

# ERRORS & OMISSIONS

## RISK MANAGEMENT ALERT

### **COVID-19 Pandemic: How Agents and Producers Should Respond to Coverage Questions**

by **Thomas Casella, JD, MBA, SCLA**  
*Senior Risk Management Representative, Utica National Insurance Group*

**The Coronavirus (COVID-19) pandemic** is an unprecedented event in world history. Federal, state and local governments and businesses of every type – small and large – are grappling with how to respond to this crisis.

During this time of crisis, it is imperative that insurance agents and producers do not make any statements or representations to their clients regarding the potential coverage of a claim. If a client submits a claim to you, the best practice is to simply report the claim to all relevant carriers for that client, and document that the claim was timely submitted. Refraining from making any statements or representations regarding insurance coverage may help an agency mitigate the risk of becoming involved in litigation.

#### **Other E&O mitigation measures:**

- **Review renewal accounts to determine if any new exclusions, i.e., a virus and bacteria exclusions, have been added to the coverage.** This is particularly important in the non-standard market.
- **Event Cancellation Coverage should include Communicable Disease Outbreak and Civil Authority coverages.** If you have clients that schedule events and fundraisers, it will be imperative that you offer Event Cancellation coverage at various available limits. If a client declines such coverage, document their declination in a writing signed by the client. If you are unable to bind Event Cancellation Coverage with the Communicable Disease Outbreak and Civil Authorities coverages, make sure you document this in writing sent to your client.
- **Business Interruption Coverage is being challenged by the Plaintiff's Bar.** Litigation has already been initiated regarding BII and the interpretation of physical damage to the insured property. As stated above, DO NOT make any statements or representations on whether a BII claim is covered. Simply tender all information as provided by the client to the carrier and request that the carrier provide its coverage determination in writing.

From an E&O perspective, the challenges presented by the COVID-19 pandemic are no different than other large scale catastrophe events, such as a hurricane. Agents and producers should be ready to timely submit claims to carriers on behalf of their clients. Carriers will make coverage determinations based on the nature of the allegations and the terms and conditions of the policy in place at the time. Taking the steps outlined here may help mitigate the potential for E&O claims based on failing to report or commenting on potential coverage of a claim.

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### **Timely, Accurate and Complete Claim Reporting: Ensure that Your Agency is Prepared to Handle Incoming COVID-19-related Claims**

by **Thomas Casella**, JD, MBA, SCLA

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In the midst of the COVID-19 pandemic, claims for Business Interruption, Workers Compensation and various General Liability matters are already being reported, and this trend is expected to continue for the foreseeable future. If your agency is one that offers the service of reporting claims to insurance carriers on behalf of its customers, then you will need to be especially vigilant during this time as the claim activity is anticipated to increase exponentially. If you are not an agency that offers this service to its customers, you need to make this clear, in writing, and advise your customers to report all claims directly to the appropriate carrier.

To avoid E&O exposure on the increased influx of COVID-19-related claims being reported to you by your customers, you will need to:

**Avoid making comments to your customers regarding coverage.** Customers may ask whether a particular claim is covered, and it is natural to want to provide information based on your years of experience; however, it is not the agent's role to determine coverage. You may not have all the information at the time the claim is initially tendered, and there may be changes in legislation that could impact a carrier's coverage position. You should merely take the customer's information and forward it to the carrier for a coverage determination.

**Forward all claim information in a timely manner.** Do not delay forwarding claim information from the customer to the carrier as this may result in a denial of the claim and an E&O exposure for your agency. This applies to all information including initial claim details as well as further information, reports, etc. Immediate forwarding is optimal, but you should not have longer than a 24-hour turnaround on claim information provided by your customer.

**Ensure the information provided by the customer is relayed in its entirety to the carrier.** Do not paraphrase, interpret or otherwise alter claim information provided by your customers. The claim information you receive is what should be forwarded to the carrier. Any deviation that results in reduced, or a denial of, coverage will be an E&O exposure for your agency. Additionally, if you request clarification or additional documentation, ensure that this is documented and forwarded once it is received.

**Report claims to all appropriate carriers.** There may be a number of policies that may respond to a given claim. To avoid exposure for a failure to report a claim to a particular carrier in a timely manner, make sure you report the claim to each carrier that may potentially have coverage for a particular claim.

**Ensure that excess carriers are provided notice of the claim.** Whether the umbrella or excess coverage is with the same carrier or not, report the claim to each policy that may have coverage. Do not assume that because a carrier has both the underlying and excess coverage that both policies are triggered when the claim is reported to the carrier on the underlying policy. You need to notify the carrier of each policy that may be triggered to avoid an E&O issue for failure to report or untimely reporting.

While public and private entities, healthcare workers and first responders, and private citizens contribute to move forward during this pandemic, you will need to do the same. Be mindful and vigilant in your business practices and submit all claim information received by your agency customers in a timely, accurate and complete manner to reduce the risk of E&O exposure.

