

Section 10: Lessons Learned: Cases with Happy Endings



Take a look at these of examples of E&O claims and what the agency did well. Share these with your staff and talk about how your agency would fair if it happened to you.

- ✓ **FLOOD WAIVER** - An insured suffered a flood loss, then sued its agent for damages for failing to advise that her homeowner's policy did not cover all hurricane damages, including flood, since it had a "hurricane deductible." The agent's customer file included a signed flood insurance waiver. When provided with a copy of this waiver, the Plaintiff's counsel in turn provided us with an order of dismissal with prejudice.
- ✓ **LESSER COVERAGE** - The agent was accused of changing the renewal policy to one of lesser coverage. The agent sent a letter outlining the prior year's coverage and confirming the differences in the new reduced coverage requested by the customer. The confirmation letter reflected the agreement between the agent and customer of the lesser coverage. The customer never contested the written agreement until suit was filed.
- ✓ **DECREASE REPLACEMENT COST VALUE** – The agent met with the plaintiff at renewal to review the insurance for the plaintiff's commercial building. The plaintiff decided to reduce the RCV on the building based on the decreasing property assessments. A CSR for the agency sent two letters after the meeting confirming the plaintiff's decision to decrease the RCV of the building. After a loss the plaintiff insisted that he did not instruct the agent to decrease the RCV and claimed that the confirmation letters from the agency were not received. The agent made a persuasive witness and the two letters confirming the reduction of coverage provide an excellent defense.
- ✓ **FOR THE 5TH TIME, DO YOU WANT FLOOD COVERAGE?** – An agent insured a small manufacturing facility. During the first visit with the customer the agent observed a creek about 50 yards behind the building. The agent recommended flood insurance in the proposal on the first visit and on every subsequent visit to the property. Each year the customer file was documented to show the recommendation and subsequent rejection by the customer of recommended flood coverage. In the 5th policy year the insured suffered significant flood damage when the creek overflowed its banks during a "storm of the century". The insured alleged that the agent failed to adequately explain the "water" exclusion in his policy thereby confusing him about the necessity of flood coverage. The documentation of offering flood coverage won the day.
- ✓ **DON'T ROCK THE BOAT** - The plaintiff alleged failure to procure liability insurance coverage for its rental of small boats. The agency file (all contained on the agency management system) clearly documented that the customer called and canceled the insurance on the rental boats stating that the business was no longer renting boats. Then later, when the business again sought to procure the insurance, the agency well-documented its requests for information from the client to underwrite the policy. The customer file documented the customers repeated

failure to provide the information, including an inquiry on the day of the accident wherein the customer said they were busy and would get back to the agency later in the week with the underwriting information. The agency documented well the customer's original decision to cancel the coverage. The file also contained all of the agent's attempts to get the required information to re-procure the coverage, which efforts might have been successful but for the client's failure to timely provide the underwriting information. The agency personnel made good impressions during the deposition.

- ✓ **UNDERINSURED AND STILL TRYING TO SAVE MONEY** - The insured was grossly underinsured for the value of property stored at their record storage facility. Using faxes, emails and letters, the attorney was able to show that whenever the insured had requested info on buying more coverage, a CSR for the agency had responded with the requested information within 24 hours. There was a pattern where the insured would request information, get it, then start questioning ways to reduce the cost as opposed to the original reason of increasing limits. The policyholders would then inevitably drop the inquiry. This happened in fits and spurts over a period of years, and the insured just never pulled the trigger to buy the additional coverage needed. The agency was always prompt in providing the appropriate information needed to do so. The attorney was able to show a pattern and practice for the insured calling and not acting on the information provided by the agency. The case settled for a fraction of the underlying damages. This case demonstrates how the agency's conduct and record-keeping brought about a favorable result.
- ✓ **A TOUCHY SUBJECT** - An agency was sued by its customer, a boat manufacturer, because the manufacturer had an EPLI claim but no EPLI coverage. The boat manufacturer was seeking reimbursement of attorney fees spent to defend the claims and the amount paid to the claimant to settle the manner. The combined amount the manufacture was suing the agent for was well over \$100K. After reviewing the agency's customer file the attorney found that the proposal had clearly listed the fact that the policies available had no EPLI coverage. In addition to clearly listing in the proposal that the coverage available did not provide EPLI coverage, the agency had the customer sign and date the proposal and also had the customer initial each page. This documentation got the lawsuit dismissed.
- ✓ **EXACT COVERAGE REQUESTED: AGENT MEETS LEGAL DUTY** – This case summary highlights the need for agents to know their state's duty to advise and standard of care. The agent gave the customer the precise coverage he had requested. The agent's file was well documented and demonstrated that they had in fact obtained the coverage exactly as it was requested by the customer. However, when the customer sustained an uncovered loss, he sued the agent claiming that the agent should have not only procured the coverage that he had specifically requested, but the coverage that would have covered this specific claim. While the agent had clearly met his obligations under current state law, and a summary judgment in favor of the agent was obtained, counsel for plaintiff proceeded with an appeal to the State Court of Appeals in an effort to expand the agent's duty to suggest coverage according to the insured's business operations. When agents go beyond their legal duties as a normal business practice, make sure that employees are careful to execute in the risk exposure assessment process and in offering and appropriate coverage for the customer. Document files accordingly.

