

If It's Not in the File, It Didn't Happen

Agents who adequately document their customers' files are already one step ahead of their colleagues who fail to maintain a proper customer file. In a litigation-driven society where agents are sued for failure to procure adequate coverage for their customers, regular file documentation can be the key to successfully defending one of those claims. Failure to maintain comprehensive customer files—including documenting customer conversations, coverage recommendations and rejection by customers—can turn a defensible claim into a swearing contest. Once such a claim gets into the hands of a jury, the agent is left to sit back and wait to see whose side of the story is believed. This is not the position that an agent wants to be in. History indicates that, barring other issues that reflect on the plaintiff's credibility, juries generally find it easier to put themselves in the shoes of the customer and not the agent.

Agents need to better understand when and how to properly document customer files, and these suggestions on managing potential claims through proper file documentation can help.

Consider the following examples:

- An agent insures his customer's home for a period of years. The customer makes a number of upgrades to his house resulting in \$30,000 worth of improvements. When the policy is set to renew, the premium is more expensive given the amount of improvements the customer has made to the property. Because the coverage is "too expensive" according to the customer, the customer declines the additional policy limits. The agent fails to document his conversation with the customer. Later, the home burns to the ground and the customer sues for insufficient policy limits, claiming he instructed the agent to procure "full coverage" on the home.
- An agent insures a group of nursing homes for a corporate customer. For several years, the customer had all policies written on an occurrence-based form. Then, because of the customer's loss history, the agent had to take the customer's account to market, which resulted in finding a carrier who would only underwrite the risk on a claims-made basis. When the agent obtained a quote for retroactive coverage to fill the gap in insurance, the customer verbally told the agent the "cost" was too expensive and that he would take "the risk" regarding future claims. The agent failed to document his file regarding his conversation with the customer. After the nursing home is sued for wrongful death, the customer sues the agent for errors and omissions, alleging that the agent should have advised him to increase his coverage.
- An agent insures a commercial building for a corporate customer. When the agent first began to write the account, he asked for an appraisal of the building. The customer failed to provide one. The agent made verbal requests for an appraisal and square footage a number of times before the customer provided a value to the agent. The customer never provided an appraisal, and the agent never documented his requests for such information. After a fire destroyed the building, the customer sued the agent, alleging that the agent did not get him high enough limits.

While proper file documentation would not have prevented a lawsuit in each of the scenarios listed above, it would have gone a long way in helping counsel adequately defend the agent. In each of the instances above, the agent, when he actually spoke with the customer, could have made a dated or time-stamped note to the file summarizing the conversation. Moreover, the agent could have sent the customer a letter which outlined the materials requested and confirmed why he did not procure additional coverage, emphasizing what was offered by the agent but rejected by the customer. Finally, the agent could also request that the customer sign off on any rejections of coverage offered or recommended. Such file documentation leaves little room for question if litigation ensues. **A**

Alison VanDyke is an assistant vice president, claims and liability management with Swiss Re Corporate Solutions. She handles claims against insurance professionals out of the company's Overland Park, Kan., office.

