



Insurance Agents E&O Claim Scenarios



Berkley Service Professionals is your partner in risk management

If an alleged error or omission occurs, a business could become entangled in a dispute or litigation that can be costly in terms of time, money and loss of reputation.

Our dedicated and experienced claim professionals help insurance professionals manage these issues and concerns so that they can focus on their business.

With Insurance Services E&O insurance from Berkley Service Professionals, your clients can rest assured that they'll be supported when they need it most!

These claim scenarios provide insight into instances where a claim may occur and the lessons learned.

A Reporting Slip-Up

An insurance broker secured commercial general liability (CGL) coverage with an insurance carrier for the owner of an apartment building. A third party suffered bodily injury from a slip and fall in the parking lot of the building and filed a lawsuit against the owner and the property manager. The owner reported the claim to their broker. Unfortunately, the broker failed to notify the CGL insurance carrier that would have, in all likelihood, provided defense and indemnity for the bodily injury claim if properly notified. Instead, the CGL carrier denied coverage for late notice. Because no defense was provided, there was a default judgment against the apartment building owner for more than \$575,000. Negotiations ensued and a settlement for \$250,000 was achieved by Berkley Service Professionals on behalf of the broker (who contributed \$10,000 toward the settlement through their deductible). Defense costs were about \$15,000.

Lessons learned: Notice of any incident/claim from a client to an insurance broker should be immediately reported to all appropriate insurance carriers. A notation should be made in the client's file that the matter was reported and include confirmation of receipt of the incident/claim.



Blown Away by Non-Payment

A wholesale apparel distributor in Florida suffered property damage during a hurricane. When they contacted the insurance provider to file a claim, they were informed the apparel distributor did not have coverage for property and wind damage due to non-payment of the policy premium. Because the policy was established on a direct-bill basis, a notice of cancellation had been provided by the insurance carrier directly to the apparel distributor (the distributor's insurance broker was also notified). However, the apparel distributor alleged that it called the insurance broker to inquire about coverage prior to the hurricane and was advised by the broker that coverage was in place and paid. Unfortunately, this allegation was confirmed by an email from the broker to the apparel distributor. The distributor had a number of insurance policies and the broker mistakenly advised that the wind coverage policy was still in effect.

The damages proved difficult to assess due to the apparel distributor's ownership of numerous structures on or near the property and the lack of photographs of the damage. In addition, repair documentation was missing and there was no record of the insurance policy that would have been in place had premiums been paid. An expert was retained and made a site inspection. However, analysis was delayed significantly because of difficulties obtaining prior insurance policies which were in effect to determine damages. After nearly four years of investigation and depositions, negotiations ensued and a settlement for \$1.2 million was achieved by Berkley Service Professionals. Defense costs were \$27,000.

Lessons learned: Even when the premium is directly invoiced to the policyholder, the insurance carrier typically notifies the insurance broker when payment is not received. In turn, the insurance broker should contact

the client—both verbally and in writing—to ascertain the situation and advise the client of the consequences of non-payment of the policy premium. Further, brokers should use extreme care when responding to a client's inquiry about in-force coverage.

Be Sure to Ask

A home builder built a custom home in another state. The homeowner later made claims of construction defects. The insurance carrier declined coverage as its builder's risk policy did not cover projects built outside the domicile state of the builder. The builder had not notified its insurance broker that it was constructing homes outside the state but still alleged negligent misrepresentation and negligent failure to procure appropriate insurance coverage to cover this scenario.

The builder settled its lawsuit with the owners for \$97,500 (out of pocket) and assigned its rights against the insurance broker to the homeowners. The owners, in turn, sued for recovery of additional funds against the insurance broker, including legal fees and other costs of approximately \$300,000. Mediation was unsuccessful and the case moved toward trial.

The case ultimately settled on the courthouse steps, after depositions revealed that the builder had repeatedly declined coverage for construction defects, which this case hinged on, and that the insurance broker issued certificates of insurance on the builder's behalf to an out-of-state lender, which implied the broker was aware of the out-of-state activity. The homeowners accepted a settlement of \$160,000, which was in addition to the \$97,500 already paid by the builder. Berkley Service Professionals also settled with the builder to cover roughly half of its settlement and defense costs for a total of \$92,750. In addition, the insurance broker contributed \$80,000 toward legal expenses through its deductible.

