

# Avoiding E&O Exposure When Advocating For Customer Claims

*A value-added risk management service of the Big "I" Professional Liability Program and Swiss Re Corporate Solutions.*

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**150**  
YEARS

Visit [www.iiaba.net/EOhappens](http://www.iiaba.net/EOhappens) for free E&O risk management information and tools.

# Welcome

## Our Panelists

- [Greg Blaies](#) and [Laura Copeland](#) – Attorneys and Partners with Blaies & Hightower, L.L.P. in Fort Worth, Texas. Their firm offers a broad spectrum of litigation capabilities and experience, including insurance agent defense work. Greg has been recognized as a Texas Super Lawyer as published by Texas Monthly Magazine 2004-present, and Laura has been recognized as a Texas Rising Star as recognized by Texas Monthly Magazine 2008-present.
- [John Nesbitt](#) – Assistant Vice President/Claims Specialist for Swiss Re Corporate Solutions. John has been with Swiss Re for 15 years and currently handles insurance agent E&O claims. He has a J.D. from the University of Missouri School of Law.
- [Bill Wilson, CPCU, ARM, AIM, AAM](#) – Director of Big “I” Virtual University for IIABA. Bill has conducted hundreds of technical seminars, workshops, and convention presentations as well as published hundreds of technical articles and manuals. He also coordinates the Big “I” VU’s “Ask an Expert” service.
- [David Hulcher](#) – AVP of Agency Professional Liability Risk Management at the Big ‘I’ Advantage, Inc. Dave is a 17 year Big ‘I’ employee who manages the development of E&O risk management information and tools, including the E&O Happens website.

# Today's Topics

- Why This Webinar - Survey
- Should agents advocate when a claim is denied?
- Big “I” Virtual University Advocating Success Stories
- Advocating and Your E&O Coverage
- Circumstances – To Advocate or Not Advocate!
- When is the appropriate time?
- Get Help - Using the VU [“Ask an Expert”](#) Service
- Other E&O Risk Management Tips – Claims Handling
- [“The Wallet Card”](#)

## Why This Webinar?

- 2012 survey of panel counsel attorneys from Swiss Re in every state.
- Common errors/most dangerous things:

**“ADVOCATING ON BEHALF OF CUSTOMERS AND ATTEMPTING TO NEGOTIATE WITH THE CARRIER AFTER THE DENIAL OF A CLAIM.”**



### Swiss Re Corporate Solutions: Attorney Survey of Agents E&O Litigation

*A value-added risk management service of the Big “1” Professional Liability Program and Swiss Re Corporate Solutions.*



Corporate Solutions 

# The Independent Agent Advantage

- **Trust**
  - Trusted relationship
  - Credibility (particularly product knowledge)
- **Choice**
  - Consultative coverage and pricing options
  - Customization of products
- ***Advocacy***



Independent Insurance Agent

# Advocacy...

## Our heartfelt thanks to:

*The wonderful Rialto employees—  
Josh, Carrie, Wayne & Nick  
& The Helena Fire Department*

*\* Kleen King \* Outside In \* Bob Franz  
\* Rainbow International \* Dazzle Carpet Care  
\* Home Beautifiers \* Old Time Plumbing  
\* Scott Fitzpatrick \* Montana DEQ  
\* Montana Window Cleaning \* Steve Spraycar  
\* Serati Construction \* Bulkley Electric  
\* City of Helena Building Division*

With very special thanks to **Payne Financial Group**  
"To my knowledge, this is the only insurance agency in Montana that has a "Claims Advocate" on staff to help with the multitude of details when working with an insurance claim. Pat McCutcheon, Kathy Burt and most especially, Chuck Mazurek, made this process so much easier than I've ever experienced with any other insurance claim. Chuck was a constant resource to me - guiding me through the necessary steps to make sure we were covered all our bases! He helped us deal with this process on a DAILY basis - and has my most sincere regard and respect for all his knowledge - and all his assistance." I highly recommend the Payne Financial Group!" *Kathy Brown*

# Big “I” Virtual University “Ask an Expert” Success Stories



## From Where I Sit

Aubie W. Knight, CIC, IIAG CEO

A member agent called me to ask about an upcoming CE seminar. It was a very routine call from a young agent that I have known for a long time and talk with fairly often. As we were ending the call, the agent says, “By the way, thanks for telling me about the [Ask An Expert](#) section on the Big “I” web site. It has been a great resource for me.”

