

E&O Risk Management Newsletter

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In this newsletter:

- ➔ When Was the Last Time You Read Your E&O Policy?
- ➔ E&O TIP: Policy Checking and Delivery
- ➔ RISK MANAGEMENT: Self-Assessment Tool

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for Insurance Agents

E&O

When Was the Last Time You Read Your E&O Policy?

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While most agencies have an errors and omissions (E&O) policy, it is questionable whether they have the time to review it and truly know how to use it. Sometimes the situation is obvious, such as if you are presented with a summons and complaint. Other times it may be questionable whether it is appropriate to contact your E&O carrier. Because any two situations are rarely exactly alike, there are some good rules to go by – do's and don'ts – that can help in these instances.

THE DO's

Read your E&O policy. This is great way to understand what your E&O policy covers and what it doesn't. Every E&O policy has exclusions, so review them to determine to what degree those exclusions are of concern for your agency. Ensure you are covered for what you do and what you sell. There have been many situations where the agent found out, after being presented with an E&O claim, that the agency didn't have the coverage the agent thought they did.

Know your limits and how they work. Typically, agents only have one time a year to modify their limits – at renewal time. In determining the "right" limit for your agency, realize that the size of the agency is not a determinant of the potential size of an E&O claim. Big claims happen even with small agencies. While E&O claims arising from Personal Lines tend to be smaller, big E&O claims happen with all types of agencies. *Find out more:* [Considerations When Choosing a Limit for Your Agency E&O Coverage](#)

Understand how the deductible works. Are you only required to pay the deductible if your agency is determined to be liable – or are you responsible for defense costs on claims even where your agency is absolved of any wrongdoing? Unsure? Contact the Underwriter or a representative of the agents' association, if you secured coverage through it. Don't wait for an E&O claim to occur to find out.

Use the resources/expertise of your E&O carrier. Your E&O is more than just a policy. Some E&O carriers provide their agent-customers with resources to help those agents manage their E&O exposure. In most cases, this involves the usual articles and tips. However, the staff of some E&O carriers (typically the Claims

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and Underwriting folks) are readily available to answer questions on procedures or a multitude of other E&O matters. If a potential E&O matter surfaces, do not hesitate to contact the Claims staff for their perspective. They can help guide you regarding your future actions.

Report any claim, error, or concern promptly. The earlier the agent advises the E&O carrier of an issue, the quicker the carrier can begin to begin its discovery to determine what happened.

THE DON'TS

Don't admit liability or commit to a payment. There have been situations where after an agent committed an error, he or she automatically presumed the E&O policy would pay. This is not always the case. An E&O policy is based on the concept of legal liability. If the agent made a mistake, legal liability would still need to be proven before the policy will pay. There are many defenses E&O carriers can apply to eliminate or reduce the degree of the agent's legal liability. For example, in most states, the client has a duty to read his or her policy. By doing so, the client would be able to determine, hopefully before the claim, that coverage was not what they thought it was. If it was determined that the client did not read the policy, any eventual settlement could potentially be modified.

It might be natural for an agent to want to admit they made a mistake and to advise a client that the agency's E&O policy will pay. However, just as an agent advises a customer not to admit liability if the customer is involved in an auto accident, agents should follow their own advice. If a client suffers a loss only to find out they will not be fully paid or not paid at all, the agency should contact its E&O carrier immediately for guidance/direction. An admission of liability could impair the ability of your errors and omissions carrier to settle the claim at the best possible terms. In some situations, it could actually jeopardize your E&O coverage.

OTHER DON'TS

- **Don't approve** any recorded or written statements concerning the alleged error or omission.
- **Don't alter or make changes** to any records pertinent to the claim.
- **Don't discuss the matter** with anyone other than your own personal counsel or E&O carrier representative.
- **Don't allow the inspection, copying, or removal of any records** without discussing it with your E&O carrier.

YOUR E&O IS SERIOUS BUSINESS

In many respects, the decisions you make regarding your errors and omissions coverage – carrier, limit, deductible, etc. – are among the most important decisions you will make during the year, and can only be made before the claim. Yet the other set of decisions – those made after you have been presented with a claim – are equally important.

Work with your E&O carrier to make sure you understand your coverage and how it works. This can give you the peace of mind to help you sleep better at night.

E&O TIP: Policy Checking and Delivery

Ask most agencies where policy checking and delivery rank among daily duties and it is likely not high on the list. Yet it's not that agents think these are unimportant.

- Some agents believe policies are correct and, if they are not, it's the carrier's problem.

- Many agencies believe the quality of the policy issuance has improved, but these same agencies will state that errors happen and some are significant, such as missing locations or vehicles, incorrect named insureds, etc.

Whether the policies are provided in paper or electronic form, it is vital to promptly check for accuracy to ensure the coverage provided meets what your agency requested.

Simply giving policies a quick “once over” will not be detailed or comprehensive enough to identify errors in the policy. A best practice is to use a checklist that is completed and saved in the system, breaking down the checklist by overall issues (named insured, address, effective and expiration dates, policy number, etc.) and by type of coverage. For:

- **Property coverage** – Verify correct coverage/forms, locations insured, limits for each location, correct list of mortgagees/loss payees, additional coverages or changes requested from the prior policy, etc.
- **Liability insurance** – Review additional insureds, limits, requested coverage changes, etc.
- **Auto policies** – Check symbols, list of scheduled vehicles, limits, and any unique exclusions or coverage limitations that need to be brought to the customer’s attention, etc.
- **Umbrella** – Double-check that underlying insurance limits meet the minimum underlying limits required by the Umbrella. Insufficient underlying limits is a major cause of E&O claims.

RISK MANAGEMENT: Self-Assessment Tool

What is it? An agency risk assessment available to E&O policyholders with the Utica National companies and included with the policy.

How does it work? Answer a series of questions and then receive an overview of your agency with feedback on whether your current processes and procedures help protect you from E&O claims. Recommendations are provided so you can make improvements when your current processes and procedures are insufficient. Some of the topics included are producer procedures, premium handling, record management, and system/procedural issues.

How do you access it? Sign in to our online Customer Care Center and then click Risk Management on the left side to access the Risk Management website. Choose Try Our Self-Assessment Tool on the homepage.

Please see [our self-assessment flyer](#) for additional details, including how to sign up for Customer Care.

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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