



Expert Commentary

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Agent E&O Tips from the Streets in Rhyming Tweets



Each E&O tweet is short and sweet

To help us recall what's best for us all.

And they rhyme, too, so they must be true.

Hopefully, these rhyming errors and omissions (E&O) tips, which are short enough to tweet, will help us all remember the insurance E&O risk management practices that may save us stacks of money and worlds of grief.

Count the Zeroes

**The more zeroes in the uncovered claim
The greater the chance of big E&O pain.**

Agents sometimes ask, "Should I make an extra (and time-consuming) effort to inform the insured about this or that potential uncovered exposure?" My answer is often to ask them, "How many zeroes might be in the uncovered claim?" The bigger the possible uncovered loss, the more extra effort is warranted. If your community has a 1-in-500-year flood and you haven't offered your long-term clients flood insurance and excess flood insurance because "no one ever buys it," the E&O claims could bankrupt your agency. Focus on those "agency killer" risks first. You can't buy enough E&O insurance to protect yourself against them.

Nix Website Boasting

**Our agency website doesn't boast
So the plaintiff's attorneys can't turn us to toast.**

When policyholder attorneys are considering whether or not to bring an E&O suit against an agent, one of the first things they do is look at the agent's website and the past proposals provided to the insured. If the agent made promises that were not kept, the chances of the attorney bringing suit go way up.

One seasoned E&O defense attorney told me:

The agency website and advertising issue is one that gives me grief. I can't count the number of times when the agent's advertising made a difficult case an impossible case. I particularly dislike language that touts how the agency recognizes and reduces risks and protects assets. Asset protection is something even experienced attorneys and CPAs are very careful about. How in the world an insurance agent can tout being an asset protection specialist is beyond me.

Word to the wise—review your website, advertising, and proposals, and take out all promises you don't consistently keep to *all* of your clients (not just the big ones).

Loyal Clients Get Our Best

**Loyal clients get our best
Care and advice above the rest,
Or a jury may find we failed the test.**

Juries often find that insurance agents have a higher duty to provide insurance advice to long-term clients who have relied on the agent for advice in the past. Even if those are small clients, give them the special attention your "special relationship" requires, or you may be found liable for not recommending more or better coverage.

Proposal and Policy Reviews

**Proposals and policies get a review
By someone with time and competence, too.**

We are selling legal contracts, not shoes. A large majority of the policies I review contain serious errors that could compromise coverage if there was a claim. The larger the policy, the more likely there are errors. Agencies that have a competent person review all proposals and policies get an education. Others get experience.

Insurance Certificates—Prepare with Care

**Insurance certs, we do many a day.
But get them wrong, and we may pay.
So we're very careful about what they say.**

Agencies receive so many certificate requests that they sometimes treat them as a routine clerical function to be handled by someone with little insurance knowledge. Perhaps that is why, when one agency management consultant did a file review for an agency, he found 20 percent of the agency's certificates listed nonexistent policies and 42 percent represented that additional insured endorsements were in place

that the agency had never requested. One Florida agency conducted an internal audit of 11 months of its own certificates and found errors on 90 percent of them.¹ So it is not surprising that errors on certificates are a significant source of E&O claims. The person preparing certificates for the agency needs to be both knowledgeable and a stickler for details.

Insurance Certificates—Just the Facts

**Though our clients may threaten to leave us for good,
Our certificates never say more than they should.**

Your insured is screaming at the other end of the line, "If you don't send me a certificate with the right wording, I won't get paid for my work. And if I don't get paid for my work, I'm cancelling my coverage with you, friend or no friend." These are the times that try agents' souls.

However, if you add wording that isn't part of the policy, you not only open yourself up for an E&O claim, many insurance departments say they may pull your license. Other states make it illegal for anyone to request a certificate that contains wording that is not in the policy. It's best to do all you can for your customer without exceeding your authority. If that's not enough, then walk away if you have to.

Know Our Stuff

**We can't learn enough.
Insurance is tough.
It's a whole lot tougher
If we don't know our stuff.**

One senior E&O underwriter recently told me that they are seeing fewer claims stemming from processing errors and more claims stemming from agents not knowing what they are selling. Agents who know their stuff avoid E&O claims, set themselves apart from the pack, and build careers they can be proud of.

When the Client Rejects Coverage

**When we offer coverage and our client rejects,
We always have them sign the X.
Or later they may not recall**

We mentioned it to them at all.

It is good to offer additional coverages to your insured. It is better to document that offer in your file. It is best to have the insured sign a rejection form if they don't accept the offer. I have seen several depositions in which the insured testified under oath that the agent never offered him the coverage he is now suing about—until his memory is refreshed by his own signed rejection form. Without that form, the agent would have spent many more anguished hours in the jaws of a lawsuit.

Read the Insurance Policies!

**We remember that we're not selling shoes.
If we don't read the policies, we will lose.**

If you want to do one thing that will quickly set you apart from other agents, read the policies. When I first became an independent agent and had a question about coverages, I would ask the underwriter. I soon learned that they often had not read the policies themselves. Take the time to read the policies. Then, if you still have questions, refer to the many excellent commentaries offered by IRMI and others. BUT FIRST, READ THE POLICIES.

Document, Document, Document

**We document what we do and say
So the other guy's lawyer can't make us pay.**

You are being sued by a couple because the new homeowners policy you sold them only covered \$10,000 of their \$100,000 water damage claim. You say that when you sold them the policy, you told them about the limit on water damage, which was less than they had on their old policy with a different insurance company. They say you didn't. They have one home and one homeowners policy. You have hundreds of clients with thousands of policies. There is no documentation in your file supporting your version of the story. Which party do you think the jury will believe? Best to document the file.

Invariable Practice

**Consistency may win the day
When "he said/she said" comes to play.
It's great when we can say,
"Your honor, I always do it this way."**

Whether you have documented your file or not, it will help you in court if you can testify to your "invariable practices."

Attorney: "You say you offered them flood insurance on their house even though they are not in a flood zone, but there is no record of it in your file."

Agent: "I know I did because I do it for every client, every time, whether they are in a high-risk flood zone or not."

Is that as good as a signed flood insurance rejection form from the insured? No, but it definitely strengthens your credibility. What "invariable practices" can you adopt in your agency?

Big Dogs Must Lead

**The big dogs must lead.
Employees won't heed
If owners don't demonstrate
Actions to imitate.**

Eisenhower, who led the greatest invasion in military history on D-Day, said, "Pull the string, and it will follow wherever you wish. Push it, and it will go nowhere at all." Agency owners who want to avoid E&O claims will see the best results when they lead by example.

**You've got so much to know and do.
Thanks for taking a moment or two
For these rhymes on avoiding litigation
And earning your clients' acclamation.**

Disclaimer: These tips are not statements of what agents are required to do to meet their standard of care in a given state. They are a tool to help agents remember the best practices to help stay out of E&O trouble.

¹ Big I Advantage, Inc., and Swiss Re Corporate Solutions, *E&O Issues with Certificates of Insurance*, 2012.

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