*<sup>1</sup>Utica National Insurance Group and Utica National are trade names for Utica Mutual Insurance Company, its affiliates and subsidiaries. Home Office: New Hartford, NY 13413.*

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## RISK MANAGEMENT ALERT

### Is the Coronavirus causing a change in your clients' exposures?

by **Curtis M. Pearsall, CPCU, AIAF, CPIA**

*President – Pearsall Associates, Inc. and Consultant to the Utica National E&O Program*

There is no doubt that the Novel Coronavirus (COVID-19) is causing major issues for businesses of all sizes, primarily a loss of revenue. However, there are some other potential issues that your clients may be dealing with that could have insurance ramifications that you should be aware of, which include:

- **Businesses being used for a purpose other than what they were designed for.** Examples include schools being converted to day care centers, theatres and auditoriums used for storing supplies, college dorms and hotels becoming makeshift hospitals, etc.
- **Restaurants are much more active in the delivery of their products to make ends meet, as a significant part of the nation is engaged in Social Distancing or Shelter-In-Place, of varying degrees.** Who is acting as the delivery service and do they have the proper insurance protection?
- **Manufacturers retooling their production lines to make much-needed medical and personal protective equipment.** There is immunity, in certain circumstances, under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), but these exposures should be assessed to determine if the new risk is anticipated by the current policy or policies.
- **Some businesses have been forced to shut down, potentially resulting in a vacant building scenario.**

These are all issues agents need to be sensitive to and encourage their clients to bring to their attention. Will the insurance carriers be willing to continue on the coverage when the exposure is different from what they were aware of? Will the policy, as written, respond to the current risk? It is best not to assume and to contact the carriers with new exposure information provided by your clients. It is advisable to reach out to each of your clients by letter/email or via your agency website, and request that they advise you if there has been any modification to their business operation that would change the risk associated with that coverage. It is important that you document all responses and any declinations to modified coverages that are proposed.

While there are moratoriums in place in several states to prevent carriers from canceling policies, this does not guarantee that the loss will be covered. Having your clients alert you to any changes in their business operations is a proactive way to address the current crisis and will put accountability on your clients to advise you of their changing exposures.

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# IMPORTANT INFORMATION:

## Simple Steps to Take to Prepare Yourself, Your Staff and Your Customers

*Courtesy of the member companies of the Utica National Insurance Group*

In the wake of the COVID-19 pandemic and its effects on the United States, it is important to be prepared to respond appropriately to questions and requests from your customers. Insurance agencies are not only faced with preparing for the effects of the pandemic on their business routines, but also with the ongoing business cycle of incoming clients, renewals and claims management for clients who have experienced losses.



From an agency errors and omission perspective, here are some simple steps to take to prepare yourself, your staff and your customers for the challenges that lie ahead:

- **Prepare for backup call service or update voicemail with contact information for claims reporting.**
  - You should NOT just close your operation.
  - If you are forced to (illness, isolation, quarantine, etc.) you must, at a minimum, alert your current clients and carriers. Update all client-facing portals, i.e., voicemail, email, website, Facebook, LinkedIn, etc., with your business's plans and provide contact information for servicing of accounts.
- **Communicate with your clients and carriers.**
  - While several states, including New York, are requiring the workforce to stay at home, excluding essential services, it is important to keep your clients informed of the status of your business operations, and the contacts for new business, renewals and claim submissions. To date, every state with a stay-at-home order considers insurance to be essential.
  - Likewise, if you will be unavailable, or your contact numbers have changed, alert the carriers that you work with and your state association, in the event they need to contact you.
- **Make sure antivirus and firewalls are updated frequently.**
  - While working remotely, there is even greater risk of cyber exposures; ensure that your computer system's security software is up to date.
  - Use a Virtual Private Network ("VPN"), where available.
- **Mobile devices and communications containing Personally Identifiable Information ("PII") need to be encrypted.**
  - If you are working from a laptop computer or other mobile device, such as an iPad or tablet computer, you should have the information on these devices encrypted with strong encryption software.
  - Any communication containing PII should always be encrypted to prevent release of sensitive information.

*Continued*

- **Staff should ensure compliance with carriers' binding moratoriums in effect and communicate this to clients requesting changes in coverage.**
  - Several states have already issued notices regarding cancellation of policies and renewals. Make sure that you check with the State Department of Insurance where your clients have effective policies.
- **Have down-time procedures in place that are communicated with your staff.**
  - In the event remote workers are unable to access the servers where your agency management system is located, have a process to manually document client requests for policy changes, renewals, cancellations, etc.
- **Print a list of all policyholders, policy numbers, and important policy information and store it in a safe location, should you have issues connecting to the internet.**
  - The internet is seeing record amounts of traffic as many companies across the U.S. are transitioning to remote work. Should there be an issue connecting to the internet, or a specific server, you will want to have a paper backup of client information.
- **Print a list of all carrier claims information, including numbers to call and report claims, paper claims reporting forms, etc.**
  - As indicated above, should there be an issue with connection to the relevant server it will be helpful to have a paper printout.
- **Prepare for staffing needs post-event to handle your clients' claims-management needs.**
  - There will likely be in an influx of claims related to the COVID-19 pandemic. Are you properly staffed to efficiently relay those claims to the appropriate carriers?

**Should you need to report a claim, we are ready to assist you 24 hours a day, 7 days a week.  
Call us at 1-800-598-8422 or find us online at [www.uticanational.com](http://www.uticanational.com).**

**WE APPRECIATE YOUR BUSINESS.**

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