

Dos and Don'ts of E&O Claims Reporting

No agency ever wants to be the subject of an error & omissions claim. But despite best intentions, many agents, at some point, will face one. When such a situation arises, it is good to know what to do with that claim.

Do review and familiarize yourself with the specific language of your E&O policy, paying particular attention to the reporting requirements and definitions of "claim" and "potential claim" under the terms of that policy. This will help you determine what and when you are required to report to your carrier. Contact your carrier with questions.

Do report claims in writing to your carrier as soon as you become aware of the situation. Submit relevant documentation with your written report or chronological narrative of the situation. Notify your carrier when you receive a summons, subpoena or any other notice of legal process. Also notify your carrier if you receive notice of a written demand, a written demand for money or services, or if you are requested to provide a recorded statement or documents. Even if you have reviewed the documents and do not feel there would be coverage under your E&O policy, *still* report them to the carrier and give the carrier the chance to investigate the situation and determine whether there will be coverage.

Do be aware of your policy's language regarding "potential claims" and when they should be reported. Some situations do not fit any of the categories above but still give rise to a claim. These are often referred to as "potential claims." Many policies require you to report potential claims in a timely manner. Consult your policy and/or carrier to determine when to report these instances if you have concerns about the situation. This is especially important if you are thinking about changing E&O carriers.

Do not admit liability. Even if you determine or feel as though you are responsible for the situation or claim, do not admit liability or continue to discuss the alleged error until you report it to your carrier. Allow the carrier time to investigate and make its liability determination. Many factors influence a liability determination. While you may feel that, in hindsight, you could have done something differently, your actions might not rise to the level of legal liability.

Do not pay or agree to pay any expenses without your E&O carrier's permission. This may give the impression that you are liable. You also could be paying expenses that your carrier may believe you are liable for. If you do pay or agree to pay expenses or costs without the carrier's permission, your carrier may not be obligated to reimburse you for expenses you incurred before reporting the claim.

Do not settle or attempt to settle or resolve claims on your own. By doing so without the permission or involvement of your E&O carrier, you are admitting liability without an investigation. You may be paying expenses or costs you should not be liable for and you may not negotiate the best settlement possible in the situation. Additionally, you may not obtain the appropriate release, which means you could get brought back into the claim. If you are unsuccessful in settling or resolving the claim and then try and turn it over to your E&O carrier, you likely will have jeopardized your coverage for that claim.

This is not an exhaustive list, but rather a few helpful tips to refer to if you ever find yourself having to report a claim. Since the terms of different E&O policies vary, refer to your actual policy terms and conditions for specific questions and follow those up with questions to your carrier. 

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Seek Support

Don't underestimate the impact a claim can have on your agency—cost of deductible, loss of productivity, future increased E&O premiums, decrease in staff moral and degradation of your agency's reputation.

Swiss Re is an endorsed carrier of the Big "I" Professional Liability Program. Here are some facts about the strong Swiss Re/Westport claims team:

- The Swiss Re/Westport claims team has an average of more than 13 years of industry experience.
- Seventy percent of the claims team, including the manager and all three team leaders, are licensed attorneys. The rest of the staff are either paralegals or well-seasoned claims adjusters who focus on agency E&O.
- Nearly 50% of the claims or potential claims reported to Swiss Re/Westport are eventually closed with no payment.
- About 1/3 of all claims that have a loss payment are resolved without a corresponding expense payment. That means that the claims team independently investigates, analyzes and negotiates the settlement without having to assign the claim to outside counsel, keeping costs down.

—G.B.