

“Duty? We don’t have no stinkin’ duty!”

(With apologies to “The Treasure of the Sierra Madre”)

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“Badges, we don’t need no stinkin’ badges,” is one of the most famous, and most often misquoted, lines from the 1927 novel by B. Traven, “The Treasure of the Sierra Madre”, and the later great film of the same name starring Humphrey Bogart. When Gold Hat, the bandit leader is asked by the character Fred C. Dobbs, played by Bogart, “If you’re the police where are your badges,” his response is “Badges? We ain’t got no badges. We don’t need no badges! I don’t have to show you any stinkin’ badges!”

With my apologies to the author and the filmmakers, a similar sentiment can sometimes be heard when an insurance agent’s customer receives a notice of cancellation. Many times the notice comes at the end of the policy period and is simply a reminder to the policy holder by the insurance company that their policy may cancel at the end of the policy term unless it is renewed prior to that date. These notices are many times required under state insurance laws or regulations. They are relatively innocuous and little more than a perfunctory duty of the insurance carrier pursuant to the terms of the policy. However, there are other times that the notice is more than a just a reminder and in fact is necessary due to non-payment of premium. This is the instance when the customer may utter the words “Notice? We don’t need no stinkin’ notice!”

In years past, independent agents acting on behalf of their carriers were responsible for collecting, accounting for, and transmitting premium payments to the insurance companies on a daily basis. At many points during these transactions, due to various factors including the crush of everyday business, errors would be made at every step: Collection: the amount paid would not be the correct amount owed, if paid by check it could be post dated or from a closed account; Accounting: the amounts may not be entered correctly between what was billed and what was collected, the premium calculation could be misquoted resulting in insufficient payment amount; Transmitting: the amount sent to the carrier would be net of the agent’s commission and the calculation would be incorrect, or, heaven forbid, the payment would not be sent to the carrier in a timely basis. At any point in this timeline, an error might be made that would result in the carrier notifying the agent that the policy had been cancelled due to non-payment of the premium and to issue the notice of cancellation. The agency might then issue the notice of cancellation without checking their records to determine if in fact the notice was appropriate.

Thankfully for the agents, insurance companies then began the process known as “direct bill”. This effectively took the agency out of the money handling business and reduced the risk of exposure when dealing with monetary transactions. No longer does an agency have to worry when a customer is late with a premium payment and the carrier issues a notice of cancellation. Should the customer come running into the agency late on Friday afternoon with their premium payment, it is no longer the agent’s duty to collect the premium and transmit it to the carrier. Now, the customer is responsible for making sure that timely payment is made directly to the

carrier. The agent can leave the office on Friday evening with a clear conscience that all is right with the world. However, there are some agents who create an obligation and an E&O exposure that direct bill had eliminated.

Consider if you will the following situation:

On March 1 Marc, a long time customer of the All Is Right With The World Insurance Agency, receives a premium notice on his direct bill policy from the FiddleDeeDee Insurance Company. The notice states that if premium is not *received* by the company by May 1, his policy will be cancelled. Marc places it on his desk and it is promptly covered up by other papers he receives and just as promptly forgotten. The fact that it was forgotten by Marc is not important to him because he knows that his agent, Sharon, will always call him to remind him to pay his bill. (Remember, this is a direct bill policy.) Sharon, who has always called Marc to remind him to pay his bill a week before it is due, is on an extended vacation to Hawaii celebrating her 25 years in the insurance business and will not return until May 10. On May 5, Marc has a loss and calls Sharon's office to let her know about the claim so she can report it to the carrier. Sharon's CSR, Erik, tells Marc that Sharon is out of town and won't be back until May 10, but he will report it to the carrier. Erik then looks for the file on the agency management system and discovers that the policy cancelled on May 1 due to nonpayment of premium. Erik was going to call Sharon to tell her what happened, but when she was leaving for her trip, she left strict orders that she was not to be contacted for any reason other than for death of a family member or pet. Erik then called Marc and said he reported the claim to the carrier, but it would probably be denied because the policy had cancelled before the loss, and of course it was.

In this situation Sharon had created a duty for herself that was completely unnecessary: the duty to notify her customer that a premium was due on a direct bill policy. Although Sharon thought she was being a good agent and providing a good service to her customer, all she had done was create an expectation that until she called to remind him to pay the premium, that the policy would always be in force. Due to that expectation, she was now responsible if he did not make the payment on time. Had she not created the expectation, she would not be responsible.

So what should Sharon have done? Assuming that once she took on this obligation to call her customer, she also had a duty to let Marc know that she would not be doing it any longer. She would let him know that the premium notice from the carrier was the only notice he would receive and if he failed to make the payment, the policy would be cancelled. So how should she notify him (and any other customer that she did this for that also had a direct bill policy)? A good thing to do would be to send him (and all others like him) a letter advising him that she would no longer be notifying him by any means, phone call, letter, email or any other method, when the premium was due. The best thing to do would be to send a letter certified mail return receipt requested so that there would be documentation in their file that Marc had received the letter. Yes, there is a cost involved with sending these letters, but the cost is significantly less than most deductibles on an E&O policy, not to mention the time, stress, and all the other unpleasant things associated with an errors and omissions claim.

Sometimes the simplest thing to do to protect yourself from an E&O exposure is to simply do nothing. Don't create an obligation for yourself where no obligation is necessary. "Duty? We don't have no stinkin' duty."

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