what information and for what purposes? Text messaging could be used by agency staff to: maintain customer relationships, communicate and gather relevant information, or bind or modify coverage. In fact, it may even be your customers' preference to communicate with the agency via text message because of the convenience. But does your agency have existing procedures to address texting and provide consistency around how agency personnel should handle both incoming and outgoing texts? Here are some things to think about when it comes to utilizing texting in the agency:

1. Agency Policy on Texting: Does your agency have a written procedure for how texts should be handled? The procedure should be thorough with clear standards to be adhered to by all agency staff. It should cover how texting can be used with both customers and carriers. If you don't have any procedural guidelines in place sit down with agency staff and talk about who is texting and how it's being used for business purposes. Also, consider any nuances with agency staff texting from personal phones versus if they are provided to employees by the agency.

2. File Documentation of Texts: Should an E&O claim arise against the agency the number one tool for a defense is going to be documentation in the customer file. E&O claims are often the customer's word against the agent's and well documented files can be the difference between winning and losing. Text messages to and from both customers and carriers can serve as vital documentation. That's right - carriers! E&O claims from carriers against agents continue to rise. Important file documentation includes offers and declinations of coverage, information for the application, changes to the policy or limits, carriers' permission to bind, declinations to offer terms, and mid-term change requests. The author of the text, along with date, time, and summary of the text should find their way into the customer's file in the agency management system. Remember, the ability to provide optimal customer service relies on all agency staff knowing what has been discussed with the customer. A disciplined approach to documentation is extremely important.

3. Professionalism of Text Communications: OMG, BRT, OOTO, CYE, LMK* - are all commonly used texting abbreviations. To say that texting is a more relaxed form of communication is an understatement. Employees should not fall into this trap if the agency is using texts to communicate with customers. Communication should stay professional and understandable by both parties. Ambiguity is not the agency's friend in defending an E&O claim. When it comes to customer file documentation in the agency management system, just like all documentation, it should adhere to the agency's standard input procedures so that all employees can reconstruct the conversation, the action taken, and any additional follow-up required.

With so many ways to communicate with customers and carriers it is important to understand what agency staff is doing. Valuable customer documentation that could help in the defense of the agency should an E&O claim occur could be getting lost in the form of text messages. If your agency has never thought about texting or doesn't have a written guideline for its use, take the time to discuss this with agency staff and come up with a plan.

**"Oh my God", "Be right there", "Out of the office", "Check your email", and "Let me know".*

Office Routing	

Maintaining Policies Locally in Today's Agency and Emailing Policies to Clients

By Jeff Yates, ACT Executive Director

About this article: Many agencies are assessing whether they should continue to maintain policies locally, given their availability on the carrier website. They are also looking at emailing policies to clients. This article provides guidance to agencies considering these questions. The article also outlines opportunities carriers and technology providers have to deliver electronic policies to their agents more effectively. Vendors are also encouraged to make secure client service portals available more cost effectively for the broader agency population to allow clients to access their policies as well as specific carrier sites for servicing through agency websites.

As agencies go paperless and carriers stop providing paper policies, agencies have to decide whether to continue to retain policies locally or rely on electronic policy view to access the policies on the carrier's website. Agencies are also considering whether to begin to email policies to clients, rather than sending them paper copies. Since I get these questions frequently, I decided to reach out to a number of agency consultants and E&O risk management experts to get their insights on these questions.

Agency Retention of Policies

Many agencies have decided to retain commercial lines policies locally, even if they have a good download of policy data and electronic policy view in place, because they find they need to refer to these policies and endorsements frequently when coverage and claims issues arise. In contrast, many agencies with a good download in place have decided not to retain personal lines policies locally, because they are able to handle the typical client inquiries without referring to the policies. Often these questions relate to billing and making a payment and the agents are able to handle these inquiries efficiently by using real-time Billing Inquiry and Make-a-Payment functionality.

