
ERRORS & OMISSIONS

RISK MANAGEMENT ALERT

What Should You Do When A Customer Makes an Allegation of an Error or Omission?

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In the event that an agency customer had a claim denied by their carrier, or for which there were not enough limits to cover the loss, the customer may decide to contact your agency and allege that they either had the wrong coverage, or that the coverage they had in place had insufficient limits. If this occurs, there are several things that you need to do, and practices that you should avoid, to ensure that you do not compromise your E&O coverage.

Steps to take to ensure that you do not compromise your E&O coverage:

- **Timely reporting of incidents and claims.** Incidents are facts that are made known to you that may result in an E&O claim. An E&O claim is a demand for money or services. It is important that you notify your E&O carrier if there is an incident or claim to preserve your coverage.
- **A subpoena for a customer's file should be reported to your E&O carrier.** A subpoena for a customer's file is a fact-finding endeavor. Not all such subpoenas result in an E&O claim being pursued, but having legal counsel review the request to ensure that the response is appropriate may prevent additional issues from arising. Under your Utica National E&O policy, subpoenas for customer files may be covered and defense counsel may be assigned to assist you in the response, if necessary.
- **When asked, advise your customer that the issue has been reported to your carrier.** You should not discuss issues pertaining to an open claim with the claimant. You should continue speaking with this customer about other insurance matters, and provide them the same service you would if there was not a claim. However, you should not discuss the claim with the claimant.

Things you *should never do* when a customer makes an allegation of an error or omission concerning, or tenders a claim to, your agency:

- **Never make any admissions. This includes apologies, which may be construed as an admission.** Admissions may be used against you if the matter is litigated. Simply state that you will take the customer's information and report the matter to your E&O carrier for review.
- **Never make a payment to a customer on a claim prior to discussing the matter with your E&O carrier.** Making payments, yet another form of admission, may cause you issues if the customer intends to pursue you despite the payment and may have serious repercussions under your E&O policy as a

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breach of policy conditions. If you get a demand for money or services from your customer or a third party, report it immediately to your E&O carrier's claim department so the E&O claim specialists can review the matter and provide you with the appropriate assistance.

- **Never attempt to “fix” the issue.** Similar to making payments, providing services or advice to attempt to “fix” the issue, without first speaking to an E&O claim specialist, may result in exacerbating the situation. Submit the claim or incident and discuss it with an E&O claim specialist before proceeding.
- **Do not delay on reporting the matter to your E&O carrier.** Failure to report a claim in a timely manner may result in a disclaimer of coverage.

Do not jeopardize your E&O coverage because you think a claim will be within your deductible or you believe the hassle of reporting the claim will not be worth the effort. The potential for claims to escalate is great, and the time it takes to report a claim and discuss the facts with a claim specialist is insignificant when compared to the time and expense of a litigated E&O claim.

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