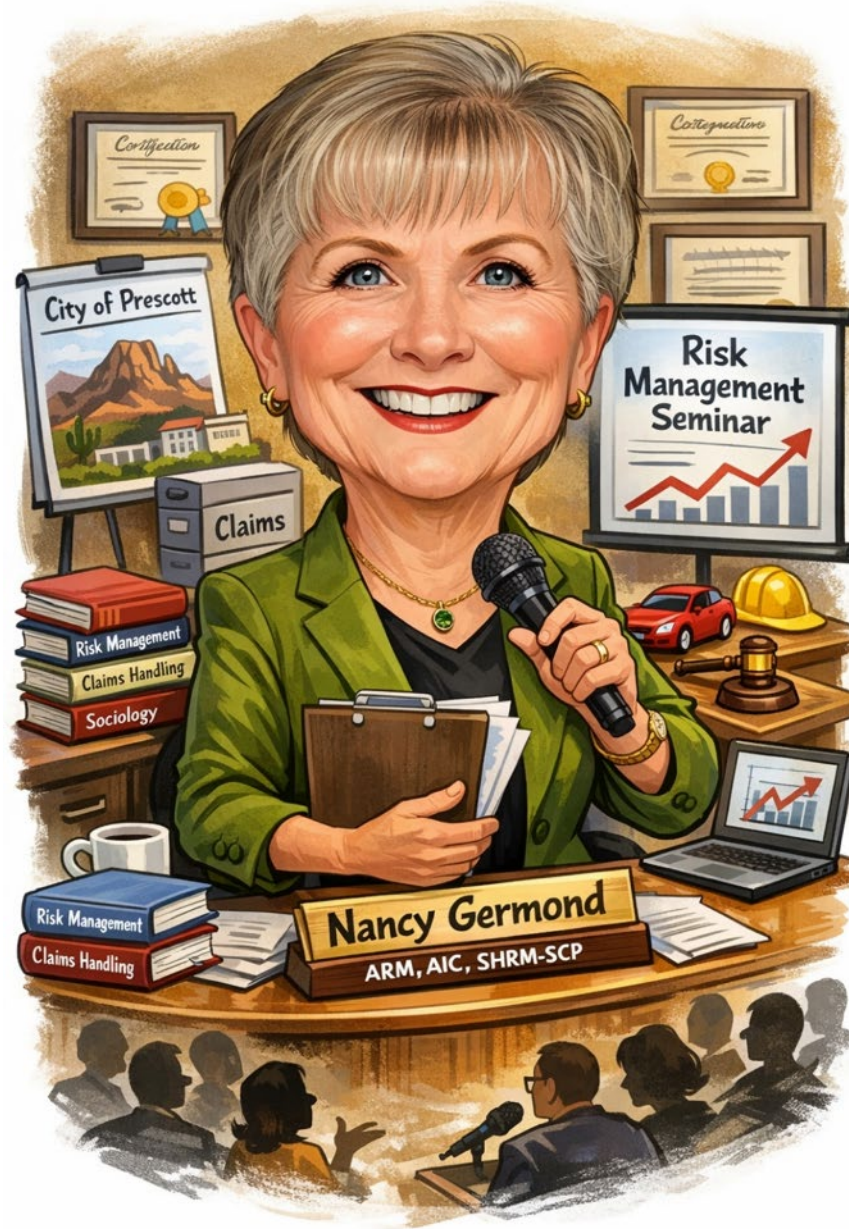


E&O Risk Management

***Agency Errors &
Omissions (E&O)
Exposures and
Defenses***



**Nancy
Germond,**
MA, ARM, AIC,
ITP, SPHR,
SHRM-SCP
Executive
Director, Risk
Management &
Insurance, IIABA

▪ Copyright © 2026 Independent Insurance Agents & Brokers of America, Inc. All rights reserved. No portion of this presentation or these materials may be shared, reproduced or recorded in any manner without the prior written consent of IIABA®.

Educational Objectives

1. How Are Illinois E&O Claims Arising?

- Review January 2021 through December 2025 Swiss Re claims history in Illinois

2. Agency Defenses – Documentation

- Understand why documentation matters, what “good” documentation looks like, and how disclaimer language can strengthen the agency’s defense

3. E&O Considerations of Agency Operations

- Explore areas in the agency’s daily operations that may expose the agency up to an E&O loss

4. E&O Exposure When Using Social Media

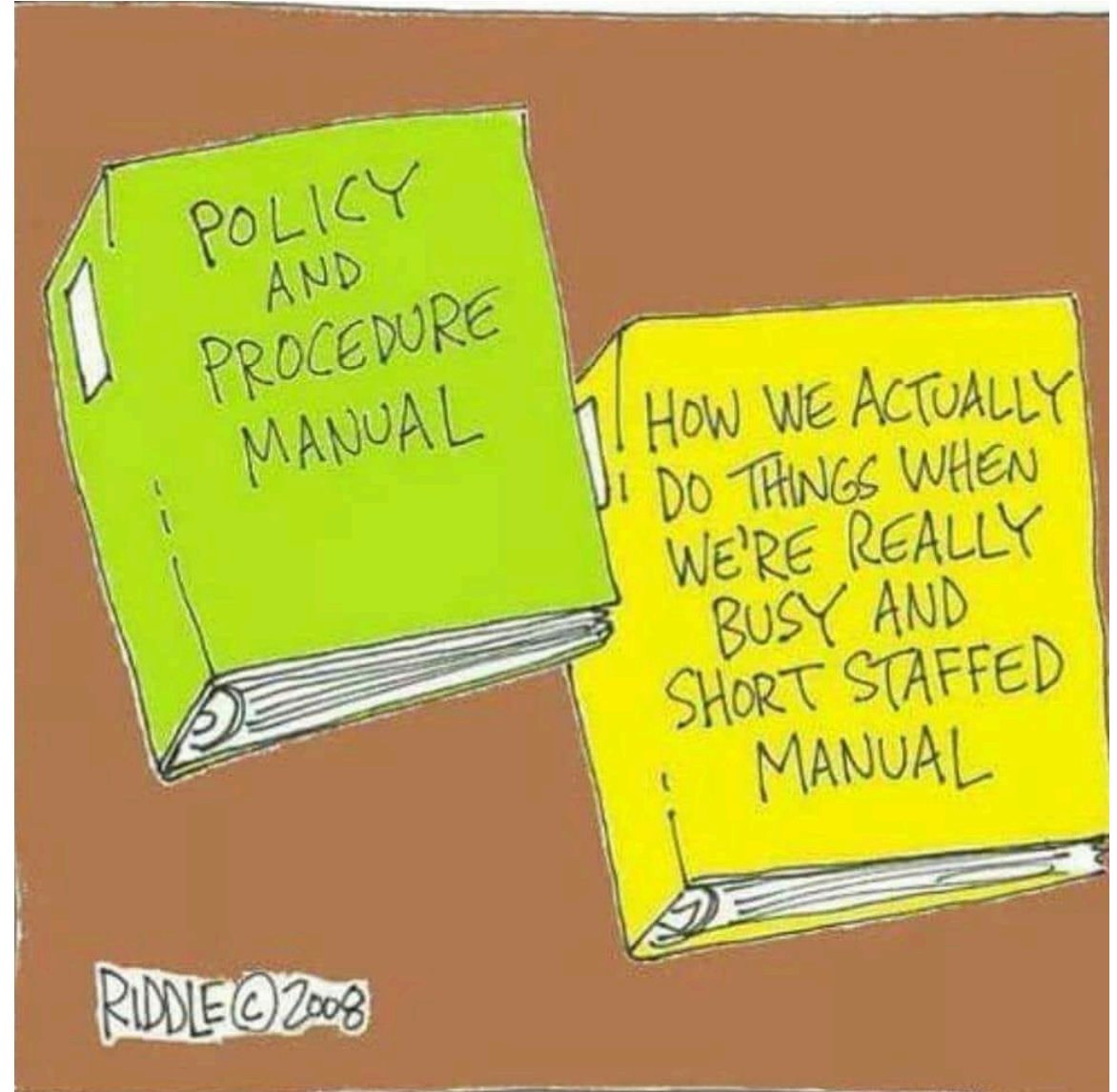
- Understand the exposures faced by social media – the good, the bad and the downright ugly

5. Limiting Exposures to Data Breaches and Artificial Intelligence Issues

- Review issues every agency should consider when protecting customer personal information and provides some risk management guidance to help protect the agency’s operation and the data it keeps, with a side dish of artificial intelligence cautions

Objective One

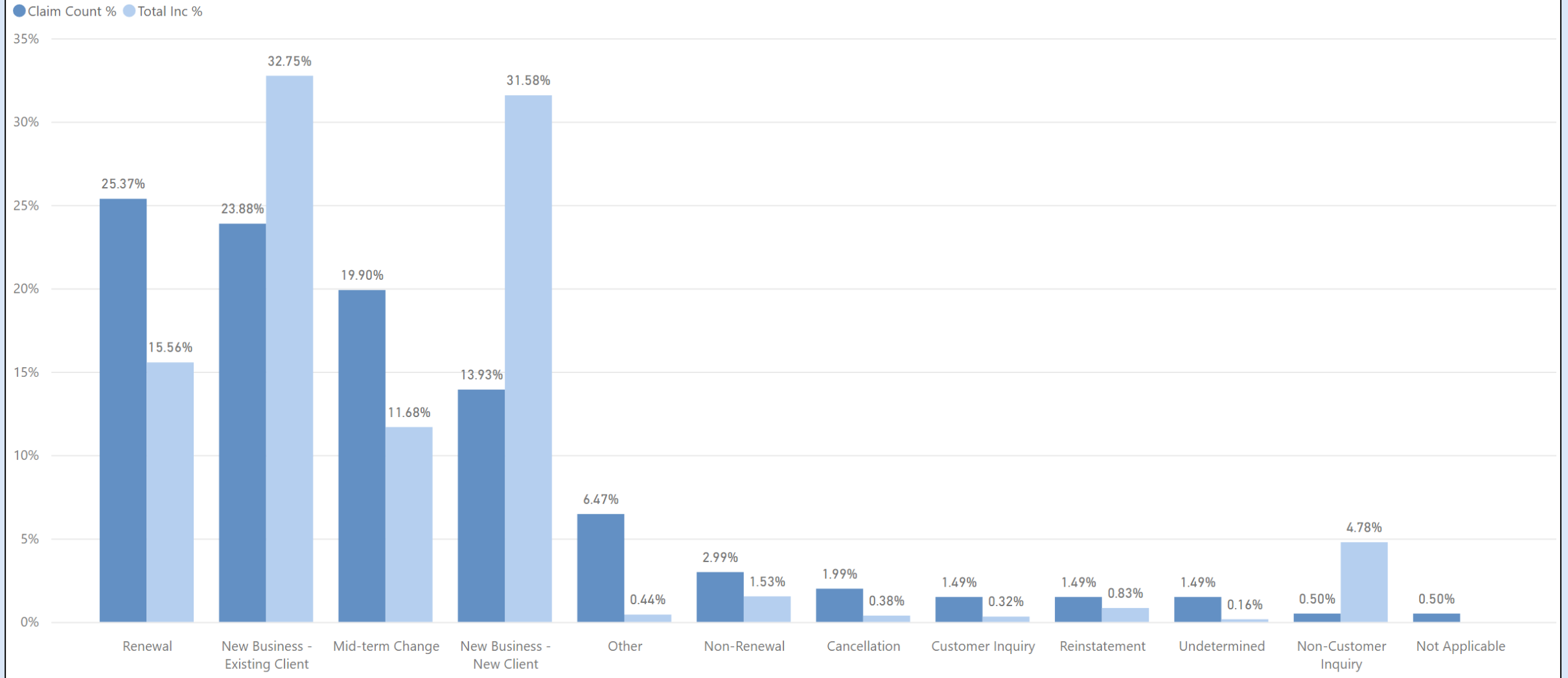
What issues are driving Illinois' Big "I" Swiss Re E&O Claims?



