

NAVIGATING THE E&O JUNGLE

A guide to E&O coverage for agents and brokers



Agents and agencies face a costly risk

The role of an insurance agent is to help clients manage their risk so they can pursue their lives and businesses with less worry. But what about the agency's own risk? Insurance agents are expected to place the right coverage at the right time, to process the paperwork and payments correctly, and to satisfy the requirements of both the policyholder and the carrier. However, mistakes happen. And should a policyholder or carrier believe your failing to satisfy these requirements resulted in financial loss, they may choose to take legal action.

E&O coverage for insurance agents helps mitigate that risk. Each year, an estimated one out of eight agents will report an E&O claim to their carrier.¹ Even with coverage, however, the cost to defend such a claim and to pay damages can be devastating to an agent or agency, and that is in

addition to potential reputational damage as well as the loss of a valued client.

Recent years have seen multiple events that often spark claim lawsuits, including the COVID-19 pandemic and subsequent lockdowns that depressed the economy, strained healthcare systems, and drained both personal and business funds. There has also been significant growth in cyberattacks—all this in addition to hurricanes, wildfires, and other disasters that have led to a hard insurance market for many lines.

If your agency has not experienced an E&O claim recently, you could be forgiven for thinking, “It couldn't happen here,” and continue with business as usual. Or perhaps you've been through a wrenching E&O claim recently that has made you gun shy and cautious not to repeat the same

¹ <http://www.insurance-agents-errors-omissions.com/>

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mistake. As a result, you may take a legalistic approach to client interactions, reducing your role from trusted advisor to order-taker. Neither of these approaches, by the way, will shield you from E&O risk, and may well increase it. So how can you reduce E&O risk while ensuring that you, your agency, and your clients are served to the best of your ability? How do you walk that line? That's the question we will address in this guide.

One point before we begin: There are plenty of excellent guides out there that will detail the specifics of E&O risk in legal terms. This is not one of them. We encourage you to familiarize yourself with E&O risk in general and any specific laws or regulations in your jurisdiction.

Rather, we're going to present a holistic approach to E&O risk that considers these risks in a broader context—one intended to benefit you, your agency, and your clients.

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Duty of care: Between a rock and a hard place?

Nothing quite illustrates the concept of the double-edged sword as an agent or broker's duty of care to their clients. If you take the responsibility to the extreme—by, for example, making subjective assumptions or decisions in your client's stead—you have overstepped your bounds. At the same time, however, if you're too disengaged to discover the full extent of a client's risk, you are equally at fault.

To reiterate, we're not going to delve into the specific scope or definitions of "duty of care," as they can vary from jurisdiction to jurisdiction. But we can say this: If you honestly offer the best advice you possibly can while educating and informing your clients on their current and emerging risks, you will go a long way towards managing your E&O risk. That means taking the time to understand the client's needs, learning

and communicating the details of specific policy forms, and ensuring that the documentation is complete and accurate. If you take this advice, you're less likely to fall into the traps that can lead to lawsuits: promising things you can't deliver, making assumptions about your client's wishes, or speaking in absolutes.

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When do E&O incidents happen?

E&O can occur at any point in the sale or servicing of a policy. E&O carrier Swiss Re Corporate Solutions reported these results for commercial lines in 2020 (results for personal lines were similar but not

Transaction type: As far as the timing of an error in the sale or servicing of a policy, the top five claims for commercial lines in order of frequency occur during renewals, new business (existing client), new business (new client), midterm change, and cancellation.

Process step: In order of frequency, the top five procedural steps where claims occurred in commercial lines resulted from recommendations (type/limit), claims, applications, renewals, or policy changes.

Error type: When looking at the nature of the failure, failing to procure coverage is three times

What about certificates? Although Swiss Re did not include information about certificates and evidences of insurance (COI, EOI), we know from experience that they are a big pain points for agencies. When executed poorly, COIs can leave customers frustrated and create E&O exposures. This often occurs when less experienced personnel are assigned to complete them on the misconception that they are straightforward. In fact, COIs can be an E&O minefield, and they require experienced professionals to compare them against the insured's requirements and their policies. Do they need an additional insured with completed operations? A waiver of subrogation? Primary non-contributing wording? All these circumstances come under consideration.

