

Agents E&O Standard of Care Project Indiana Survey



To gain a deeper understanding of the differing agent duties and standard of care by state, the Big “I” Professional Liability Program and Swiss Re Corporate Solutions surveyed their panel counsel attorneys. Each attorney was asked to draft a brief synopsis outlining the agents’ standard of care in their state. They were also asked to identify and include a short summary of the landmark cases. In addition, many of the summaries include sample case studies emphasizing how legal duties and issues with standard of care effected the outcome. Finally, recent trends in errors in the state may also be included.

This risk management information is a value-added service of the Big “I” Professional Liability Program and Swiss Re Corporate Solutions. For more risk management information and tools visit www.iiaba.net/EOHappens. On the specific topic of agents’ standard of care check out this article from the Hassett Law firm, our E&O seminar module, and this risk management webinar.



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Insurance agent Errors and Omissions Claims in Indiana

Swiss Re Corporate solutions

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Summary of the standard of care in Indiana

Standard of Care

In Indiana, the law regarding the standard of care for insurance agents and brokers has been fairly well defined since the late 1970's. In recent years however, with a few exceptions, case law overall had become less favorable to the agent as more cases have been litigated. The core case law has actually not changed much, however the courts have become more varied in their treatment of similar facts and their application of the case language. The net result is fewer cases adjudicated at the summary judgment stage.

Fundamentally the duty of the insurance agent is a two tier standard, one based in the general duty to exercise reasonable care in procurement, and the second, a more enhanced duty created by an intimate long term relationship or some other special circumstance. This paradigm has been traditionally stated in these general terms:

An insurance agent who undertakes to procure insurance for another owes the principal a general duty to exercise reasonable care, skill and good faith diligence in obtaining the insurance. That duty does not extend to providing advice or other services to the insured unless the insured can establish the existence of an intimate, long-term relationship with the agent or some other special circumstance.

Something more than the standard relationship is required to create a special relationship obligating the agent to advise or monitor the customer's coverage. There is a corresponding duty to inform the customer if the coverage cannot be obtained.

Factors demonstrating the existence of a special relationship between the agent and customer include whether the agent: 1) exercised broad discretion in servicing the customer's needs; 2) counseled the customer concerning specialized insurance coverage; 3) held himself out as a highly-skilled insurance expert; or 4) received compensation for the expert advice provided above the customary premium paid.

While the question of whether the relationship gives rise to such a duty may involve questions of fact, whether an insurance agent owes the customer a duty to advise based on undisputed facts is a question of law for the court. The burden of establishing an intimate long-term relationship or other special circumstance is on the customer.

The principal however, be it a customer or an insurer is not without duty. The principal and agent relationship imposes certain duties and obligations on the principal. One of these is the duty of exercising good faith and care to prevent the agent from suffering harm during the existence of the relationship. Additionally, there is an implied obligation to do nothing to thwart the effectiveness of the agency. Thus, an action by the principal against his agent may be avoided by the breach of contract by, or contributing fault of, the principal.

Causes of Action

There is a conflict in the law as to how claims against agents can be brought. When these claims were first articulated, the case law generically stated that such actions could be brought against the agent for breach of contract or for negligent default in the performance of a duty imposed by contract. Indiana is a modified comparative fault state, so damages are recoverable so long as the plaintiff's fault is equal to or less than the combined fault of the named defendants and non-parties, subject to reductions for that fault and other defenses.

However later cases adopted the analysis found in legal malpractice actions, stating that as these claims are essentially malpractice, they sound in negligence regardless how they are pled. This analysis however has not been adopted by the Indiana Supreme Court. The court has, in dicta, cited the traditional contract/ negligence quotes from older case law and as such, contract claims are still being pled alongside of the negligence claims. There are two recent cases, one in state court at the appellate level and one unreported but published in federal district court which have expressly recognized contract actions against the agent. The state court action found an implied contract from conduct. The federal case found a written contract in the form of a producer agreement with an insurer. It is hopeful that the Indiana

Supreme Court will be addressing this conflict soon, so there can be a modern opinion stating clearly what causes of action the courts should be recognizing and when.

Fraud also continues to be pled. This claim should be also treated like negligence, however where the courts have been allowing the fraud claims, usually the traditional fraud defenses have been sufficient in curtailing these counts, so these cases have not made it to the court of appeals.

