

Don't Make Claims Decisions for Carriers or Clients

A recurring theme seen by insurance agents' E&O claim handlers is the problems created by an agent's recommendation that a particular claim not be submitted to all potentially responsible carriers. An agent or broker, who does an excellent job locating and placing policies, later undoes all of his or her good work by making assumptions about coverage for an occurrence or potential occurrence when one finally happens.



This is understandable. Insurance agents, like everyone else, want to save themselves and their clients unnecessary work that seems unlikely to produce tangible results. Good agents want to get to a productive solution rather than wasting valuable time when they perceive that there is no coverage.

As a simple example of where good intentions can go wrong, consider a claim where, for whatever reason, a homeowner's policy does not carry sewer backup coverage. When the client calls to report the mess in his basement, the agent has two choices. First, the agent can advise the client that, unfortunately, his policy does not cover sewer backup and ask if he'd like to add the coverage for the future. Second, the agent can advise about the availability of the coverage, but go ahead and submit the claim to the carrier anyway. In truth, there are many reasons why the coverage may not have been on the policy, some of which may lead the carrier to reform the policy to include the coverage. Further, there are some causes of sewer backup that some carriers may consider covered occurrences even absent the specific coverage. Imagine the client's reaction when his neighbor's claim is covered, and his is not. That reaction could lead to an E&O claim the agent could have avoided by merely reporting the claim to the carrier.

A failure-to-report-claims scenario typically is a bit more complex. One example is a claim against an employer by a recently fired employee, which the employer's insurance agent submits only to the EPL carrier, and not to the GL carrier. In fact, the GL carrier might have obligations regarding defamation allegations against the employer, and failing to submit the claim to the GL carrier could lead to an E&O claim. Another example is part of a load falling from a truck and causing property damage. Would the GL policy's auto exclusion exclude allegations that the trucking company failed to properly train and supervise the employees who loaded the truck? The GL carrier—not by the insurance agent—should make this determination. The better practice is to submit the claim both to the business auto and to the GL carrier.

You should always submit claims to excess and umbrella carriers. Even if it appears, at first blush, that the underlying policy limits are more than adequate, it is good practice to notify these carriers along with the primary carriers. Later on, should the claim develop such that upper layers might be involved, any successful late-notice defense available to the excess/umbrella carriers could result in a successful E&O claim against the agent who didn't report the claims to all the carriers involved.

There are obvious situations where it makes no sense to report a claim. If your client has driven his only car away on vacation, and his house burns down while he's away, presenting the claim to his auto carrier would be frivolous in most cases. However, agents should err on the side of reporting to too many carriers rather than too few. [A](#)

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Play it Safe

In many cases, the agent's initial reaction is correct: There is no coverage available to the client. Nevertheless, this is not the agent's determination to make. While a policy may have lapsed or been canceled, if an agent reports a loss under that policy, the carrier in question typically has a statutory or regulatory obligation to review the matter and make a coverage determination. While rules differ from state to state, all carriers are obligated to make a timely coverage determination and to provide timely notice of that determination. Failure to do this may affect a carrier's ability to deny coverage, even on a policy that is no longer in effect. This is, admittedly, not a strong position, as it relies on the remote possibility that a carrier may make an unlikely mistake or favorable determination in handling the claim. Still, from an E&O perspective, getting the claim covered lessens the possibility of facing an E&O claim down the road. In fact, the mere effort of submitting the claim for the carriers' considerations could provide an important defense should an E&O claim arise.

In a true E&O situation, the lack of coverage seemingly arises from agency error, such as misplacing and then failing to submit an application for coverage. In such cases, you should immediately report the situation to your E&O carrier. You should not undertake to explain the situation to the "would be" carrier hoping for ex gratia consideration of your client's claim, as such a request might be considered an admission that breaches your E&O policy's cooperation clause. Remember that your E&O carrier deals with similar situations on a daily basis and will work with you to resolve the situation in the best way possible.

—G.F.