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Insurance Agents & Brokers Errors & Omissions Mock Trial

Bushwood Country Club v.
Noonan's No Risk Insurance Agency

BIG I ILLINOIS | CONVO
October 7-9
Peoria, IL

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Legal notice

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Today's Objectives

- Understand the perils associated with not properly updating coverage
- Recognize the importance of properly completing certificates of insurance
- See the problems that changes in operations can present
- See the potential problems with electronic communications
- See how an insurance claim is calculated when property is not insured to value
- Understand the E&O exposure from not properly handling an account
- Serve as a Jury for the Proceeding After Hearing the Facts

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Introduction

- All agencies are different, so this material may not reflect exactly how your agency operates
- There are steps we can all take to minimize E&O
- Strong internal practices minimize E&O exposure
- Check out the website at https://eoguardian.com

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E&O Facts

- Any agency is vulnerable, regardless of size, location or areas of specialty
- Market cycles change customers buying behavior
- Catastrophic events can lead to E&O claims
- One in seven agencies will report a potential E&O claim
- Approximately 50% of reported E&O claims close without payments

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You Don't Have to Make a Mistake to Face an E&O Allegation

When an E&O allegation occurs, how can the agency defend itself?

- Consistent procedures
- Thorough documentation
- Strong E&O risk management processes

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Top Reasons for an E&O Claim

- Application Errors
- Policy Change Errors
- Misinformation to the customer
- Failure to provide timely notice of a claim
- Mishandling certificates of coverage
- Failure to notify of policy cancellation

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Top Reasons for an E&O Claim

- Failure to explain policy provisions
- Recommending inadequate values or limits
- Failure to identify exposures
- Failure to recommend coverage
- Failing to duplicate prior coverage
- Providing inaccurate information to the carrier

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Uncovered Losses Usually Caused by the Following

- Lack of appropriate type of coverage
- Inadequate values or limits

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E&O Mock Trial Check In

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Gathering Information and Uncovering Exposures

- Risk Assessment Questionnaires/Checklists
- Agent of Record Requests
- Documentation
- Standards of Care/Client Expectations

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Risk Assessment Questionnaires and Coverage Checklists

- Reduces exposure to knowledge-based and procedural E&O claims
- Provides essential documentation in the customer file
- Helps identify customer risk exposures and fill coverage gaps
- Increases agency revenues by offering additional coverage to customers
- Enhances understanding of the customer's business and address risk management concerns
- Boosts customer's perception of the producer's and agency's professionalism.

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Checklist Realities

- Should be used by everyone – not just the inexperienced
- Consistency - All should use the same checklist
- Risk-specific checklists are available

Checklists for both PL and CL at

eoguardian.com/coverage-checklists

Suggested Reading: *The Checklist Manifesto* by Atul Gawande

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Cautions on Agent of Record Requests

- You may not know if the previous agent provided proper coverage
- Treat the account as new business; don't simply rely on what the previous agent did
- Complete an exposure checklist
- Complete an application and obtain the customer's signature

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- **Who**
  - Who the conversation was with (the name, not just the "insured")
- **What**
  - Specifically what was being requested or communicated.
  - What happens next; what was communicated.
- **When**
  - Date and time of conversation
  - Your agency management system should provide date and time automatically.
- **Why**
  - Details of request. Answers to important questions you asked to support what is being done.
- **Where**
  - In your management system. When the task is complete, close the task.
- **How**
  - What method was used to communicate? Phone? Was the customer in the office?

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What is the Best Type of Documentation?

1. **GOOD –** a note in the customer file
2. **BETTER -** confirm in writing (or an email) to the insured
3. **BEST –** the customer confirms in writing, or email, or signs a declination or waiver form

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Documenting Verbal Conversations

- Entered as soon as possible after the conversation
- Entered by the person who had the conversation
- Every conversation with a customer or related to a particular customer

IF IT'S NOT IN THE AGENCY MANAGEMENT SYSTEM….

IT DIDN'T HAPPEN!

Well-known adage about documentation.

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Certificates of Insurance and Evidences of Commercial Property Insurance

- What is a Certificate of Insurance?
- What is an Evidence of Commercial Property Insurance?
- Information you must consider
- What information should be listed?

