



Tales of the Crop: Three stories of E&O Crop Claims with Three Different Results

By Janice Blanton

Crop insurance? In the dead of winter? You betcha! Spring crop insurance renewal season is approaching fast. Now is the time to review some lessons learned and put them to use in your agency prior to renewing or writing those crop insurance policies. So gather round and listen to the "Tales of the Crop".

Let Me Tell Y'all a Story 'Bout A Farmer Named Fred

Claim Scenario: The "Crops 'R Us" Insurance Agency had been placing crop coverage through the Federal Crop Insurance Corporation, (a part of the United States Department of Agriculture,) for Farmer Fred and his father for many years. Farmer Fred and his father had each claimed a 50% share interest in the crops on the acreage report in previous years. Farmer Fred's father retired from farming and Farmer Fred acquired a 100% share interest in all crops reported on the FSA 578 annual acreage report and the crop carrier's acreage report. Farmer Fred advised the Agency of the change in the share interest. Farmer Fred then completed the FSA 578 acreage report to reflect his 100% share interest in the crops. Farmer Fred provided the Agency with a copy of the FSA 578 acreage report. The Agency had Farmer Fred sign the crop carrier's acreage report and assured him that the Agency would make the change to reflect a 100% Farmer Fred's share interest. Unfortunately, the Agency did not register the change in share interest on the crop carrier's acreage report, so it only showed Fred's 50% share interest. The Summary of Coverage was issued by the crop carrier and the Agency did not review it when received and therefore, they did not discover that Farmer Fred's share interest had not been changed on the policy. Farmer Fred reviewed the Summary of Coverage form when he received it but did not notice the change had not been made. Some months later, Farmer Fred reported a total crop loss to the Agency. The Agency reported the claim to the carrier who assigned a crop adjuster and noted the share interest of 50% for Farmer Fred. The adjuster informed Fred that he would only be paid for the 50% share listed on the acreage report. Farmer Fred then contacted the agency and asked why he would not be receiving the full 100%. The Agency said they would check on it and get back to him. The Agency then reviewed their file and discovered that the change in share interest had not been completed. They then contacted their E&O carrier....

End Result: In this case, the agent reported the claim to the E&O Carrier. The agent was understandably upset because they had not done as the customer requested. The Claims Specialist reviewed the facts with the agent and asked them to send a copy of their file. The Claims Specialist reviewed the documents and discovered that the agent had documented the request in the file but had not sent it on to the carrier. The Claims Specialist was aware of a Federal Crop Insurance Corporation Risk Management Agency rule which stipulated that if the share interest, reported acres or planting pattern were inaccurate, crop carriers will in most instances revise the acreage report to show the proper information in cases where the correct information was provided by the policyholder to the agent, documented in the file and

inadvertently omitted. Knowing this, the Claims Specialist reviewed this with the agent, and instructed the agent to contact the carrier and advise them of the problem. The agent provided the documentation to the carrier showing the request by Farmer Fred to change the share interest and requested that the carrier correct the acreage report. The carrier reviewed the documentation and ultimately agreed to revise the acreage report and Summary of Coverage. The carrier then paid the claim in full to Farmer Fred.

Although an E&O claim was avoided by the agency, what can be learned from the above?

- Make all changes to the application and acreage report PRIOR to the applicant/named insured signing these documents.
- Give the applicant/named insured an opportunity to review these documents as well. Farmers are busy people during planting season, but ultimately it is their responsibility to check the accuracy of the information on the application or acreage report.
- Never ask the applicant or named insured to sign these forms in blank and never sign on their behalf.

If any information is incorrect and there is a crop loss, it should be no surprise that the Farmer is going to look to the agency to fix it. You can avoid this by following the simple procedures outlined above.

Share and Share Alike.....NOT!

