

SMART SITE SAFETY

It won't surprise any reader of this magazine that, as the one insurance person in the family, I found myself going through his insurance papers after my father's funeral. I searched and searched for the umbrella policy I just KNEW he and my mother would have, but it was nowhere to be found. What I did find was his direct writer's local agent's name and phone number. She explained that there was no umbrella and when asked why, she was very clear: "He never asked for one." In his state, that was an acceptable answer because, like most of the United States, it required only an "order taker duty" or "duty to provide as requested". (IIABA.net/EOHappens has a map showing each state's standard of care, along with other helpful loss prevention information.)



Fortunately, it never became necessary to discover if that agent or carrier had expanded that duty by advertising or otherwise offering to go beyond that basic duty with coverage advice, exposure analysis, asset protection, and/or an ideal package of coverages to suit his needs. Any materials that indicated that the agency guaranteed a "special relationship" with its clients would have worked if we needed it.

Unfortunately, for many agencies, plaintiff attorneys DO have reason to find those indications and recent E&O claim history shows that they are having good success.

AN AGENCY'S WEB PRESENCE HAS DUAL GOALS

Just about every agency realizes that it needs a social media presence and often, that starts with a strong website and an app. Like any marketing piece, good design starts with knowing the goal or goals. Good objectives can include:

- attracting new business
- giving current clients access to information on their account information
- allowing current clients "self-service" either because they prefer "doing it themselves" or need to do it during off-hours
- providing current clients and/or the community at large helpful insurance-related information such as disaster preparedness, differences between working with a direct writer vs. an independent agency, or the various ways property values can be computed/insured.

Most marketing seminars and E&O seminars provide very valuable recommendations but they often seem to conflict when it comes to site and app content. The marketing gurus use words like "creating client relationships", "differentiation", "hyper-value", "going the extra mile", "full coverage", proactive account rounding, "exposure analysis", and "value added". E&O seminar leaders urge caution about over-promising, creating that "special relationship", extending the "duty to provide" to coverage-recommending, and using terms like "full coverage". One multi-

session attendee described feeling like the person between the rock and the hard-place: Should she be E&O-safe or should she be successful in an ever-more-competitive insurance marketplace?

SAFE & COMPETITIVE

The industry’s consensus is that an agency that waits for requests for coverage will miss important revenue opportunities and will not be competitive with other agencies that will be offering more analytical, recommendation-based insurance services. Most insurance people have a desire to guide and educate, not just follow instructions, especially if those instructions would leave important exposures uninsured.

Happily, an agency can be E&O-safe while it is presenting itself positively and proactively in the marketplace. A simple change in wording from “we will” to “we will endeavor to” can help. Here are some well-intentioned but dangerous examples of wording on websites that if shown on the “big screen” in court could turn the case against the agency, along with safer wording that still gets the message across to the site or app user.

<i>Sample Original Site Wording</i>	<i>Suggested Rewording</i>
“Full Coverage”	“Coverages that match your described needs”;
“We ensure that you have the right insurance plan to protect your family or your business”	“Our professional staff can help you select the right coverages for your family or business”; “We track our carriers’ financial rating.”
“Our financial services department can provide you with a safe retirement”	“Our financial services professionals can help you choose among retirement planning options”
“Providing the BEST solution for your own particular situation”	“We listen to what you need and provide strong coverage programs to match those needs” Be descriptive, not comparative or superlative. The word “Best” is not easy to defend!
“Complete this form to request a “certificate of insurance” and include any additional insured person to your policy”	“Please complete this form to request a certificate of insurance. You can also request a person/entity to be an additional insured.”
“Our goal is that every claim will be paid to your satisfaction”	“Our goal is that feel respected and well-informed in settling any claim that

	happens under the coverage you buy through us.”

E&O auditors review and comment on agency websites as part of their analyses and most Agency Principals immediately see the potential for problems when they are pointed out to them. Almost all of those Principals comment that they “just weren’t reviewing it for that exposure” when they approved the site – or the site got updated without as thorough review as when it was new. While your site may not use the exact wording above, this may be a good time to go through it with a “jeweler’s eye” to see if modified wording is in order. You also may want to consult one of the site auditors listed on the E&OHappens site of IIBA.

