



## How agency management systems can help defend E&O claims

By John Nesbitt

Electronic communication is nothing new; independent insurance agencies have widely used e-mail and the internet for about 20 years, and there are many choices of agency management systems available. Despite this, too many errors & omissions claims still end up as a "he said/she said" credibility dispute. Documenting all interactions with customers and carriers and every insurance transaction can be critically important to the defense of an E&O claim. Without time-stamped documentation, an agency will be left with little more than its employees' memories of conversations that may have taken place years earlier, and your E&O carrier may recommend that you settle your claim.

Agency management systems provide many benefits, not the least of which is the contemporaneous documentation they provide. Electronic documentation more definitively establishes what occurred than handwritten or paper files. Documenting a customer's file through an agency management system is more credible evidence than paper files because the automated system creates a record of the date and time of the entries, which cannot be manipulated later. All employees should make electronic notes documenting every conversation with customers, carriers, or anyone else with whom they discuss coverage. Electronic documentation of coverages offered and declined or the specific type of coverage requested can be very persuasive evidence to defend an E&O claim.

Of course, while the quantity and consistency of documentation is important, so is the quality. Each entry about a conversation should include:

- **Who** - The names and roles of the person at your customer and at the agency involved
- **What** - The specific topics discussed and any actions or decisions reached
- **When** - The date and time of the conversation and any deadlines or next steps
- **Why** - The reason the conversation took place
- **Where** - Where are you in the process? If the activity can be closed, close it
- **How** - Was it a phone call? Email? In office visit? On location?

Many agency management systems also integrate with other agency applications, such as e-mail and word processing systems. This can ensure that documents such as applications, quotes, change endorsements, rejections, checklists, and other correspondence is immediately placed in the customer's electronic file. If an agency's agency management system does not do this automatically, such documents should be scanned and routed to the system. Emails forwarding a copy of the policy to the customer or even just forwarding a link to the policy on the carrier's website can be documented in many systems, which can be used to confirm that the

customer received a copy of the policy. Every certificate of insurance the agency issues for an insured should also automatically be entered as an activity into the agency management system. Some systems will even synchronize with the agency's phone systems to send voice mail messages to the file.

Consider the following example in which electronic notes or a time stamped letter in the file would have helped defend an E&O claim. An agent procuring a new policy neglected to have his customer complete a required form. After realizing the mistake, the agent called the customer and asked her to come sign the form, but the customer did not do so and later had an uncovered claim. Documentation that the customer was given an opportunity to sign the form, but failed to do so, would be key to defending the resulting E&O claim. The agent said he had a log where he keeps that kind of information, which the E&O claims handler thought might establish that the agent gave his customer an opportunity to correct the initial oversight, putting at least some of the responsibility for the lack of coverage on the customer.

However, the log the agent sent the claims handler to review turned out to be handwritten notes, which did not provide proof of when the agent made them. Without any other documentation that the customer was informed of the need to come sign the document, the claim became a simple swearing match between the customer's version of events and the agent's, on a claim in which the agent had admittedly neglected to have the customer sign in the first place. The E&O claims handler recommended settling the claim.

Handwritten notes or paper files should not be any modern agency's methods of documentation. An agency management system, when consistently and properly used, can increase an agency's efficiency and will be invaluable in successfully defending any E&O claims that arise.

John Nesbitt is an assistant vice president, claims specialist with Swiss Re Corporate Solutions and works out of the Overland Park office.