Damages

There is also a conflict in the law as to the damages recoverable against agents for claims. While the case law goes back several decades, it has broad language as to damages just as the causes of action were broadly identified. Traditionally, the recovery against an agent was limited to the difference between what was paid pursuant to the coverage in place and what would have been paid pursuant to the coverage claimed desired, less the additional cost of premium. If the desired coverage was unobtainable, there could be no cause of action for failure to procure. The old general language has been resurrected however, and now, it is more common to see additional claims for consequential damages resulting from the breach of duty, such as increased taxes, interest, and the like. No particular degree of mathematical certainty is required in awarding damages so long as the amount awarded is supported by probative evidence, and not be based upon mere conjecture, speculation, or guess work. Where there is doubt as to the exact proof of damages, such uncertainty must be resolved against the wrongdoing agent.

Seminal cases

Bulla v. Donahue, 366 N.E.2d 233 (Ind. Ct. App. 1977) Plaintiff insurance applicants sued agent/agency for failure to procure coverage on their automobiles. Plaintiffs met with agent and requested same coverage they had previously, provided agent with all information, paid money, and agent failed to forward the information. Agent had not informed plaintiffs that he did not get them covered. Court held there is a duty of agent to seasonably notify applicant if agent is unable to obtain insurance, which defendants failed to do. All of the elements were satisfied and parties had meeting of the minds to establish a contract to procure insurance. Court also discussed the duties of the principal in context of failure to procure claim.

***Bulla* was the first case to lay out the classic standards of agent procurement, using both contract and negligence claims, and the corresponding duties on the principal and the agent.**

Nahmias Realty, Inc. v. Cohen, 484 N.E.2d 617 (Ind. Ct. App. 1985) Customer sued agent for failure to procure (in negligence) adequate replacement cost insurance for principal's building. Trial court found agent liable but awarded no damages and principal appealed. The court discussed differences between actual cash value policies and replacement cost insurance—replacement cost can result in a windfall for the insured, which is compensated for by higher premiums. Appellate Court awarded \$6,250 to principal since the cost of repairing fire damage and updating building to meeting current code requirements was \$363,750, and insurer had already paid \$357,500 under the policy. The insured did not waive the code update coverage.

***Nahmias Realty* was the first case to articulate recoverable damages in failure to procure cases as: (1) amount due under policy which should have been obtained by agent, plus (2) any consequential damages resulting from that breach of duty (3) less the cost of unpaid premiums or cost of insurance.**

Butler v. Williams, 527 N.E.2d 231 (Ind. Ct. App. 1988) – automobile accident victims brought suit against tavern's insurer and agency pursuant to assignment of claims executed by tavern owners. Plaintiffs sued in contract and negligence. The court held that (1) the two-year statute of limitations for damage to personal property was applicable to Plaintiff's claims for failure to obtain particular type of insurance coverage (and not the 6- or 10-year contract statute of limitations); (2) accident victims stood in shoes of tavern owners for purposes of determining when cause of action accrued; (3) action accrued no later than the date that tavern owners were informed that their policy did not cover dram shop; and (4) "no action" clause in tavern's policy did not bar commencement of suit against insurer until underlying injury suit was resolved against owners. It is the nature of the cause of action that determines the applicability of the statute of limitations. Court held that motion to dismiss in favor of insurer/agent should have been granted.

***Butler* was first case where a failure to procure insurance was brought under insurance and contract theories and the court dismissed plaintiff's claims based on 2-year (negligence) statute of limitations, stating that "the nature or substance of the cause of action is negligence in failing to obtain a particular type of insurance coverage." The court also determined that plaintiff's claim accrued at the latest when they received their policy, and they knew or should have known they did not have that coverage they claimed they wanted.**

Parker v. State Farm Mut. Auto. Ins. Co., 630 N.E.2d 567 (Ind. Ct. App. 1994)
Customer brought action against insurer and agent for breach of duty to advise re: the availability and desirability of underinsured motorist coverage. Court held that agent did not have a duty to advise insureds and insureds failed to allege any facts that would support a long-established relationship of entrustment other than fact that insureds first purchased insurance from insurer 15 years earlier. Court held that it's the nature of the relationship b/w insurer and insured, not merely the number of years, that triggers the insurer's duty to advise. Court discusses *Cook* and the special relationship test and finds that parties talked over telephone, had only 1 face to face meeting, no specialized coverage or that agent promised to undertake periodic review of insureds needs, no advice, no additional compensation. The Court affirmed summary judgment in favor of State Farm.