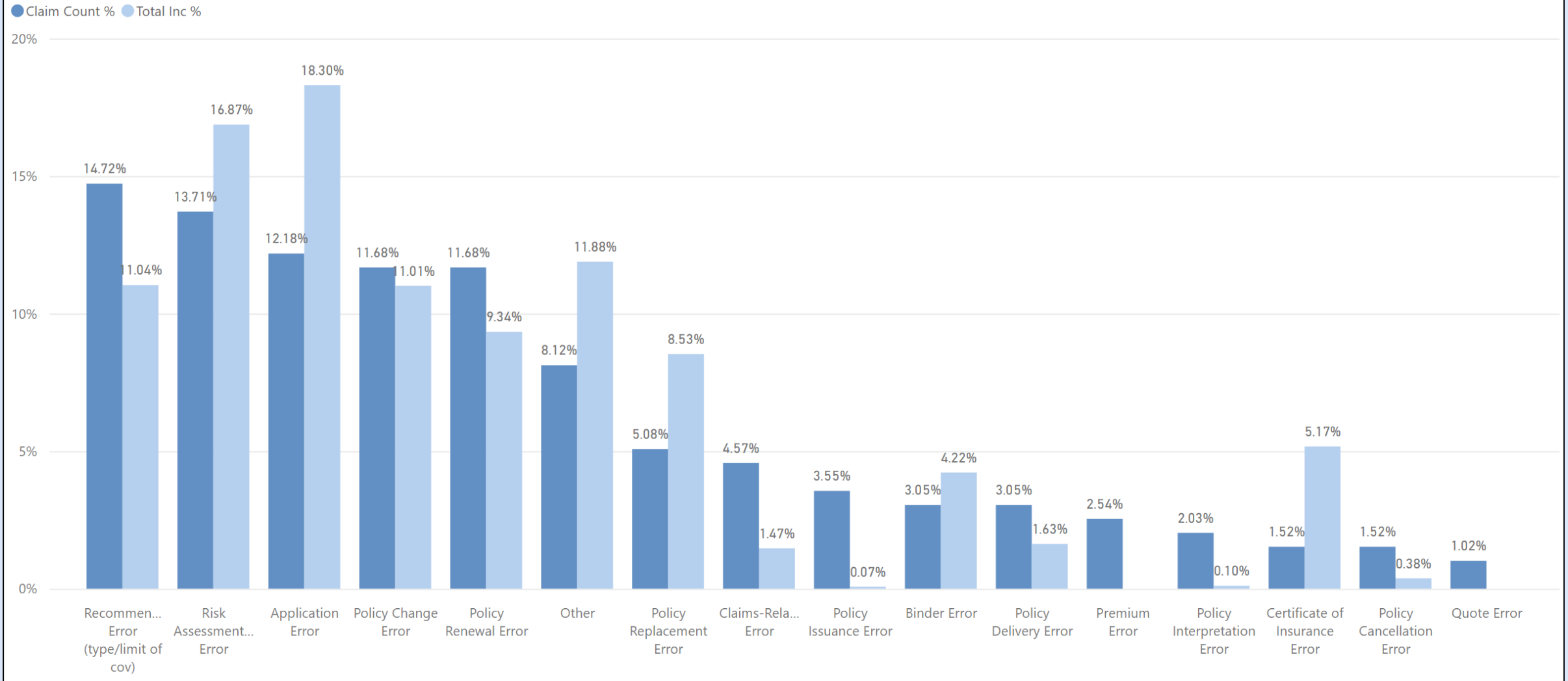
Illinois' Claims
History with
Swiss Re E&O
January 2021
through
December 2025

OOPS...

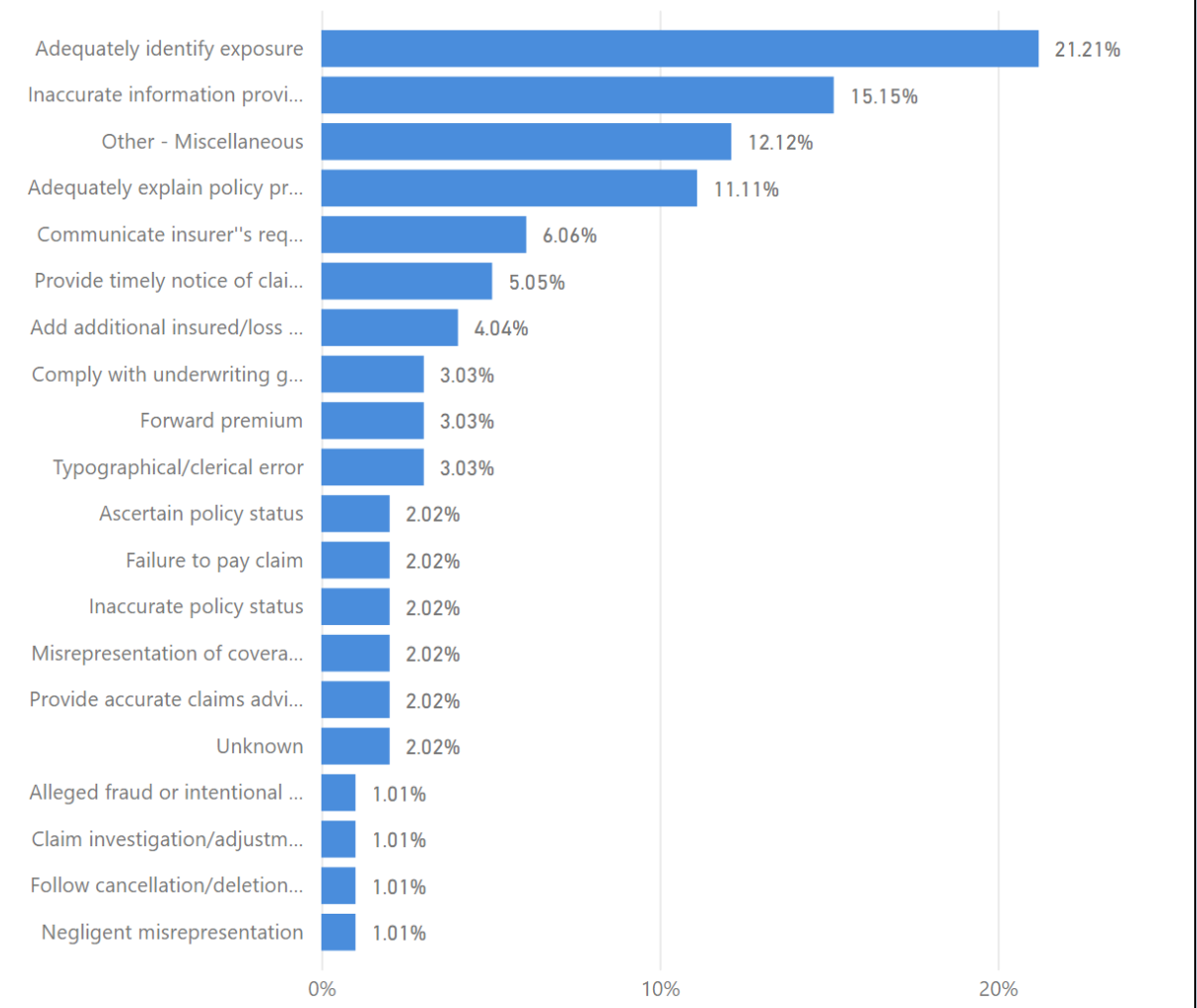
Claim Count % and Total Inc % by Transaction Type



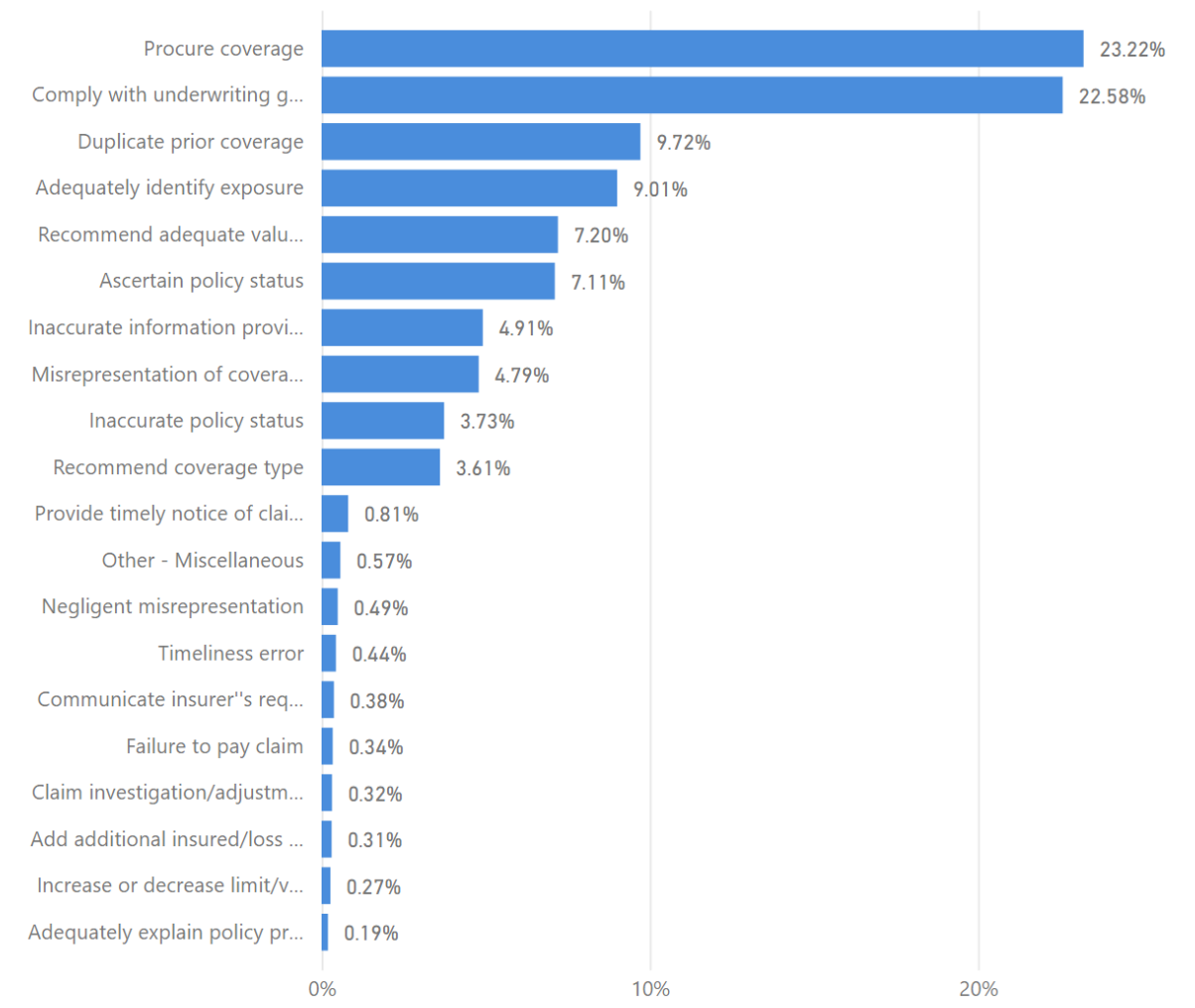
Claim Count % and Total Inc % by Process Step Involved