I asked the agent to expand on how the [Virtual University's Ask An Expert](#) helped and here's the story. One of the agent's big prospects had recently had a claim denied by its carrier. After examining the prospect's coverage, the agent believed the company had made an incorrect determination on coverage. The agent emailed the experts on VU and sought their opinion. After receiving back a number of replies that supported the position that the carrier was wrong in denying the claim, the agent contacted the prospect. Together, they approached the carrier, asked for reconsideration of the claim and presented the opinion of the VU’s experts. By now, you can probably imagine how this story ends. After reconsideration, the company decides to pay the claim. The agent leaves with an agent of record letter and a very satisfied new client. It’s one thing to promise great service to a prospect that you are hoping to insure, but how often does one get to prove it before they write the account?

So, all is well that ends well, right? Not exactly. One of the hard truths of this business, especially in these current economic times, is the fact that your new account is often times your friendly competitor’s lost account. Sure enough, when the agent told me who the former-agent was on the new account, I cringed a bit. Not only was the agent that lost the account a Big “I” member, but a very involved member. Apparently the member has not gotten word of the power of [VU and Ask an Expert](#).

The ability of independent agents to advocate on behalf of their clients is one of the greatest attributes of the distribution system. Clearly, some agents do a better job of it than others. Use the VU and the many other resources that IIAG makes available to help you better serve your clients.

In case you were wondering, there is no additional charge for this valuable service – it’s already paid for as a part of your membership dues. I sure hope to hear “By the way, thanks for telling me about [Ask an Expert](#)” many more times in the future.

# Big “I” Virtual University “Ask an Expert” Success Stories

- \$35,000 canopy destroyed by windstorm. Claim denied because canopy was not specifically described on BOP policy.
- Water damage from roof leak during storm denied under HO policy based on wear and tear and storm not causing an opening in the dwelling.
- Son backed father’s car into mother’s car...PAP claim denied because mom’s car had no collision coverage and liability exclusion applied to insureds.
- \$12,000 employee jewelry theft limited to \$2,500 jewelry theft limitation on Commercial Property form.
- \$6,000 damage to loading dock struck by vehicle excluded by Property Not Covered exclusion.
- Contractor burned down garage he was building and claim was denied based on damage to “your work.”





# Defining Advocacy

- Are you advocating? Or "falling on the sword?"
  - Keep it factual
  - Avoid putting it in writing
- Advocating carelessly can impact your E&O coverage
- Certain actions taken without your E&O carrier's written consent go beyond "advocacy" and may violate the conditions in your E&O policy:
  - Providing documents
  - Admitting liability
  - Participating in settlement discussions or entering into a settlement
  - Incurring costs or expense
  - Giving a recorded statement or deposition

## Circumstances – To Advocate or Not Advocate

- When to advocate
  - To correct the carrier's misunderstanding of the facts
  - When the carrier seems to have misinterpreted its policy language
  - To seek clarification or request further explanation
- When to notify your E&O carrier first
  - Typical E&O policy requires that potential claims be reported to the E&O carrier when the agency is aware of a proceeding, event, or development that could in the future result in a claim against the agency.
- Before taking action: stop, think, review your policy
  - Don't hesitate to call your E&O carrier or state association and ask if you should report.

# What is Acceptable Advocacy?

- Facilitating the exchange of information with the carrier when an insured needs to make a claim.
- Guiding the customer through the claims process, including ensuring they comply with notice provisions of the policy or other prerequisites to coverage.
- What constitutes acceptable advocacy may also depend on the timing...

# When is the Appropriate Time to Advocate?

When an insured needs to make a claim → okay

- Assisting with presenting the claim and complying with notice provisions of the policy is acceptable advocacy. Providing this service is one of the ways an independent agent can set itself apart.

When a claim is denied by the carrier → maybe

- If the reason for the denial is the carrier's mistake of fact, supplying information or documentation to correct the mistake is acceptable.
- If the carrier is clearly incorrectly applying a policy provision, it is probably okay to point this out. For example, you may know that courts in your jurisdiction apply an exclusion differently than the carrier has applied it in your customer's case.
- If the claim is properly denied, it is no longer appropriate/safe to advocate for coverage. Doing so may give your customer reason to think the claim should have been covered, *i.e.*, that you made a mistake in placing their coverage.

# When is the Appropriate Time to Advocate?

When the writing is on the wall → PROCEED WITH CAUTION!