Each agency is different, however, so I have provided a list of considerations to assist agencies in deciding this question:

1. How frequently does the staff need to refer to the actual policies for the line of business and for what purposes? Does the amount of usage justify the amount of time it will take to attach them to the client file?
2. Is there a good download in place for the line of business and is my database accurate? If there is not a good download for the business then the agency will

probably want to retain at least the dec page locally.

3. Does the agency use the dec page for policy checking and like to retain it as part of the documentation of the policy checking process?

4. Does the carrier provide links on the dec page to all of the actual policy forms and endorsements applicable to that risk - not just the latest editions of these forms - so that they are easy to access?

5. Has the carrier provided a contractual guarantee that the agency will continue to have access to its policy information in the event the carrier or the agency terminates the relationship? This commitment should be for the statutory period in which the agency must retain this information (usually seven years).

6. Do the applicable state laws require the agency to retain the policy documents locally or is access to them at the carrier website sufficient?

Agencies should go through the same analysis with regard to their E&S policies.

Industry Opportunity

Since many agencies have made the decision to retain commercial lines policies locally, it is incumbent on carriers and agency management system providers to make attaching these policies to their client files as simple as downloading. One approach would be to give the agency the option to have the carrier download PDFs of policies (new, renewal and endorsements) each evening using real-time Activity Notifications and Alerts. An option could even be given to receive the dec pages with links to the actual policy forms or the complete policies. Agency management systems should have the capability to route these notifications to

the appropriate person in the agency for checking and attachment to the client file. Using this real-time workflow would be an improvement over the emailing of these policies because of the added security and transmission directly into the agency management system.

Since some agencies use personal lines dec pages to check policies for accuracy and then retain them, the same workflow should be made available to agencies for personal lines.

Delivering Client Policies Electronically

Agents are generally supportive of personal lines carriers that give clients discounts in order to go paperless and access their policies electronically. In the commercial lines and E&S markets, however, many agents are concerned about the inefficiency and cost shifting that takes place when carriers stop sending the paper policies to the agent for delivery to the client, because many insureds still want the paper.

Electronic policies represent the future and are more efficient in many ways (no mail time, do not need to be scanned into agency management system, potentially save printing costs). Agents should encourage their clients to make the transition to electronic policies, in the same way that other financial services companies are inviting their clients to move to electronic delivery. Carriers, in turn, should help their agents with this transition by providing them with electronic policies and the option to receive paper copies for clients who are not ready to accept the electronic model.

Many agencies like to deliver commercial lines policies to their insureds personally and are now delivering these policies on a CD as a "value add," where clients agree to this method. Several larger

Maintaining Policies Locally in Today's Agency and Emailing Policies to Clients (continued)

agencies provide a secured area on their website where clients can access their policies. Hopefully, technology providers will increasingly provide turn-key solutions for the broader agency population so that they can provide their clients a secured portal for accessing their policies, as well as linking to their carriers to make payments and perform other self-service functions. This is an area in which ACT's Consumer Functionality Work Group is trying to spur more industry action.

Emailing Policies to Clients

In this emerging "paperless" environment, many agencies are considering emailing policies to their insureds. There are several issues for agencies to assess and then incorporate into their procedures when considering such a change in delivery:

1. Confirm that the particular state's laws and regulations permit the emailing of policies and do not require that the insured be provided a physical copy.
2. Secure the advance agreement of the client to receive policies electronically by email.
3. Provide in the email attaching the policy a request that the client acknowledges receipt of the email and policy by return email and have a procedure - that is consistently followed - of following up with the insured if he/she does not acknowledge receipt.
4. Include in the email a disclaimer that the insured should read the policy to ascertain that its limits and coverages are appropriate for its needs and that it should contact the agency if it would like to add any coverages or make any changes. The notice should also give the insured the option to elect to receive paper policies. (This disclaimer should be provided in the cover letter that accompanies the personal delivery of a paper policy or CD as well.)