***Parker* distinguished *Cook*, clarifying that "it is the nature of the relationship and not merely the number of years associated therewith, that triggers the duty to advise." *Parker* was the first case to identify and articulate the 4-factor special relationship test.**

Craven v. State Farm Mut. Auto. Ins. Co., 588 N.E.2d 1294 (Ind. Ct. App. 1992)
Plaintiff insurance customer obtained automobile insurance from a State Farm agent that covered \$100,000 per person and \$300,000 per accident, with uninsured motorist coverage of \$25,000 per person and \$50,000 per accident. The plaintiff was involved in an accident with an uninsured motorist; State Farm paid the \$25,000 limit, but denied any additional coverage. Plaintiff sued agent and insurer claiming, among other things, that he failed to advise her that she was buying only \$25,000 uninsured motorist coverage, that \$25,000 was less uninsured motorist coverage than that afforded under her previous policy, and that she could purchase more than \$25,000 of uninsured motorist coverage. The court discussed special

relationship aspects and held that the agent did not have any duty to advise the plaintiff regarding coverage—the court said that plaintiff approached the agent to discuss the purchase of auto insurance and the agent duly procured the policy; nowhere in the pleadings does plaintiff allege that the agent had been her agent for years, that she requested additional information on uninsured coverage, or that any additional compensation was paid to agent.

***Craven* clarifies the maxim that there can be no duty to advise where the first contact between agent and insured is the basis of the transaction involved in the litigation.**

Page v. Hines, 594 N.E.2d 485 (Ind. Ct. App. 1992) Beaty was injured while working for Page. Beaty sued Page, and Page filed a third-party action against Hines, the insurance agent, alleging negligence and breach of contract for failure to procure proper insurance. The trial court granted summary judgment to Hines, finding that the action was barred by the two-year statute of limitations for injury to personal property. Page appealed and argued that he alleged a breach of contract claim, and the 10-year statute for such claims applied. The court of appeals disagreed and stated that the nature of the cause of action not the manner in which it is styled determines which statute of limitations applies. It found that because the nature of the case was Hines's negligence in failing to procure a particular type of insurance coverage, the two-year statute for negligent failure to procure applied. The court also noted that Page did not present any writing reflecting a contract with Hines. However, court denied summary judgment b/c even though insured had duty to read policy, there was question of fact (within the statute of limitations) as to whether Hines made representations and whether the Pages reasonably relied on them.

***Page* clarified and strengthened the *Butler* holding. The *Page* Court once again affirmed that these claims will be treated just as legal malpractice claims are, as negligence only. Once could argue that they door was not closed if a written contract could be produced. *Page* also is one of the early cases talking about agent representations relieving the customer of reading their policy.**

Evan v. Poe & Associates, Inc., 873 N.E.2d 92 (Ind. Ct. App. 2007) Agency customers who were denied some benefits under their homeowners policy because the application was allegedly filled out improperly, brought negligence action against their insurance agency and insurance agent who filled out the application. Plaintiffs did not know that agent had marked an “X” in between a response on the application questioning whether the applicant had a loss within the last 3 years (which he had). After damage to their home, insurer paid a portion of the claim but not all of it and sent Evan a release to sign, which he did. The release released defendants from future claims. The Court granted agency and agent’s motion for summary judgment on the grounds that insureds signed a release agreement, which barred recovery against the insurers agents, and denied any extrinsic evidence that attempted to show the contract had additional meanings b/c the release was not unambiguous.

***Poe* stands for legal statement that where an insured signs a release with the insurance company, if properly worded, the insurance agency can rely on that release to bar plaintiff’s claim, even though it was not a party to the release.**