Lessons learned: Regardless of what the insurance application specifies, an insurance broker should ask where and in what states their client currently conducts or intends to conduct business. The question and response from the client should be in writing and documented in the broker's files. In addition, when providing certificates of insurance where there are known location exclusions, the requests should be scrutinized before issue.



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A Timely Reminder: Check the Policy

When a longtime client purchased a new home, their insurance agent moved the homeowner's policy from one carrier to another. The transition seemed simple, but it soon exposed a costly oversight. Under the prior policy, the client carried scheduled coverage for a luxury watch valued at \$17,500, ensuring full protection if anything ever happened to the item. But after the agent transferred coverage to the new insurer, the watch was no longer listed.

Shortly after the move, the client discovered the watch was missing and promptly filed a claim. To their surprise, the claim was denied because the watch wasn't scheduled on the new policy. The agent argued that the client had failed to list the item on the new application, while the client insisted the agent should have transferred all previously scheduled items, especially one of such high value. With no coverage in place, the client demanded reimbursement directly from the agent for the full value of the timepiece.

Through informal settlement discussions, the parties resolved the dispute before a lawsuit was filed. The professional liability policy covered \$10,000 of the \$15,000 settlement amount. While the settlement prevented further escalation, it also highlighted a preventable lapse in professional practice.

Lessons Learned: This situation underscores the importance of performing a detailed, line-by-line comparison when moving coverage between carriers. Scheduled items, particularly high-value items, cannot be assumed to roll over automatically. Insurance professionals must verify that applications, limits, and endorsements match the expiring policy to ensure "apples to apples" coverage and prevent avoidable claims.



Careless Consultation

A landscaping company made a claim with their property insurance company for the destruction of \$320,000 in materials and business interruption after a winter storm, which saw freezing temperatures and caused power outages. The property insurance company denied coverage for loss of inventory and business interruption due to policy exclusions for "extreme temperature" and "property in the open." Because the loss of materials was excluded by the property insurance company, the business interruption coverage was not triggered. The landscaping company then made a claim against their insurance broker because they had relied on the broker to secure appropriate coverage.

During the claim process, questions arose about the property insurance coverage as the policy did cover "ice" damage and had an endorsement that extended to items 1,000 feet beyond building limit. However, further documentation showed that the landscaping company signed a statement in the insurance application that it had only \$50,000 of materials on site. Based on this statement, the landscaping company ultimately settled its destruction of materials claim with the property insurer for \$46,000.

The landscape company maintained their claim against the insurance broker for the uninsured portion of the property loss (about \$275,000). Without incurring any legal expenses, Berkley Service Professionals negotiated a settlement of \$185,000, which helped the insurance broker preserve an amicable relationship with their client. The broker paid this amount directly, as it was within their deductible.

Lessons learned: Insurance brokers must discuss all potential exposures with their clients and explain which risks are covered—types of claims and dollar values—under a standard policy and which risks require additional premium. In addition, it is important for an insurance broker to know their client's business well. This should include personal visits to assess and discuss potential exposures with the client.



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Over Exposed

A property insurance company denied coverage to a school district for flooding and mudslides that occurred at a middle school after a forest fire. The coverage was denied because the type of damages claimed were specifically excluded from the policy. The school district sued both the property insurance carrier and the broker, in part claiming that the insurance broker did not properly explain coverage. The school district reached a \$250,000 settlement with the property insurance carrier but maintained a separate claim against the broker.

Berkley Service Professionals resolved the claim during mediation for \$42,500, which was significantly less than the original demand of more than \$100,000. The insurance broker paid \$21,250, which was within the deductible, and Berkley Service Professionals paid the remaining \$21,250 due to the policy's mediation credit. The insurance broker was also responsible for more than \$18,000 in legal expenses.

Lessons learned: Insurance brokers must discuss all potential exposures with their clients and explain what risks are covered under a standard policy and what risks require additional premium. The client should then make the decision as to which risks to cover, what deductible they should choose and how much premium they will pay. Insurance brokers should document the options presented to and discussed with the client, recommendations made by the broker, and decisions made by the client.

The claim scenarios described here are offered solely to illustrate the types of situations that may result in claims. These scenarios should not be compared to an actual claim. The precise coverage afforded by any insurer is subject to the terms and conditions of the policies as issued. Products and services described above are provided through various surplus lines insurance company subsidiaries of W. R. Berkley Corporation and offered through licensed surplus lines brokers. Not all products and services may be available in all jurisdictions, and the coverage provided by any insurer is subject to the actual terms and conditions of the policies issued. Surplus lines insurance carriers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds.

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