5. Check the policy for accuracy before sending as provided in the agency's procedures.

6. Send the email by secure email if the policy contains any private personal information under the applicable state and federal privacy and data breach notification laws. Such private information might include the federal employer identification number, driver license numbers, etc. ACT encourages the use of TLS email encryption for secure email, and TLS works very well in agent-carrier communications when both parties have it. A proprietary secure email solution, however, will be necessary for many client communications when the client does not have TLS.

7. Deliver the policy to the client promptly after being received - whether emailed or delivered personally - and avoid any agency backlog in policy deliveries.

8. Document in the agency management system that the policy has been sent, the steps taken to follow up if necessary and attach the transmittal email in unalterable form.

The emergence of a paperless environment is precipitating changes in agency workflows and is creating opportunities for carriers and technology providers to provide new tools to help agencies function more efficiently in this new environment. These new tools include the use of Activity Notifications and Alerts to send electronic policies to agencies and the availability of easy to use and cost effective "plug ins" to enable agencies to provide secure portals for their clients to access documents and to perform other services online. I'd appreciate receiving your thoughts on how your agency and the industry can best adapt to these trends (jeff.yates@iiaba.net).

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

AVOIDING SURETY E&O CLAIMS

BY JACK ANDERSON

With the vast number of surety bonds available agents need to be cautious when working with customers to meet their needs. Claims data from Swiss Re and Big “I” Professional Liability Program shows that bond related E&O claims have roughly three times the claims severity as other claims. Like with any coverage or customer exposure agencies need to feel comfortable and have the expertise to understand the process of writing a bond and the coverage they afford. If they don’t the chances of an E&O claim increase dramatically. Working with a broker that can assist you through the process of placing bonds can make the difference between a satisfied customer and a future E&O claim.

This article looks at the common missteps that could lead to E&O claims that agents can make when handling surety bonds. Also provided are some ways to protect the agency, including some sound risk management procedures to follow.

Common Surety Handling Missteps

Failure to Advise Proper Rate - Often times agents feel compelled to communicate a rate to a client. In many cases, that rate ends up being below what can actually be obtained.

Failure to Properly Execute Bid Bonds - If a bond is not prepared in strict accordance with the owner’s requirements, the client runs the risk of presenting a bid that may be determined “nonresponsive” even if that client is the low bidder.

Failure to Deliver Bid Bonds in a Timely Manner or to a Proper Address - Bid bonds sent via regular mail run the risk of being delivered late. Regular mail might be less costly up front, but could end up being very expensive in the long run when a client misses a bid date due to late delivery. This could also result from someone in your office using an incorrect address.

Failure to Give Proper Advice Regarding Bid Security - A bid bond assures that a performance bond will be put in place by the authorizing surety, while using a cashier’s check as bid security does not. Advising a client to use a cashier’s check might be perceived as expedient, but the amount of the check is ultimately at risk of being forfeited.

Failure to Receive Approval from the Surety - By improperly issuing a bond, an agent exposes him/herself to potential E&O claims from both the carrier and the client. The surety will seek recourse from the agent if the unauthorized bond goes into claim. If the client’s bond program is disrupted as a result of an agent’s actions, the client might have recourse for lost financial opportunity.

Failure to Adhere to Conditions & Exclusions of Line of Authority - In instances where a surety has extended a line of authority to an agent and the agent has issued a bond that falls outside the line of authority, the agent will be held accountable for any loss a surety experiences as a result of the agency mishandling his/her authority.

Failure to Provide Timely Information to the Surety - An agent is responsible for communicating all information to the surety that is relevant to the surety’s decision to authorize a bond. The surety may have recourse against the agent for information that is omitted if that information would have been material to a surety company’s ability to avoid a claim situation.

These are only a few examples of situations that create E&O exposure for agents. By implementing internal risk management policies and standardized procedures, and addressing proper steps and expectations for associates who handle bonds for your clients, you can significantly mitigate your E&O risk.

