



OIA/HAWKSOFT E&O DISCUSSION

E&O DEFINED

“I made a mistake” (error) or “gosh I missed that” (omissions)

- Wrongful acts can be described as human failings
- An agency that has good E&O risk management procedures in place, that are enforced and monitored, can reduce their E&O exposure.

INTRODUCTION

- It takes an uncovered loss to create an E&O claim
- Generally speaking, *an uncovered loss would be caused by:*
 1. A lack of appropriate type of coverage, or
 2. Inadequate values or limits to cover the full loss

INTRODUCTION

It can happen to you!

- E&O claims don't discriminate by the size or location of agencies.
- All agencies, regardless of staff size, must proactively address E&O risk management!

INTRODUCTION

Statistics Don't Lie:

- Annually ***one (1) in seven (7) insurance agencies and brokerages*** will report a potential E&O claim
- **Approximately 50%** of those reported claims are ***closed with no defense reserves or indemnity payment*** made

INTRODUCTION

Statistics Fluctuation Influences:

- Market cycles which drive changing behavior of insurance buyers, carriers, and agents
- Catastrophic events which can be the catalyst for the discovery of uncovered losses

INTRODUCTION

Documentation & Procedures are Critical:

- Where the claim goes forward, the agency may or may not have actually made a mistake
- The agency may be unable to prove that they are not responsible

INTRODUCTION

Documentation & Procedures are Critical:

Unfortunately, E&O claims allegations are “he said, she said” and this is where documentation, combined with good E&O risk management procedures that are invariably followed, is a key defense mechanism.

Procedural vs. Knowledge Based Errors

- E&O claims can generally be broken down into two categories: procedural errors and knowledge-based errors.
- The spread of claims between these two categories is about 50/50 and in some cases there is overlap between the two

Procedural vs. Knowledge Based Errors

Procedural Based Errors:

- Lack of timely response
- Failure to:
 - Comply with underwriting guidelines
 - Add Additional Insured
 - Delivery a policy in a timely manner
 - Submit claims
- Sending incomplete information to carrier

Agency E&O Culture - Staff Awareness

Agency staff needs to follow procedures AND understand the concept of how E&O may occur

- The **actions or lack of action** of all agency staff affects the agency's E&O exposure
- A **culture of E&O awareness** can keep it top of mind and **is the first step in successfully avoiding claims**
- **Open discussions** will create an environment where agency staff is more comfortable *making managers aware of potential E&O claims*
- Fear of discipline or reprisal may delay bringing a situation to management's attention until it is too late to resolve the problem