Claim Count % by Alleged Error or Omission

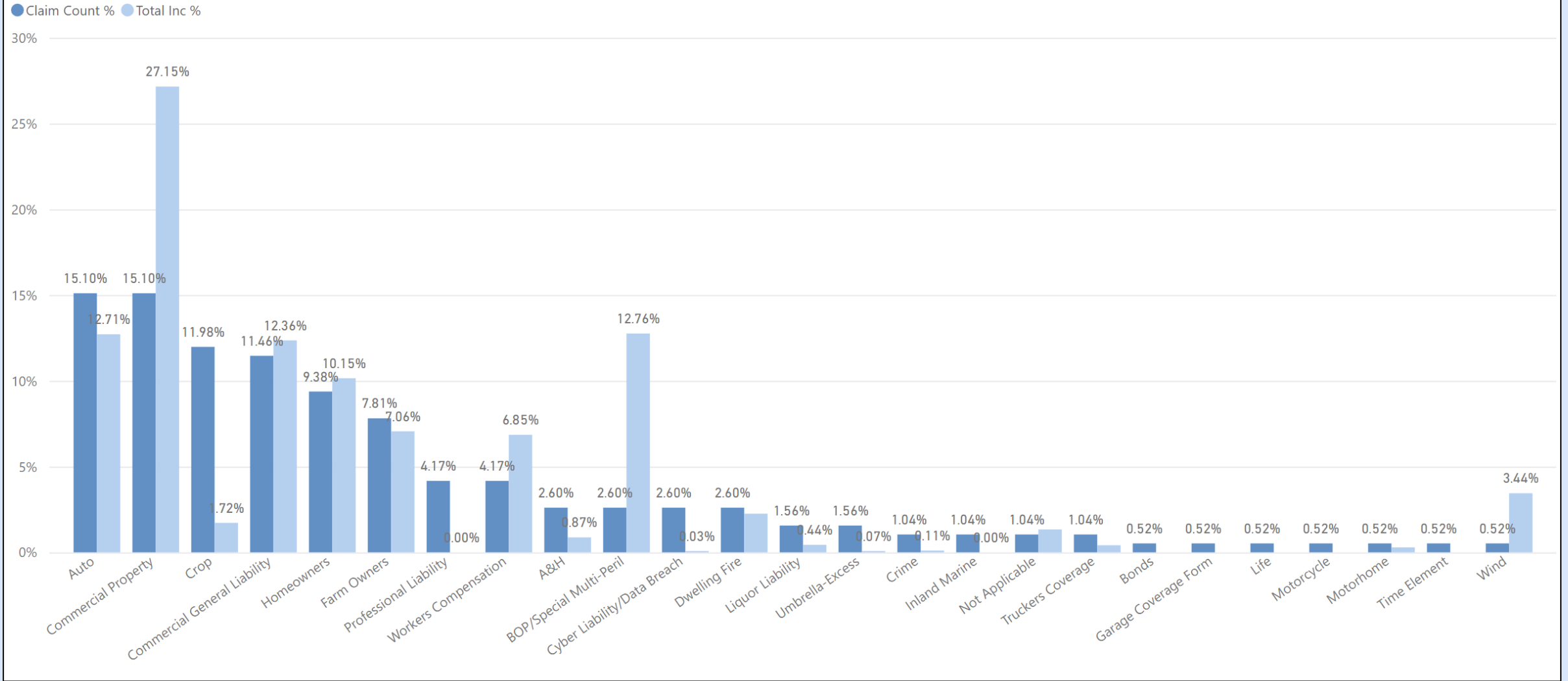


Total Inc % by Alleged Error or Omission

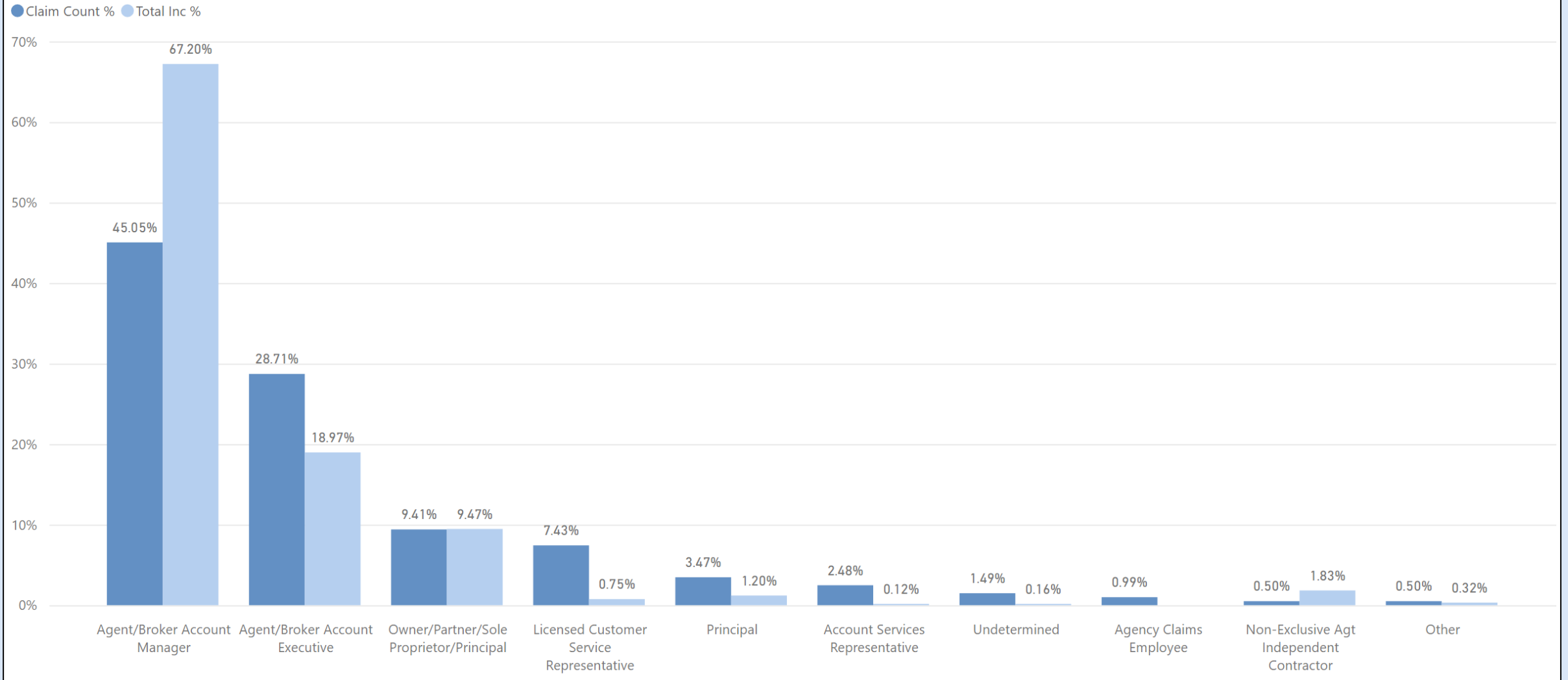


Line Of Business-Claim Count & Total Loss Amount for Illinois

Claim Count % and Total Inc % by Line of Business

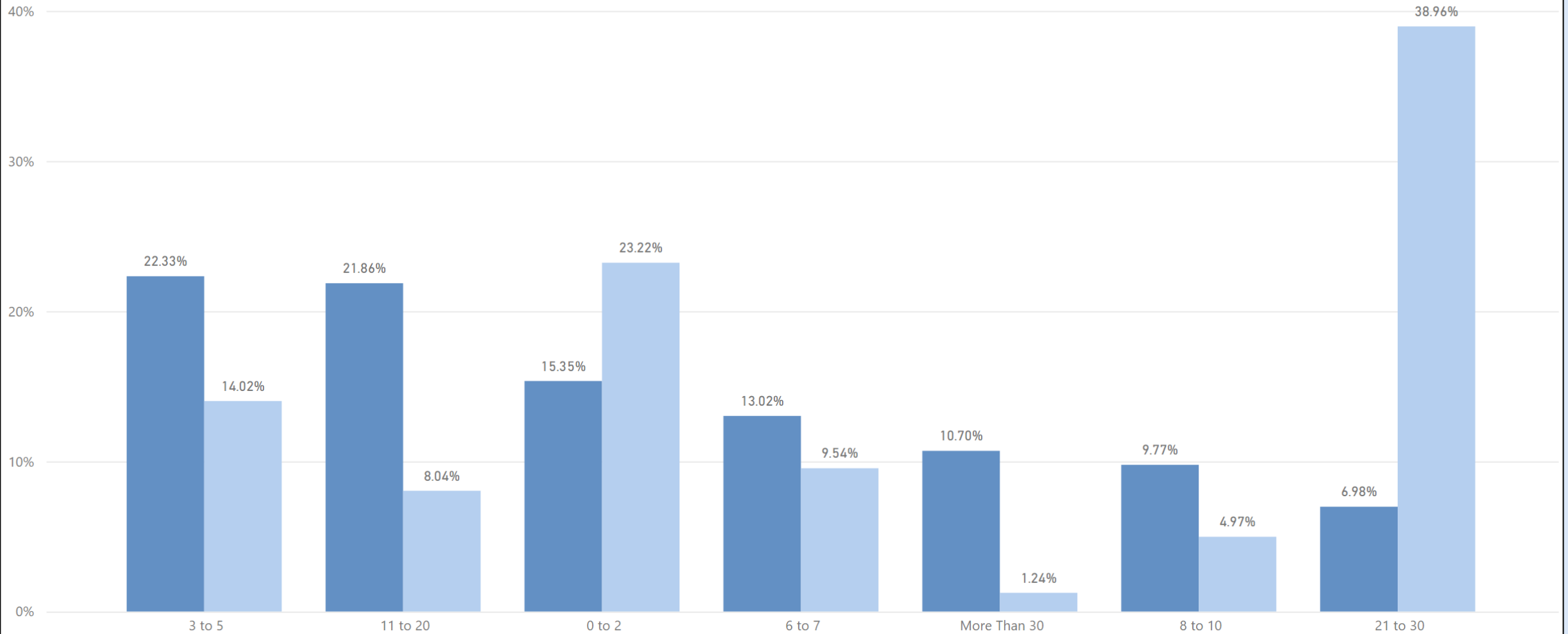


Claim Count % and Total Inc % by Person Involved



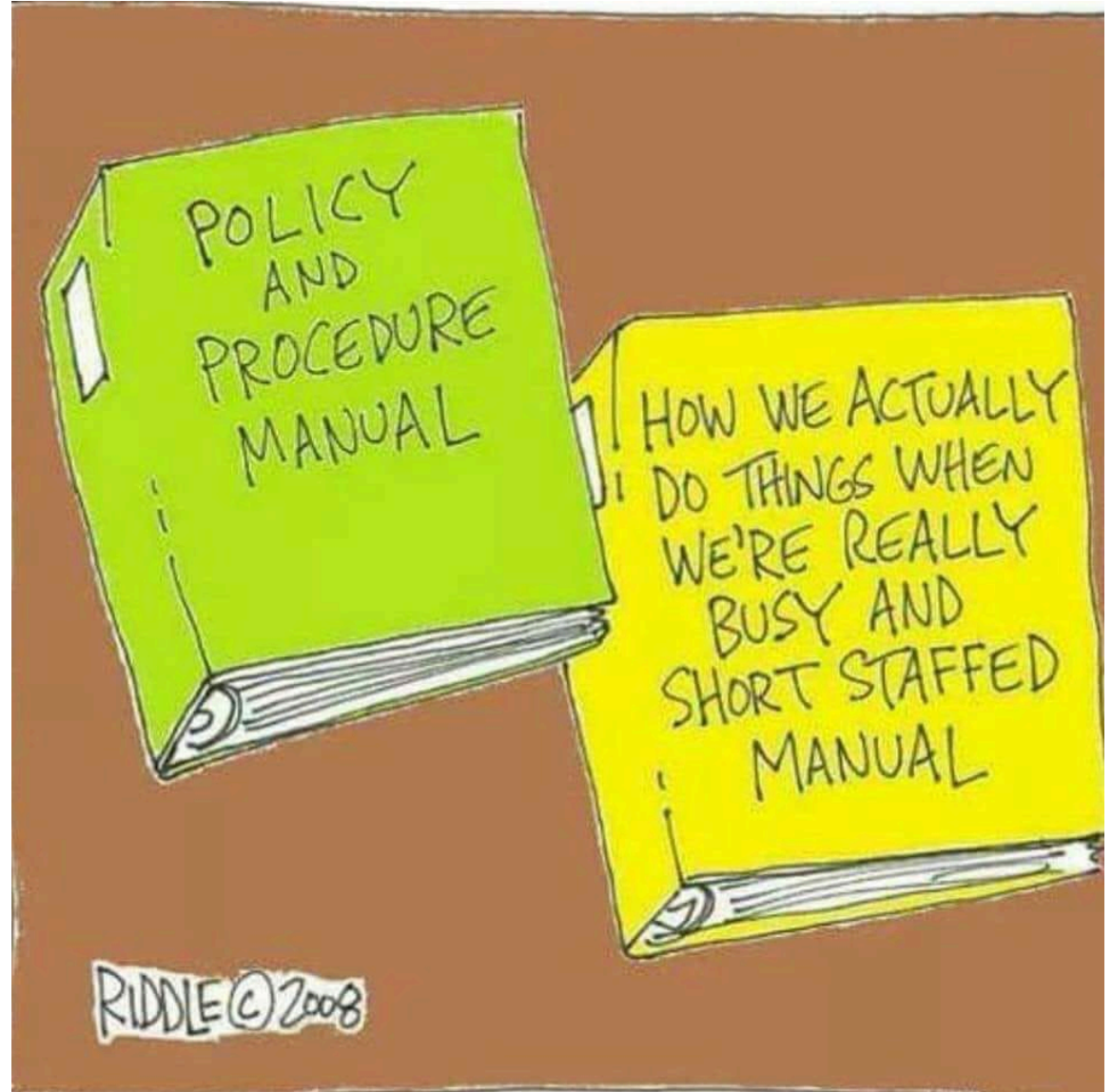
Claim Count % and Total Inc % by Staff size

● Claim Count % ● Total Inc %



Objective Two

Agency Defenses – Documentation



Introduction

If the first rule of real estate is “location, location, location”...then the first rule of E&O is “document, document, document”

Documentation combined with consistent agency practices and procedures are key defenses when E&O allegations arise

If an E&O claim occurred in your agency today, would it be prepared to defend itself?

