

# the E&O angle

E&O issues and advice

## What If It Happens to You?

Here are some things to think about if you are put in an E&O claims situation.

By David Hulcher

This year one in every five insurance agents will provide notice of an E&O claim or potential claim to their carrier—will you be one of them? Whether a reserve is posted, an agent is served with a subpoena, or nothing comes of it is not important. But the chance of being involved in an E&O claim during the business life of your agency's operation is pretty good. Of course, you can't just sit back and wait for the inevitable. Make avoiding and reducing your exposure to E&O losses a major priority from the agency principal down to the clerical staff.

Over the past several decades, courts have compared insurance agents to other professional service providers with specialized knowledge and skills, including doctors, lawyers and accountants. But running an insurance agency is about much more than simply providing insurance and having specific knowledge—it's about relationships that are built within local communities. These relationships can often be strained by the stress of a client's loss and often broken should the claim turn out to be uncovered by the insurance carrier. Many agents' initial reaction is to find a way for the claim to be covered within the customer's policy language. If that doesn't happen, the next thought is their E&O backstop. When facing an E&O claim, take the necessary steps to make sure your business interests are protected by your E&O insurance. You must adhere to the provisions in your E&O policy in order for coverage to apply. Here are a few things to think about when an E&O claim is knocking at your agency's door:

- 1. Provide written notice of claim.** Whether you place your E&O through an agent or directly with the carrier, provide them with written notification of a claim as soon as possible. If you become aware of a claim or act that may give rise to claim in the future, notify the carrier based on the notice provisions outlined in the policy so that the claim will be considered made during the policy period. This becomes extremely important if you are thinking about changing carriers. Written notification generally includes a description of the claim or alleged wrongful act, names of the parties involved, the date of circumstance and a summary of the facts.
- 2. Never admit liability or make payment.** Most policies indicate that an insured shall never admit liability or incur any costs in the settlement of a claim. Doing either one greatly

jeopardizes the E&O carrier's ability to offer a solid defense. This is where the relationships with clients can become a problem. If you unknowingly make an error on the account, your instinct is to apologize and admit you made a mistake. It is best for the agency and your client to never admit liability—it could violate a policy provision, voiding coverage under the contract.

- 3. Cooperate with your E&O carrier.** Working with your E&O carrier and providing it with information requested will make the process more efficient and effective. Attend hearings, work with the carrier in the settlement process and assist in obtaining evidence and witnesses.

When purchasing your E&O policy, there are some things to consider outside of the carrier requirements mentioned above. First, consider the type of deductible that applies to your policy. E&O carriers have different deductible options, such as a first dollar defense deductible and a loss and defense deductible. First dollar defense, or loss only, means that the carrier will incur defense costs and the policyholder deductible will only apply should a loss be paid out. In today's hard market, many agents' E&O carriers offer this first dollar defense options only to those that have remained claims-free for at least several policy periods. With the loss and defense deductible option, policyholders must pay their deductible the moment that defense work begins on the claim. This option puts pressure on agents to have liquid assets available to pay for the deductible should a claim arise.

Another policy provision to think about when it comes to the claims process is whether you must provide consent before the carrier can settle claims. As agents depend heavily on their reputation to retain clients and write new business, you may feel that the settlement of a claim may have negative repercussions and that your agency personnel acted appropriately. The consent to settle clause provides you with safety of knowing that you can ultimately make the decision. Of course, most agents' E&O policies contain provisions that would limit the amount of carrier payment at the time of recommended settlement and then you are responsible for expense and losses should the outcome exceed that.

The severity and frequency of agents' E&O claims has been climbing over the past five years and your agency needs to stay focused on sound business practices to help prevent E&O claims. Review policy provisions and deductibles to make sure that you are prepared if an E&O claim is brought against you. Finally, be sure to place your coverage with an agent that has experience in assisting with claims and a carrier who has a good reputation for defending and paying claims. **IA**