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Producer and CSR Tips for Avoiding Surety Claims

The relationship between a customer and an agent that helps them secure bonds for their projects is vital to their success. By being aware of the possible pitfalls that can create E&O claims, you will be able to provide bond services to your clients without interruption, and mitigate serious E&O exposures for your agency. Remember working with surety bond is a specialized process in which dabbling can land you in the middle of an E&O claim. It is strongly recommended that you work with an experienced and professional broker that can assist you through the process.

E&O Tip #1: Obtain Specific Rate Approval from a Surety - If a client pressures you for a rate, provide a range that includes a low and high estimate (e.g. 1% - 5%). Communicate that you cannot give an exact rate without knowing credit history and other underwriting information.

Benefit: By receiving a specific rate from a surety, a contractor will be able to include a more exact amount in his/her bid estimate, and the agent avoids providing inaccurate information.

E&O Tip #2: Establish a Checklist for Bid Bond Preparation - The checklist should include the following:

- Verify bond form
- Verify bid bond amount/percentage
- Attach a separate notary signature page for contractor's signature
- Attach Power of Attorney showing name of person who signed bond
- Independent review of bid bond to ensure accuracy
- All requirements included

Benefit: Establishing a checklist will help eliminate the possibility of a contractor's bid being rejected as a result of bid bond mistakes. This will also eliminate your agency's exposure to a claim involving a contractor's lost profit and its ability to cover fixed overhead.

E&O Tip #3: Assure Proper and Timely Delivery of Bid Bonds - Confirm delivery address ahead of time and use a reliable overnight delivery service.

Benefit: Taking steps to assure proper and timely delivery alleviates the possibility that your client will miss a bid deadline. Delivery date and time will be specified and status can be tracked if reliable overnight delivery is utilized.

E&O Tip #4: Never Advise a Contractor to Use a Cashier's Check as Bid Security in Lieu of a Bid Bond - Notify clients that they must request a bond as soon as they are aware one will be required. If a bid bond cannot be secured in a timely fashion, a cashier's check should only be used when the surety provides written approval stating that they will support the bid bond. Never assume that the surety will support a bid bond for which a cashier's check was provided.

Benefit: By verifying that a surety will support a bond, the contractor will avoid the possibility that he/she will be out the amount specified in the cashier's check, triggering him/her to file an E&O claim against the agent.

E&O Tip #5: Establish a Written Procedure Requiring Verification of Surety Approval - Set up guidelines regarding what constitutes authorization from the surety and how it should be documented. Agency staff who issue bonds must be notified of this policy and adhere to all requirements prior to delivering bonds to your clients

Benefit: By having agency staff receive prior approval, the surety's trust in your agency will be maintained, and your client's future surety relationships will not be jeopardized.

E&O Tip #6: Train Associates on Specific Criteria Granted by Bond Lines of Authority - Don't focus solely on single bond size and aggregate limits authorized under the line. Know and understand the other conditions and exclusions before issuing a bond under the line.

Benefit: When a line of authority is given by a surety company, it gives the agent authority to issue bonds that fall within the scope of the line. Verifying that the project meets each and every item on the bond line of authority is critical to maintaining the confidence of the surety and protecting your agency against an E&O claim if the project ends up in claim.

E&O Tip #7: Deliver All Relevant Information to the Surety in a Timely Manner - Create and adhere to a procedure that calls for providing all known information to the surety that may impact their decision for both bond approval and for the handling of a claim.

Benefit: This requirement is included in the agency agreement that is signed with the surety, and honoring it is critical to maintaining the relationship with the companies with whom you do business.



The Real World: Case Study A Not So Bonding Experience

Best Bond Agency is a non-exclusive agent for Universal Surety. Best Bond has over the years written surety bonds with several other carriers for both public and private construction projects throughout the United States. Seth, the agent at Best Bond, was contacted by his longtime client, Public Works, and asked to obtain three bid bonds for three Out of State public highway projects valued at \$5 million. Prior to completing its surety bond application, Public Works sent Seth a letter detailing Out of State's bid requirements, which included a condition that the bid bond issuer must be licensed in Out of State to do business on public projects.

