

E&O Risk Management Newsletter

Issue 4, April 2024

We KNOW

for Insurance Agents

E&O

In this newsletter:

- ➔ RISK MANAGEMENT ARTICLE: "I am going to sue you!"
- ➔ RISK MANAGEMENT TIP: Communicating with Clients via Text
- ➔ RISK MANAGEMENT RESOURCES: Lessons Learned

RISK MANAGEMENT ARTICLE: "I am going to sue you!"

We all hope that clients appreciate how hard agency staff works in providing a high level of customer service. Hearing "thank you," "great job," "your agency is the best," and similar phrases can bring out some positive emotion and a tremendous degree of pride.

While it would be great to always hear these praises, the difference you make in a client's life may not always be positive. For example, perhaps you just told them that they don't have any coverage for the flood loss they just suffered, or their liability limits are not enough.

These conversations can be difficult and emotional. As a result, instead of hearing "we love your agency," the six frightening words "I am going to sue you" may be spoken. Knowing how many E&O claims have happened over the years, there is a good chance that words threatening legal action have been said more than a handful of times.

Be Prepared

It is vital to understand that because someone threatens to sue you does not mean you did anything wrong. The client is emotional, and may simply be venting. In fact, a significant number of E&O cases are settled with no loss payment (yet possibly some defense costs). So, when you have a customer threatening a lawsuit, it is best to stay calm.

Getting on top of these issues is critical, so promptly report these scenarios to the designated person in your agency who handles them. Don't take the approach of "they probably didn't mean it." Be prepared to provide information pertaining to your client, including name, address, phone number, and a detailed description of the claim or incident. Provide as much detail as you can, including dates that the error allegedly was made and the client's specific coverage in question. It is suggested this be done in one-on-one sessions. Don't send an email to your boss saying "I think I messed up" as this type of communication has the potential to be admissible in the court of law. Take direction from your manager/designated internal E&O contact person to determine any next steps and, to reiterate, stay calm.

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WHAT NOT to Do

- **Do not provide any recorded or written statements** concerning the alleged error involving your agency.
- **Do not make any admissions of liability.** You will probably feel bad, but do not admit that your agency made a mistake even if that is what you believe.
- **Do not make or commit to a payment.**
- **Do not alter or make changes to the account/file in question without authorization from management. Changes made after the “I’m going to sue you” notification may be revealed, which will not position your agency well.**
- **Do not discuss the matter** with anyone other than your manager/designated internal E&O contact person. In addition, do not allow the inspection, copying, or removal of your records without approval from the E&O carrier.

Errors & Omissions claims happen. It is key to stay calm, report the matter to your manager/internal E&O contact person, and then let them do their job.

RISK MANAGEMENT TIP: Communicating with Clients via Text

Nearly everyone has a cellphone – and many clients like the convenience of communicating via text. While this can be a great service to provide to your clients, don’t slack on documentation when texting.

- **Get permission** from the client to communicate this way if you are initiating texts to them.
- **Turn on the “read receipts” function**, which may help you confirm the client received your message.
- **Ensure correspondence via text is the same quality as email you would send.** It’s easy to use more shorthand or looser language when texting, which can create miscommunications. As with email, put responsibility back on the client where you can. For example, if you explain a coverage aspect, ask the client if they understand or have any additional questions.
- **Document texts and include them in your files.** Texts can typically be forwarded to email. Search online to determine how to accomplish this with the cellphone you use. Some agencies use screenshots. Stress to staff that texts should be consistently documented in the file – review this as part of their quality-control (QC) process.
- **Consider what communications your staff is allowed to make via text.** Texts are typically more vulnerable than email, so avoid exchanges that include personally identifiable information (PII). Texts are also more suited to short communications, such as confirming receipt of payment or an application, than more involved coverage discussions.
- **Train your staff on cyber vulnerabilities related to using texts, such as smishing attacks.** If you have cyber coverage in place, review the policy to see if there are any restrictions related to using mobile devices.

RISK MANAGEMENT RESOURCES: Lessons Learned

Our Risk Management site includes a section titled *Lessons Learned* that includes many examples of claims we have handled over the years. Each includes a summary of the claim details and a lesson to be taken from the incident. Real-life claim examples can be a great training tool for your staff.

CLAIM EXAMPLE:

Homeowners: The insured did not take steps to insure a 21' 330 horsepower boat under a Homeowners Policy. The agent was aware of the boat, but mistakenly thought the Homeowners carrier would automatically pick up coverage for the boat. The Homeowners carrier disclaimed coverage following a fatality involving the boat due to the boat's size and horsepower. The Umbrella carrier stated that until \$1,000,000 in coverage was exhausted, it would not participate in the defense or indemnity of the underlying claim. The deceased, an owner of a modeling agency, was struck by the boat while waterskiing. The case settled, with the agent paying \$640,000 and the Umbrella carrier paying \$250,000.

Lesson: Know which vessels are automatically covered under a Homeowners Policy and which vessels require an additional premium to be covered.

Reminder: Access the risk management site through our online Customer Care Center. [CLICK HERE](#) for instructions.

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