Claim Scenario: Farmer Sunny had previously farmed and insured her own crops. However, she had recently agreed to farm Uncle Joe's and Aunt Betty's farms. She came into the Crops 'R Us Insurance Agency and advised her agent that she needed to fill out a new application this year due to the change in the coverage from the previous year. She advised the agent of the two new farms that she was farming for her relatives and requested that these farms be considered independent of each other. The agent advised Farmer Sunny that this could be accomplished by putting a check in the Optional Units coverage box on the application. Farmer Sunny was in a hurry and the agent quickly filled out the application and included the new farms. However, in the agent's haste, the Optional Units coverage box was not checked. Neither the agent nor Farmer Sunny noticed this small box was not checked prior to Sunny signing the application. Farmer Sunny filled out the FSA 578 and provided it to the Crops 'R Us Insurance Agency. The agency in turn filled out the crop carrier's acreage report. A Summary of Coverage was issued and the agent did not review the document and did not send Farmer Sunny a copy right away. Farmer Sunny contacted the Crops 'R Us Insurance Agency and notified them of a hail crop loss on one of the farms. The agency notified the crop carrier and a crop adjuster was sent to adjust the loss. This crop year had been quite productive except for the occasional hail storm. The adjuster presented the crop loss adjustment worksheet to Farmer Sunny who was shocked to see that the final loss calculation being paid was only a fraction of the amount she expected for the hail damage to the crop. Farmer Sunny was also faced with the task of explaining to Uncle Joe why he was not receiving a higher payment on the crop loss. When Farmer Sunny questioned the adjuster as to how these calculations were arrived at, the adjuster then advised that the yield on the farms that were not affected by the hail storm had offset the loss to the farm that had suffered hail damage. Of course, Farmer Sunny contacted the agency and inquired as to why the loss was not being adjusted independent of the yields of the other farms. The agency reviewed the application and that is when it was discovered that the Optional Units box had not been checked. The agency then reported this to its E&O carrier.

End Result: After the Crops 'R Us Insurance Agency reported this claim to its E&O carrier, the Claims Specialist requested a copy of the file documents, including the application and any

notes. The Claims Specialist noted that the agency's file contained some handwritten notes by the agent that reflected Farmer Sunny's need for optional units. The agent as well as Farmer Sunny both confirmed that Farmer Sunny had notified the agent of the addition of the two new farms and the need to keep these farms independent. The application also correctly reflected the addition of the two new farms. The agent advised the Claims Specialist that after explaining the Optional Units coverage, Farmer Sunny had requested this coverage. The Claims Specialist interviewed Farmer Sunny who confirmed that she had requested the Optional Units coverage. Based on the investigation by the Claims Specialist, this claim was understandably determined to be a liability claim for the agency. The E&O carrier retained the crop adjuster to adjust the crop loss to the one farm due to the hail damage, independent of the other farms' yields. The E&O carrier settled this claim with Farmer Sunny for the amount that she would have been paid had the Optional Units box been checked. Farmer Sunny was quite relieved that she did not have to do some explaining to Uncle Joe.

The above claim was clearly due to an omission by the agent which ultimately left the agency liable to Farmer Sunny. What can be learned from the above?

- Haste makes waste is an old adage, but one to remember when it comes to filling out crop insurance applications and acreage reports.
- Give the applicant/named insured time to review the accuracy of the documents and the coverage that is desired is being requested on the application.
- Don't skip over questions or those small check boxes! They may be small, but can have a big impact if there is a crop loss.

If the agent had told Farmer Sunny how much time would be needed to complete the application, Farmer Sunny may have allotted adequate time. If it appears that there will not be enough time, it is best to reschedule rather than rush through the completion of the documents. Take your time, review your notes, and don't let other's deadlines create E&O claims for you!

'Til Death Do Us Part

Claim Scenario: Farmer Dale decided to purchase crop insurance for his spring crops. Farmer Dale and his wife Rebecca had been having marriage difficulties and had been living apart for quite some time and had filed for divorce. Farmer Dale went to the Crops 'R Us Insurance Agency and the agent went over each question on the application and inquired as to whether Farmer Dale was married. Farmer Dale didn't consider himself still married since divorce papers had been filed and advised the agent that he was no longer married. Farmer Dale listed himself as the only named insured, and signed the application. Farmer Dale filled out the FSA 578 listing himself as having 100% share interest in the crops and did not list his wife Rebecca. The agency filled out the carrier's acreage report based upon the FSA 578 acreage report, representing Farmer Dale as having a 100% share interest and as the only named insured on the policy. The Summary of Coverage was issued reflecting Farmer Dale as the only named insured and the agency reviewed it for accuracy and mailed it to Farmer Dale immediately upon receipt from the carrier. That summer, Farmer Dale and his wife Rebecca reunited and the divorce never became final. This year was very dry and one of the hottest in 75 years. A severe drought destroyed Farmer Dale's crops. Farmer Dale notified the Crops 'R Us Insurance Agency of the loss and a crop claim was forwarded to the crop carrier. The crop adjuster performed a loss calculation and met with Farmer Dale and his wife Rebecca. The crop adjuster inquired as to when Farmer Dale had married Rebecca as she was not listed as a named insured. That is when it was discovered that Farmer Dale had been legally married to Rebecca when the policy had been taken out. Unfortunately for Farmer Dale, the failure to list his legal spouse as a named insured reduced his loss payment by 50%. Had Farmer Dale listed his legal

