

LOSSPREVENTION LESSONS

December 2014

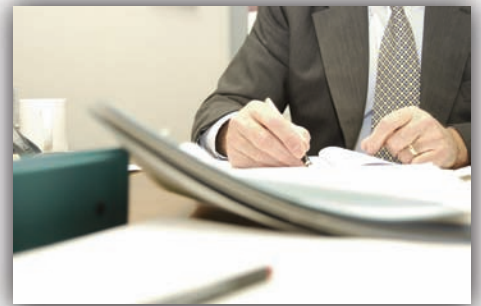
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The Importance of Endorsements Cannot Be Stressed Enough

Endorsements are vital to your business as an insurance agent. The topic is an issue of particular concern for newly contracted agents who may not have the experience to understand the ramifications of any endorsements on a given policy, but even seasoned veterans in the insurance industry frequently make mistakes related to endorsements that result in sizable E&O claims. The topic is such an important one that we are further examining issues surrounding endorsements this month.

Endorsements change the scope of coverage afforded by an insurance policy, so it is crucial that you include all applicable endorsements in your proposal to your client when you are quoting business. Furthermore, it is important that all parties involved in an insurance transaction understand the nature and terms of an endorsement and how the endorsement affects the coverage afforded. Your client should also be made aware of any endorsements available under the policy which may be of interest to them, as a claim can also be pursued for failing to offer an endorsement that was available and should have been offered to the client given the circumstances.



Without a proper understanding of endorsements, you are unable to explain the terms of an endorsement properly to your client. If you incorrectly explain the effect of an endorsement, you may face an E&O claim based on misrepresentation. Your client should be aware of any endorsements that will be attached to the policy at the time the policy is bound or immediately if the endorsement is added to the policy midterm.

The first step is to secure a copy of any proposed endorsement and to read it. You cannot properly explain the effect of an endorsement without first reading and understanding it. If you do not understand the endorsement, you need to actively seek help from appropriate sources, such as your district manager or underwriting. You must remember that you are an insurance professional and if you are having difficulty understanding an endorsement, it is very likely that your insured will not be able to understand the effect either. It is important for you to document the file with notes advising who you spoke with, the date of the discussion, and the content of the discussion.



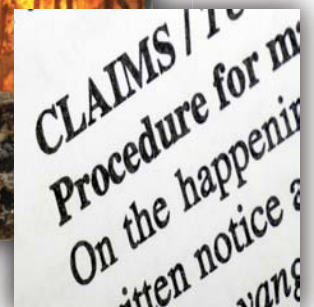
For example, in connection with a business owner's package policy, a client asked his agent for pollution coverage, in particular for coverage for clean-up costs for pollution migrating off-site from the client's premises to adjacent private property and sewers/storm drains. Such coverage was available, but the agent did not obtain a copy of the various pollution endorsements by which the carrier provided differing levels of pollution coverage. Although the agent believed the endorsement that was selected provided the coverage requested, it was discovered after a fire loss to a paint manufacturing plant that the pollution endorsement selected did not provide coverage for off-site pollution clean-up costs. The client was left facing thousands of dollars of uninsured exposure for the clean-up costs and the agent is facing liability for failing to obtain coverage requested by the client.



The next step is to review the endorsement with your client. Of course, there will be times when it is difficult to coordinate a meeting. At such times, you should send a copy of the endorsement to your client for review and invite any questions or comments. If your client does not respond, follow up with written communications offering to review the endorsement together. If the client still does not respond, you should add notes to the client's file recording the attempts to discuss the endorsement. Finally, the client should be sent a "closing" communication, indicating that based on the client's lack of response, the agent presumes that the client understands the endorsement and has no questions.



In another recent matter, the agent annually reviewed the commercial property limits of the client's structures, contents, business income, and extra expense coverages. The agent was aware that significant construction had occurred on the site, including a new structure. The agent brought this item to the client's attention, but the client was not interested in having a conversation about the matter. The client declined the suggestion, stating that it was only an empty garage and he didn't care if it was covered. The agent did not obtain a proposal or quote and did not send a follow-up written communication to the client stating that the agent had offered to discuss coverage options and confirming the client had declined his offers. Soon after, the client suffered a catastrophic fire loss that resulted in a total loss of the "garage". It turns out that the client was using this



"garage" as a warehouse for his valuable paper and electronic records. The client alleged that the agent told him he was covered to the policy limits rather than a \$25,000 sub-limit. Because there is no written record of the agent's efforts to offer coverage and no record of the declinations, the agent's defense is compromised and it will be left to a jury to decide whether to believe the agent or the client's testimony.



In any event, if you and your client are able to meet and confer about the endorsement's effect (whether in person or by telephone), upon completion of the discussion the agent should summarize the discussion in writing and confirm whether the client accepted or declined the endorsement. Best practices regarding the quoting and binding of endorsements can go a long way in the prevention of E&O losses.

LOSS PREVENTION TIPS

The agent needs to understand any endorsements well enough to explain its effects on their clients policies. Attempt to discuss the endorsement with the client and make a written record of the attempts. Confirm in writing the client's acceptance or declination of the endorsement.



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