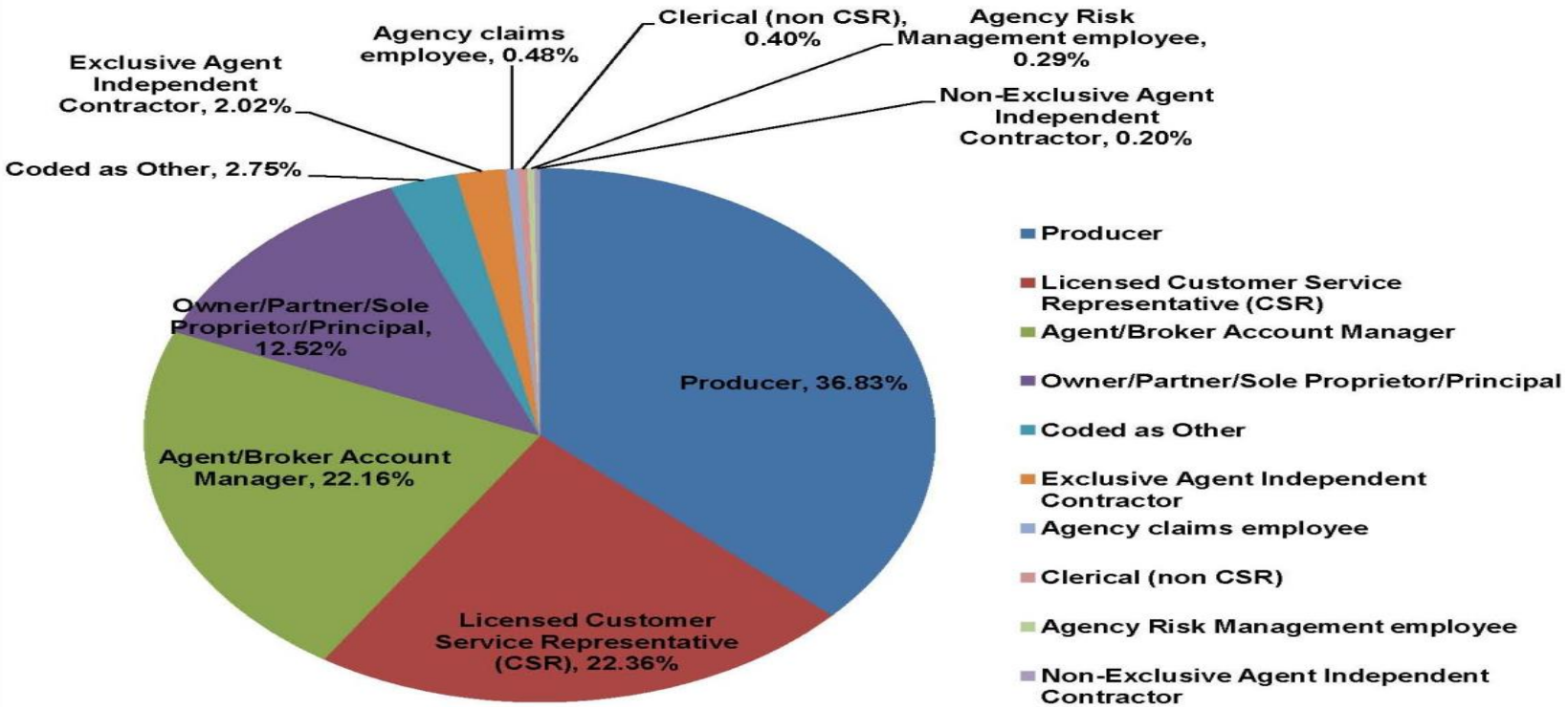
E&O CLAIM STATISTICS

Who is Suing Agents?

- Customers
- Carriers
- Third Parties
- Regulatory/government agencies

Person Involved

Claims Frequency - Person Involved Agency



E&O CLAIM STATISTICS

What's Driving Claims Frequency?

The **two transaction areas** that make up agency's largest profit margins also **drive claims frequency**.

- **40%** of all claims frequency arises from **new business**
- **Approximately 25%** of all claims frequency arises from **renewals**

E&O CLAIM STATISTICS

What types of policies are driving claims frequency?

- Any policy not properly written could generate a claim
- Commercial lines forms make up about 60% of the claims frequency by type of coverage
- Commercial lines frequency of E&O claims is double that of personal lines

E&O CLAIM STATISTICS

What type of Error/Omission

- Failure to procure coverage
- Failure to adequately explain policy provisions
- Failure to adequately identify exposures
- Failure to recommend coverage type
- Inaccurate/incomplete information provided to the carrier
- Failure to provide timely notice of a claim to the carrier
- Negligent misrepresentation
- Failure to add an Additional Insured/Loss Payee
- Failure to duplicate prior coverage
- Alleged failure to pay claim
- Failure to recommend adequate value/limit
- Failure to notify customer (re: policy cancellation)

AGENCY DEFENSES



DOCUMENTATION

INTRODUCTION

- Documentation combined with invariable agency procedures/practices are key defenses
- If an E&O claim occurred in your agency today, would it be prepared to defend itself?
- Do you have the proper policies and procedures in place to insure that your E&O carrier could mount a compelling defense?