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"Ain't Nothing but a 'Thing'"

Certifies to a **third party** what coverage(s) is/are in effect!

It is a matter of information **ONLY**!

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"Certifies" Coverage

- More weight is given to "Certify" than is owed
- The information within the COI is not "certified"
- Only the *existence* of the listed policies is "certified"

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A Matter of Information Only

- A COI is a matter of information only
- But here is where the trouble begins
  - A COI is intended to present only what is in the policy
  - A COI does *not* alter the policy

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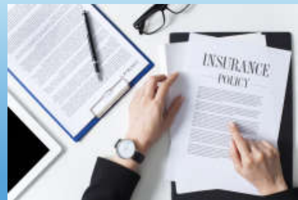
What Limits Should be Listed in GL Section?

- Actual policy limits
- Limits requested
- Reduced limits
- Other limits



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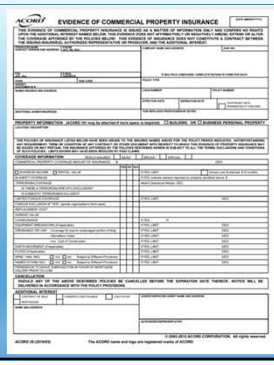
Slightly different than a COI

Although not the intent of the form, it can stand in place of the property policy until it arrives (takes the place of the policy)



The Evidence of Commercial Property Insurance (ECPI) form provides the holder a high-level overview of the named insured's commercial property coverages

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Key Points of the ECPI

- Every coverage-related line must have at least one choice selected:
  - "Yes"
  - "No"
  - "N/A"
- ACORD 101- Additional Remarks Schedule will likely be required to address issues that cannot be addressed within the ACORD 28

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Pay Special Attention to These Details

- "COMPANY NAME AND ADDRESS"
- "THIS REPLACES PRIOR EVIDENCE DATED"
- "ADDITIONAL NAMED INSURED"

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Pay Special Attention to These Details

- Business Income: Must address the Rental Value box
- Business Income: Must provide limit or state Actual Loss Sustained (ALS)
  - If ALS – how many months?
- Blanket Coverage: May need to attach the ACORD 101 to state whether a margin clause applies
- Agreed Value / Coinsurance: If Agreed Value, Coinsurance is N/A

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Marketing the Agency

- Promotional Language to Avoid

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Promotional Language to Avoid
BIG i PROFESSIONAL LIABILITY
Specialist, Specialize
Expert, having expertise
We tailor coverage to your needs
Fully covered, comprehensive, best price, all risk, addressing all your coverage needs
Risk manager
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Danny Noonan's No Risk Insurance Agency
Your business partner; we're so much more than an order taker
Serving our Customers for more than 20 years!
Get a Quote
About Us
Con-tact Us
We partner with our clients to constantly check to see what you need
We ask all the right questions, so you don't have to
Insurance is hard to understand
Let us do it for you
Taxidermy by appointment
There's no coverage we haven't dabbled in!

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The Importance of Properly Insuring to Value
INSURANCE
RISK
• Replacement Cost and its Reality
• Barriers to Replacement Cost
• Adequate Coverage Limits

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Replacement Cost and its Reality

- Belief vs. the Reality of Replacement Cost
  - We have mischaracterized the truth of "replacement cost" in our insured's minds
  - Insureds believe "replacement cost" means they will get a new building for an old one following a covered loss
  - Insureds expect "Reconstruction Cost" (New for Old)

The policy can get *close* to what the insured expects, but it requires attention to detail, using available options and attachment of key endorsements

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Building up to the Insured's Belief about Replacement Cost

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- Reconstruction Cost
- Ordinance or Law
- Blanket Limits
- Inflation Guard
- 100% Insurance to Value
- Replacement Cost

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Barriers to Replacement Cost

- Adequate coverage limits
- Actual repair or replacement
- Government involvement

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Adequate Coverage Limits

- Failure to meet Coinsurance conditions
  - Policy requires insured carry 80% of property's value to be fully insured for all losses
- If condition not met, the insured is **penalized** by applying the coinsurance calculation
  - "Traditional": ((Did / Should) x Loss) – Deductible = Payment
  - Reality: ((Did / (TIV x Coinsurance %)) x Loss) – Deductible = Payment

