

## E&O From All Sides

Even with the most stringent guidelines and procedures in place, an error or omission can happen. When insurance agents act like the professionals that they should be and still get caught up in a legal liability dispute, it is regrettable. On the other hand, when agents go about their business in a generally sloppy manner with little concern for professionalism, it is only a matter of time and circumstance before legal trouble comes knocking.

A popular song contains the lyrics "I've looked at clouds from both sides now...." Well, I've looked at insurance agents from five sides now. With 45 years in the p-c insurance business, I have looked at agents activities as a consumer, company underwriter/representative, wholesale excess and surplus lines broker, retail agent and now a litigation consultant. Most of this experience has been with independent agents and, I must say, has typically been very satisfactory. However, when a glaring exception comes along, it is not a pretty sight.

As a consultant and expert witness in several E&O cases, I've seen the gap that exists between agents who conscientiously do a professional job, and those who just don't care. Even when agents acted appropriately, it is sometimes necessary to prepare and present a proper defense. Chalk up some of these situations to our litigious society and some to a desire to pass the buck on mistakes.

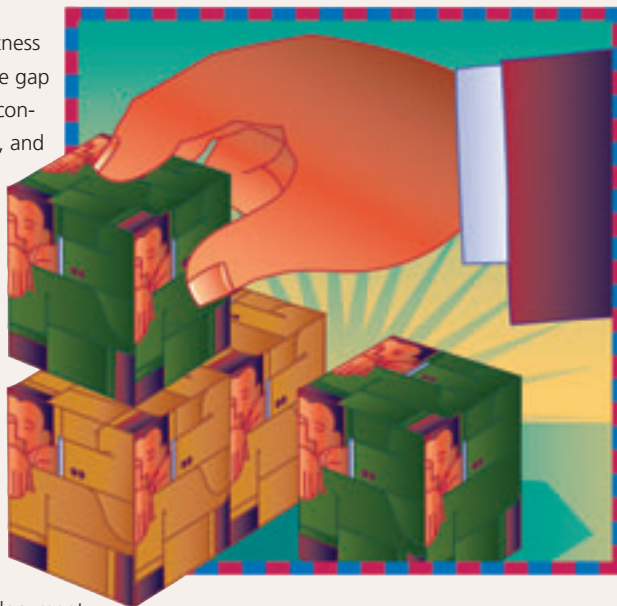
It has been said that the three top requirements for desirable real estate are location, location, location. The three top requirements for agents to prevent E&O cases are document, document, document.

Almost every case I have worked on probably never would have reached the legal system if the agents involved had properly documented the conversations and actions they later try to convince the court they did. From a short note in a file or telephone log to a letter confirming an agreement—having something in writing makes all the difference. But you probably have been given this advice before. Therefore, the purpose of this column is to jog your memory and to exhort you practice what you know. The relatively small amount of time spent in prevention always pays off in the long run.

I have viewed the situation from many angles and have seen agents experiencing extensive trauma because of situations that were easily preventable. Take the courses, review the procedures, run down the checklists and continue to keep an air of responsibility and professionalism in your agency operation.

You have to carefully and conscientiously mind the shop. As the proverb goes, "A hint to the wise is sufficient." Let me urge you to embrace these hints to help remove one of the many concerns that surround your agency operation. The pen of documentation can be the pen of prevention. ☐

**Billy L. Akin, CPCU, ARM (bakinpcs@aol.com)** is president of Professional Consultants & Services, Inc., a consulting company that provides insurance and reinsurance services for the insurance industry and attorney consultation and support.



## Agents Behaving Badly

While most agents I encounter are hard working and sincere, there are also some of the other variety. Here are a few war stories (names changed to protect the innocent and the guilty):

- **I Am Busy** was evidently standing on the sidelines while a company using questionable procedures cancelled one of her commercial policies. When the insured had a devastating fire, Ms. Busy had to say that she didn't know whether the policy was in force or not. Never mind repeated notices from the insurance company about the situation. Ms. Busy was not too busy to become involved in lengthy research and a time-consuming personal deposition.
- **Must B. Fine** made no effort to confirm the financial stability of an offshore excess and surplus lines carrier. A serious loss occurred, the carrier wasn't financially stable and it was certainly off shore—so far off shore that none of its principals or employees could be located. Mr. Fine not only didn't investigate the company thoroughly or check the correct sources—he didn't investigate the company at all.
- **That's A. Plenty** was too busy working his life insurance and annuity business to put proper liability policy limits in place for an insured. After coming up about a million dollars short to cover a judgment against him, the insured probably needed the annuity advice of the agent, and perhaps more life insurance. The agent never looked beyond his few p-c companies to get adequate liability limits for this wealthy insured. In this case, lack of action on the part of Mr. Plenty failed to meet an acceptable standard of care for insurance agents in his state.

—B.A.