Requirements and Compliance Review

Seth did not notice this particular licensing requirement. However, he did forward the bid requirements letter to Universal Surety with his client's bond application. As Public Works was financially sound and had a long track record of completing large public projects, Universal Surety approved and issued the requested bid bonds for \$5 million. Public Works was the lowest bidder on the three highway projects. However, when Out of State conducted a compliance review on the Public Works' bids, the parties discovered that Universal Surety was not licensed to write surety bonds on public projects in Out of State. As a result, Public Works was disqualified and lost a potential combined \$1.7 million in profits from the three projects.

Agency and Surety Sued

Subsequently, Public Works sued Best Bond and Universal Surety for misrepresentation, fraud, unfair business practices and professional negligence. Universal Surety responded in the litigation that Best Bond should be solely liable because Seth never asked the bond carrier if it was licensed to do business in Out of State. The plaintiff also argued that the alleged conduct of Best Bond and Universal Surety in connection with this dispute violated the Unauthorized Insurance Act of Out of State, which prohibited the placement of insurance products in Out of State for an unlicensed insurance carrier.

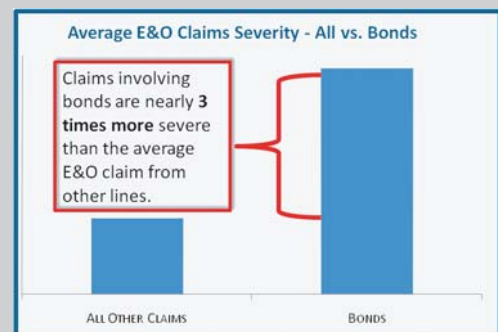
What do you think was the outcome?

The E&O carrier was able to successfully defend the agent in this matter because it was able to prove that the bond carrier had been put on notice of the licensing bid requirement and therefore had a duty to advise both the agent and his client that it was not licensed to issue surety bonds for public projects in Out of State prior to issuing the relevant bonds in this matter. A jury returned a multi-million dollar verdict for the plaintiff against the surety carrier for lost profits and damage to professional reputation sustained by Public Works.

Best Practices and File Documentation Win Again

While Seth had not carefully read the bid requirements letter provided by his client, he did follow a best practice in providing this document to the bond carrier with his client's bond application. Seth had carefully documented his file to show what he had submitted to Universal Surety. As a result, Best Bond was dismissed early from this litigation.

Did You Know?



Interested in learning more about bonds?

The Big "I" Virtual Risk Consultant (or "VRC") has technical information that can help you learn about bonds. The Commercial Lines Casualty portion of the Policy Forms and Manual (PF&M) section provides information on bonds including: an overview, a comparison of surety bond terminology versus insurance terms, and underwriting and rating considerations. Learn more about the VRC or to purchase visit www.iiaba.net/VRC.

The "Primary and Noncontributory" Myth

By Bill Wilson

Abstract: Your customer has entered into a construction contract that requires, among many other things, for you to show on a certificate of insurance that additional insured coverage is provided on a primary and noncontributory basis. This article explains why it is typically impossible for you to do this.

Your customer has signed a construction contract that requires the following to be added in the Description of Operations field on the ACORD 25 certificate of insurance you're expected to issue yesterday so that your customer can get access to the job site (or get paid for work already completed):

"ABC General Contractor, Inc., XYZ Architectural Firm, Inc., and PQRST Engineers, Inc. and their respective customers, directors, officers, employees, agents, subsidiaries, divisions, affiliates, and successors are named as Additional Insureds on a primary and non-contributory basis with respect to liability for bodily injury, property damage or personal and advertising injury caused in whole or in part by the acts or omissions of either you or the additional insureds to the extent required by the written contract."

Aside from the name changes to protect the ridiculous, this statement was actually added to an issued certificate by an agency. This is not unusual...we see this kind of thing on a weekly, if not daily, basis. There are MANY problems with this statement, but this article focuses on just one of them...the "primary and noncontributory" comment. The following commentary outlines why this phrase should NEVER be placed on a certificate.