spouse as a named insured, she would have been entitled to 50% of the loss payment as well, ultimately reimbursing them for 100% of the adjusted crop loss. Farmer Dale was quite upset and contacted the agency. Farmer Dale accused the agency of failing to explain to him the impact of not listing a spouse on the policy and demanded payment of the other 50% of his crop loss. The Crops 'R Us Insurance Agency notified its E&O carrier.

End Result. The E&O carrier's Claims Specialist requested the file documents and reviewed the application of Farmer Dale closely. The agent for Crops 'R Us had made notes that Farmer Dale was not married, along with other information obtained during the initial interview with Farmer Dale. Farmer Dale was interviewed and admitted he did not consider himself married because he and Rebecca had filed for divorce and he did not understand the impact of the question. However, he believed the agent should have explained to him why the agent was asking if he was married. Based upon the notes of the agent, Farmer Dale's admission that he did not consider himself to be married at the time the application was filled out, the fact that Farmer Dale was still legally married, and that the agent had no obligation to verify the accuracy of the information that Farmer Dale was providing, the E&O carrier denied any liability of Crops 'R Us for the error on Farmer Dale's application and did not compensate Farmer Dale for the 50% reduction of the crop loss.

Even though the E&O carrier did not deem the agency to be liable to Farmer Dale, there is still something to be learned from the agency's effective practices.

- The agency had documentation to support that Farmer Dale advised he was not married;
- The agent went over each question on the application with Farmer Dale and allowed him time to review it before signing;
- The carrier's acreage report accurately reflected the information that was contained in Farmer Dale's FSA 578;
- The agency timely forwarded the Summary of Coverage to Farmer Dale after reviewing it to make sure the policy matched the application and acreage report.
- The agency timely notified the crop carrier of the claim.

These three claim scenarios contain just a few examples of the many types of E&O claims that can be made against agents that place crop insurance. Crop insurance is a government program that is different than most types of insurance in that the application cannot be changed after a set date. Because of this, every line and every box on the application can be a potential E&O claim and should be carefully filled out and reviewed with the applicant. The same is true for the carrier's acreage report. Change requests are limited to specific pieces of information and only for a certain period of time. This spring (or fall for those winter crops) here's a best practice checklist that will help avoid costly E&O claims:

- Don't allow someone else's time constraints cause documents to be filled out in a hurry! This is the number one cause of errors on applications and acreage reports;
- Go over all questions on the application and acreage report;
- Place accurate information on the application and acreage report the first time;
- Make all changes prior to the applicant/farmer reviewing the document and signing;
- Schedule ample time for the applicant/farmer to review the documents prior to signing;
- Never present a blank form to the applicant/farmer;
- Never sign a document for the applicant/farmer;
- Never alter dates on forms;
- Submit all documents by the deadlines set by the Risk Management Agency;
- Review the Summary of Coverage and forward a copy to the insured as soon as possible;

- If any errors are discovered, contact the crop carrier and attempt to resolve immediately. Time is not on anyone's side when it comes to requesting changes to crop coverage;
- And lastly, document, document, document! This is your best defense if an E&O claim is brought against your agency.

If any of these above stories have a familiar ring to them, now is the time to review your agency's practices and adopt the best practices listed above. An ounce of prevention is worth that pound of cure. Have a productive crop insurance placement and renewal season!

*Janice S. Blanton, AIC, is an Assistant Vice President and Claims Specialist with Swiss Re Corporate Solutions. Since joining Swiss Re Corporate Solutions as a Claims Specialist in 2002, Janice has handled claims for insurance agents and brokers. Prior to that, she worked in the Legal Department from 1995 until joining claims in 2002.