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# Deal Makers

10 Top Sales Cues, Marketing Tips, Deal Closers

By Emily Huling

1. **Be a collector.** Continuously gather information about your clients, their business and their industry. You'll always be prepared to engage in a meaningful conversation.
2. **Limit your speed.** In communication, not everyone speaks or thinks at the same pace. Complex information requires slower, simpler language to make it easier to understand. Don't let your clients strain to comprehend.
3. **Dust yourself off.** Getting back in the saddle after a fall relates to sales. After hearing disappointing news, make contact with valued clients and prospects to get riding again.
4. **Don't zip.** When sending e-mail attachments, keep it simple. Microsoft Word™ is the standard. Avoid using pdf, Mac, or zip files unless you're sure your recipient can easily open them.
5. **Be a matchmaker.** Connecting your clients with employee candidates, potential customers and reputable vendors helps their business—and yours.
6. **Improve internal affairs.** College interns are a great resource for marketing and sales projects. What are you doing that a young, eager worker can help with and learn at the same time?
7. **Stay away from moody blues.** Get control of mood swings. Emotional lows result in unproductive, low-quality work. Work on maintaining a positive attitude.
8. **Keep promises.** Avoid over-committing yourself or the front-line staff to clients. Check on timeframes before you make agreements.
9. **Know your DNA.** Creating a unique brand sets you apart. Focus on developing your image, unique assets, and area of expertise.
10. **Don't worry if you're not a wizard.** "It is our choices... that show what we truly are, far more than our abilities."—J.K. Rowling, *Harry Potter and the Chamber of Secrets*. **IA**

Huling, CIC, CMC is the author of a new book *Selling from the Inside: Creating a Front Line That Adds to Your Bottom Line*. To order your copy, call 888-309-8802; [emily@sellingstrategies.com](mailto:emily@sellingstrategies.com); [www.sellingstrategies.com](http://www.sellingstrategies.com).



# Deal Breakers

A sales rep loses his shirt—and more.

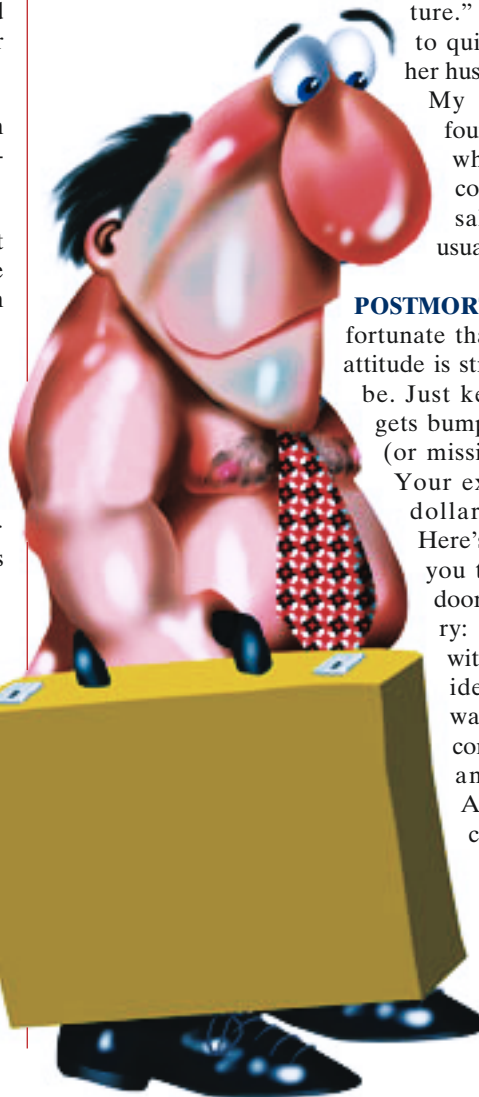
By Dan Seidman

I'd spent 40 years in insurance sales. In the old days, we were called collectors as much as sales representatives. We used to go door to door to collect money at people's houses. I had the wealthy residents of Chicago's Gold Coast, but I also covered the edge of the Cabrini Projects—still to this day a very dangerous area.

I was enjoying a beautiful day after three or four calls. Then three guys nailed me, caught me completely by surprise. A gun came up in my face and a deep voice said, "let's see what you got, man." I'd never been robbed before and was terrified of being shot. But these fellows were smart. They never struck me, just waved the gun, took my money belt and then took all of my clothes.

There I was—stark naked.

I went back to the house where I'd just collected. The woman's quizzical look through the peephole changed to embarrassment as she swung open the door and got the "whole picture."



She was kind enough to quickly give me some of her husband's clothes to wear. My clothes were later found in a trash can. Well, what could I do? I just continued on my day of sales calls—business as usual.

**POSTMORTEM:** Mike was very fortunate that he wasn't hurt. His attitude is strong—as yours should be. Just keep going. When life gets bumpy and money is tight (or missing), just keep going. Your expertise will put new dollars in your pocket. Here's a protection tip when you travel, especially outdoors in unfamiliar territory: carry a second wallet with minimal money and identification. Give this wallet up should you be confronted. Hand it over and get out of there. And thank God for credit cards. **IA**

Check out Seidman's book, *The Death of 20th Century Selling*. Visit [www.salesautopsy.com/book.html](http://www.salesautopsy.com/book.html).