- If you are reasonably certain the customer believes you have made some kind of error – whether or not you actually did – it is no longer safe to advocate. (And before attempting to convince the customer that you are not at fault, it may be a good idea to contact your E&O carrier for support and guidance.)
- If you are reasonably certain the customer believes you have made some kind of error – and you *know* you did – it is no longer safe to advocate. Falling on your sword is not advocating! It could jeopardize your E&O coverage, and it will impact your attorney's defense of an E&O claim and their ability to raise otherwise valid defenses.
- If the customer has already filed suit against the carrier, do not inject yourself into the litigation, even if you think you are helping your customer. You might end up a defendant.

# When is the Appropriate Time to Advocate?

Once an E&O claim has been made against you → NEVER!

- Anything you say or do can and will be held against you in a court of law. So don't do it. Ever. Especially in writing.
- First rule of holes. When you're in one, stop digging.



- Now is the time for you to let your lawyer start advocating for you.

# Other Considerations When Advocating

- “Ask an Expert” Guidelines
- Policies and procedures
- Education
  - Triple net leases, AI endorsements, etc.
  - CE
  - Fast and cheap
  - VU newsletter
  - State and national Big “I” webinars and seminars



# The VU “Ask an Expert” Service

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## Ask/View Question

Members using the VU sometimes need answers to questions that they can't find in the Research Library. In such instances, we have a volunteer faculty of experts who can usually answer, or find an answer, to your questions.

Any question that you submit to the "Ask an Expert" service is confirmation that you have read, understand, and agree with the guidelines, instructions, and disclaimers on [this page](#).

If you have come to this page to read our answer to your question, scroll down and you will find a link to the Q&A under "Your Questions."

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<b>GETTING STARTED</b> Click here to read the Ask an Expert Submission Guidelines and Disclaimer page.	<b>SUBMIT QUESTION</b> To ask your question scroll down and click on the blue "Ask/View a Question" link.	<b>READ THE ANSWER</b> To read your answer scroll down and you will find a link to the Q&A under "Your Questions."	<b>HELPFUL HINTS</b> Remember to attach any related ISO policy forms, provide your state location and email address with the question.	<b>ATTACHMENTS</b> Please do not include attachments greater than 5MB in size.	<b>NO LITIGATION</b> Important. Do not submit questions on claims being litigated or likely to be litigated.
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If your question involves a policy form or endorsement, we **MUST** have the **full** ISO form number and edition date (e.g., CG 00 01 04 13 or HO 00 03 05 11). If it is not an ISO form, please attach the company form, along with any related claims information to your submission. We cannot respond to questions that, for example, refer to "a Homeowners policy."

Again, it is important that you read the [disclaimer](#) page. For example, DO NOT submit any questions on claims being litigated or likely to be litigated:

**Litigation.** We cannot respond to any questions involving situations that are currently being litigated or likely to be litigated...we can only respond to hypothetical coverage questions or claims for which there have been no final coverage denials and that are unlikely to lead to litigation.





# The VU “Ask an Expert” Service

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**Litigation.** We cannot respond to any questions involving situations that are currently being litigated or likely to be litigated...we can only respond to hypothetical coverage questions or claims for which there have been no final coverage denials and that are unlikely to lead to litigation.

After submitting a question, you will receive a confirmation via email. Do not respond to that email address since it is an automated responder and invalid. If you have questions, email [Bill Wilson](#).

## UP NEXT IN VU WEBINARS:

[Feb. 11 – "Legal and Ethical Obligations for Insurance Professionals"](#)

[March 25 – "Competing with Direct Sales & Captive Agency Insurers in Personal \(and Commercial\) Lines"](#)



Click the link below to Ask/View a Question

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## Helpful Hints

### ▼ Step 1: Your Email Address?

Important: Make sure your profile includes your current email address.

### ▶ Step 2: Required Documentation

# The VU “Ask an Expert” Service

Questions - New Item

Edit

Save Cancel Paste Copy Attach File

Commit Clipboard Actions

Subject \*


State \*

Body

Save Cancel

# The VU “Ask an Expert” Service

+ Ask/View a Question

▼ Step 1: Your Email Address? 

Important: Make sure your profile includes your current email address.



▶ Step 2: Required Documentation

▶ Step 3: Where are you?