Filip v. Block, 879 N.E.2d 1076 (Ind. 2008) Customers purchased insurance from Block on a 6-unit apartment building in 1999, requesting the same coverage that had been in place under the previous apartment building owner. The policy did not cover nonbusiness personal property or business interruption and was actual value (not replacement cost). Customers made several changes to their policy b/w 1999 and 2003 and Block promised them that she would visit the premises. They sued agent/agency for negligent failure to procure and negligent failure to advise. The Indiana Supreme court held the 2-year statute of limitations barred plaintiff’s failure to procure claim regarding business interruption and replacement value since plaintiffs could have discovered the error at the activation of the policy in 1999 by reading the policy. There was also no basis that the agent made representations regarding the adequacy of the policy’s coverage. Regarding the nonbusiness personal property, while there was evidence that agent breached duty of care because she told them their personal property would be covered, there are no damages because their business personal property exceeded their personal property by \$17k which would have prevented recovery. Court also ruled that there was no evidence of a special relationship imposing a duty to advise because the breach, if there was one, would have occurred in 1999 at the time of

procurement, and no evidence agent undertook ongoing review of the insured's insurance needs.

***Block* was an important articulation of the law from the Indiana Supreme Court, confirming that the 2-year statute of limitations on a negligent failure to procure claim, and particularly when it begins to run. The court clearly talked about the breach being the wrong procurement, not the insured loss, because the wrong risk is being transferred, and the potential for customers to become freeloaders enjoying a lower premium for lower coverage only to complain when the loss exceeds the limits. The court found the statute began to run when plaintiffs received the policy when in the exercise of ordinary diligence by reading the policy, they could have discovered they were underinsured. *Block* also stands for fact that 2-year statute of limitations applies in a failure to advise claim, at the time of giving the advice.**

Groce v. American Family Mut. Ins. Co., 2014 WL 1327953 (Ind. April 3, 2014) The Court recently affirmed *Filip v. Block*. In 1997, plaintiffs purchased homeowners insurance from Defendant; in October 2007, fire damage. Claim was filed June 2009, alleging agent negligently failed to obtain a fire insurance policy would have paid the entire cost of reconstructing their residence if destroyed by fire. The Indiana Supreme Court affirmed that plaintiffs could have timely discovered the company's replacement cost liability was capped at the dwelling loss coverage limit by reading homeowner's policy; the statute of limitations began to run no later than the first policy renewal after the alleged statements made by the agent to insured on August 18, 2003. Motion for summary judgment on statute of limitations was affirmed.

***Groce* expressly affirmed *Block*. *Groce* affirms that the 2-year statute of limitations begins to run when through exercise of ordinary diligence one can read the policy, however, the court did toll the statute of limitations based on the date of statements made by the agent to insured.**

Brennan v. Hall, 904 N.E.2d 383 (Ind. Ct. App. 2009) Customer sued agent for negligent failure to procure a homeowners policy that covered her dogs. Insurance agency breached a duty to obtain a policy that provided coverage for insured's dog, and thus agency was liable in negligence for damages resulting when insurer voided policy based on misrepresentation in policy application

stating that customer had no dogs. Even though customer failed to read application carefully before signing it, agent filled out application containing misrepresentation after customer specifically asked for a policy covering her dogs, and answered “yes” when broker, filling out application, asked whether she had dogs. The Court held that if an insurance agent is negligent in assisting a client complete an insurance application, and such negligence leads to a basis for the insurance company to deny coverage to the applicant and/or revoke the policy, the applicant may seek damages from the agent, even if the applicant signed or ratified the application after having a chance to review it. The Court further held that the applicant’s failure to read should be analyzed under the comparative fault act.

***Brennan* stands for proposition that if an insurance agent is negligent in assisting a client complete an insurance application, and such negligence leads to a basis for the insurance company to deny coverage to the applicant and/or revoke the policy, the applicant may seek damages from the agent, even if the applicant signed or ratified the application after having a chance to review it and comparative fault will be considered between agent and customer. This is one of the most important cases in Indiana law for agents as more applications are filled out online by the agent with the customer’s assistance. It essentially means that these cases will almost always be tried rather than summary judgment regardless of whether the customer read, reviewed and signed or otherwise ratified the contents of the application.**