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How to avoid these errors

Your best defense against E&O liability is to stick to the basics: Encourage your producers and account managers to improve their technical knowledge; train them to fully educate policyholders; and establish strict procedures for processing applications, checking policies, and properly filing paperwork. It is also important that you hold people accountable for following the procedures you set up. We strongly recommend taking the following steps to not only to reduce your E&O exposure but also to better serve your clients.



Educate yourself

The best way to avoid misrepresenting your products is to improve your technical knowledge. Start by mastering your portfolio. Familiarize yourself with standard policy forms and take care to understand the nature of each risk described. One way to gain this expertise is to specialize by industry or insurance type, a decision that can position you as a desirable expert partner for clients.



Educate your insureds

Make sure your clients fully understand what they're buying. Dispel the myth of "apples to apples" coverage for them by explaining that no two insurance companies or policies are the same. For example, walk them through what a term such as "replacement cost" means policy by policy. Policyholders often assume this language means they have up to the policy limit to replace a building, for instance. If the policy says it will replace it with "like or similar kind," let them know that, unless stated otherwise, that does not include the cost to upgrade to current building codes. There is only one way to know these details: **Read. The. Policy.**

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Ask the right questions

All too often, a client will put their current policy on the table and say they want the same coverage but at the lowest possible price. If they haven't suffered a loss, that policy may seem adequate—whether it is or not. When conducting new business or a renewal, always take the time not only to complete a high-quality survey of the insured's risk but also how they prefer to manage it. How much risk do they want to transfer to the insurance company? How much risk are they willing to assume with their own assets? How do they want to rebuild in the event of a loss? The answers to these questions will inform your recommendations.



Submit the application and review carrier quotes

Once you've asked the right questions to bring the client's risk into focus, document the answers in an application and submit to carriers. Carriers may respond with a combination of copyrighted and proprietary forms. It is critically important that you review all forms, as some will inevitably include limitations and exclusions on the coverage presented on the policy summary.



Create a thorough proposal

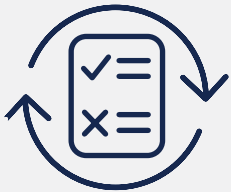
Once you've received a batch of quotes, spend sufficient time reviewing them against one another and then explaining to your client what your proposed solution includes. Encourage questions, and research the answers if you don't know them immediately (again, avoiding promises and absolutes). We recommend that your proposal include options that improve the client's coverages and terms that go beyond what your customer requests. For example, if they are requesting

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\$5,000,000 in umbrella limits, also include an option for \$10,000,000. In addition, include options for coverage they may not currently insure, such as cyber liability, employment practices liability, earthquake, flood, etc.



Follow through on documentation and policy checking

Across the entire sales, renewal, or servicing process, you should continuously review documents against their precedents (e.g., quotes vs. applications) to ensure they are accurate and that they deliver what is expected. Document timely follow ups and check to be sure the policy procured is as good as or better than the one your customer requested and you quoted. A best practice would be to have someone other than the person creating these documents review them, preferably someone whose attention won't be drawn away by other activities. In addition, those reviewing documents should operate according to strict, well documented processes and procedures to avoid error. These tasks may be best delegated to an interested third party—either internal or external—trained to follow these procedures to the letter. These professionals need the skills and knowledge to check data sources including supporting documentation, applications, proposals, quotes, and policies, and catch any discrepancies or errors.

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Use checklists

Checklists are a great loss prevention tool for agencies and their clients alike. Many agency management systems include checklists, or you could create your own or download one published by industry associations such as Big I. Does your commercial property client want actual cash value or replacement cost? Business income coverage? Are there any additional insureds to include on that general liability policy? What about employment practices coverage? Workers' compensation? An umbrella?

Agencies that consistently use coverage checklists reduce their E&O exposure by ensuring that a discussion occurs about available coverages and limits. A good checklist includes coverage choices and optional coverages a client might want to accept or reject. It also documents that the agent asked the questions on the list, as well as affirms, by signature or initials, that the policyholder was made aware of them and has opted in or out of each individually.

