E&O Risk Management for Claims Handling

Most agencies, if involved in the claims process, take the first report of loss and forward the information to the carrier for handling. Professional handling of the first report reinforces an agency's customer service skills and can lighten a very unsettling situation for the insured. It can also present a significant E&O exposure if claims are not handled appropriately.

The most important things in avoiding E&O claims are to:

- Report claims to the carrier the same day received,
- Not to make coverage determinations on behalf of the carrier,
- And, to report the claim to all carriers where the insured has policies that may include some coverage (i.e., umbrella, excess carriers, D&O, and professional liability).

Although an agent may believe initially that a claim may not reach the level of an umbrella or excess policy, report the claim to them anyway as circumstances can change at any time unbeknownst to the agent.

Depending on the size of the agency, either a customer service representative or a dedicated claims person usually takes the first report. Managing customers' expectations requires professional handling and clear, precise information. If a producer is contacted, the insured should be turned over to the appropriate staff member. In complex claims, producers may become involved in assisting the insured to respond to carrier inquiries and requests, but must proceed with caution and not become too entangled in the claims process.

While no agent wants to see his or her customers have uninsured losses and might wish to advocate on behalf of the customer with carriers, care does need to be taken in how this is handled. As an agent, you may not necessarily agree with the carrier's interpretation of policy language used to deny a claim. A healthy discussion of the language can help influence a change in the carrier's position to get the claim covered. The Big "I" Virtual University "Ask the Expert" service has proved a valuable resource that has helped agents in these situations.

Unfortunately, claims scenarios arise where an agent's error or omission may be the root cause of the denial of the claim. Out of a desire to get the claim paid, agents have advocated for their customers by admitting in writing to the carrier that they erred and that the customer should not suffer. The customer is often copied on such letters. Unfortunately, many carriers will not or cannot change their claims denial position, and the customer is left with a written document admitting error. This is very detrimental to any E&O carrier's defense and could violate the reporting and notice provisions of the agency's E&O policy, which provides that the insured shall not admit liability. When a customer

experiences a potentially uncovered claim which could result in a potential E&O claim, involve the agency's E&O carrier early as it will often step in and advocate on behalf of the agency and the customer with the underlying carrier. There is no downside to involving your E&O carrier as soon as you discover such a situation.

Risk Management Tips for Handling Claims:

- Treat all claims as critical – they should generally be handled the same business day they are received. Notify all carriers that MIGHT provide defense or coverage.
- Explain the carrier's and agency's role in the claims process – do not deny or affirm coverage.
- Provide information on when the policyholder can expect to be contacted by the adjuster.
- Encourage the insured to contact you if the carrier has not contacted him or her within the expected timeframe.
- Advise the policyholder of any loss conditions or duties that apply (contacting the police, protecting the property from further damage, making the property available to the carrier for a physical inspection, etc.).
- Don't advise the insured who to hire to make repairs unless directed to do so by the carrier.
- Report all claims that are reported to the agency to the carrier, regardless of instructions from the customer to the contrary.
- Send an agency standardized, written verification of the reported of a claim.
- Create a suspense/activity to follow up with the policyholder within 72 hours.