

the E&O angle

E&O issues and advice

Document! Document! Document!

You've heard it before—but do you know what it means?

By David Hulcher

How many agents E&O classes have you been to that have preached the gospel of the Triple-D? While it may seem cliché, the reality is that documenting the activities performed for your clients significantly lower or eliminate a big part of the risk of being party to a claim.

Attack the Usual Suspects

Here are the top four lines of business that likely will be the underlying coverage when an E&O claim occurs. Keep these in mind as you focus on where in your agency to re-double documentation efforts.

1. Commercial General Liability —Package Policy
2. Personal Auto
3. Homeowners
4. Workers' Compensation

Eliminate the Two Deadly Sins

How can the triple D help? First, let's look at the two activities that generate the most exposure:

Customer Service Errors. Customer service errors generate the most E&O claims. Every time an agent answers a request from an existing policyholder, there is a possibility of misrepresenting coverage, adding the wrong coverage or giving incorrect advice. Every time an agent fulfills a policyholder request, they should document it. Of course, agents must first understand the coverage that they are selling—documentation won't help with that. But agents must avoid the trap of implementing one thing and later being held to a different standard when they submit a claim.

Processing Errors. Agents and CSRs often can avoid underwriting and claims processing errors with proper procedures. If you require agents to document that they follow the correct procedures, then—you guessed it—the procedures are actually followed. For example, many errors in the underwriting process occur because of failure or delay in submitting applications or

underwriting information. Proper documentation in the customer file will uncover the application that was held up during processing.

Analyze Your Line Breakdown

Where should you focus your documentation efforts?

It truly depends on the breakdown of the lines of business your agency writes. As mentioned earlier, CGL package policies, personal auto and homeowners are the leading underlying coverages when E&O claims occur. Since the number of CGL package policies written by agencies is generally smaller, this signals that there is proportionally more exposure to E&O claims when writing this line of business.

Agencies with smaller revenues (\$500,000 or less) tend to write a higher percentage of their total business in the personal lines property-casualty area. On the other hand, commercial lines p-c tends to make up a greater portion of business written by agencies with larger revenues (greater than \$500,000). So, smaller agencies should focus more on the documentation procedures for personal auto and homeowners, while larger agencies focus on documentation of commercial p-c lines, like CGL package policies. Generating a report from your agency management system that breaks down the lines of business can point you in the right direction to focusing on your agency's greatest documentation exposure.

Triple-D and the Experts

What is the single most important thing in avoiding E&O claims? The attorneys who serve as panel counsel defending agents claims for the Big "I" Professional Liability Program, underwritten by Westport Insurance Corporation, all agreed on one thing. Documentation strikes again.

"An agency should be certain that everyone is making and retaining notes on all discussions involving coverage or claims," says Jim Keidel, a managing partner with Lustig & Brown, LLP's E&O practice.

Another tip: document significant coverage events in real time, rather than waiting. Nick Lanza, an attorney from Burck, Lapidus & Lanza, PC in Houston, Texas, stresses the importance of documenting events such clients rejection of proposed coverage, reductions of in the types of coverage and coverage changes (i.e. adding/dropping vehicles) when they happen.

Types of documentation can include confirmation by e-mail, fax, or—if the situation is very important—certified mail. In addition, making confirmations part of the client's policy records in your agency

management system is critical. To enhance your staff's ability to meet agency documentation procedure requirements, Bill Wilson, IIABA Director of the Virtual University, added that it may be a good idea to train your staff in organization, time management and communication skills.

Let your staff know which agency activities produce claims and the underlying lines where they most frequently occur. Those two pieces of information should give you a starting point to lowering your E&O exposure through documentation. And remember that "documentation, documentation, documentation" can prevent "E&O claims, E&O claims, E&O claims"!

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