

**From the email bag: If you're a babysitter, let's hope you don't get paid like one.**

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I recently received a question from a Swiss Re Corporate Solutions/Westport Insurance Corporation policy holder: "Are there any real-world claim examples of agents being held liable when they establish a habit of contacting clients when a Notice of Cancellation (NOC) is issued on a direct bill policy; but then they forget and the policy gets cancelled, and the client has a claim, aka babysitting.

Since the focus of this month's magazine is on young agents, this question could not have been timelier. Such claims have been happening for at least the 27 years I have been with the firm although we have advised agencies not to do so. I can safely say that this subject comes up at virtually every E&O risk management course I have ever taught or attended, and I regularly saw this type of claim when I was in the claims department. Just to be current, I contacted our claims department team leaders and within 5 minutes Jim Redeker found two recent examples where we paid substantial losses. Both were carrier direct bill policies.

Jim's initial response was this:

"Every time a policy cancels for nonpayment of premium and there is a loss, the argument is made that the agent should have done something. In most cases we simply state that the customer received the same notices that our insured received, and our insured has no duty to notify its customer of an impending policy cancellation. We have trouble when the agent failed to notify the customer that the policy was about to be cancelled for nonpayment of premium after the agent has made a practice of providing such notifications in the past. At that point the agency customer has an argument that they relied on our insured to notify them when their premium was due."

In most cases the agent never had a legal duty to contact the customer, but because they had created an expectation that they would do so, the duty was now in place. And because of that, if they failed to do so they had breached their duty to the customer. If a loss occurred the agent could be held liable.

Example 1: "The customer alleged that on May 25 the agency mailed notice of policy expiration to the wrong address and unbeknownst to the customer the policy was cancelled. The customer alleged that no one at the agency contacted them to advise the policy would be cancelled.

The Agency would mail cancellation notices to customer who would then pay. They would wait for the notice from the agency disregarding the notice mailed to them by the carrier. In this case, the agency mailed the cancellation notice to the wrong address, so the customer never paid the bill. There was then a claim made by the customer on the cancelled policy that was

denied by the carrier. \$101,242 loss paid by Swiss Re Corporate Solutions/Westport on behalf of the insured."

Example 2: "Mr. (Customer) is claiming that the agency developed a practice and procedure of personally collecting premium payments from Mr. (Customer) but failed to do so in this instance. The agency had a change in staff and was not aware of the previous practice, so the payment was not collected from the customer. The policy cancelled and there was a loss. The carrier denied coverage as the policy had rightfully been cancelled due to non-payment of premium. We paid a total of \$204,837 on a death claim for a cancelled auto policy."

These are just two of many examples where an agency developed a duty that they would not otherwise have resulting in substantial claim against the agency. The lesson for you as young agents (and not so young gents as well,) is simple: on direct bill policies where a Notice of Cancellation has been sent to the customer, DO NOT babysit your customers to make sure they pay the bill on time. HOWEVER, you should contact them immediately after the date of cancellation to see if they want you to try to obtain a new policy.

As a member of the IIABA, you have access to the "Virtual University" and if you are also a Swiss Re Corporate Solutions policy holder, you also have access to the "E&O Happens" website. Below are just a few of the resources available to you that address this and why you should avoid this.

<https://www.independentagent.com/vu/Agency%20Management/Procedures/FacultyCancellationFollowUp.aspx>

<https://www.independentagent.com/vu/Agency%20Management/Procedures/FacultyCourtesy.aspx>

<https://www.independentagent.com/vu/Agency%20Management/Procedures/FacultyFollowUps.aspx>

[https://rms.iiaba.net/ClaimsHappen/Pages/Examples/All\\_or\\_Nothing.aspx](https://rms.iiaba.net/ClaimsHappen/Pages/Examples/All_or_Nothing.aspx)

<https://rms.iiaba.net/Resources/Pages/Publications/Articles/Duty-we-dont-have-no-stinkin-duty.pdf#search=notice%20of%20cancellation>

<https://rms.iiaba.net/Prevention/Pages/Procedures/Letters/Cancellation-Change-in-Late-Pymnt-Notice-DB.docx>

[https://www.independentagent.com/vu/Agency%20Management/E\\_O/WilsonLatePayers.aspx](https://www.independentagent.com/vu/Agency%20Management/E_O/WilsonLatePayers.aspx)

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