Do you have the proper policies and procedures in place to ensure that your E&O carrier could mount a compelling defense?

Did you know we have a template Agency Procedural Manual available at this link?

<https://www.independentagent.com/resource/sample-agency-procedures-manual/>

Two Types of Errors Leading to Negligence Claims

1. Knowledge-Based Errors 2. Procedural Errors

- **Failure to place appropriate coverage, recommend endorsements; usually producer-based**
 - E.g., failure to offer flood coverage on every property policy or an umbrella
 - Failure to point out a policy warranty
 - Failure to point out an important or newly added exclusion. E.g., Gen AI
- **Failure to follow agency procedures or proven workflows**
 - E.g., missing a renewal the didn't process
 - Failing to add a piece of equipment or vehicle as requested
 - Failure to document offer/rejection of specific coverage



Agency Defenses

Document!

Document!

Document!



Key Elements of a Customer File

- The goal of documentation would be to have every point of contact with a prospect, customer, carrier, or outside third party (e.g., mortgage company, attorney) documented
- However, it's more important to document some things than it is others
 - New business: coverage and exclusion discussions
 - Renewals: coverage and exclusion discussions
 - Limits and values
 - E&O coverage checklist
 - Claims
 - Endorsements and Cancellations



The Need to Integrate Multiple Agency Systems

- Agency Management System
- Document management software
- Email systems such as Outlook
- Websites, social media, and instant messaging
- Phone systems, cell versus landline
- Voicemail-to-text software
- Carrier underwriting and policy issuance systems

He Said vs. She Said

- E&O claims or potential claims can often come down to “he said, she said” scenarios involving a lack of coverage or insufficient limits
- Documentation of transactions and interactions with customers is the most important factor in defense
- Documentation must also be tied to invariable internal procedures and practices



Importance of Consistent Practices

- Documentation can only verify what *actually* occurred
- How do you defend against allegations of failing to follow through on a request when you have no record of any contact between the agency and the other party?
- When the agency needs to prove that it did or didn't do something or the request was never received, that is when consistent business procedures provide a defense

“Everyone doing it the same way, all the time, for everyone.”

The File Must Tell the Story

- It is not just the ***quantity*** of the documentation that is important, but also its ***quality***
 - Always document exactly with whom you spoke, not just “the insured”
 - Have a designated representative of any commercial account “approved” by the insured to receive policy information, etc.
- The ***sufficiency*** of documentation is ***revealed at the point your claims handler retrieves it, not when you created it***
- Documentation can ***represent the difference between providing a defense against the allegation(s) and the need to settle***

Six Aspects of Good Documentation



Changing Communications Methods

- With more ways to communicate it is easy for certain correspondence and conversations to miss finding their way into the customer's file
- More relaxed correspondence with certain communication media
- Professionalism must be maintained with all communication documented and clear to all parties



Types of Communications in the Customer File



- In-person Discussions
- Phone Calls
- Emails
- Instant Messages
- Live Chats
- Faxes
- Text Messages
- Phone voicemail messages
- “Contact Us” Page
- Social Media

Characteristics of Proper Documentation

- All staff should use the same system and procedures in documenting customer files
- Daily activity logs, copies of change orders, premium adjustments, premium audits, applications, renewal applications, declaration pages, and access to all policy forms should be in the file or easily accessible using a carrier website
- Documentation should be clear, concise, consistent; include what was done or discussed with specific dates and times
- Don't use random abbreviations or jargon that could be misunderstood
- Documentation should include unalterable date/time stamp (Note: this is only possible in an automated environment)
- Documentation must recreate the transaction step-by-step



Things To Avoid

- **Comments about a claim, its merits, or your opinion as to whether or not there is coverage**
- **Resist the urge to go to bat in writing for your customer when a claim is denied**
 - Example "Fortunately, there's a neighbor who says that John was not permitted to drive the car."
- **Just the facts - personal asides and comments should not be included**
- **Do not put E&O claim information into the file of the customer involved**
 - Create a separate file with limits on viewers
 - This file may become part of an employment issue down the road

Carrier Claims Against Agents

- Generally, first the insured pursues the insurer, then they come after you
- There is an increasing frequency of claims involving carriers against agents, so it is important to document all carrier correspondence and conversations



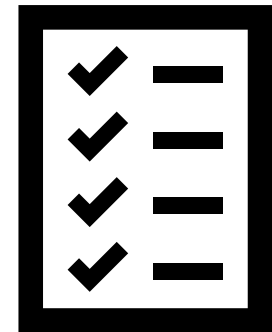
Electronic vs. Paper Files

- **Use only one file storage method. Locate all transactions pertaining to a customer should in that file**
 - Duplicate files often create litigation problems
 - There should be only *one* source of customer information.
 - Today, that information is likely most effective when it is in electronic form
- **Electronic files provide a stronger and more credible defense than paper files since as data is created, edited and expanded upon, the automation system records the date and time of these changes**
- **When used when defending the E&O claim, paper files have the disadvantage in potentially lacking proof of the exact time and date the agent created that documentation**
 - Computer generated correspondence has the date and time produced embedded in the system; therefore, alterations are not easily accomplished
- **Any possibility that the information can be viewed as suspect will diminish or eliminate the protection that documentation provides the agency**



Defense Method – Checklists

- Do you have a roadmap of products to offer your customers?
- Document coverages offered, accepted, rejected, or not applicable
- Utilize E&O Guardian Coverage Checklists and Declination forms
- Can help avoid claims from the following
 - Failure to procure the coverage requested
 - Failing to recommend coverage
 - Failing to identify exposures
 - Not adequately explaining policy provisions



Customer Sign-off, Acknowledgement Forms, Written Follow-up

- The defense of an E&O claims is strongest when the customer file includes customer acknowledgement that an exposure exists, the agent offered coverage and the insured makes the decision not to transfer the risk through the purchase of an insurance product
 - <https://www.independentagent.com/eo-guardian-2/eo-guardian-declination-forms/>
- Document customer acknowledgement by using customer sign-offs, coverage acknowledgement waiver forms, and written follow-up of discussions
 - Put the ball back in the insured's court by stating, "If you change your mind and would like to revisit this important coverage, please let us know."

Discussion Question

**Where does your agency
rely on individual
judgment when making
decisions instead of a
consistent, documented
procedure?**



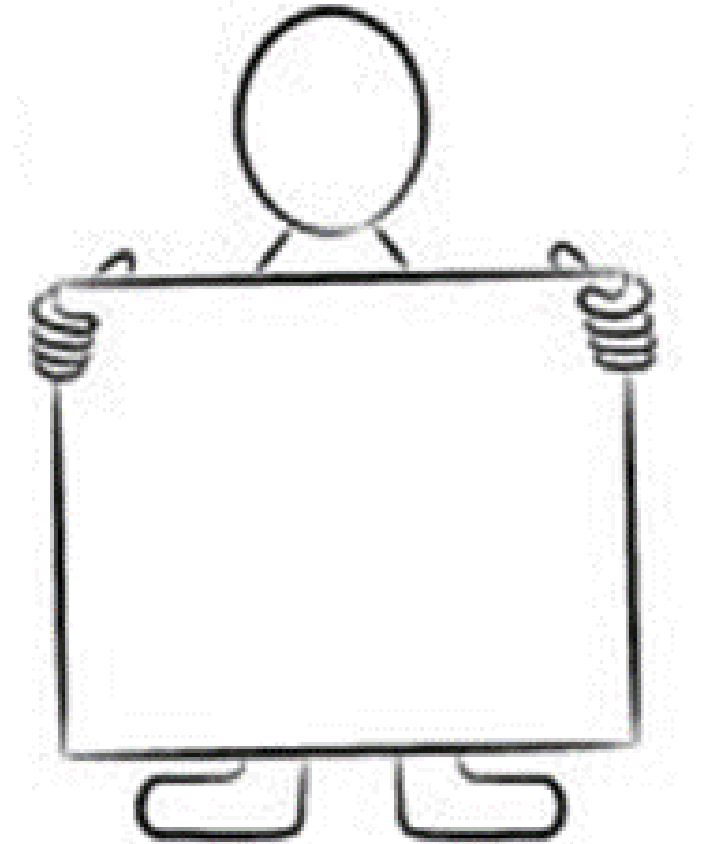
Is This a Customer You Want?

- Various types of customers you may not want
 - The “I don’t have time for insurance talks; just give me what I need”
 - Customers who mistreat agency staff, especially support staff
 - Clients who “misrepresent” information, e.g., driving record, business pursuits (e.g., handyman who also installs roofs)
 - Clients who file small claims rather than handle minor matters themselves
 - “Just give me the cheapest price” customers
 - Potential customers who have credit problems
 - Do you want to chase clients for agency bill money and multiple reinstatements?



Customer Proposals

- Insurance proposals can provide a wealth of defense documentation
- Customer sign-offs acknowledging what was discussed should be included
- It is also a good idea to have the customer initial each page of the application and sign where required]
- Many agencies may present proposals exactly as they are generated from carrier underwriting systems
- Review all proposals for appropriate disclaimer information or an area for customer sign-off



Waiver Forms

- Some states require acknowledgement waivers to be signed for various coverages (i.e. – UM/UIM, earthquake, flood)
- ACORD also offers some template forms
- Carriers may specifically require waivers when insureds reject certain coverages
- Waivers are important for E&O defense; therefore, agencies need to determine when a waiver is required

Signed Applications

- A carrier may not require a completed and signed application; however, a completed and signed application should be obtained from all insureds
- Insurance policies are legal contracts and as such are subject to the common law rule of “parole evidence”
- Once the carrier issues the policy, the agreement between the insured and the carrier is what is in the policy, not in any proposal or oral promise made before the policy’s issuance



Disclaimers

- Disclaimers aide in the defense of E&O claims and reinforce customer communications with clear guidance
- Nearly all of communications should include disclaimer language
 - Voice Mail
 - Websites
 - Fax, Email, and Instant Message Sample
 - Claims Reporting
 - Social Media
 - Proposals

Electronic Signatures

- Legislatures enacted the Electronic Signatures in Global and National Commerce Act (ESIGN) and made electronic contracts and signatures legal and enforceable as paper contract with ink signatures
- Important for agencies when it comes to signatures on applications, proposals, quotes, and policies



Documentation Retention Considerations

- Every agency should have a records retention policy
- The documentation contained in the customer file that should be retained and for how long may be dictated by your state's law
- The agency should be familiar with these laws and your insurance division or your attorney or state Big "I" can provide direction about existing laws and how they apply
- Disposal of private information requires handling and agencies should have a process in place



Policy Forms

- Some carriers have stopped providing paper policies or give the agency the option
- Agencies may have to decide if they will rely on the electronic policy view to access the policies/endorsements from the carrier's website or to retain policies in their office
- It's important to have at least one master policy form and to retain dec pages referencing coverage and exclusions



