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# Should the Agency Purchase E&O Coverage from One of Its Carriers?

Proper placement of the agency's errors and omissions (E&O) coverage is of utmost importance. Protection provided by an E&O policy can be the difference between the agency's continued success and financial ruin.

Agencies have many options available for the placement of their E&O coverage. For some agencies, one of the options is purchasing E&O coverage directly from one of their appointed carriers. In fact, these carriers constantly solicit their appointed agents, enticing them with exclusive perks for placing their E&O coverage such as points towards carrier incentive plans, reductions in deductibles for E&O claims and applying the E&O premiums towards overall production.
On the surface, this seems like a good deal, especially since the agency already has a relationship with the appointed carrier. The agency trusts them to protect its customers, they are highly rated and they a have a great reputation for paying claims. But serving the agency's clients and defending the agency from E&O claims are two separate and distinct relationships. The line between what is best for the agency and best for the customer becomes blurred; the two aren't always compatible. Further, what is best for the carrier and best for the agency may not be the same either. It's seldom spoken of when this happens, but it's always lurking in the background and it's called "conflict of interest."

Before placing E&O coverage with any carrier the agency is appointed to represent, there are several factors that must be considered:

## Agent vs. Direct

Big "I" considers promoting the value insurance agents bring to their customers part of its mission. Independent agents KNOW the value they add to customers, so why would the agency not want the benefit of a trained professional liability agent working on its behalf? Professional liability can be tricky and just because an agent knows the coverage needs of his or her customers doesn't necessarily translate into knowing the nuances of agents' E&O coverage. Big "I" state association personnel whose only focus is professional liability works closely with the agency to service its E&O needs. Yes, even the best agency benefits

from the professional service and knowledge offered by a dedicated E&O professional.

## Damaging Carrier Relationships

The intrinsic value of agencies is their book of business and carrier appointments. A disagreement about the handling of an E&O claim has the potential to severely strain that relationship and may hamper any long-term representation. If the agency is embroiled in an E&O claim involving the same carrier, maybe even forcing the carrier to fight for and against its agent, relationships are harmed.

## Sharing Application Data

E&O applications necessarily contain large amounts of sensitive and proprietary information necessary for underwriting including premiums by line of business, revenue, staff count, appointed carriers and descriptions of office procedures. In addition to knowing all the carriers with which the agency is appointed, the E&O carrier will also know the amount if business with each carrier. Will the E&O department keep this information confidential; or is it shared with other departments? The hope is that the information is kept confidential, but there may be no guarantees. It is easy to imagine the carrier's field underwriter hounding the agency for more business because of this inside information.

## Increasing Carrier Claims Against Agents

E&O claims data is analyzed regularly to reveal claim trends. One VERY clear trend that began nearly two decades ago is the steady increase in carriers suing agents for mistakes that result in damages to the carrier. Defending an agent against itself creates a clear conflict of interest for the carrier.

## Conflict of Interest

Once the carrier is convinced the agent is guilty of the E&O incident, all the years of a pleasant and profitable business relationship are quickly forgotten. The carrier only has one purpose in mind, forcing the agent to pay the claim. So, if the E&O is with that same carrier, there is an immediate conflict of interest because the E&O contract places on the carrier the sole duty of defending the agency. But if the carrier is also trying to lay blame on the agency; how can it, in good faith, also defend the agency? It's rather mind-bending to think about, but what kind of defense can the agency expect when the carrier is defending the agency against itself.

## Protecting the Agency's E&O Claims History

Many potential E&O incidents involve, "he said, she said" accounts of the relevant incidents. What happens when a customer written by same carrier is the subject of the potential E&O incident? Even if the agency didn't make a mistake, the customer may misrepresent the facts in an attempt to secure payment from the E&O policy. The E&O carrier must make the decision to defend the agent or pay the retail customer's underlying claim to appease them. Maybe the carrier just decides to pay the loss as an E&O claim under the agency's account because it is less expensive than defending it. Two problems of this approach for the agency are: the agency's E&O policy has a deductible; and the E&O carrier can use the claim to justify future rate increases or simply cancel the policy. Also, the loss will show up on the agency's loss history and will likely have a negative impact on the agency's ability to shop E&O coverage in the future.

Agencies have a choice to make regarding the placement of their E&O coverage; this article lays out just a few factors that must be considered when making this very important decision. Although placing the coverage with a carrier the agency represents may seem safe and convenient, the ultimate risk may be too high.

Agents are better served placing their E&O coverage with long-term, stable programs focused strictly on Agents' E&O coverage. Not only are these programs more focused, they aren't full of the inherent conflicts of interest common when placing coverage with an appointed carrier.

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