INTEGRATION OF MULTIPLE AGENCY SYSTEMS

- “Agency management information systems” (or “AMIS”)
- Document management software
- Email systems such as Outlook
- Websites, social media, and instant messaging
- Phone systems
- Voicemail-to-text software
- Carrier underwriting and policy issuance systems

HE SAID VS. SHE SAID

- E&O claims or potential claims can often come down to “he said, she said” scenarios involving a lack of coverage or insufficient limits.
- Documentation of transactions and interactions with customers is the most important factor in defense.
- Documentation must also be tied to invariable internal procedures and practices to bolster your claims defense

IMPORTANCE OF INVARIABLE PRACTICE

- Documentation can only verify what **ACTUALLY** took place.
- How do you defend against allegations of failing to follow through on a request when you have no record of any contact between the agency and the other party?
- When the agency needs to prove that it didn't do something or the request was never received, that is when consistent business procedures provide a defense.
- **“Everyone doing it the same way, all the time, for everyone.”**

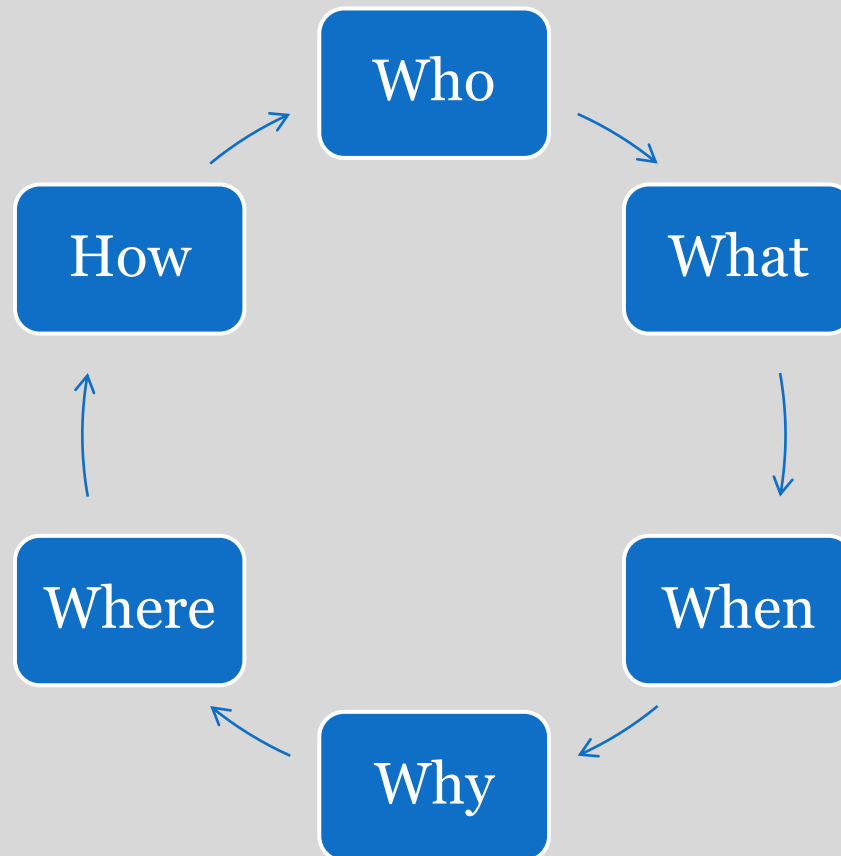
LINES OF DEFENSE

- Documentation – Formula for Documentation
- Invariable Practices
- Use of Disclaimers
- Written Follow-ups
- E&O Coverage Checklists

LET THE FILE TELL THE STORY

- It is **not just the quantity** of the documentation that is important, but also **its quality**
- The **sufficiency** of documentation is ***revealed at the point it is retrieved, not when it is created.***
- Documentation can ***represent the difference providing a defense against the allegation(s) and the need to settle***

WHAT MAKES DOCUMENTATION COMPLETE?



WHAT TYPES OF COMMUNICATIONS SHOULD BE IN THE CUSTOMER FILE?

- In-person Discussions
- Phone Calls (landline and mobile)
- Emails
- Instant Messages
- Live Chats
- Faxes (traditional and electronic)
- Text Messages
- Websites
- Social Media
- Voice Media

Communication Methods See Pg6-9

CHARACTERISTICS OF PROPER DOCUMENTATION

- Documentation should be **clear, concise, consistent**; include **what was done or discussed with specific dates and times.**
- **Don't use random abbreviations or jargon** that could be misunderstood.
- Documentation **should include unalterable date/time stamp** (Note: this is only possible in an automated environment).
- Be able to recreate the transaction step-by-step.

