

Mixed Signals

Proceed with caution when advocating for your clients

By John Nesbitt, J.D.

When a carrier denies coverage for a customer's claim, your natural reaction may be to advocate for coverage by pleading with the carrier to cover the claim.

But while this may seem like a natural extension of the service agents provide to customers, advocating on behalf of the customer on claims can create additional problems for you in the long run. If you advocate for coverage, do so cautiously—or risk facing an E&O claim in the near future.



When advocating for coverage, an agent may make statements that could be used against the agency later while attempting to shift fault away from the policyholder. In doing so, they may unwittingly place some fault on the agency for any confusion regarding coverage.

Carriers seem less hesitant than in the past to seek indemnity from agents after paying questionable claims, asserting that “but for” mistakes made by the agent, the carrier would not have paid the loss or issued the policy at all. They might use statements an agent makes while advocating for coverage against the agent in an indemnity action. Conversely, if the carrier maintains its coverage declination, the policyholder may file suit against the agent for lack of coverage and use the agent's own words against him or her. This is especially important when statements are in writing.

Advocating on behalf of a customer may also create E&O coverage issues for the agent. E&O policies typically require that an agency report potential claims when it becomes aware of a development that could result in a claim against it. If coverage for the customer's claim comes into question, an E&O claim potentially exists and requires reporting. Providing documents, admitting liability or giving a recorded statement without reporting the potential E&O claim may also violate the E&O policy.

Advocating for a customer on your own could simultaneously jeopardize the agency's E&O coverage and increase the likelihood of liability against the agency. Your E&O carrier would likely prefer that you let it review the situation and work with you to determine whether to advocate for coverage for the policyholder, as well as the best way to do so without prejudicing your potential future defense.

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