



Make a List and Check it Twice

Santa isn't the only one who should be meticulous about using a checklist. While no E&O discussion would be complete without preaching about the importance of documentation, often this mantra devolves into: "Blah, blah, blah. Documentation! Blah, blah, blah...."

It seems basic, but a lack of documentation can turn a simple case to defend into a nightmare. Consider some current events. While both the Casey Anthony murder trial and the perjury mistrial of Roger Clements involve criminal charges, the importance of evidence and evidentiary burdens was clear. In the Anthony trial, the prosecution did not prove the case to the satisfaction of the jurors. The lack of hard evidence was too difficult to overcome. In the Clements case, the judge declared a mistrial when the prosecution used inadmissible evidence, making clear the lesson that not all evidence is allowed into trial. While E&O cases are in civil court, lessons learned from criminal cases still hold true. It is very difficult to prevail on an E&O claim without good evidence to support your position.

Checklists make documentation part of the normal workflow. Consistently using checklists improves efficiency by eliminating multiple calls back to the client for more information. At times, it can lead to the selling of more insurance coverage (a checklist review can serve to educate a client to additional coverages not previously considered). Every time a checklist is used, staff receives training on the various coverages available. Finally, the checklist can serve as good evidence in the event of an E&O claim.


Coverage checklists are essential, but checklists in general can be used in other areas as well—such as work flow process, valuation determination and to delineate the differences in coverage that various carriers may offer. In order for checklists to be valuable, they must be used consistently, completed properly and both the insurance professional and the customer must understand them.

Checklists are more likely to be used if they are helpful to the insurance professional. Nobody likes busy work. Take time to develop or choose the appropriate checklists for your business. There are also commercially-available coverage checklists that can be very comprehensive. Making checklists relevant and keeping them up to date is critical to getting people to use them.

Additionally, the checklist will be useless if it is not completed properly. For example, if a checklist is not really discussed with the customer, is not done contemporaneously with the procurement of coverage or selection/rejection sign-offs are not obtained from the customer, then issues can arise. In these instances, the checklist does not become good, usable evidence and does not assist you internally in training or in helping to educate the customer.

Likewise, a checklist that is routinely completed, but not understood, is not helpful.

Consider a scenario where an E&O claim has resulted in litigation for failure to procure necessary coverage. The plaintiff's attorney is deposing the customer service representative (CSR) who filled out the checklist. Included in the checklist is an acronym for a certain coverage that might have been beneficial for the client to purchase. The plaintiff's attorney asks the CSR what the acronym stands for and the CSR says "I don't know" or perhaps guesses incorrectly. What could have been good evidence will now be used against the agency.

Do not underestimate the value of using checklists. A well-done checklist can even have the effect of thwarting an E&O claim from being pursued. For those claims that are pursued, decision makers want to see hard evidence. Your claims professional and defense attorney, armed with a good checklist, will have a way to defend you that can be clear and unambiguous for a judge or jury. Utilize your industry resources to assist in formulating a relevant, easy-to-understand checklist that will actually be used. The result will be increased efficiency and a potential source of good evidence. 

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Documentation Reduces Deductibles

Using risk exposure questionnaires and E&O coverage checklists can help your agency uncover opportunities to provide coverage, and provides valuable documentation for the customer file. But did you know checklists may also help you reduce your E&O policy deductible? This year, Swiss Re Corporate Solutions is introducing a new state-of-the-art policy form designed to meet the evolving needs of Big "I" members. One of the new features of the policy is a "deductible reduction" feature. The new feature provides policyholders with up to a 50% reduction of the deductible (up to a maximum of \$12,500) for claims alleging failure to procure coverage where Swiss Re determines the agency has written documentation in the customer file refuting such a claim. With the frequency that agents are involved in these types of claims, this new policy feature can result in savings for policyholders, if, of course, the customer's refusal of coverage and higher limits is documented. To learn more, please contact your Big "I" state administrator.

Using the E&O checklists on the Virtual Risk Consultant (VRC) can assist in providing the written documentation.

—**Dave Hulcher**

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