▶ Step 4: Enter your question

+ Add new page

## Your Questions

 <u>Subject</u>	<u>Replies</u>	<u>Last Updated</u>
Insuring an Auto Leased by a Corporation from the Wife of the Owner	1	12/2/2012 8:18 PM
Extra Expense Coverage for Cost to Relocate 45 Apartment Tenants Following Roof Windstorm Damage	1	12/2/2012 8:20 PM
MCS 90 Question	1	12/16/2012 10:05 PM
CGL Legal Fees	1	2/4/2013 10:35 AM
Need for USL&HWA Coverage	1	2/8/2013 8:53 AM
 Test Question	0	10/14/2013 6:59 PM
This is a test question	0	12/18/2013 3:03 PM
CGL Claim About Workmanship Exclusion	0	12/19/2013 1:48 PM

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# The VU “Ask an Expert” Service

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Information provided in this section represents the views of one or more experienced professionals on a given topic; it is not a recommendation that a particular course of action be followed. IIABA and the participants in this service do not assume, and will have no responsibility for, liability or damage which may result from the use of any of this information.

There are five types of questions that we cannot respond to:

- **Legal Advice.** We cannot provide legal advice, so please do not submit questions as to whether someone is liable or not.
- **Litigation.** We cannot respond to any questions involving situations that are currently being litigated or likely to be litigated...we can only respond to hypothetical coverage questions or claims for which there have been no final coverage denials and that are unlikely to lead to litigation.
- **Complex Situations.** We cannot respond to overly complex coverage or claim scenarios, particularly those that are largely fact dependent or involve lengthy proprietary coverage forms or extensive documentation...a number of the participants in this service are available for consulting and expert witness work as outlined on their [Bios](#) pages.
- **Markets.** We cannot help you find a market for an account. It's simply impossible for us to monitor insurer underwriting appetites. We suggest you try your carriers, our own Big "I" Markets, then try [www.insurancemarketplace.com](http://www.insurancemarketplace.com) and [www.mynewmarkets.com](http://www.mynewmarkets.com).
- **Classification, Coding and Coverage Options.** We cannot opine on the proper classification of a risk. This almost always involves subjectivity based on a greater knowledge of the risk (and possibly even a physical inspection) than this forum allows. Similarly, we cannot tell you how to write an account on an exposure you're not familiar with, e.g., as to what forms or endorsements a particular prospect or insured might need (ISO has thousands of endorsements and we can't suggest which ones a risk might need).

**Note: Due to the volume of questions, we are unable to respond by phone, fax or regular mail. In order to meet the demands of the service, we can only correspond via the web/e-mail.**

## E&O Risk Management Tips – Claim Handling

- Be familiar with any provisions in your agency/carrier contract addressing claims reporting to the carrier.
- At the time an policy is written share the claims reporting procedures and any loss conditions or duties that apply.
- Do not make coverage determinations on behalf of the carrier.
- Treat all claims as critically urgent and report them the same business day they are received.
- Report the claim to all carriers where the insured has policies that may include some coverage, especially umbrellas.

# Responding to Potential E&O Incident – “The Wallet Card”

## What to Do When an E&O Incident Occurs

All agency staff should consider the following when responding to customers when faced with an E&O situation:

1. Never admit liability. You can be empathetic, but never admit you've done anything wrong.
2. Don't participate in any settlement discussions or enter into a settlement without written consent from your E&O carrier.
3. Ask them to explain what they think it is you've done wrong and write it all down including names, dates, and telephone numbers.
4. Don't tell them you have E&O liability insurance unless they ask you specifically if you do. Then, only advise them that you do and that you will provide all the information to your insurance carrier and they will be in touch with them.
5. Report the incident immediately to management so they can submit it to your E&O carrier.

Big "I" Professional Liability

Visit [www.iiaba.net/EOHappens](http://www.iiaba.net/EOHappens) today to review exclusive agency risk management information that can help the agency avoid the hassle and expense of E&O claims.

- Share the wallet card with all agency staff.
- Available to print at: <http://rms.iiaba.net/Content/E O-Happens/default.aspx>

March 25 Webinar:

## “Competing with Direct Sales & Captive Agency Insurers”

Are you tired of all the insurance commercials that shout “Price! Price! Price!”? Are you sick of the silly claims that someone’s exposures to loss can be analyzed and priced in 15, 7 ½, or even 2-5 minutes as these commercials claim? Are you really, really, really ticked off about losing business to someone selling an inferior product yet claiming, “SAME COVERAGE, Better Value”?

If so, then register for this new 3 hour webinar:

**Hour 1:** The Landscape is Quickly Changing

**Hour 2:** The Value-Added Agency

**Hour 3:** The Independent Agency Advantage

*(Yes, there will be breaks.)*

**Register:** <http://tinyurl.com/032515Webinar>

### Presenters:

- **Mark Fine**  
MBF Training & Consulting
- **Ed Higgins**  
Thousand Islands Agency
- **Jamie Deapo**  
IIABNY
- **Bill Wilson**  
IIABA







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