Checklists are also a great tool for upselling or side-selling. They can spur action from clients who may have overlooked certain risks, who haven't fully considered how they would prefer to handle specific types of losses, or who are overly focused on cost at the expense of coverage (in many cases, those are the policyholders most likely to suffer uninsured or underinsured losses and blame the agency). The only caveat for using checklists is to use them consistently across the board. **The existence of a checklist that went ignored can work against the agency in a lawsuit.**

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In conclusion

Reading policies, double-checking sources, and having risk-based dialog with insureds is highly detailed work. But it shouldn't be a chore. Rather, think of these tasks as part of a greater effort to better service your clients and sell more and larger policies in the process. Hopefully, you are in this business to help people protect themselves, their families, and their businesses, not to be a mere order-taker. Being a client's trusted advisor can be satisfying, and it can reduce rather than increase your E&O risk when done well. Matthew Davis, vice president and claims manager with Swiss Re Corporate Solutions, put it well in a recent article for Big I: "There is a lot of territory between making impossible promises on a website, such as 'the best coverage at the best price,' and sitting on your hands. The middle ground is where you need to operate." ²

² [Why Failing to Upsell Coverages Creates a Lose-Lose Scenario \(iamagazine.com\)](https://www.iamagazine.com)

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ReSource Pro: A trusted partner to reduce E&O Risk

ReSource Pro leverages deep insurance industry expertise, forward-thinking research, and proven methodology to help retail agencies and brokers accelerate profitable growth, optimization, and transformation of their business. We offer comprehensive solutions aimed at reducing E&O risk while driving growth, profitability, and scalability. These include:

Policy Servicing

Empowering your agency's producers also means delegating essential but nonrevenue generating tasks such as policy checking, endorsements to a cadre of professionals dedicated to the task. This liberates staff to focus on higher-value, more interesting work. It also frees up time and resources for the kind of mentoring and training that will develop engaged service staff and high-earning producers. Your team will be able to acquire more clients and take a value-driven, risk-based approach to sales, renewals, and account servicing that will better protect policyholders and generate more revenue. A best-in-class partner like ReSource Pro leverages scale, experience, standardization, automation, and continuous process optimization to make your back office more efficient, accurate, and responsive to client needs.

Policy Insights

ReSource Pro's Policy Insights delivers faster, more accurate insurance policies with human-verified policy checking, analysis of errors, and more to optimize your entire post-bind process and deliver accurate policies to your insureds faster. On average, our team uncovers nine errors on every policy we check for

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agencies. That's alarming, considering that a policy is the promise you sell to your customers. Your agency can quickly resolve policy discrepancies and seamlessly delegate resolution steps, such as updating the agency management system or ordering and correcting endorsements, in our online Account Manager Portal. Our dashboard helps you to understand how your carriers are delivering that promise— which is critical both to your customers' satisfaction and your exposure to E&O risk—as well as how your internal service team is handling discrepancies.

Certs Center

Certificates and evidences of insurance (COI, EOI) are needed at critical times for insureds. When executed poorly, COIs can leave customers frustrated and create E&O exposures. Bring peace of mind to your customers and agency staff with an end-to-end managed service offering and standardization process that limits E&O risk and helps you deliver best-in-class accuracy. Our certificate-specific teams are available throughout your working day to ensure fast turnaround times for on-demand requests, while our proprietary, cloud-based task management and tracking system allows for unrivaled insight into your certificate management and issuance operations.

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ReSource Pro is a trusted strategic operations and advisory partner relied on by insurance organizations to accelerate business growth without sacrificing quality or insurance domain expertise. With a global team of over 9,000 employees, ReSource Pro serves more than 1,800 insurance carriers, MGAs, wholesalers, and retail agencies with strategic consulting, business process management optimization, and transformative data and technology solutions. ReSource Pro consistently earns a +95% client retention rate and was recognized in 2023 by Inc. 5000 as one of the fastest growing companies in the U.S., having received this honor 14 times since 2009.

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