“SAY WHAT YOU DO & DO WHAT YOU SAY”

A website or an app is not JUST a marketing tool. It really is a representation to the world (literally) of what your agency is. Even safe wording and reasonable descriptions of the agency’s business model can be used against you in a court of law or mediation if the “picture” painted on the site does not match the “reality” of your operation. What you reasonably say your agency does will be tested if a plaintiff alleges the agency’s work did not match that description.

Many agencies assure clients and prospects that each account is reviewed annually. In many of those agencies, automatic renewals are processed as they come in from the carriers with little or no pre-renewal or post-renewal or mid-term coverage review. It is not unusual for an agency to move a commercial book of business to a new carrier and discover it does not even have a record of what the client company does.

Here are some other examples of potential dissonance between a site or app description of what an agency does for its clients and reality:

<i>What the Site or App Says We Do</i>	<i>The Reality in Many Agencies</i>
“We represent many carriers and can help you decide which one is best for you.”	Few if any of the staff, including Producers, are able to point out meaningful difference between carriers’ forms in the same line of coverage. The agency has no Coverage Spreadsheets to help differentiate between available coverage options.
“We protect your assets and can assist you in planning for your retirement needs.”	The agency has at best sparse documentation that an umbrella has been offered to every client.

“Anyone helping you with your insurance is a licensed agent.”	Not every service rep is licensed; one or more service reps is not licensed.
“We help you know what coverage you need in a confusing insurance world”	At most the agency sends out an annual exposure-update questionnaire but does not offer proactive coverage suggestions to make the account better. Some clients have not had a documented contact with the agency in years.
“We are an all-lines agency that can help you with any of insurance-related questions and needs.”	All agency licenses are P&C or the staff with life & health licenses have little experience with those lines of insurance. A very small minority of current accounts have any non-P&C coverage.
The site has a quote request form	The agency does not have standards for immediate action on and response to web and app requests (or does have such standards but does not monitor and enforce them); clients can wait for days to hear back from the agency.
“We will partner with you to review your work contracts and make sure your coverage backs up those agreements.”	You staff are not legal experts or versed in contract law; often the contract has been signed before the agency even sees it.

WEBSITE ESSENTIALS

Swiss Re’s Corporate Solutions Department, like all E&O carriers, has seen plaintiff attorneys bring the defendant agency’s web-based statements as evidence of the agency’s negligence in not fulfilling its “promise” to the client. They have been very proactive in providing solid recommendations that are very easy to incorporate into an existing agency site or app or that can be very helpful in developing a new agency site or app.

Some of those recommended “Essentials” are:

- clearly indicate the states in which the agency is licensed to offer insurance
- explicitly state that mis-statements or omitted information can and probably will change the pricing and availability that the agency can provide

- include a privacy statement (available from the E&OHappens website or your agency's attorney) and be very clear that no information provided will be shared with other parties without the applicant's explicit permission and provide a mechanism for the applicant to provide that permission
- encrypt all information that could jeopardize the user's privacy and security. Those items include, but are not limited to, health information, full name, mother's maiden name, social security and driver's license and car registration numbers, as well as any free-form areas since the client could enter confidential information there
- be clear that applying for insurance does not automatically lead to being insured. Specify exactly what the applicant will receive to verify that coverage has been put in force. Repeat (e.g. as a "footer") on every page.
- obtain, by written or electronic signature, permission from any individual or business if you use a testimonial or quote from that entity
- avoid superlative and comparative words such as "the best" or "better than other providers" or "all risk" or "full coverage" or "the best insurance program". Instead, promote the agency's and its staff's professionalism, experience, specialization, product line on their own merits
- set up a suspense system to ensure that the site and app information is current. Staff changes, carrier deletions and additions, product line updates, relevant law revisions, and agency hours changes and even location changes can get lost in the shuffle. One agency's site very recently wished its visitors "A Very Happy 2010" which did not convey the message of competency that the agency intended!
- provide the agency's credit & collection policy on any quote or coverage request page. Examples: if the prospect's old/incumbent agency reminds them to pay their direct bills and your agency does NOT, the potential new client has no way of knowing that they should not wait for your reminder call unless you TELL them that. If their old/incumbent agency paid their agency-billed premium for them when their budget was tight and you do not advance premiums, the client deserves to be so informed. This will not only make the agency safer from E&O loss, but will begin client service off on the right foot.

