

Planning for the Unexpected

Insurance agents operate on deadlines. Policies come up for renewal, prospective clients need timely quotes to decide whether to move their coverage and clients have projects that require insurance to be in place before they can proceed. Even under normal circumstances, getting everything done on a timely basis can be a challenge. But what happens if circumstances are not normal?

It's no surprise to any insurance agent that fires, floods, tornados, hurricanes and earthquakes change normal circumstances and disrupt businesses. It's also no surprise that errors and omissions (E&O) claims against insurance agents are often made as a result of a lack of insurance coverage for an event like a fire or flood that disrupts a client's business. An event like a flood or fire can also disrupt an insurance agency's business, and that interruption could lead to an E&O claim being made against the agency.

Consider what happens to Acme Insurance Agency. Mr. Acme heads to the office one morning and discovers it has been destroyed by fire.

Of course, the agency had adequate building, contents and business interruption coverage. However, there were significant delays before the agency was back up and running. The agency's paper files and computers were all destroyed in the fire and the agency did not have copies. Trying to recreate what the agents had been working on at the time of the fire was a real problem. The agency had to locate temporary office space, get new computers and load the necessary systems on the new computers. Inevitably, deadlines were missed.

Some of Acme's clients and prospective clients recognized the agency had not obtained coverage for them and went to another agency. Those business opportunities were lost by the agency, but at least coverage was put in place. One commercial client was not able to close on a property sale because of a several-week delay in obtaining property insurance and the other party ended up cancelling the transaction. Acme received an angry letter from that client threatening litigation for the failure to obtain the necessary insurance by the closing date. Another Acme client homeowner's policy had not been renewed and he was without coverage for several weeks due to the agency's disrupted operations. In the interim, the home had a water loss for which there was no coverage. The Acme agency was contacted by the

Business Continuity and Disaster Planning

IIABA's Agents Council for Technology (ACT) offers more information on continuity planning. Visit the Disaster Planning section of www.iiaba.net/ACT and check out these articles:

- Enhancing Disaster Communications with Social Media
- It's Time to Update Your Disaster Plan
- Key Considerations in Disaster Planning and Management
- The Lessons Learned from Recent Disasters and Recommendations for Improved Response for Independent Agencies and the Industry
- Some Communications and Technology Lessons Learn From Katrina


—D.H.

client's attorney instructing the agency to report the claim to its E&O insurer.

The agency's primary defense to these claims would obviously be that delays in obtaining insurance were not the result of any negligence by the agency, but rather were due to fire interrupting the agency's business operations. A creative plaintiff's attorney might argue that the agency should have taken precautions so that it could better maintain business continuity in the event of a fire, flood or other disaster and could inform clients of the interruption. Such a plaintiff's attorney might ask questions such as: Did the agency have a business continuity plan to implement in the event of a fire, flood or other interruption? Did the agency back up its computer hard drives on a frequent basis and store the backups in a safe location? Did the agency maintain a client contact database so that it could communicate to its clients in the event it suffered a business interruption? Did the agency have a plan by which employees with laptops would take them home at night so they could continue to work in the event they could not access the office? Are long-term records stored off site in a safe location? To what extent has the agency moved to electronic data management, and to what extent does it rely

on paper documentation?

One would expect that a judge and jury would be sympathetic to an agency that has suffered a disaster, even if a client ended up with an uncovered loss. Nonetheless, if a plaintiff's attorney could provide evidence of a lack of advance planning or that planned protective steps were not actually taken and that there were long and unnecessary delays before the agency was back up and running, then a judge or jury might be persuaded that the agency was negligent in not obtaining the coverage or informing the client it could not obtain coverage.

Every agency is different and the reasonable steps an agency can take to plan for a possible disruption will be different for every agency. It makes sense for any agency to think about those issues in advance and make plans based on its size, location, nature of business and other factors. The bottom line is that planning in advance for the possibility of a disruption to an insurance agency is not just good business, it may help protect the agency against E&O claims should the unexpected happen. 

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