West Bend Mut. Ins. Co. v. 1st Choice Ins. Services, 918 N.E.2d 684 (Ind. Ct. App. 2009) In April 2004, Welco Realty sold Welco Truck Stop to Howells, entering into a purchase agreement. Purchase agreement required Howells to maintain insurance on the property and list Welco as mortgagee. Agent and buyer met to discuss business insurance for the truck stop; Howell indicated she was owner of truck stop and did not tell agent that anyone else had an ownership interest; Howell read and signed application. Agent noticed discrepancy when she received the policy but was unable to communicate it to insured or to drop off the policy to the insured prior to the loss. In this case, the customer never disputed the agents contention that the policy was sold exacty as it had been requested, as she had abandoned the property and the lawsuit. Relying on *Brennan* and *Roe*, the Court found that there was a genuine issue of material fact whether 1st Choice agent committed negligence when completing the insurance application even where there

was not testimony by the customer in opposition to the agents testimony, finding that since the agent knew Howell was first time business owner; she should have asked whether she bought business or there were other owners; she had the information of the additional insureds on the commercial policy. Whether Howell should bear some blame in the application process would be determined by comparative fault. The Court reversed summary judgment in favor of 1st Choice, sending the matter to be tried by a jury.

***1st Choice* was another version of the *Brennan* holding. *1st Choice* simple demonstrated that the courts are going to prefer trial over summary judgment even under very slim facts and allow comparative fault to be allocated between the customer and the agent.**

Leo Mach. & Tool, Inc. v. Cline-Armstrong Ins. Agency, Inc., 2011 WL 886129 (N.D. Ind. March 14, 2011) Plaintiff sued its insurance agency for negligently failing to advise it of the amount of coverage it needed and failing to procure coverage in the appropriate amount. The agency argued that claims were barred by 2-year statute of limitations. Prior dealings between the parties and regarding insurance agents in general, whenever plaintiff made a request to change or modify their coverage, plaintiff would receive written notification within a reasonable period of time notifying of the change. Plaintiff argued that it made some oral requests to modify coverage sometime in 2005. The Court concluded that even if plaintiff orally requested higher coverage on December 31, 2005, he would have received notification on January 31, 2006 when he received and read the policy. Court held that “when Leo received nothing by January 31, 2006, it knew, or in the exercise of reasonable diligence, could have known, that its coverage limit remained at \$250,000.” 2-year statute of limitations began to run on January 31, 2006 and complaint was filed on May 16, 2008 and was time barred.

***Leo Machine* stands for important legal theory that the statute of limitations can begin not only when an event happens, such as when the wrong coverage is placed, but also when an event does not happen, a nonevent, such as when plaintiff should have received notice of requested changes but did not.**

Acuity v. Nuthak Ins., LLC, 2011 WL 5179156 (S.D. Ind. October 31, 2011) plaintiff insurer sued defendant agency. Nuthak had entered into an agency

agreement with Acuity to bind and execute insurance contracts pursuant to Acuity's guidelines. Nuthak obtained a commercial quote for insured's restaurant from Acuity by filling out information online and took a payment from the insured for coverage. Acuity's underwriter wanted to reject coverage b/c the supplemental application wasn't filled out accurately but was overruled by someone higher up, pending loss control inspection to confirm application information. Following the Feb. 2008 inspection, Acuity sent cancellation letter to insured but the day before, the restaurant had burned down. Insurer paid limits and sued agent for negligence, breach of contract, indemnification, and fraud. Court granted summary judgment to Nuthak on issue of fraud and negligence, concluding that the negligence claim was brought outside the statute of limitations (Acuity should have known that insured did not meet requirements in January 2008 when information was filled out online or at time of inspection). However, the court granted summary judgment to Acuity on issue of breach of contract and indemnity claims—the breach of contract claim in this case was subject to the 10-year written contract statute of limitations. Waiver was not applicable in this case.

***Nuthak*, while not binding precedent, is the first clearly stated case in Indiana where a court found a contract and found breach against the agent. The court found the producer agreement to be a written contract found support the 10-year statute of limitations. The court also went so far as to find as a matter of law breach of the contract by the agent, and the damages, and left only an affirmative defense for later consideration.**

Indiana Restorative Dentistry, P.C. v. Laven Ins. Agency, Inc., 999 N.E.2d 922 (Ind. Ct. App. 2013) IRD sued Laven (agent) and ProAssurance (insurer) for failure to procure an increase at renewal, and failure to advise it regarding the inadequacy of its policy limits and failure to procure full coverage in contract and negligence. The appellate court ProAssurance could be vicariously liable for the agent's acts, and found a special relationship existed creating a duty to advise IRD about its insurance based on the facts that Laven and IRD had a relationship spanning 30 years, Laven was an authorized agent for the Indiana Dental Association through ProAssurance, Laven answered IRD's questions, Laven mailed an annual questionnaire regarding changes in coverage, and that Laven mailed out generic risk review newsletters to its clients. (many of these conclusions by the court are hotly disputed) The court also found that there was an implied

contract to procure full coverage insurance based on the past dealings between IRD and Laven. The past dealings included the annual ritual of sending the insurance questionnaire and returning it with requested coverage. the court found a breach of the contract to advise and procure “full” coverage even though there was never a request for such coverage and never an undertaking by the agent to inspect or monitor values, and in spite of a specific request to increase coverage to a specific amount (\$350,000); the full coverage loss valued at \$704,000.