First, this is what the ACORD Forms Instruction Guide (FIG) says should go in the Description field:

"As used here, records information necessary to identify the operations, locations and vehicles for which the certificate was issued."

What does "primary and noncontributory" have to do with the operations, locations and vehicles of the insured? Answer: Nothing. So this statement is not appropriate for this field in the certificate. The ACORD FIG also says that the certificate should not be used in the following situations:

- ▶ To quote wording from a contract
- ▶ To quote any wording which amends a policy unless the policy itself has been amended

The "primary and noncontributory" wording is requested to be shown on the certificate because the contract requires it to be done that way. ACORD makes it clear that proper use of the certificate does not include quoting contract wording. Also, unless coverage is actually provided by the policies on a "primary and noncontributory" basis, the certificate shouldn't say so. For example, the "primary and noncontributory" statement on the certificate does not reference any specific policy. The certificate included information on the CGL, BAP, and workers compensation policies. We know, or should know, that auto coverage cannot be provided on a "primary and noncontributory" basis under ISO forms.

Commercial auto primacy is governed largely by ownership and ISO's symboling system, along with various and diverse state laws. Saying that auto coverage is "primary and noncontributory" on a certificate quite likely does not accurately reflect the policy. As such, the certificate, on that one point, could be patently illegal in some states and in all states could be subject to allegations that it

is a misrepresentation or a fraudulent insurance document, something that carries severe penalties in all states.

Keep in mind that insurance policies govern primacy of coverage, not certificates or construction contracts, and any attempt by a certificate to purport to provide a policy right not actually afforded by the policy could be presumed to be an attempt to amend, extend or alter the policy. A majority of states now expressly prohibit this. If the certificate implies that it extends such a policy right, then it is in effect purporting to be a policy form which, I suspect, is illegal in all states whether they've opined on specific certificate issues or not. Either a policy grants "primary and noncontributory" coverage or it doesn't, and the certificate should only reflect what the policy does provide.

With that said, let's focus on the CGL coverage for which that statement "primary and noncontributory" is usually directed at. The ISO CGL policy governs primacy under the Other Insurance clause:

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over:
(2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

As we can see, condition 4.b.(2) says that the CGL policy is excess over any other primary insurance under which the named insured has been added as an additional insured by attachment of an endorsement. It sounds like this solves our problem, but it doesn't. Why? First, keep in mind WHOSE policy we're looking at. It's the ADDITIONAL INSURED's policy (assuming they have an ISO or equivalent form) that governs whether AI coverage is primary or excess, NOT your insured's CGL policy. NONE of ISO's 30 or so additional insured endorsements mention the phrase "primary and noncontributory." ISO relies on the Other Insurance clause in the CGL to control primacy which, as we've just seen, lies within the AI's policy, not your insured's policy.

So, that being the case, how can YOU, the agent, say that your insured's policy is extending additional insured status to the upstream party when it's THEIR policy that controls primacy? The fact of the matter is that, when you're using ISO forms, you can't. At best, you're guessing that the AI coverage you're providing is primary. The only way to know with absolute certainty is by reviewing BOTH general liability policies. Do you do that before placing the "primary and noncontributory" wording on a certificate? Unlikely.

To make matters worse, you can't even be certain that what appears to be the unambiguous intent of the policies really is. In the case of *Travelers Lloyds Ins. Co. v. Pacific Employers Ins. Co.*, No. 07-20157 (5th Cir. April, 2010), a tenant insured by Pacific agreed to provide "primary and noncontributory" CGL coverage for the landlord insured by Travelers. Following a customer injury, Pacific refused to provide coverage on a primary basis. The landlord's "almost ISO" policy said it provided excess coverage over any other "valid and collectible insurance available to you if you are added as an additional insured under any other policy."