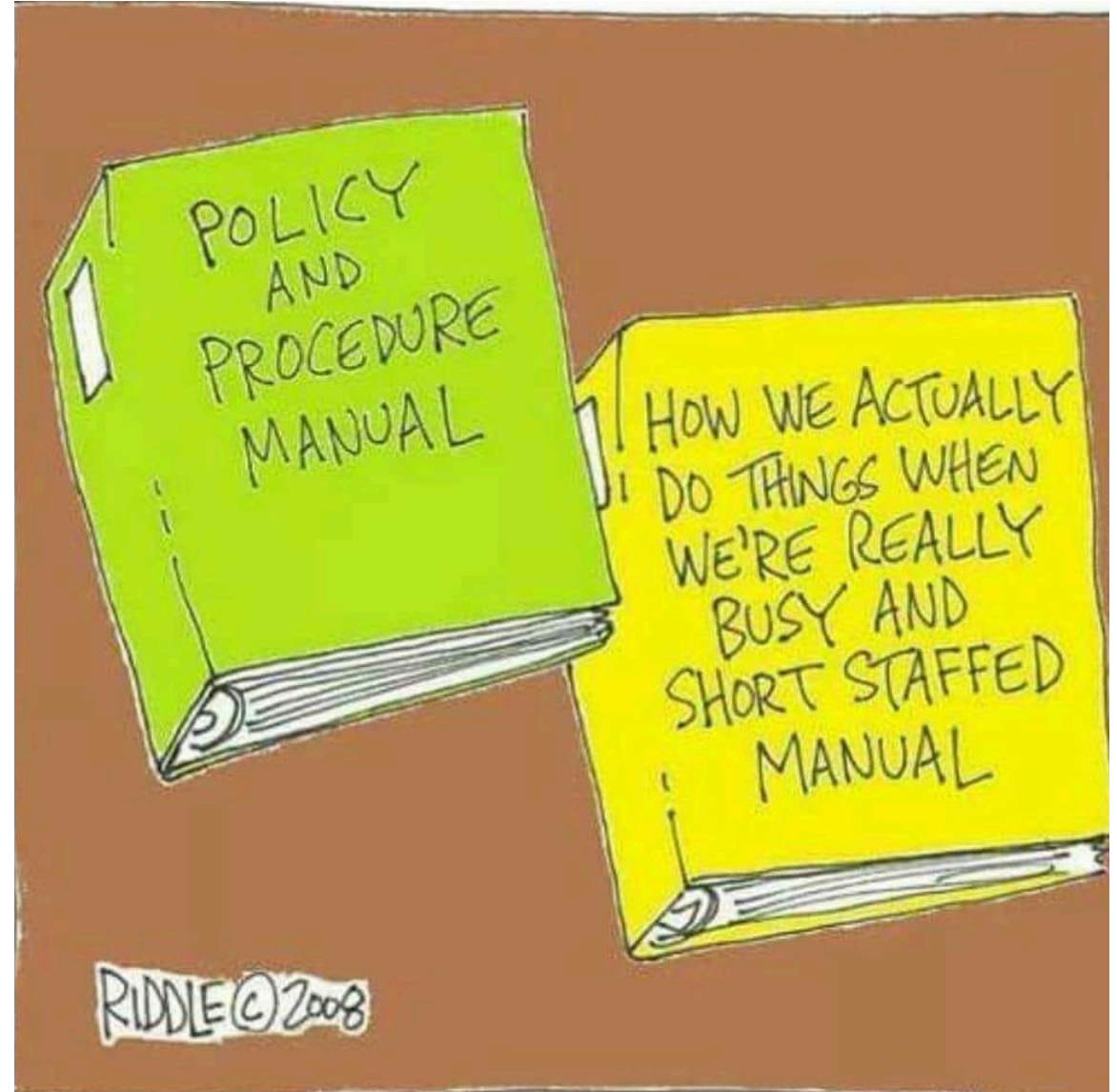
Discussion Question

Which E&O exposure poses the greatest risk to your agency today—and why?



Objective Three

**E&O Considerations of
Agency Operations –
Explore Areas in the
Agency's Daily Operation
That May Expose the
Agency to an E&O Loss**



Stay Within Your Knowledge Boundaries

Easy to say but hard to do when an opportunity presents itself



When additional experience may be needed

- Complexity/scope of operations
- Number of locations
- International operations
- Large network of supply chain vendors
- Products and completed operations
- Familiarity with specialty coverages

E&O Tips – Assessing Exposures

- **Stay within your expertise – coverage and account type**
 - Specialization can bring in more clients and more profitability
- **Gather information from the right party**
- **Use standardized checklists and questionnaires**
- **Review E&O checklists periodically to assure they are current**
 - E.g., cyber, generative AI, human trafficking exposures
- **Document exposure areas not discussed and why**
 - Did you try? Document attempts to discuss uncovered issues
- **Verify specific exposures with respect to flood and earthquake zones**
- **Point out coverage differences when placing with new carrier or changes with renewal**

Policies and Procedures

- Not all agencies operate the same way
 - Agency procedures are most effective when staff are trained and knowledgeable on the following
 - Onboarding new employees to your procedures and policies is critical
- Consistent procedures and strong documentation should be cornerstones of agency operations
- Procedures should address standard and carrier specific processes
- Constant reviews and operations audits assure compliance
- Assess manual and automated functions of daily operations
- Different departments may have unique operating requirements and have separate procedures for varying customer segments
 - Insurance Coverages
 - ACORD Forms
 - Use of agency management system
 - Basic and carrier-specific procedures
 - Staff responsibilities and authority
 - State laws and regulations
 - Protecting security of customer and employee information
 - Certificates of Insurance issuance

New Business: Gathering Application Data

Application process is critical to preventing E&O claims before they happen.

Carrier underwriting systems have changed the application process:

Instantaneous quotes

Carriers may no longer require signed application

With no application, a misrepresentation of the customer becomes that of the agent.

Different set of E&O exposures

Carrier downloads can overwrite information in agency management system.

Customers not reviewing information for accuracy.

New Business: Gathering Application Data

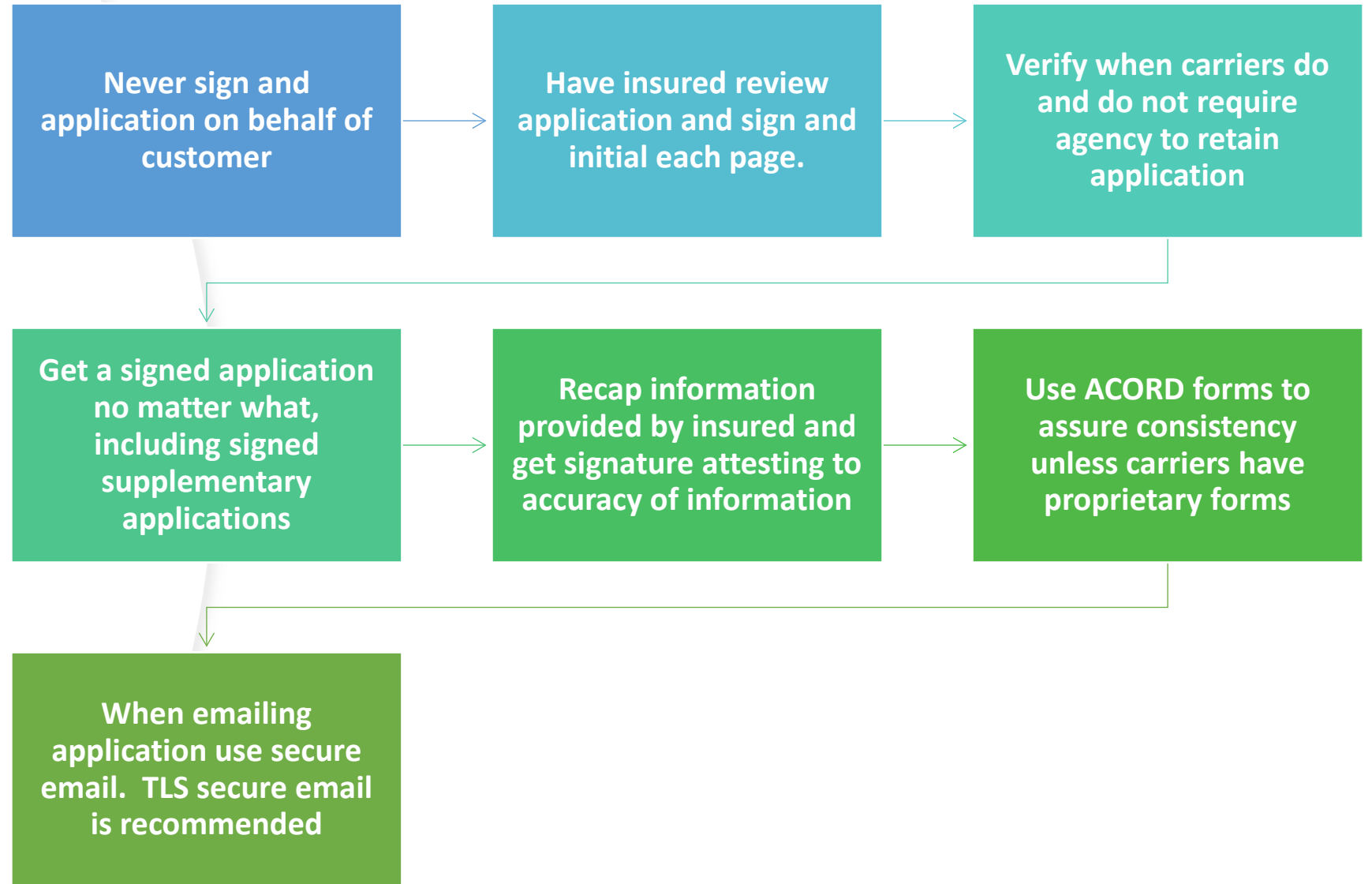
Just because a carrier does not require a signed application doesn't mean the agency shouldn't retain one

Insured's signed application is critical piece of evidence in defense of E&O claim

All oral and written information in the application process is reduced to a written contract – the insurance policy

Insured's signature on application indicates what exposures they are transferring to the carrier and verifies underwriting information

E&O Tips: Application Data



New Business: Assessing Customer Exposures



Proposals and Quotes



How your agency handles prospects' quotes and proposals can influence the agency's level of E&O exposure



Documentation in proposals such as coverages offered, coverage limitations and insured requirements are invaluable



Disclaimer language in proposals also reinforces customer communications with clear guidance

Proposals and Quotes



- **Presentation of quotes and proposals varies by agency**
 - Size and complexity of account, Personal vs. commercial lines
- **Carrier underwriting systems have changed how some agencies handle proposals**
 - Proposals can come directly from carrier underwriting systems with no modification
 - Agency specific proposal template where information is transferred from carrier quotes
- **Agency and prospect may review quotes over phone without issuing a formal proposal**

- Proposals directly from carrier underwriting systems may neglect to include the following
 - Offer of increased limits
 - Additional endorsements available
 - Other stand-alone coverages offered/rejected
 - Appropriate disclaimers
 - Duties in the event of a claim
- Customer sign-off verifying the agency relied on information provided by the customer
- Consider a supplemental form when using a carrier specific proposal that include the above
- Encourage prospects to request a copy of the proposed coverage forms

New Business: Assessing Customer Exposures



Failure to adequately identify exposures and failure to recommend coverage are common E&O claim allegations



Uncovering exposures protects agency from E&O claims and increases revenue.



Some agencies hesitate to offer additional coverage options because customer simply price focused



Customers make the decision on what coverages to purchase, NOT the agency.



Document coverages that were offered and not accepted.

