



E&O Risk Management Newsletter

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We KNOW

for Insurance Agents



E&O

What if Your Client Asks You if They Should Report a Claim Under Their Policy?

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Many Errors and Omissions (E&O) claims involve clients alleging that they told their agents about situations that were then never reported to the clients' carriers. The agent often tells his or her E&O claim adjuster that the client did talk to him or her about the situation and that the client did not want to report it.

If clients ask you whether they should report a claim, the answer is that their insurance policy spells out the claim-reporting requirements – and that they likely need to report the claim right away and provide the details specified in the reporting provisions of their policy.

If it is the client's decision not to report a claim, document this in writing to the client and include it in your file.

Remember the following when dealing with agency client claim reporting:

- **Do not tell a client not to report a claim.**
- **Do not take it upon yourself to make an insurance coverage decision** as a reason to not report a client's claim.
- **Be sure to report to all applicable policies (primary, Umbrella, etc.).** If you are uncertain as to whether a policy is applicable, report the claim.
- **When submitting a loss notice form on behalf of a client, consider placing the carrier on notice** with a cover sheet that the agency accepts no responsibility for the reliance upon, and has not undertaken verification of, the information contained in the loss notice and that the carrier needs to verify all information with the agency client.
- **Many policies require reporting claims directly to the carrier. Consider from an E&O perspective whether it may benefit the agency to have clients report directly to their carriers** rather than having your agency accept the responsibility and potential liability surrounding claim-reporting issues. If a client contacts you regarding a claim, it is best to advise them *in writing* that they should report the

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claim directly to the carrier and provide the claims contact information or advise them where they can locate this information.

- **Keep your agency file well documented.**

A Good Rule of Thumb

Whether it is reporting a claim or reporting a potential claim under your E&O policy, or fielding a claim-reporting question from a client, a good rule of thumb is to immediately submit a claim to the carrier and let the claim adjusters take care of the rest.

Could this happen to your agency?

An agent received a notice of potential claim from their client, and the agency has a policy of not accepting notices of claim. The agent advised the client that the client would need to submit the claim directly to the carrier, supplying the client with the claim-reporting details. The client did not report the claim to the carrier at that time. A few months later, the client further contacted the agent with a notice of summons and was again advised to report the claim to the carrier. Again, the client did not report the notice to the carrier. Subsequently, a default judgement was made, and the claim was then reported to the carrier by the agent. There was no documentation of the instruction from the agent to the client regarding reporting the claim. This E&O claim resulted in a payout to the client exceeding \$100,000.

LESSON: Document in writing if you advise a client to report a claim directly to a carrier.

E&O TIP: Are You Memorializing Conversations with Your Clients?

In the past, when a client would call with a question or a decision on a coverage, the agency standard was to document that discussion in the agency file. Nothing more, nothing less.

Today, that is not enough. While these discussions should be documented in the system, they should also be memorialized back to the client in a written format – *by email, letter, etc.* Without some form of documentation that confirms or memorializes the discussion to the customer, it will be the agency's word vs. the client's word if an uninsured loss occurs. You might be surprised about what a client will say in such instances.

The goal is to address any potential misunderstandings between what the customer told you – or thought they told you – and what you heard. Simply documenting the conversation in the agency management system does not help to identify a misunderstanding.

RISK MANAGEMENT

CHECKLISTS: A Useful Tool to Help Agents Mitigate Errors and Omissions

Checklists are an invaluable tool for agents to help ensure you are not missing vital information on new and renewal business – and ultimately can help you mitigate errors and omissions while providing better

Risk Management Website – Our risk management website includes sample checklists for Commercial Lines, Commercial Property Valuation/Limits, Workers' Compensation exposures, and Homeowners exposures. Access our risk management website by logging in to our online Customer Care Center – <https://myaccount.uticanational.com/ccc-portal/user/login> – and clicking "Risk Management."

[CLICK HERE](#) to learn how to sign up for Customer Care.

Rough Notes – E&O policyholders with the Utica National companies can take advantage of a discount for Rough Notes Pro and Rough Notes Advantage Plus, giving you access to checklists and exposure analysis for over 700 classes of business.

[CLICK HERE](#) to find out more.

Ready to Help

Are you looking for risk management guidance on a particular topic? Reach out to Tabitha DeGirolano of our E&O team for help at tabitha.degirolano@uticanational.com.

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