- ✓ **COINSURANCE EXPLANATION DOCUMENTATION TO THE RESCUE** - An agent sold a builder's risk policy and asked the insured for the completed value. The insured initially advised it was \$3 million and then reduced it to \$1.5 Million. As result of the reduced value, the very astute agent provided a letter fully explaining the co-insurance penalty one could face if they were underinsured. A loss occurred and sure enough the customer was underinsured. The case was tried and the jury returned a defense verdict in favor of the agent. The jury advised the court that the one piece of evidence that influenced them to side with the agent was the letter from the agent explaining what would happen if the insured was underinsured. A suggested best practice could be that all customers receive with their policy a letter explaining co-insurance.
- ✓ **CONCRETE EVIDENCE - STOP-GAP/EMPLOYERS LIABILITY DOCUMENTATION** - An agent was asked to quote a concrete statue manufacturing company for liability. The company had been insured with Carrier A for 25 years, however, their agent representing Carrier A died and they found the new agent. Not representing Carrier A, the new agent provided a liability coverage proposal for coverage with Carrier B. Midway through the first policy term with Carrier B, the owner of the concrete statue manufacturing company decided that he felt more comfortable being insured with Carrier A. He knew what to expect with Carrier A and wanted to return to them for coverage. It was purely a comfort issue with the carrier and not the agent. The owner had his office manager call the home office of Carrier A and obtained the name of an agent that could write the coverage for them with Carrier A. The new agent representing Carrier A met with the owner and the owner provide the history of being a long time insured and asked for a quote from Carrier A. The agent was instructed to set up a meeting with the office manager which he did. The office manager gave the agent a copy of their current policy with Carrier B and instructed him to quote with Carrier A the same coverages and the limits currently written by Carrier B. The agent did exactly that and was instructed to order the policy. When the agent reviewed Carrier B's policy, he mistakenly thought there was a Stop-Gap Employers Liability Endorsement for operations in a monopolistic state. The agent's quote request to Carrier A included request for Stop Gap coverage. Carrier A would not provide a quote for the coverage as the concrete manufacturing facility class code did not qualify for a Stop-Gap endorsement. The agent advised the insured that Carrier A refused to write the Stop-Gap Coverage endorsement. The insured acknowledged the lack of coverage but still ordered the policy. The policy was renewed the next three years, with each year the insured asking the agent to duplicate the prior year's limits and coverage. Each renewal the agent followed the instructions of the insured. The customer reviewed the policy form and paid for the policy, but never requested any other changes to the policy nor addition of the Stop-Gap coverage. In the fourth policy year an employee died in a work-related accident and the insured was sued for intentional tort for which there was no coverage. The concrete statue manufacturing company owner sued the agent alleging he failed to provide the "full coverage" requested. The agents file documented every interaction with the customer and the carriers. In summary agent's file contained all of the documentation necessary to defend the agency.
- ✓ **COMPLETED PRODUCTS CREATE LIABILITY?** - The agent procured products liability insurance for a shocks and struts manufacturing company. The owners of the company were nearing retirement, sold the company to another firm and then canceled their products liability

insurance. Subsequently, a person was injured due to a failed strut. The insurance company denied the claim on the basis that the company's product liability did not cover the products after the coverage was cancelled. The company and its owners were sued for the personal injury. The agent was sued for failing to properly advise and obtain coverage for products after the sale of the company was finalized. Unfortunately, the agent's lack of experience was a challenge in defending the claim. Furthermore, the company and owners argued that the agent assured them that they were properly covered for products liability after the sale. The attorney of the owners failed to show that the agent had a special relationship with the company which would have increased the duties owed by the agent, thus the court granted partial summary judgment in favor of the agent on the issue of failure to advise. The trial resulted in a jury verdict in favor of the agent on the issue of failure to obtain the proper coverage. The jury sided with the agent because they felt the company owners were sophisticated businessmen who should have known what type of coverage that they needed. In addition, the defense attorney was able to show that the company owners were the ones who made the decision to not purchase the additional coverage.