

The Coverage Predicament

When your customer tenders a matter to you for coverage, do you verbally advise him regarding coverages that may apply to the outstanding claim? Do you ever instruct your customer not to tender claims to the insurer for fear the insurer will cancel the account? After a carrier has denied coverage to your customer, do you sometimes write a letter to the carrier on your customer's behalf, discussing why the carrier's coverage determination is misguided?

If you answered yes to any of these questions you may have committed malpractice—or at the very least violated specific portions of your own errors and omissions (E&O) insurance policy.

While an insurance policy is a contract between an insurer and the policyholder, agents routinely try to assert themselves into the claims adjudication process, commenting on coverages before the carrier has issued an official coverage determination. Or worse, many agents, in an attempt to save their customers money on insurance premiums, simply determine no coverage applies to an outstanding claim and never report the matter to the carrier. When customers' lawyers determine that coverage may apply, these customers will more often than not institute proceedings against your agency for failure to provide timely notice of claims to the carrier. Because agents are understandably busy professionals, implementing an agency procedure for when and how to tender claims to an insurer is one of the easiest ways to safeguard your agency against such E&O claims.

Consider these points before commenting on coverage to customers:

- **Do not render coverage determinations on behalf of carriers.** While customers may press you for a "decision" regarding coverage, tell them that you do not have the authority to make such decisions. Should a carrier deny coverage, do not write letters after the fact to the insurer on behalf of your customer arguing that coverage should apply unless you have first consulted with your E&O carrier. Moreover, do not admit in such letters that your agency made a mistake and should have procured coverage that would have covered the claim. Engaging in such behavior may prejudice your rights under your own E&O insurance policy. Once the carrier has issued an official coverage determination, you should refer your customer to the carrier to answer any additional questions regarding how those coverages are applied via the policy.
- **Review customers' policies regarding reporting procedures and advise accordingly.** Agents should be familiar with the reporting provisions and requirements of the carriers they represent. It is imperative that your customers understand and follow all policy requirements for reporting claims; if your customer asks you for assistance, it is important that you are able to help or refer him or her to the appropriate person at the carrier. Document any such conversations with your customer in writing and put your notes in the file.
- **Once you have tendered a claim to the insurer, be sure to follow up with the carrier to see it has received actual notice.** Agents are busy professionals and tend to provide notice to carriers and then assume the carrier will hire counsel to represent the customer. While this is how the process should work, you should institute a diary system to follow up with the carrier to make sure notice has been received. Moreover, it is imperative that your agency maintain documented evidence that you actually tendered the matter to the insurer for defense and indemnity. Such evidence could be in the form of a fax confirmation sheet. Without such documented evidence in the customer file, your agency has no proof that it actually provided timely notice of the claim to the carrier.

Following these simple suggestions will enable you and your agency to better defend itself against E&O claims. As in any business, mistakes will happen. When they do, be prepared to illustrate through documented evidence that you met the standard of care when servicing your customer's account. 

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Does Your Agency Have E&O Holes?

Need help reviewing your agency's processes and procedures to ensure that you are running the agency as efficiently and effectively as possible while protecting yourself from E&O claims? The Agency Shield Program (ASPTM), available exclusively for Swiss Re policyholders, is an E&O claims prevention consulting program designed to reduce E&O exposure, improve client service and build sustainable, profitable processes. This self-paced program is affordable and an easy way to reduce an agency's exposure to E&O claims and improve client service. It also provides an additional 10% credit to your Swiss Re E&O policy for completion and implementation. To learn more about the benefits of the Agency Shield Program, visit www.independentagent.com/EO.

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