Existing Coverage vs. What's Needed

Customers come to agency for a price on existing coverage



Existing coverage may be inadequate or have coverage gaps



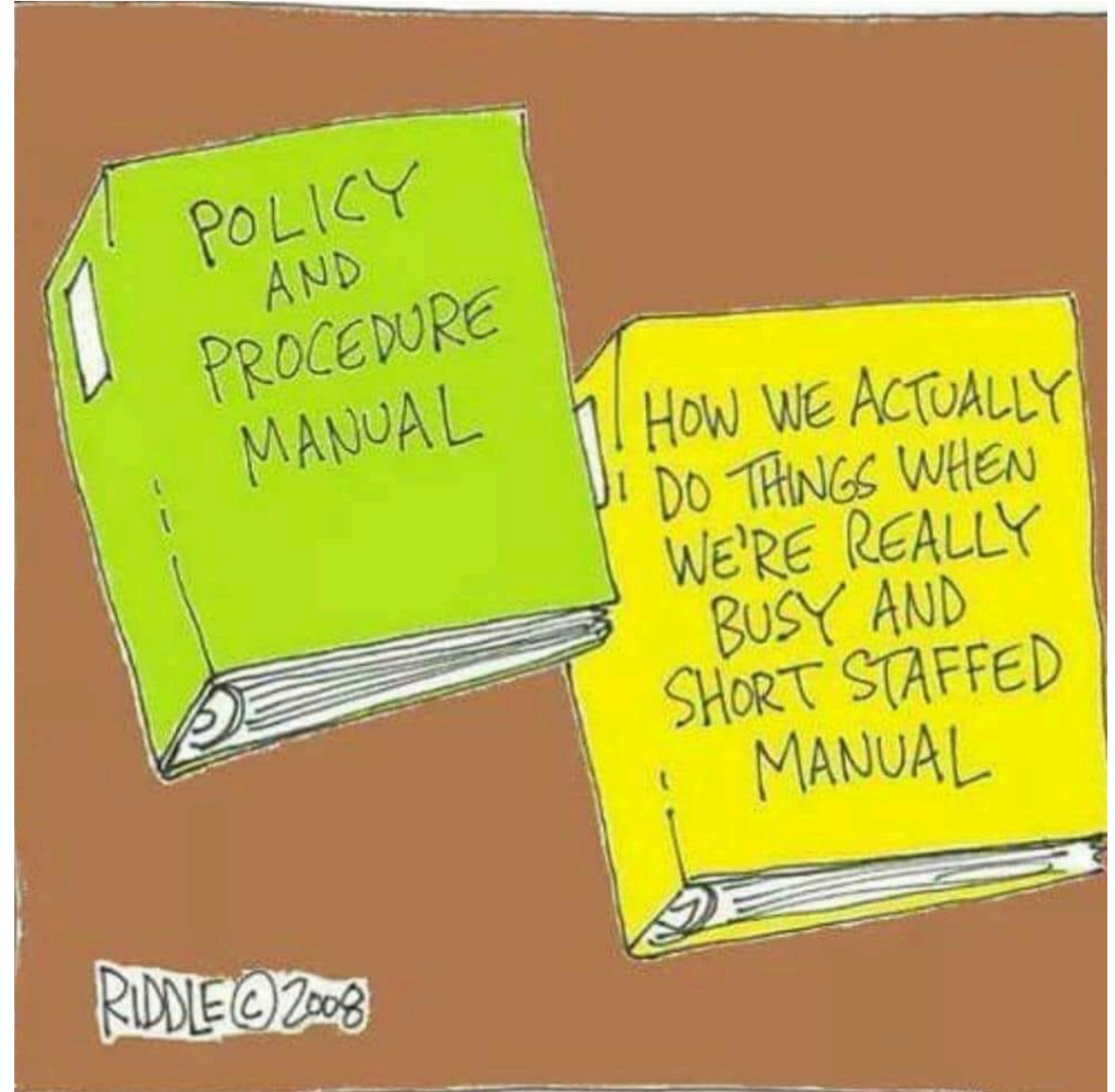
Never rely on the incumbent agent to properly assess customer exposures



At least match existing coverage and point out differences with a new carrier

Objective Four

E&O Considerations of Advertising and Social Media Use



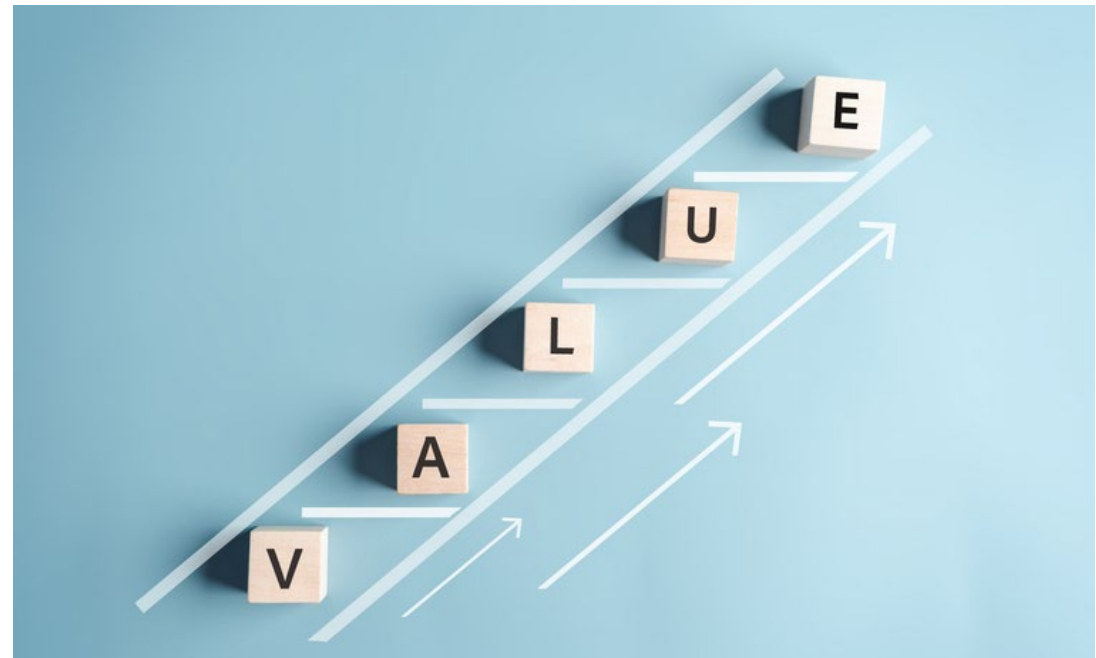
Marketing the Agency

- Ways to market the agency:
 - Websites, cold calls, brochures, advertisements, newsletters, Facebook, Twitter, blogs
- Agencies must take care in how they market their products and services
- Statements made can influence the standard of care expected from customers



Promotional Language

- Balancing act of trumpeting strengths while managing customer expectations.
- Services promised must match services delivered.
- Watch out for raising the standard of care with the following wording
 - “Specialized” or “expert” expertise
 - Broad promises “We have extensive expertise in construction risks”
 - Higher levels of loss exposure expertise “Our expert loss prevention assistance can help you reduce workers’ compensation claims”



Examples of Promotional Language to Avoid

- **Example of the “Expert Agency” that specializes:**
 - *“XYZ Agency is a full-line independent insurance agency offering auto, home, and business insurance. **We are also experts that specialize** in Employee Benefits in the workplace. These include group medical, life, cancer, accident, disability, vision, and long-term care.”*
- **Example of the Customizing Agency:**
 - *“ABC Agency represents many of the leading insurance companies in the world. That means we can **tailor custom insurance programs** specifically for you or your company **without the expense of coverage you don’t need.**”*
- **Example of Evaluator Agency:**
 - *We will carefully **do a thorough risk exposure assessment, evaluate your current insurance coverage and provide you with fair and reasonable comparisons** based on an honest assessment of your needs. **We will never knowingly over or under insure you.***

Prospecting and Advertising



Growth is a challenge for all agencies



Agencies often utilize the following

Leads from outside sources, referrals, social media, online quotes, “contact me for a quote”, instant chats, sponsor events, join online communities, and sit on not-for-provide boards



Make sure to document all correspondence from online tools in the customer file.



Include disclaimer with all media advising customer that no coverage is effective until confirmed with agency staff

Prospecting and Advertising

Ads should reflect agency's knowledge and services

Don't overuse superlatives

Review and approve all marketing materials

Encrypt private information collected from websites

Avoid terms that imply coverage is broader than actually available

Don't over-promise carrier representation

Include "unsubscribe" on solicitations

Document initial conversations with prospects

E&O Tips – Proposals and Quotes

Documents any coverage discussions with prospects, insureds, and carriers

Procedures should outline whether carrier proposal or agency template is used

Let the customer make the coverage purchasing decisions

Clearly indicate any changes in coverage

Have insured sign off on rejected coverage.

- Recommend additional coverages: flood, earthquake, umbrella, environmental impairment, EPLI, cyber liability
- Include disclaimer language on proposals
- Provide additional steps or information required to effect coverage
- Don't unintentionally limit coverage limits options
- Make customer aware if premium is subject to audit

Binders

Agency staff should know their binding authority and underwriting restrictions for each carrier. Is that producer approved by that carrier?

Speed of policy generation from carrier website has reduced usage of binders

Information on binders should be accurate and doublechecked by staff

Verify information is consistent with application and proposal

Don't let the binder expire without policy issuance, review and delivery

Policy issuance

- How you deliver and how clients receive policies has changed with technology
 - Policy issuance varies by specific carrier and line of business
 - Agencies often need to make decisions on how policies are received and delivered to policyholders
 - Agencies must adapt workflows to accommodate expanded methods of policy delivery – a challenge!



Electronic Delivery of Policies

Be familiar with state laws affecting electronic delivery

Electronic policy delivery considerations:

- Certain insurance documents must be “mailed or delivered” to insured
- Previous agreement from insured to receive policies electronically, whether by email or accessing the agency’s secure website
- Emailed policies are sent via secure email
- Be able to verify receipt or use a registered email solution that notifies the agency when the email is received by the policyholder

E&O Concerns Electronic Policies

Electronic receipt and delivery of policy may cause agency staff to become complacent in their review of new and renewal policies for accuracy

Agency staff fail to compare policies to applications and quotes

Reiterating coverages offered and not taken., reminding the customer to read their policy, who in the agency to contact, what to do in the event of a claim

Direct delivery of policy from carrier to the customer may prevent agency from answering follow up questions

Security required for protected personal information

Example of Policy Issuance Error

The agency requests a deductible of \$500 per vehicle on the customer's commercial auto application. The policy is issued with a \$2,500 deductible per vehicle, which is not discovered until the policy owner has a hail claim that affects every car in the fleet

The agency had not reviewed the policy to determine if it was consistent with the application

E&O Tips – Policy issuance



Review policies for accuracy against application, quotes/proposals and other correspondence



Deliver policies in a timely fashion and to the correct / authorized person at that business



Encourage policyholders to read their policies



E&O Tips – Policy issuance

Send

Send policies using a secure connection to protect sensitive information

Process

Have process in place for electronic delivery verifying receipt of policy by customer

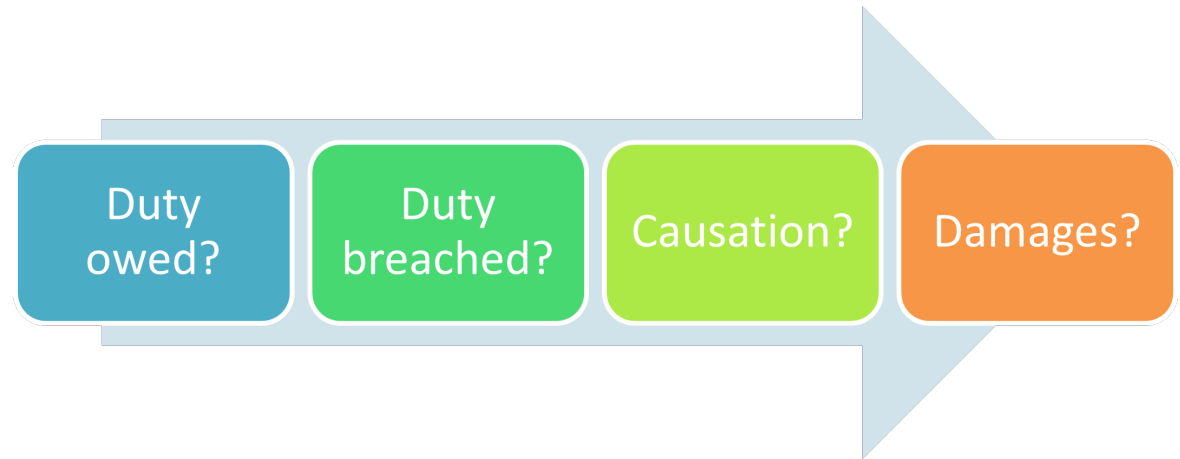
Verify

Verify the agency complies with the appropriate state laws regarding electronic policy delivery

Policy Changes and Endorsements

Types of Change Errors

- Failure to add endorsement requested
- Failure to add new commercial big rig truck to an umbrella policy results in an uncovered claim post accident
- Failure to add additional insured/loss payee
- Making policy changes requested by an unauthorized person



Policy Changes and Endorsements

How policy changes and endorsements are handled depends on the specific carriers' workflow

No change should be made unless ordered by the named insured

Information from a third party, such as a car dealership, should be verified with the insured first

Consider the effect the policy change or endorsement will have on other policies, especially excess policies

When working with carrier service center the contract should hold the agency harmless for errors of the carrier

Include disclaimers that coverage is not bound until confirmed by the agency

E&O Tips: Policy Changes and Endorsements

- Change requests to add or increase coverage should be handled as critical items.
- Change requests should come from the named insured.
- Customer records should include who ordered the change, the date and reasons for the change.
- Confirm requests for reductions in coverage in writing.
- Carrier service center contract should contain hold harmless language.
- Use care in situations of divorce and consider getting requests in writing.
- Use disclaimers.
- Know your binding authority for certain changes.
- If not immediate, notify customer that coverage is not in effect until confirmed.