However, the tenant's policy said it was excess over other insurance "unless that insurance is written specifically to apply in excess of the Limits shown in the Declarations." The court opined that this statement sounded like it was referring "specifically" to an umbrella or excess policy, not another CGL policy. So, there could possibly be no coverage or, at best, pro rata coverage. This demonstrates how important the very specific and unique wording of policies may be interpreted, making it difficult and highly inadvisable that broad wording like "primary and noncontributory" be used on a certificate of insurance, compliance checklist, warranty statement, or agent affidavit. If a loss occurs that is uncovered or otherwise denied by the downstream party's insurer, you can bet that the agent will be on the receiving end of the lawsuit.

Again, keep in mind that none of the ISO AI endorsements address "primary and noncontributory." However, a number of proprietary carrier AI endorsements do say they are primary or even "primary and noncontributory." But, once again, you don't know what the upstream party's CGL policy says, so you can't predict exactly how even this specific language might fit with the language in their CGL policy. Also, exactly what does "noncontributory" mean? I've never seen it defined in a contract. I've seen it defined a couple of times in a proprietary insurer AI endorsement, but that seems rare. If we don't know with certainty what this term means, how can we say coverage is "noncontributory" without a meeting of the minds on the meaning of the term.

Here's another issue...notice that, under the Other Insurance clause, the upstream party's CGL policy is excess over the downstream party's CGL policy only if "you have been added as an additional insured by attachment of an endorsement." Some carriers are now extending AI status on a blanket basis within their proprietary

CGL policy, not by the attachment of an endorsement. For example, consider this excerpt from one insurer's liability policy:

Additional Insureds When Required By Written Contract or Agreement

The person(s) or organization(s) described below are additional insureds when you have agreed, in a written contract or agreement, that such person or organization be added as an additional insured on your policy.

Because AI status is provided within the downstream party's CGL policy and not by endorsement, a literal reading of the AI's CGL policy now implies that it is NOT excess coverage, which means that it is either primary or provided on a pro rata basis. This may seem like a mincing of words beyond the intent of the policy language, but this is exactly what trial lawyers do when they are litigating policy language.

With this information in mind, along with the increasing focus of regulators on certificate wording that might misrepresent policy language, we suggest that agents use extreme caution when responding to requests to place specific wording on a certificate.

For more information related to certs topics visit the Certificates of Insurance Section of the Big "I" Virtual University at <http://www.iiaba.net/VU/NonMember/Certificates.htm>.

For specific questions on this article feel free to email Bill Wilson at Bill.Wilson@iiaba.net.

Let Big “I” Virtual Risk Consultant Help You Meet 2011 Agency Sales Goals

2011 is still a very new year. New budgets are out, targets are set, performance goals are at the forefront of the minds of agency staff. This year let the Big “I” Virtual Risk Consultant powered by Rough Notes (“VRC”) help your agency meet its goals by providing the knowledge and tools to improve and grow. From the agency principal to producers and everyone in between, VRC has information and tools that everyone in the agency can benefit from. Learn how by clicking on the linked resource below for a sample page from the described product.

Agency Principals and Managers

Knowledge is power in meeting your customers’ needs and having the most professional staff is a huge competitive advantage. The insurance industry is a technically challenging business that can be intimidating to agency staff, but VRC will shorten the learning curve and bolster confidence to help agency staff hit the ground running. The Policy Forms & Manual Analysis section of VRC gives producers, account managers, and CSR’s the insight to understand policy information and coverage detail while giving them confidence to answer customer inquiries, which leads to more sales. Also, professionally designed sales tools such as Business Building Letters and E-Marketing articles will aid in your agency management, prospecting, follow-up, and marketing efforts.

Producers - Commercial and Personal Lines

Get comfortable going after business with the Commercial Lines Risk Exposure Evaluation System which provides narrative descriptions of operations with exposure-based questions for more than 670 types of businesses. In addition to giving you the knowledge to write and develop the entire account, it helps you increase your per account revenue through account rounding and retention. The Exposure Identification Survey is an excellent supplement to your applications, reducing underwriting questions when you go to market. The E&O Coverage Checklist is the key to documenting customer files and controlling agency error and omission exposures.