CHARACTERISTICS OF PROPER DOCUMENTATION

- All staff should **use the same system and procedures** in documenting customer files.
- Daily activity logs, copies of change orders, premium adjustments, premium audits, applications, renewal applications, declaration pages, and access to all policy forms should be in the file or easily accessible using a carrier website

KEY ELEMENTS OF THE CUSTOMER FILE

- The **ultimate goal of documentation would be to have every point of contact** with a prospect, customer, carrier or outside third party **documented**
- However, **it's more important to document some things than it is others.**
 - New business: coverage and exclusion discussions
 - Renewals: coverage and exclusion discussions
 - Limits and values
 - E&O coverage checklist
 - Claims
 - Endorsements and Cancellations

CARRIER CLAIMS AGAINST AGENTS

- Keep in mind that the **frequency of claims involving carriers against agents is increasing**, so it is important to **document all carrier correspondence and conversations.**

ELECTRONIC VS. PAPER FILES

- Use only one file storage method and all transactions pertaining to a customer should be located in that file.
- Electronic files provide a stronger and more credible defense than paper files since as data is created, edited and expanded upon, the automation system records the date and time of these changes.
- Paper files have the disadvantage, when used as a form of defense, in potentially lacking creditable proof as to the exact time and date that the documentation was created

ELECTRONIC VS. PAPER FILES

- Documentation is **only effective if the information in the files can be considered accurate**
- Any possibility that the information can be found suspect will diminish or eliminate the protection that documentation provides the agency
- There needs to be only one source of customer information. Today, that information is likely more effective when it is in electronic form.

DEFENSE METHOD - CHECKLISTS

- Roadmap of products to offer customer.
- Document coverages offered, accepted, rejected or not applicable.
- Can help avoid claims from:
 - Failure to procure the coverage requested
 - Failing to recommend coverage
 - Failing to identify exposures
 - Not adequately explaining policy provisions

CUSTOMER SIGN-OFF, ACKNOWLEDGEMENT FORMS, WRITTEN FOLLOW-UP

- The defense of an E&O claims can be bolstered when the customer file includes customer acknowledgement that an exposure exists, coverage is offered, and the insured makes the decision not to transfer the risk through the purchase of an insurance product.
- Customer acknowledgement can be documented by the agency through the use of customer sign-offs, coverage acknowledgement waiver forms, and written follow-up of discussions.

CUSTOMER PROPOSALS

- Insurance proposals can provide a wealth of defense documentation, including:
 - outlines coverages offered
 - highlights coverage limitations
 - any insured requirements
 - E&O coverage checklist
- Customer sign-offs acknowledging what was discussed should be included
- It is also a good idea to have the customer initial each page of the application and sign where required

PROPOSALS – CARRIER SYSTEMS

- Many agencies may present proposals exactly as they are generated from carrier underwriting systems.
- These proposals may not include appropriate disclaimer information or an area for customer sign-off.
- The agency may want consider adding a supplemental page for both of these.

WAIVER FORMS

- Some states require acknowledgement waivers to be signed for various coverages (i.e. – UM/UIM, earthquake, flood)
- ACORD also offers some template forms.
- Carriers may specifically require waivers when certain coverages are rejected.
- Waivers are important for E&O defense; therefore, agencies need to determine when a waiver is required.

SIGNED APPLICATIONS

- A carrier may not require a completed and signed application; however, a completed and signed application should be obtained from all insureds.
- Insurance policies are legal contracts and as such are subject to the common law rule of “parole evidence”.
- Once the policy has been issued the agreement between the insured and the carrier is what is in the policy, not in any proposal or oral promise made before the policy’s issuance.

DISCLAIMERS

- Disclaimers aide in the defense of E&O claims and reinforce customer communications with clear guidance.
- Nearly all of communications media can include disclaimer language.
 - Voice Mail
 - Websites
 - Fax, Email, and Instant Message Sample
 - Claims Reporting
 - Social Media
 - Proposals