

## Don't Waiver into an E&O Claim

When defending a claim, a signed waiver could be a life saver. This is not quite the eloquent prose of Robert Frost or even a former heavyweight champion, but if it helps you remember the importance of a properly executed waiver it will serve its purpose.

A waiver is generally required in instances where an insured has an arguable expectation of coverage even though such coverage was not purchased. Thus a waiver of that particular coverage must be obtained from the insured when certain coverages are refused. In addition, such a waiver can be compelling evidence that the insured was offered the coverage and made an informed decision not to purchase it.

Most states require a signed waiver if an insured chooses to not purchase certain coverages. In addition to state regulations, carriers may require waivers when certain coverages are refused. This requirement can be found in the agency agreement between the carrier and the agency. If there is a loss and a waiver was not obtained or cannot be located the carrier may have to reform the policy to include such coverage. If the carrier is obligated to pay, it will generally pursue a breach of contract claim against the agency to recover any damages paid that were outside the scope of the original insurance policy. Every agent should be familiar with the state and carrier requirements for when waivers are required.

A good practice for an insurance agent is to make notes at the time the waiver is signed documenting that the insured was thoroughly advised as to what coverage they were electing to waive. These notes, along with a signed waiver, should be kept in the insured's file. The combination of notes and a signed waiver will help refresh the agent's recollection of the transaction and add to the agent's credibility should it be sued at a later date.

There are other times when an agent should obtain a signed waiver even though one is not required. For example, when an insured refuses to purchase workers compensation coverage and the agent knows he/she should have it or if an insured refuses flood coverage on property located in a flood zone. In short, whenever a client is making an unreasonable decision regarding the coverage being purchased, agents should require him/her to sign a waiver indicating it was their choice to reject coverage.

Remember, having a waiver on file is only effective if it is signed. The insured's signature is proof that he/she saw the waiver and, in some states, the signature is proof the insured understood the content of the waiver. If a waiver is required by state law or the carrier, send the original to the carrier and keep a copy in your file. If a waiver is not required, keep it in your file only. Think of the signed waiver as an extra insurance policy to protect your agency in a future professional liability claim. **IA**

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## Motoring Through Waiver Issues

Waiver issues often arise in the context of uninsured or underinsured motorist (UM/UIM) coverage, specifically when an insured does not wish to purchase UM/UIM coverage equal to the liability coverage purchased on an auto policy. In many states, the court will assume UM/UIM coverage limits equal the liability coverage limits unless a signed waiver of the matched coverage is produced. UM/UIM waivers may also be required on umbrella policies. Agents should be careful when selling an umbrella policy offering UM/UIM coverage and the policyholder doesn't increase the UM/UIM portion to match the umbrella liability limits. If an insured under that policy is severely injured in an auto accident, he may testify that he thought his umbrella policy included UM/UIM. Regardless of whether a waiver is required, an agent should always obtain a signed waiver of the increase in UM/UIM coverage.

—J.R.