Advocating for Coverage

Take care in how the agency advocates for their customer when a claim is denied and don't forget about our Ask an Expert service

Healthy discussion of the policy language with the carrier is acceptable

Admitting your error caused the denial should never be done, especially in the form of a letter to the carrier

If your customer has an potential uncovered claim consider getting your E&O carrier involved early

Claims Handling

Report

Report claims to the carrier the same day received and consider excess reporting duties

Do Not

Do not make coverage determinations on behalf of the carrier

Remember

Remember a claim report to the agency is a claim reported to the company

Report

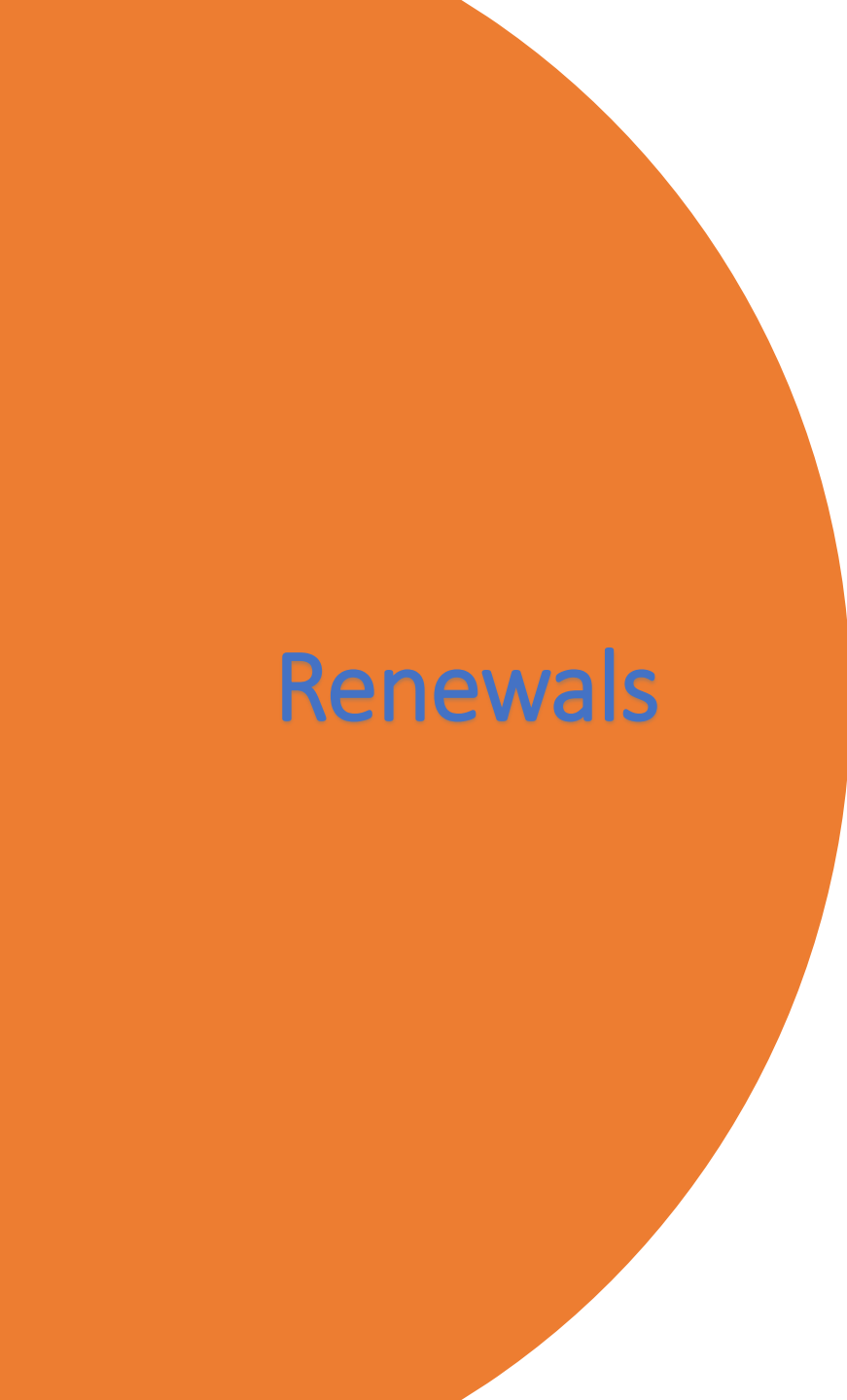
Report claims to all carriers where coverage may be applicable

Manage

Manage expectations of the customer

Claims Handling

- **Treat all claims as urgent**
 - Especially any workers' compensation injuries
- **Never deny or confirm coverage**
 - It's perfectly okay to warn your client that "I'll turn it in, but you may not have coverage."
- **Outline the claim process**
- **Have the customer to contact you if they don't hear from the carrier.**
- **Advise the policyholders of any loss conditions or duties.**
- **Don't advise the insured who to hire for repairs unless directed by the carrier.**
- **Regardless of instruction from the customer, report all claims to the carrier.**
- **Create a suspense/activity to follow up with policyholder with 72 hours.**

A large orange circle is positioned on the left side of the slide, partially cut off by the edge.

Renewals

- Carriers handling direct bill renewals may have reduced agency processing time
 - Unfortunately, this may have led to complacency in reviewing changes in customer exposures
 - Direct bill renewals should not be ignored or left on “autopilot”
 - Reach out to customer at renewal time for updated information and changes in exposure
- 
- A series of four yellow curved dashes are located in the bottom right corner of the slide.



Remarketing Accounts

- Remarketing accounts presents similar E&O exposures to new business accounts
 - Tendency to simply input existing application data without the customer's review
 - When moved to a new carrier a thorough policy review is needed to identify any reductions in coverage
 - Moving accounts should be done with an abundance of caution
- 

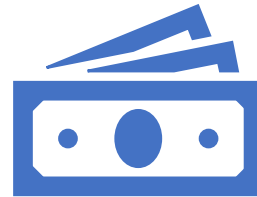
Renewals

- **Determine the number of days prior to expiration to run the list of all renewals**
 - The harder the market, the sooner you should adjust the timing
- **Use checklists to uncover current loss exposures on renewals**
- **Recommendations of coverage and limits can be reiterated with each renewal review**
- **Rejected recommendations should be verified in writing**
- **Obtain updated signed applications when applicable**
- **For renewals that are downloaded, the agency should have a process in place for reviewing accuracy of downloaded accounts**
- **If a renewal is not going to be offered by the agency, the insured should be notified in writing well in advance of the renewal date**

Auditable Policies



**Encourage insured to
provide information based
on their best educated
projection**



**Stress the downside of
underestimating the
auditable premium base**



**Renewal premium plus
large audit results that are
fully earned and due at
audit time**

E&O Tips – Audits

- Audits should be discussed at the time of writing new business and at renewals
- Verify in writing that premiums are provisional and subject to audit
- Provide information on how the audit premium will be determined
- Be aware of NCCI changes in experience rating application
- Consider sending a mid-term reminder of audit provision or request mid-term figures to avoid a large audit
- Establish a written procedure for handling audits and make sure staff is fully trained

Cancellations and Non-renewals

- Take a number of forms (mid-term, non-payment, insured request, etc.)
- Initiated by either carrier or customer.
- Cancellations vary by policy term, state law, and type of policy.
- Agents should be cautious - Cancellation process is between the policyholder and the carrier

Cancellations and Non-Renewals

- **Customers should understand:**
 - Their payment must reach the carrier by the due date
 - Replacement coverage may not necessarily be available if there is cancellation for non-pay
- **In working with carrier cancelled policies, agency staff needs to clearly communicate with the customer on whether an attempt to replace coverage will occur**
- **Timing when replacing coverage is important to avoid gaps in coverage**

E&O Tips – Cancellations and Non-Renewals

- Don't continue to remind late pay direct bill customers
- Don't interfere with the carrier's cancellation notifications
- Verify with the carrier first before telling the customer coverage can be reinstated
- When coverage is replaced, make insured aware in writing of any reductions in coverage, limits or restrictions
- If coverage is replaced in an E&S market, provide information regarding the differences between the standard market and the surplus lines market, including that the policy is not backed by the state guaranty fund in most states

E&O Exposures When Using Social Media



Social Media Benefits and Challenges



An increasingly important marketing tool



Popular social media platforms: Facebook, Twitter, LinkedIn, Google, Instagram, etc.



Agents want to increase their name recognition, market their services, and connect with customers

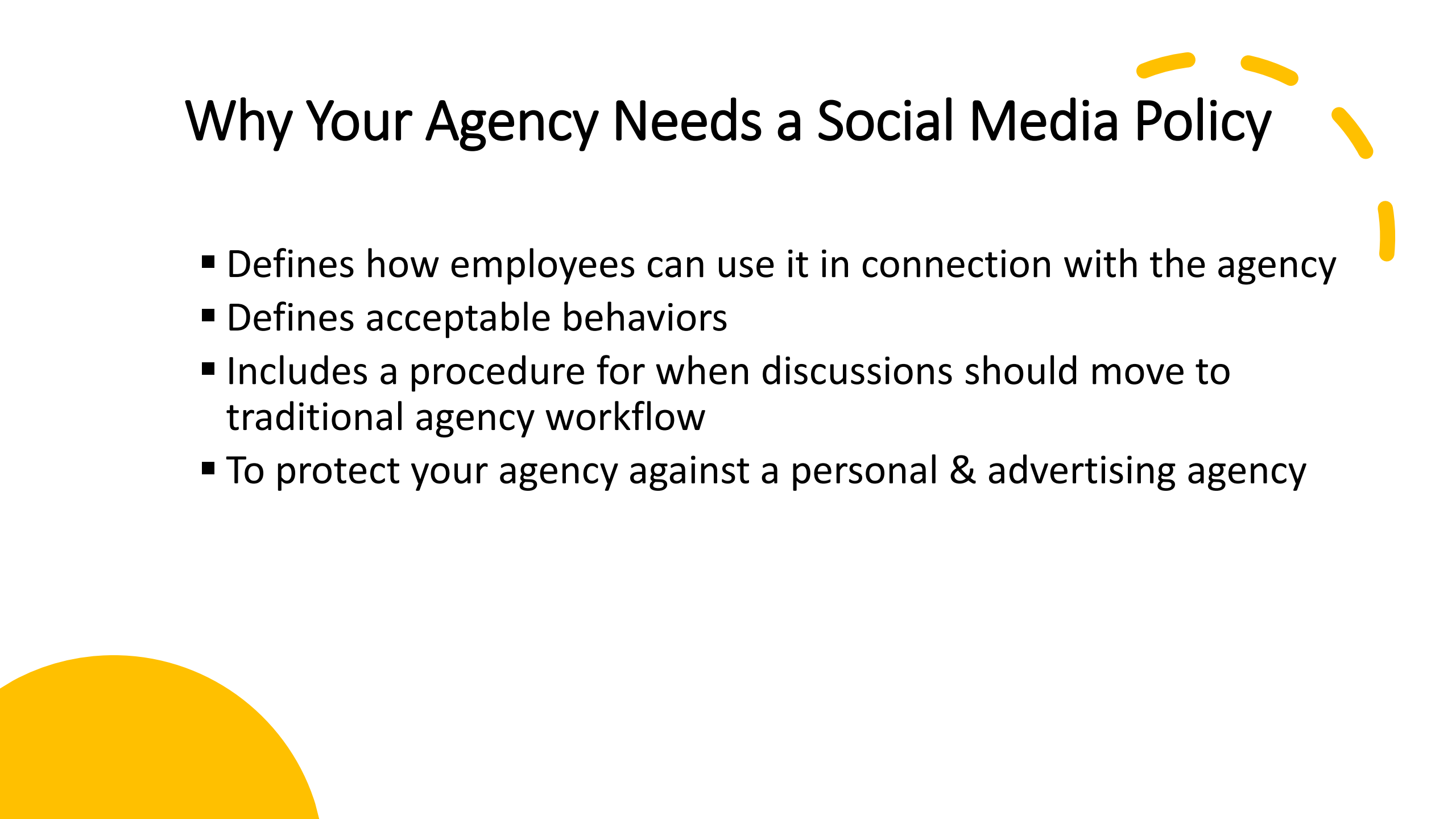


99% of your clients are using social media to some extent, which means you should always offer personal & advertising injury



Your personal lines customers may benefit from an endorsement on their Homeowner's policy to protect them against personal injury claims

