

Agencies' E&O Exposures Relative to Automated Underwriting Systems and BOP's

Automated underwriting systems (AUS) using multivariable predictive modeling and BOPs have certainly sped up underwriting and writing small commercial accounts. This is great for all involved—until it isn't. An AUS or BOP often lull agency personnel into believing the products being sold are commodities. A commodity is a product or service that has no material distinction, and inherent to the nature of a commodity is that details do not matter. So when selling a commodity, people naturally quit paying attention to the details. But in this business, the details always matter.

Agencies have several major E&O exposures relative to AUS and BOPs. The first is "tricking the AUS" to be able to write an account that may otherwise be unacceptable. Obviously, this is a hypothetical discussion because companies swear their systems cannot be tricked. Regardless of what agents have seen happening on the frontlines and what many company people on the frontlines know to be true, this example is hypothetical.

If an agency "tricked the system," what E&O exposure does this create? One exposure may be that the company will contend it would never have written the risk that just incurred the \$1 million claim had the agency not tricked the system. Therefore, after paying the claim, they would sue the agency to get their money back. E&O claims data reveals that in the past five years there has been an increased trend in the number of claims involving the insurance carriers against agents. Also, keep in mind that "tricking the system" may violate the agency/company agreement, which agents should always be familiar with.


Another, larger concern has to do with BOPs. Many producers and CSRs do not give a second thought to moving a client from one company's BOP to another—even though the coverages are not the same. Again, when people think of something as a commodity, they don't think of the important, subtle differences. And with the transition from living, breathing human underwriter to today's AUSes there is no one sharing expertise of additional coverage options or limitations for specific risks being written.

The E&O exposure from handling BOPs has grown in many agencies because they have set up internal small business units (SBU). Correctly-designed SBUs can be extremely profitable. By designing an SBU with inadequate consideration however, the risk to E&O claims is exacerbated; the odds are the people manning the SBU have inadequate experience and inadequate authority, and the check and bal-

ance provided by having both a producer and CSR review accounts will not exist. Additionally, the procedures will almost certainly be streamlined, further causing CSRs to look at BOPs as commodities. Just because an account is in an SBU does not necessarily mean it requires lesser quality service. The types of E&O errors on a \$500 account and a \$25,000 account are often the same—it's only the severity of loss that is different.

The fact remains that BOPs are not commodities. The differences between various companies' BOPs are material. Therefore, agencies can significantly reduce their E&O exposure by advising clients of the loss of coverage (and possibly the gain of coverage) when moving a BOP client from one company to another. So, many E&O claims are generated when changing carriers and not reviewing coverage for changes. This is especially important when moving policies to the non-admitted marketplace.

In addition, advising the client to read their policy and become adequately educated to understand the differences can reduce the agency's exposure to E&O claims. Don't lose sight of the point that it should not just be about winning an E&O claim in court. The agency should be focused on providing the coverages your clients need so that you never have to go to court; if they do not heed your advice and notices, your documentation should be so good, the plaintiff's attorney is uncomfortable pursuing further action. No one but the attorneys win when an E&O case goes to court. The only variable for the agency is how much it loses.

We live in an era when agencies are pressed to process accounts, especially BOP accounts, as quickly as possible. However, we should never let AUSes or handling BOPs lull us into treating any insurance policy as a commodity. If the agency moves a BOP from one company to another, regardless of the reason, to avoid an E&O claim, someone in the agency needs to advise the client in writing of the coverages they are losing. Then have the client sign-off, stating it is their choice to move their account. This level of documentation may seem like a hassle and an expense, but look at it as an opportunity to work more closely with clients and to try to write more of their business. It may also help you save the cost of paying the deductible on your E&O policy. Make sure you communicate with agency staff not to get sucked into thinking small policies and BOPs are commodities. And don't be afraid to contact the insurance carrier with questions about client activities or areas of potential exposures that you want to make sure are covered when using AUSes. Avoid this trap and the agency will realize great opportunities. 

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