

Avoiding E&O Claims: 5 Best Practices for Insurance Agents

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Even the most experienced agents and brokers can find themselves facing an Errors & Omissions (E&O) claim—I've seen it firsthand.

These claims are more common than many realize. In fact, one in eight agents will report an E&O claim each year. The average claim costs around \$40,000, and that number is climbing by about 10% annually, according to InsuranceThoughtLeadership.com.

Whether the claim comes from a policyholder or a carrier, the financial and reputational impact can be serious.

At Berkley Service Professionals, we help agents navigate these risks every day. One of the best ways to protect yourself is by building habits that not only help defend against claims but often prevent them altogether.

Know your legal duties

Understanding your legal responsibilities as an insurance agent is key to avoiding E&O trouble. Two concepts that come up often in claims are agents' "duty of care" and fiduciary duty.

- **Your "duty of care."** When you help a client secure insurance, the law generally sees you as working on behalf of the insured, not the insurer. That means you're expected to act in your client's best interest, using reasonable skill and diligence to help them get the right coverage.

If a client asks for specific coverage, or if their situation clearly calls for something more comprehensive, you're expected to advise them accordingly. That includes discussing higher limits or additional protections they might not have considered.

- **Fiduciary duties and "special relationships."** You also have a fiduciary duty to be transparent, honest and proactive in sharing information that could impact your client's insurance decisions.

If you've worked with a client for a long time or positioned yourself as an expert, the law might say you have a "special relationship" with that client, which means you have an even higher duty to advise.

Courts look at a few things to determine whether this "special relationship" exists, such as how long you've worked with the client, how involved you are in their insurance decisions and

whether you've been paid extra for your advice. So, if you've built strong, long-term relationships with your clients, know they come with added responsibility.

5 best practices to protect yourself from E&O claims

1. **Keep a strong file.** When a claim arises, your file becomes your first line of defense. It should include signed applications, emails, policy documents and notes from client conversations. These records help establish what was discussed and decided, and they can make or break your case.

Too often, we see agent files that are missing key documentation. Without written proof, it becomes one person's word against another's, and that's not a position you want to be in.

2. **Document everything.** Verbal conversations are easily forgotten or misinterpreted. A quick follow-up email to confirm what was discussed can go a long way.

This is especially critical when it comes to coverage decisions. Our claims team sees it time and again. Agents who offered better coverage but didn't document it end up accused of failing to procure adequate insurance. In fact, failure to procure is behind about 80% of the E&O claims we see.

3. **Always quote better coverage — and keep records.** Underinsurance is a growing trend in E&O litigation. When clients don't have enough coverage and a loss occurs, they often ask: "Why didn't you tell me I needed more?"

Quote better coverage at every renewal, even if you know the client is likely to decline it. The key is to document that offer and keep the quote. That way, if a claim arises, you can show the client made an informed decision.

This applies to limits, extended reporting periods, retroactive dates and other policy enhancements. Offering all available coverage options, not just the minimums, can help avoid future disputes.

4. **Know your role in the claims process.** When a claim is reported, it's natural to want to help your client. But remember that you're not an adjuster or a lawyer. Once the claim is in the carrier's hands, your role should be limited.

Avoid making promises or predictions, as even well-intentioned comments like "Don't worry, it's covered" can come back to haunt you. If you need to talk to your client about a claim, do it by phone rather than email because written statements can be taken out of context and used against you later.

5. **Lean on your E&O carrier and legal counsel.** If you get a subpoena or document request or are named in a lawsuit (even as a witness) contact your E&O carrier immediately. Many policies, including ours at Berkley Service Professionals offer subpoena assistance and legal support. Having counsel involved early can help you avoid missteps and limit your involvement in disputes.

Talk to us

E&O claims are a reality in our industry. But with the right habits in place, you can reduce your risk and protect your business. These aren't just legal strategies; they're smart business practices that build trust and help you serve your clients better.

At Berkley Service Professionals, we're here to support you with tailored E&O coverage and practical risk management resources. If you'd like to learn more, visit our website at BerkleySP.com or reach out to our team directly.

About the Author



Amanda joined Berkley Service Professionals in March of 2022. She has more than 20 years of experience underwriting professional liability insurance working in both large and small insurance company environments, as well as for managing general agents. While her expertise is in miscellaneous professional liability, she has spent more than 26 years in underwriting insurance services, real estate risks, lawyers E&O, accountant's E&O and technology E&O in both the admitted and non-admitted markets. Amanda is responsible for underwriting primary and excess business within the wholesale insurance community, fostering strong broker relationships and achieving profitable

growth for Berkley Service Professionals' expanding miscellaneous professional liability, insurance and real estate services portfolio.

Amanda is a licensed insurance agent and surplus lines broker in the state of Connecticut. She is based in Glastonbury, Connecticut and can be reached at afederici@berkleysp.com.

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