


Create the Right Relationships to Avoid E&O Claims

One of the keys to being a successful insurance agent is to create and nurture good relationships with your clients. All relationships with clients should be important and special. However, the term “special relationship” is a legal term that refers to a situation that, if it exists, requires a legal duty to act for the protection of another person.

In order for a plaintiff to make a successful negligence claim against an insurance agent, he must establish that the agent owed a duty to the client and that the agent breached that duty. While the law varies in each jurisdiction, agents typically only have a duty to exercise reasonable skill, care and diligence to procure the requested insurance coverage for their client or to advise the client if they are unable to do so. In a majority of the states, an insurance agent has no independent affirmative duty to evaluate a client's risk, recommend coverage amounts or coverage types. However, many states have already increased the duty when an agent has done something to create a special relationship, and more states are getting in line. Whether and to what extent a legal duty exists depends on the relationship of the parties. Generally, the determination of whether a special relationship exists is fact specific and will be decided on a case-by-case basis.

Special relationships can develop from any number of situations. Some of the factors a court might consider include: a long and continuing course of business between an agency and a client; a relationship in which the agent knows his client relies upon his expertise or an agent who voluntarily takes on obligations which are not required under the law. An agent must strike the right balance between providing service to clients while avoiding the creation of special relationships.

Agencies should take time to review agency advertising slogans and Web site information. An agency slogan that proclaims its employees to be “experts” in insurance or that invites its clients to “leave all their insurance needs to the agency” may be creating a basis for clients to later claim they did just that when an incident occurs and there is an uncovered loss. These types of slogans and proclamations can become bold exhibits to be presented to a jury in a negligence action against an agent or agency. Remember Web sites and letterhead are not only seen by clients and potential clients, but also by attorneys who are later hired to represent those clients and potential clients.

Insurance agents must walk a fine line in order to provide the high level of customer service that clients expect and are entitled to without creating unwanted “special relationships.” Falling short of expectations may result in lost business, but doing too much can foster special relationships which carry an additional assumption of duties. 

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Being Nice Backfires

What may seem like simply going above and beyond for a client can result in an unintended consequence of increasing your duty or creating a legally defined “special relationship” between your agency and your client. Consider this actual claim scenario: In order to provide what she feels is unparalleled customer service, an agent goes to her client's place of business at the beginning of each month to collect the scheduled premium payment. One month, the agent takes a scheduled, two-week



vacation which happens to fall over the date she would normally collect the premium from her client. Although the agent testified that she had a phone conversation with her client regarding her scheduled vacation and the process for making his payment to the carrier, her client denies the conver-

sation took place. The client testifies that he has no idea when the payment is due and that when his agent comes to his office, he writes her a check. Ultimately, the client failed to make the required premium payment, ignored the cancellation notice and, because the policy cancelled, exposed himself to the possibility of uncovered losses which the agent may be found liable for since she assumed the duty to not only notify her client when the payment was due, but also to personally collect and remit it to the carrier.

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