Why Your Agency Needs a Social Media Policy



- Defines how employees can use it in connection with the agency
- Defines acceptable behaviors
- Includes a procedure for when discussions should move to traditional agency workflow
- To protect your agency against a personal & advertising agency

Social Media Planning

- Think about the goals for the agency
- How is it going to be used across the entire agency.
- Create a social media policy.
- Train employees of social media policy
- Be aware of advertising laws in your states
- Check information carefully when working with a service provider that offers generic websites and social media services

General E&O Considerations

- Discussion on social media platforms tend to be more casual – easier for statements to be taken out of context
 - If you want to be very, very disturbed, follow *Insurance Soup* on Facebook
- Posting can achieve immediate, worldwide distributions
- Electronic records can survive indefinitely
- Exposure may be the same, social media just magnifies them

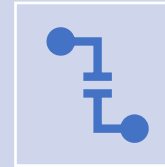


E&O Exposure – Social Media and Artificial Intelligence

Contractual Liability



Liability exposures exist when accepting the site's user agreement



User agreements will be broad, with hold harmless and indemnification of the site

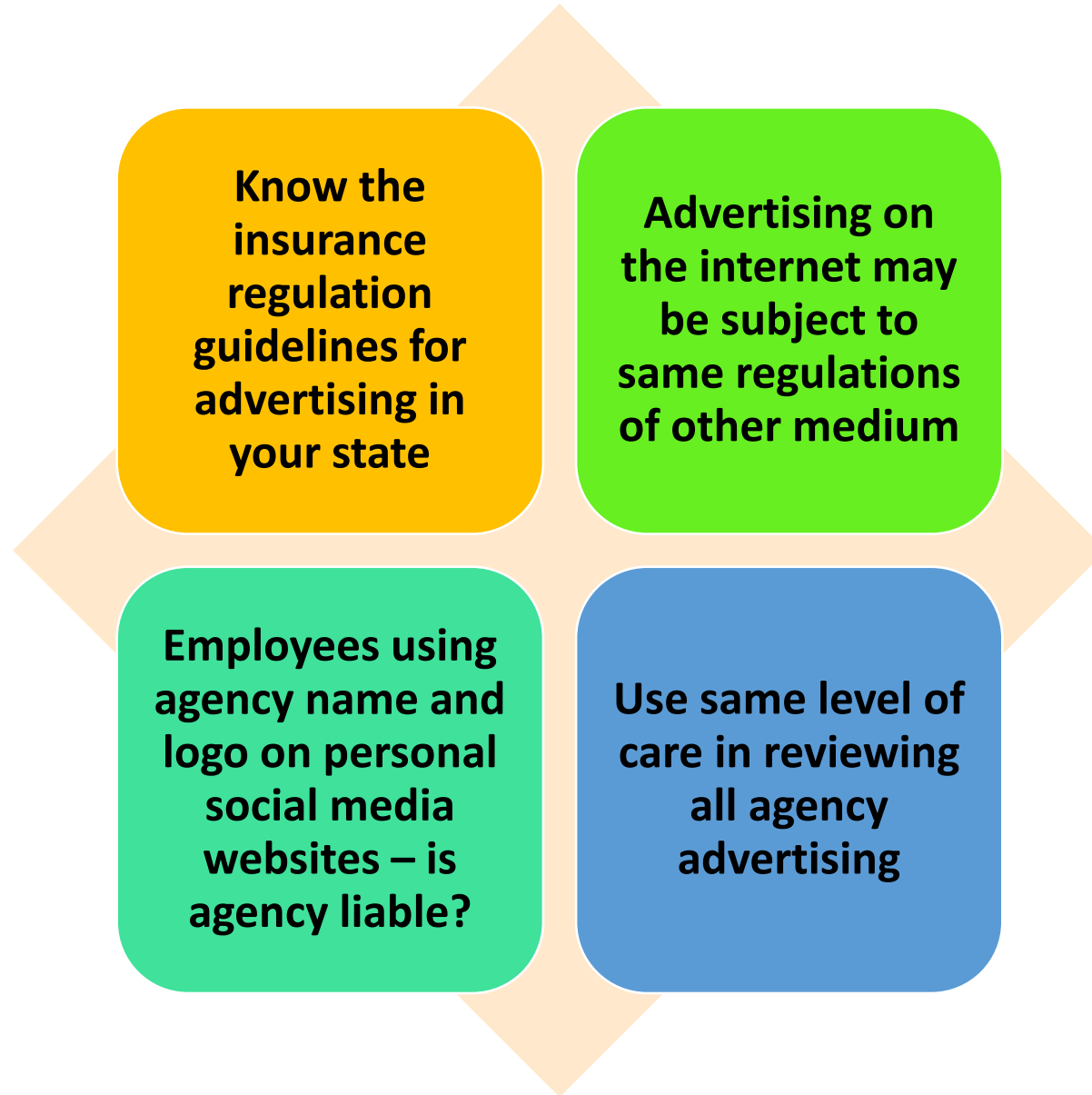


Read the user agreements and privacy statements



Consider consulting with legal counsel for full understanding of liabilities.

E&O Exposure - Advertising Liability



E&O Exposure - Advertising Liability

- **When posted articles on general insurance topics:**
 - Internally written articles should be reviewed for accuracy prior to posting
 - Any reliance on AI, go to original source to avoid “hallucinations”
 - If using others’ content, get permission and when feasible, link to original source
 - Permission should be received when linking or posting to article written by another source
 - Watch out for those “free” photos
- **Avoid misuse of trademarks and copyrighted materials**



E&O Exposure - Defamation

- Blogs, chats, and forum discussions provide an exposure of defamation claims
- Social media discussions are less formal and may provide opinions as well as facts
- Limited characters with posting on some platforms may lead to statements being taken out of context
- Defamatory comments are viewed by large audiences
- Keep all file and social media comments positive!



E&O Exposure — Privacy Issues

- Know the state and federal regulations for the protection and disclosure of private personal information of customers
- Personally identifiable information should not be shared on social media sites
- When conversation moves from general insurance topic to specific individual needs, move those conversations to the usual agency workflow



E&O Exposure – Incorrect Advice and Misrepresentation

- Exposure of incorrect advice is the same in the virtual and real world
- When using social media staff should follow same procedures for exposure analysis, coverage explanations, recommendations, and documentation of discussions
- Responding to specific coverage questions and sharing inaccurate information can create E&O exposure

E&O Exposure –
Vendor Referrals
or
“We Love All
Those
Restoration
Vendors!”

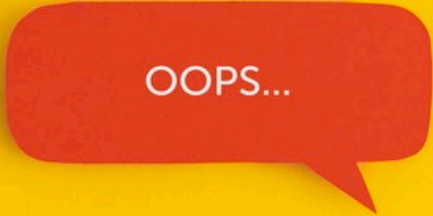
- Exposure of negligent referral claims
- Include at least two referrals to vendors pre-vetted by your carriers and let the customer decide
- If linking to referred services, make sure the agency has that party's permission to avoid exposure to trademark infringement
- Use disclaimers regarding the services being provide by these vendors

Agency Procedures

- Employees should keep discussions professional and never provide coverage advice on social media
- Limit discussion to general insurance topics such as “Should I take pictures at the accident scene?”
- Move discussions of individual insurance needs into the traditional agency workflow and documentation processes

Objective Five

***E&O Exposures Limiting
Exposures of Data
Breaches and Gen
Artificial Intelligence
Issues***



OOPS...

Introduction

- Insurance agents collect, use, and store personally identifiable information daily
- Agents face exposure to both regulatory penalties and potential first and third-party liability for breaches of data
- Liability from cyber-attacks is on the rise and the media is constantly reporting on companies being hacked, exposing protected personal information

E&O Tips – The Risks of Generative AI

- The advantages and liability exposures of generative AI are just beginning to appear
- From January 1, 2026, to April 30, 2026, insurers filed 1337 generative AI exclusions according to [Insuraviews](#)
 - Gen AI cases are only now beginning to battle their way through the courts
 - The “jury is still out” is very true for AI exposures
- **Does your agency have a governance policy? Have you determined if your GL carrier or your E&O carrier has added or will add an AI exclusion to your E&O coverage?**
 - If not, you’re running a risk
- **Are you reviewing all renewals and new business docs to ensure no AI exclusions have been added?**

Physical Data Breach Risks



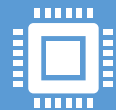
Risks include physical risks, such as the following



Discarding protected personal information without it being properly shredded



Computers, fax machines and printers being discarded without thoroughly removing stored personal information



Physical agency break-ins where the thief steals the entire agency server. Computers are still one of the first things stolen in burglaries, especially laptops, thumb drives, hard drives, smartphones



Employee Mistakes

- Agencies have an obligation to secure protected personal information whether it is in electronic or paper form and to dispose of it appropriately
- Perhaps the largest security risk arises from **employee mistakes** that often result from the failure to properly train them on agency procedures to protect the privacy of protected personal information
 - Have written guidelines and training regarding employee use of all protected consumer information
 - Have written mandatory procedures in place for the proper disposal of sensitive information
- This includes social engineering risks such as email phishing and other scams

Data Breach Exposures: Legal Responsibilities

Fair Credit Reporting Act (FCRA)

Gramm-Leach-Bliley Act (GLBA)

Health Insurance Portability and Accountability Act (HIPAA)

All 50 state, DC and U.S. territories require security breach reporting

These laws effectively require agencies to implement security plans, conduct training, and perform security audits



Data Breach Exposures and Data Breach Costs

- **Always, always recommend a standalone cyber policy to your commercial insureds**
 - The Businessowners Policy or the add-on endorsement from your E&O carrier often does not provide adequate protection
 - This information direct from Swiss Re Risk Management
- **Direct Costs**
 - Cost to handle breach...legal fees, consultants, implementing new technology and training
 - **Cost to notify and remediate affected parties**
- **Indirect Costs**
 - Loss of trust of customers
 - Damage to reputation in the community

Data Breach Exposures Identify Physical Threats

- **Majority of breaches occur from stolen or lost devices**
 - Your employees work everywhere, from coffee shops to friends' homes and shared workspaces
- **Secure the building, server room, and file cabinets**
- **Screen cleaning crews**
- **Immediately prevent access to data when employees leave**
- **Practice sound password security**
- **Limit personal information on mobile devices**
- **Carriers will require certain standards for security**
 - Not keeping those including updates current can void coverage

Generative Artificial Intelligence Threats

- **The Gen AI exclusions are coming**
 - Verisk exclusions rolled out last year; they are probably least strict
 - One non-standard carrier filed an absolute gen AI exclusion
 - Agency E&O carriers may be rolling them on
 - Swiss Re has not to date
- **It's imperative you check all new business and renewals for exclusions**
 - Courts have not yet chimed in on many cases so ...
- **It's imperative your agency has a thorough AI use policy**
 - Governance around gen AI is going to be a big issue going forward

Discussion Question

What is one change your agency should make in the next 30 days regarding documentation, AI governance, or data security?





- E&O risk comes from both knowledge gaps and inconsistent procedures; standardized workflows and training reduce exposure
- Strong documentation is the agency's best defense: records must be clear, timely, consistent and capable of telling the complete story
- Use checklists, written confirmations, customer sign-offs and disclaimers throughout the policy lifecycle
- Carefully manage applications, proposals, policy issuance, changes, claims and renewals—especially when coverage or limits change
- Keep marketing and social media accurate and professional; move customer-specific discussions into normal documented workflows
- Protect customer data and govern AI use through employee training, physical and virtual safeguards, source verification and regular coverage-exclusion reviews
- Use of gen AI is going to be a big issue for every business

Thank You!



Copyright © 2026 Independent Insurance Agents & Brokers of America, Inc. All rights reserved. No portion of this presentation or these materials may be shared, reproduced or recorded in any manner without the prior written consent of IIABA®.

References

- **Preparing a Winning Underwriting Submission**

- https://www.independentagent.com/vu_resource/preparing-a-winning-underwriting-submission/

- **IIABA's Agents Council for Technology**

- www.iiaba.net/act
- Articles and recorded webinars on social media related topics
- Specifically review - "Independent Agent's Guide to Creating a Social Media Policy"

- **Tools for members and Swiss Re Policyholders**

- <https://www.independentagent.com/eo-guardian-2/>

- https://www.independentagent.com/vu_resource/verisk-to-roll-out-new-general-liability-exclusions-for-generative-ai-exposures/