

The Importance of Documentation



Fireman's Fund
Insurance Company

A company of **Allianz** 

Background

An agent procured property coverage for a client who operated his business out of a warehouse. The limits for the building, business personal property and stock were based on numbers that the client provided. The agent documented in the file that this was the source of the limits. He also suggested in writing to the client that he have the replacement cost appraised by a qualified contractor to assure limits sufficiency and he reviewed stock and other property values to make sure the limits were adequate. The agent also pointed out that the policy had an 80% coinsurance clause.

Shortly after, the agent was in the neighborhood and saw the warehouse. He could tell by looking at it that the premises were significantly underinsured. He immediately wrote again to the client, and advised him to review his property limits. He also called the client, left a voicemail, and documented in the file that the call had been placed. He received no response. A short time later, the property was completely destroyed by fire. When the resulting claim was adjusted, limits were short by over \$500,000, and the client sued the agent. The attorney defending the claim took the client's deposition and the client admitted that he had received the agent's letters and did not take action, although he claimed that the agent should have been more persistent.

Outcome

With the letters and documentation in hand, the agent's attorney filed a motion for summary judgment, and

the court dismissed the case. Not only was there no settlement, the case did not have to go to trial and legal fees were reduced. Documentation saved the day.

Key Take-Away

An agent's file documentation is the key item of evidence used in defending E&O claims, and considered by many as the most important loss prevention and mitigation tool. In many situations with documentation lacking, E&O claims involve the agent's word against that of their client. In most of the "he said/she said cases," the client can be favored because most jury panels consist of potential clients of an insurance agent rather than an insurance agent's peers. Therefore, proper documentation will significantly help to determine liability exposure, if any, for an agent. A single piece of documentation can lead to a decision in favor of the agent if a claim is pursued (or even convince the claimant to drop the claim).

Lessons Learned

Some key documentation in defense of many E&O claims:

- Insurance applications are completed and properly signed by the appropriate parties
- Coverage rejection forms are properly executed. Should include UM/UIM (required by statute); windstorm, flood, or any other key types of coverage the client is refusing to purchase
- Offers of coverage are documented (and rejections of that coverage)
- Notice of the inability to duplicate coverage or obtain coverage requested by the client so the client can make an informed decision to accept or reject the Policy offered;
- Letter from the agent with the Policy which confirms delivery of the Policy
- Notes regarding conversations with client and/or underwriter
- Electronic “emails” that document communications
- E-mail messages or letters sent suggesting review of policies and limits with a reminder to let the agent know if any changes are desired
- Logs of all phone calls
- If mobile devices (i.e. smart phones, electronic tablets) are used for documentation, make sure there is a process of getting this documentation to the agency file maintained for the client.

This publication provides general information and recommendations that may apply to many different situations or operations. Any recommendations described in this publication are not intended to be specific to your unique situation or operation. Consult with your staff and specialists to determine how and whether the information in this publication might guide you in developing specific plans or procedures for your situation or operations. This publication does not substitute for legal advice, which should come from your own counsel.