Segale Consulting Services , LLC

# Errors & Omissions

Errors & Omissions coverage for insurance agents and brokers up until recently, has been readily available with flexible terms, conditions and stable premiums. This coverage is beginning to trend the other way. Why? Part of this trend is natural market forces at work. The deeper part of this trend is due to increased frequency of losses. Causes of the losses:

- The economy in general; individuals and businesses that cannot afford uncovered losses attempt to place the economic results onto their insurance agent or broker
- Insurance companies are becoming less resistive to looking at their own agent as a source of recovery for bad faith litigation expenses
- Agencies are becoming more focused on transaction and data management, using less staff to perform more of those functions and less emphasis on consultative, knowledge based performance by their producers and support staff. In addition to this, is the increased use of data transfer by receiving information from clients over the web; transferring that information by data links and receiving new policies and renewals by data upload.

**Agency Risk Exposures**

The current economic downturn has dramatically affected a significant number of an agency's customer base. Most agencies have lost revenue in the past few years as many of their customers have either closed their doors or experienced reduced sales and/or payroll. In turn, the typical agency has been forced to reduce their own expenses and staff layoffs have happened all over the country. Often those layoffs have affected some of the more experienced (and thus higher priced) personnel, resulting in less knowledgeable staff now being fully responsible for the account. So where does that leave the agency? Let's take a look at the different areas of exposures.

- **Documentation**

  This is the key area that must be addressed within the agency. Do NOT assume that this is happening. As Ronald Reagan so famously said, "trust but verify". In order to defend yourself against an E & O claim, you must be able to show proof of the following:

1. The coverages requested by the customer. This means that you must have a signed bind order or coverage proposal in file. No excuses.
2. The application for coverage must match the customer's coverage request and signed by the customer.
3. The coverages must be reviewed within the agency before sending to the client. This means a little more than just checking off the forms and endorsements. For certain, it means that you must have a complete copy of the policy in the system. Many carriers are now uploading renewals into the agency management system, but do not include the forms and endorsements. You must have a procedure in place to obtain these forms and endorsements for review.
4. Change orders must be confirmed to the customer in writing or a written request received from the customer.
5. Customer claims must be documented and transmitted promptly to the insurer. If it is a liability claim, have a procedure of notification to the appropriate primary policy and tender of notice only to the excess carrier(s).

Keep in mind the following truism when setting up an internal agency audit process: The file must speak for itself. If it is not in the client's file, it doesn't exist. You cannot win a case without supporting evidence and just saying that you discussed the issue with the client on a particular date will not prevent a lawsuit, nor will it have weight with the court.

If your agency or producers have created a customer relationship that is more than just placing the coverage requested by the customer or have held yourself out to have a special program or special knowledge, then you must go beyond just documenting what the client asked for. You must review their exposures and offer coverage solutions or other risk handling mechanisms.

- **Customer Review**

  Train your producers and agency managers on the type of customers that are desired as well as the type of customers that must be avoided. All of us at one point or another have had a suspicion that all is not right about a particular customer. For example: a customer that all of a sudden asks for a particular insurance coverage when in the past has wanted only the bare insurance basics or the customer that is constantly late in their payments. You really don't have to write every customer that approaches your company. It pays to be a little selective. Have a procedure in place to deal with these issues and it should not be based upon the size of the customer or the amount of commission received.

- **Security of Information**

With the advent of technology comes growing risk of privacy suits due to the loss of private information. Agency owners need to review with their IT person or department exactly how much encryption is being used and how secure are the transmissions. Many applications are being completed online and there is no means to obtain the customer's signature. Fix that problem as soon as possible. Digital signatures are, for the most part, legally acceptable, but without that signature, many carriers will not rescind coverage in the event of misrepresentation and will turn to the agency to compensate them for the bad faith claim. Check your website for encryption of information as well as the customer portal for accessing their policy information.

- **Certificates of Liability Insurance**

  This continues to be a litigious area for agencies and a growing area of claims are those arising from the recipient of the Certificate and not from just the agency customer. Ways to manage this risk:

  Have a master Certificate created by a knowledgeable insurance person in the agency. The person responsible for actual issuance must then use only the master Certificate.

  Never, ever put anything on the Certificate that is not supported by policy language.

  Use the most current version of the ACORD Certificate.

  Do NOT change the notice of cancellation on the Certificate. The newer editions by ACORD no longer have a place for that improper action, but we have seen Certificates where the incorrect cancellation information is being placed in the blank "operations" box.

- **Remarketing of Coverage**

  Agencies today are remarketing everything as it renews. Without a thorough understanding of their current coverage, it is impossible to be aware of reduction of coverage in a different policy through a new carrier. Should a claim arise that would have been covered in the prior policy but is not covered in the new carrier's form, the agency will have a hard time defending themselves if they have failed to point out (in writing with a customer acknowledgement signature) that reduction of coverage to the customer.

Professional Insurance agents work hard to understand their clients' risks and exposures to provide a comprehensive insurance program to transfer those risks. Some insurance agents identify means and methods of loss control and risk reduction. Those same principles must be applied to their own business.