CSRs

The value of exceptional service in the property/casualty insurance industry is immense. Having the ability to explain complicated insurance terms in language your customers can understand and knowing where to go for in-depth definitions of coverages are qualities no team can do without. VRC provides all the tools you need to put yourself and your agency in a class by itself. Insurance Words & Their Meanings and Coverages Applicable are just two of the “must haves” for every insurance professional.



Take a minute and share this article with agency staff members and ask if they would benefit from a tool like VRC. Not only will VRC help your agency increase sales and improve the customer experience, it could keep you safe from E&O claims. Remember, thorough customer risk exposure assessment with a high-level of coverage knowledge and complete customer file documentation will help avoid the headache of an agency E&O claim.

To learn more about VRC or to purchase it, visit www.iiaba.net/vrc. Or click here to view a webinar demonstrating the power of the product.

Auto repair links:

[Click the links below to access these resources.](#)

Policy Forms and Manual overview (Garage)
Commercial Lines Risk Exposure Evaluation System (Auto repair - understanding risk)
Exposure identification survey (auto repair)
Coverage checklist (auto repair)
Coverages applicable (auto sales and service)

SLUGGISH SALES? HIGH E&O EXPOSURE?

WE PRESCRIBE THE BIG I ADVANTAGE[®] VIRTUAL RISK CONSULTANT



Annual
subscriptions
start at
\$250!

VRC Facts

Active ingredients:

- Commercial and personal risk assessment tools (Exposure identification surveys and coverage checklists)
- Coverage reference resources and proposal tools (PF&M, ACORD forms, insurance glossary)
- Marketing and prospecting tools (Client letter templates and web site content)

Use:

Use liberally for relief of lethargic agency sales and lack of producer confidence.

Dosage:

Subscribe annually (or get four years for the price of three). Available online 24/7.

Side effects:

- Dizzying improvement in knowledge and professionalism of agency staff.
- Innoculation against E&O claims from failing to offer proper coverage or identify customer exposure.
- Rejuvenated content to market your agency's services.

Warning: Prolonged exposure to VRC will result in agency success.

*Available for purchase exclusively to Big "I" members
over the counter at www.iiaba.net/VRC.*



DON'T GET BITTEN

BY AN E&O CLAIM YOU COULD HAVE AVOIDED.



Big "I" Risk Management Website

www.independentagent.com/EOHappens

Big "I" members whose agency E&O insurance is written by Swiss Re through the Big "I" Professional Liability Program have access to an exclusive risk management web site.

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.

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



Big “I” Professional Liability Wallet Card


Print and fold this handy card for each member of your agency staff so they know what to do when an E&O incident occurs.


Keep one in your wallet and one near the phone, and refer to it FIRST when a customer contacts you to report or discuss a potential claim against your agency!

What to Do When an E&O Incident Occurs

All agency staff should consider the following when responding to customers when faced with an E&O situation:

1. Never admit liability. You can be empathetic, but never admit you’ve done anything wrong.
2. Don’t participate in any settlement discussions or enter into a settlement without written consent from your E&O carrier.
3. Ask them to explain what they think it is you’ve done wrong and write it all down including names, dates, and telephone numbers.
4. Don’t tell them you have E&O liability insurance unless they ask you specifically if you do. Then, only advise them that you do and that you will provide all the information to your insurance carrier and they will be in touch with them.
5. Report the incident immediately to management so they can submit it to your E&O carrier.





Visit www.iiaba.net/EOHappens today
to review exclusive agency risk
management information that can
help the agency avoid the hassle and
expense of E&O claims.

And remember, a customer’s uncovered claim is the catalyst for an E&O claim against the agency. The Big I Advantage® Virtual Risk Consultant Powered by Rough Notes can help agency staff better identify and cover customer exposures, while increasing sales. Annual subscriptions start for only \$250. Visit iiaba.net/VRC to learn more.