Laven is currently on petition to transfer to the Indiana Supreme Court and the briefing has been completed. Given the factual statement as the court stated, and the conclusions of the court, if transfer is denied, or if this case is affirmed, substantial portions of long standing Indiana law will no longer be valid.

Present day high risk areas

When looking at the present state of the law, and the natural direction that it is headed, there are areas of prime concern when trying to ascertain the most fertile areas for E & O claims. The following areas are the most likely areas to carry the highest risk of litigation and claims against agencies.

1. Application based claims. The process of completing the insurance application used to be virtually a nonstarter for agent E & O cases. Historically, so long as the customer read and signed the application, and the policy was procured consistent with that application, cases against the agent arising from the application were subject to summary judgment. After the Brennen case, unless the plaintiff lawyer doesn't know the law, these cases will all have to be tried. That means every time an agent fills out an application over the phone, or on a computer terminal, or by hand with the customer giving the information, an E & O claim is more likely than not and more likely to go to trial, regardless of what the customer and agent do to confirm the contents of the application and the coverage requested.
2. Oral assurances at time of application and delivery of policy. The most important effect of these events is that they may relieve the customer of any obligation to read and understand the contents of the policy and the

coverage. This can toll the statute of limitations, and affect the allocation of fault onto the agent and away from the customer. These situations will almost always be a difference of testimony between the agent and the customer, so there will not only be no summary judgment, but there will always be a credibility argument as to who is the liar.

3. Insurer Plaintiffs. The insurance agent is now firmly in the middle, with E & O claims coming from both the customer and the insurer. Agency agreements, common law and express indemnity, unsuitable risks and other subjective complaints are the next big thing for insurers to try and limit their payments and recoup their losses. If the courts find that such relationships and claims will be evaluated under the law of contract and not comparative negligence where there are written agency agreements, the insurers will continue to refine their agency agreements into subjective indemnification agreements for which there is no escape for the agent, and insurers will refine the language of these agreements to allow actions against the agent any time the insurer pays a loss. Many agreements already have these draconian clauses, and the insurers are starting to enforce them.
4. Fiduciary, high service level and advice advertising. In the insurance market, as premium pricing becomes virtually identical, and the number of sales agents increases, the independent insurance agency has to come up with some way to get and retain customers. As a result, many agencies are advertising themselves as insurance advisors, and offering advice and special service levels that take their relationships with their customers to the top level of liability exposure, the special fiduciary relationship. At this level, most lawyers are suing the agencies for any discrepancy in coverage, and arguing what amounts to absolute liability on the agent for failure to procure whatever would have covered the loss, regardless of the request of the customer or the cost of the coverage. If the agency is going to put itself in this risk exposure it can almost be assured of being sued if any customer suffers an uninsured loss that could have been insured.
5. Insurance consulting. As the sales market becomes overpopulated, agencies are moving more into the insurance consulting business. These services are

generally fee based, and as such often have written agreements. This means that the insurance consultant will likely have the most dangerous situation to operate in: paid fiduciary with a contract. The only way to manage this level of risk will be by putting limiting language into the agreements and perhaps alternative dispute resolution as a mandatory term.

6. Accompanying actions where First party property claims are denied for any reason or paid unexpectedly. The modern landscape for the independent insurance agent is likely to continue to result in suits where there are uninsured losses by customers and unexpected losses by insurers. The bookends of these suits will be the written agreements on one end, and the conflicting oral testimony between the parties on the other. The best advice to the agent who wants to avoid future litigation is to get out of the business. Everyone will be sued someday for something, regardless of how good a job, or how well documented the work is. Strict quality control in terms of procedures, documentation, advertising, advice and procurement will help the agency to avoid some claims, but the best value will be in the defense of claims once they arrive.