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Adequate Coverage Limits

- Failure to carry adequate limits even if Coinsurance condition met: If the insured carries less than 100% insurance to value (ITV), they are only partially insured for a total loss
- Recommended to *never* carry less than 100% ITV

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Adequate Coverage Limits - Options

- Inflation Guard
  - Increases coverage limit throughout year
  - Options range from 2% to max carrier will allow
  - Increase not automatic on renewal
- Blanket Limits
  - One limit for multiple properties (types and/or locations)
  - Theoretically: Total limit for any one loss
  - Beware the "Margin Clause" (Max per building between 105% and 130%)
- Inflation Guard and Blanket Limits can be combined

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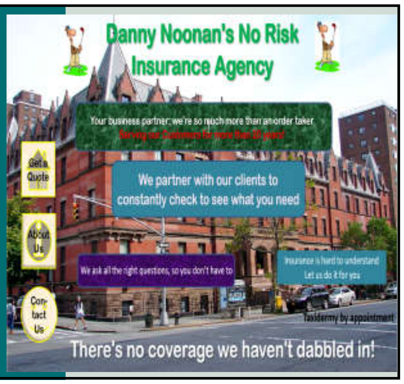
VS.

Noonan's No Risk Insurance Agency



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Damage Calculation

Policy limits	*$1,000,000*	
Building	*$500,000*	
Contents	*$250,000*	
Land	*$250,000*	
Damages		
Building Replacement Cost		*$3,000,000*
Less policy limit		*- 500,000*
Uncovered building loss		*$2,500,000*
Contents Loss		*$ 500,000*
Less policy limit		*- 250,000*
Uncovered contents loss		*$ 250,000*
Uncovered Czervik contents loss		*$ 375,000*
Total Uncovered Loss		
Building		*$2,500,000*
Contents		*+ 250,000*
Czervik contents		*+375,000*
Total Uncovered Loss		***$3,125,000***

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Insurance Agents Standard of Care

- Standards of Care
- Special Relationship
- Agency Practices vs Legal Duties

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Standard of Care

1. Non-Professional Standard of Care
   - Procure the coverage requested
   - Let the customer know if it is not possible
2. Professional Standard of Care
   - Advisory role
   - Inform customers about additional types of coverage
   - Help make insurance decisions

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Special Relationship

Courts establish different criteria in each state, and generally could include the following

- Agent agrees to advise the customer
- Receiving additional compensation
- Long-term relationship
- Agent holds themselves out as an expert
- Customer specifically requests advice
- Customer relies on agent's representations about coverage

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Agency Practices vs Legal Duties

Proactive interaction with the customer, although not a duty, can reduce incidents of uncovered customer losses

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Conclusion

- Understand how E&O claims happen
- Understand your duties as an agent
- Comply with State and Federal Laws
- Consistently follow agency procedures
- Provide exceptional customer service
- Documentation – your superpower!
- Never be afraid to ask questions if you are unsure of how to proceed

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References

For solid coverage, technical and agency management articles and charts, visit this link

Association for Independent Agents | Virtual University

For tools to help prevent agency errors & omissions, visit this link.

- https://eoguardian.com/

These tools at EOGuardian are available to all members and include the following.

- Sample Procedures Manual
- Coverage Checklists
- Coverage Declination Forms
- Records Retention Information
- Big "I" Disaster Planning Guide

These tools available to Swiss Re policyholders include the following

- Various disclaimer language templates
- Various template language for letters
- Auditing tools

Learn page at E&O Guardian

- Various articles
- Downloadable guides
- Discount for membership in the Insurance Journal Academy link
- Various Swiss Re/Big "I" webinars
- Access to ABEN, our learning provider

Reduce my premium page

- Covers the various ways your agency can lower your E&O premium with Swiss Re

Standard of care page

- Offers an on-demand webinar and book to help your agency determine its standard of care in all U.S. states

Frequently asked questions

- This page offers some frequently asked questions and their answers

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