

Potential E&O Claim: Should I report it to my E&O carrier?

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The decision whether an insurance agency reports a potential claim to its professional liability carrier brings with it a host of issues to consider. What effect does reporting a potential claim have on my agency's loss history? How will it affect my agency's premium? What difference can it make? After all, it is a potential claim. My customer has not hired an attorney or filed a lawsuit against my agency. Am I only creating trouble for my agency by reporting this potential claim?

The best source to answer this question is the agency's professional liability policy. The policy requires that an agency report potential claims to its carrier. But apart from that, there are additional, common sense reasons for doing so. The following example highlights those reasons.

An agency's most important and long-term customer owned an engineering business along with numerous commercial buildings. The agency handled all of the customer's insurance needs obtaining, among other coverages, commercial property coverage.

A pipe burst in one of the commercial buildings resulting in over \$200,000 in damage. Unfortunately, the building was vacant for several years, a fact not shared by the customer with the agency. As a result, the commercial property coverage placed by the agency contained limitations on coverage for vacant buildings.

Even though the agency suspected the carrier would invoke the vacancy provisions of the policy, the agency thought it was best, nevertheless, to report the claim to the carrier. The agency's suspicions were well-founded as the carrier denied coverage for the property claim because the building was vacant at the time of the loss and was vacant for several years.

The customer was outraged by the lack of insurance coverage though it did not take issue with the carrier's coverage position. Like many business owners, the customer believed that the significant premiums he paid each

year entitled him to coverage in the event of a loss regardless of policy language.

The agency was worried about losing its most important customer though it knew it did not breach any duty owed to the customer. After all, the customer never told the agency about the change in the building's status: from occupied to vacant. And the agency also agreed with the carrier's coverage position.

Faced with an angry customer who was litigious by nature, and a significant uncovered loss, the agency decided to report a potential claim to its professional liability carrier, Westport Insurance Corporation.

The Westport claim handler made his initial contact with the agency within 24 hours of the potential claim being received by Westport. After collecting the claim information, the Westport claim handler and the agency worked together as a team to develop a strategy focusing on both the customer and the carrier.

The customer was assured that the agency would advocate on the customer's behalf with the carrier in an effort to identify any avenue of recovery for the customer. At the same time, it was explained to the customer that the agency did nothing wrong in placing the property coverage that included vacancy provisions. The customer's indulgence was sought so that the agency could have time to then discuss the situation with the carrier. A commitment was made to provide frequent updates to the customer.

The focus then turned to the carrier. As there was no dispute with the carrier's coverage position, the Westport claim handler and agency agreed on a two-part strategy that would leverage the agency's long-term profitable relationship with the carrier, and the customer's profitable account history.

The agency appealed to the carrier using empirical data to prove that the carrier benefited throughout the years by doing business with the agency and the customer. As a result, the carrier agreed to make a business

accommodation by paying the customer \$100,000 on the uncovered claim. This decision was relayed to the customer.

The agency believed that the carrier would contribute more. After further discussions with the Westport claim handler, the agency made an additional appeal to the carrier resulting in an agreement to pay an additional \$100,000 bringing the total recovery to \$200,000. The agency's contact with the carrier said that he had never seen a payment of this kind on a loss that was clearly not covered by the policy.

The Westport claim handler and the agency had many conversations about not only what to say to the customer and carrier, but how to say it. Of utmost importance were creating and keeping goodwill with the customer.

While not every potential claim is resolved on such favorable terms, this example shows what can be achieved when a thought-out, collaborative approach is taken by an agency and Westport. Without question, had this potential claim not been reported to Westport, the customer would have sued the agency and the carrier, and the agency would have lost its most important customer.

The agency may also be concerned about whether the mere reporting of a potential E&O claim will have any adverse underwriting effect on their E&O. Each situation is unique and each carrier is different. Westport will review the facts and circumstances of the individual situation, but as a general rule the mere reporting of a claim does not automatically result in any underwriting action or increase in premium. Because your E&O professional liability policy is claims made, it is imperative that you report any potential claims immediately to your E&O carrier. In fact, Westport recommends that you report them as soon as practicable to ensure that the claim is reported during your policy period so coverage can be determined. In the situation described above, there generally would be no underwriting action taken or premium increase as a result of the potential claim.

Not every potential claim will end up with a result like this one, but if you give yourself (and your E&O carrier) the opportunity to resolve things before they develop into something bigger, the probability of a positive

outcome increases dramatically. And if you don't, the possibility is completely gone. By taking steps to report potential claims to Westport early, you may avoid actual claims and maybe even litigation.

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