VENDOR-PROVIDED INTERACTIVE SITES MAKE YOUR AGENCY'S DATA BASE AN EVEN MORE IMPORTANT E&O SAFETY MECHANISM

The major vendors of agency management systems provide products that can be used as the agency's site or that can be a "plug in" on the agency's site. Most can also work as an app. These products have been deservedly popular and allow integration with the agency's data-base so that clients can not only look up their coverages, often through the agency's portalling of the client's policies and endorsements, but also the clients can effect service functions by interacting with the site, rather than by contacting a service rep in the agency. Clients are increasing comfortable and like "doing it themselves" at a site. Many clients want to handle their insurance matters during hours that the agency cannot be physically available. These

products, therefore, are becoming not just attractive, but necessary to meet market expectations.

It is not uncommon for an agency to offer an interactive site to its clients without verifying that its data base, which the client will now be using to get a certificate or a binder or report a loss, is not complete or accurate. Agency staff have been coping with that by using images of paper or the carrier websites – all of which is inefficient and has had its own E&O dangers – but now those dangers are accentuated. Recommended practice before opening up an interactive site to an agency's clients includes:

- data audits for field completeness and currency
- workflows that update the agency system first (rather than doing the carrier's site first and awaiting the download into the agency system)
- ensuring that backlogs of agency work are eliminated so that the system detail is as up-to-date as possible.

A very simple example might clarify the importance of site and system synchrony. An agency is short-staffed due to unanticipated staff departure and some work is not done in a timely manner. It might be the download suspense; it might be handling of an aged receivable. The upshot is that a cancellation does not get updated in the agency's system. A commercial lines client in that same timeframe obtains a certificate of insurance from the agency's website and directs it to an entity for which he is working. A claim occurs during a period of "no coverage". The agency will likely be found negligent for allowing certification of coverage when coverage was not in force. It is important to point out that, even in the absence of a loss, client confusion is enough reason to ensure that the agency's data base is "ready for prime time".

AMERICANS WITH DISABILITIES FEDERAL LAW

One important consideration in agency website design is accessibility. 244 Federal accessibility cases were filed in 2016 in regard to public accommodation businesses. The Department of Justice responded to one defendant's interpretation that "only physical locations are subject to Title III of the Americans with Disabilities Act (ADA) in this way:

"The United States respectfully submits this Statement of Interest to clarify public accommodations' longstanding obligation to ensure that individuals with disabilities are not excluded, denied service, or treated differently from other individuals because of the absence of auxiliary aids and services, such as electronic technology. This obligation means that websites of places of public accommodation..... must be accessible to people who are blind, unless public accommodation can demonstrate that doing so would result in fundamental alteration or undue burden."

Since most agencies in their marketing materials offer its location(s) as open to clients, prospects, and visitors, it is a place of "public accommodation". Note that the DOJ's statement above is a Statement of Interest, not a court or administrative filing; but an agency in setting up a website would be wise to consider text alternative such as captions on-screen or available to

be displayed. At minimum, this shows admirable concern for the vision-impaired and at maximum, it may keep the agency out of one of the expected multiple 2017 and beyond accessibility-based cases.

An agency's web-presence is an integral and expected part of its overall business plan. Most clients will want and expect the agency to be accessible electronically. Agencies will continue to face strong competition and will want to differentiate themselves to keep current clients and attract new ones. Mindful setup of all information that is made available on the web and commitment to keep that information up-to-date and carefully presented will allow the agency growth, retention, strong community reputation, and avoidance of E&O entanglements.

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