

## Gray Area of Reporting Claims

**H**ave you ventured online recently to the Virtual University Web site? The VU faculty often opine over tough E&O issues related to running your agency. The VU group recently discussed an agent's obligation to report a potential claim to carriers if insureds tells the agent about it but are not sure if they want to submit it to the carrier. What do you think?

First, consider each party's contractual relationship in the transaction. The insurance policy is between the policyholder and the carrier. Whether insureds want to report a claim and take advantage of coverage is up to them. After all, insurance policies include deductibles to prevent a frequency of small claims reports. Depending on the type of insurance, insureds may have different responsibilities to report claims or potential claims; make the client aware of those provisions. If a client tells you that his Rolex was stolen and he wants to know if he should report it, should you feel obligated to recommend that he report the claim or advise him that he's better off paying to replace the watch because it barely pierces his deductible? Check the policy language, but in this particular case of first-party property coverage, the insured has the right to absorb the claim if he chooses because he is a party to the insuring agreement.

The other contractual relationship to consider is your agency contract with the carrier. You have heard the phrase: "A claim reported to the agent is a claim reported the company." Are you an agent of the company or a broker representing the client? The type of license you hold and your carrier agreements may help determine this. When it comes to contractual relationships with the parties involved in the claims reporting transaction, you must evaluate and balance your fiduciary duty to your client with your contractual relationship with your carrier.

Also think about the potential long-term impact the claim could have on both the insured and the company. If the insured doesn't want to report a stolen watch, the long-term financial impact to the insured, company and your agency E&O is finite—the value of the watch. On the flipside, say your client gets into a minor fender bender with limited damage to the cars. If the incident is not reported and two months later the other person involved sues the client for bodily injury damages resulting from the accident, the insurance company could be on the hook for significant payout since it didn't have the opportunity to mitigate loss through early settlement. The possibility of an unpaid claim went up significantly, and the potential E&O claim and carrier subrogation against you also went up.

If insureds decide not to report the claims and you agree with their decision to absorb the loss, fully disclose to the insureds what could happen if the claim is not filed (both short term and long term), document the file and request a written signed disclaimer about their decision. 

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## Three Strikes Comes into Play

Three claims and you're out is another factor that agents consider when clients come to them seeking guidance on whether they should report claims. Clients with multiple claims in a single policy period may be in danger of being non-renewed and face premium increases in the non-standard market. What should agents do if clients with several existing claims ask whether or not to report a claim? Do what is best for the client, but not at the expense of increasing your E&O exposure. Look at this scenario from both sides. First you could not report the claim and risk a future uncovered claim. Or, you could have the client report the claim and risk the insured suing you for increased premiums and lesser coverage in the non-standard market. You'll need to weigh the options, but it's probably not worth the risk of the insured not reporting it.

Also consider the impact of known losses on underwriting considerations. Applications ask for known losses, whether paid by insurance or not. There is an obligation to include the loss that didn't make it to the insurance company to avoid the misrepresentations on the application. This is especially true in dealing with known prior acts while working with claims-made forms.

—D.H. and R.E.

