
THE E&O REPORT

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During the past two months, the world has been severely impacted by the coronavirus pandemic. The effects on individuals and businesses have been many and far reaching. Due to the spread of the virus, sporting and concert events have been cancelled, schools have been closed, and the restaurant and travel business has been hit hard. During this time, many insurance agents and brokers have reached out to us to ask how they should handle inquiries from their insureds concerning coverage for potential claims that they many have related to the effects of the coronavirus.

There is no doubt that the coronavirus will result in insurance claims being made. But, will there be coverage for those claims? The answer is not entirely clear, but most insurance policies contain exclusions that would exclude coverage for coronavirus related claims. But, whether there is ultimately coverage for a particular claim will depend upon the individual circumstances involved and the language contained in the subject insurance policy. Insurance agents and brokers should be prepared for an influx of claims and remain diligent in their claims handling procedures in order to both help the customers through the process and also protect the agency or brokerage from an E&O Claim during this very uncertain time.

As we have cautioned repeatedly over the years, since the insurance company is the one that will ultimately make the determination of whether or not to cover a particular claim, the question is most appropriately answered by the insurance company and not by the agent or broker. **If you are faced with a customer who is asking about coverage for a particular type of coronavirus related claim, the best practice would be to have that the customer put the inquiry in writing to you.** Having the request in writing will avoid any confusion as to what information is being sought and will provide an easier means for transmitting the inquiry to the insurance company. The quickest and most efficient way to transmit the written request for information is by e-mail or fax. **As a general rule, do not summarize or editorialize the inquiry that you receive from the customer.** While this may be done with all the best intentions, it might lead to an inaccurate translation of the question or possible confusion. Keep in mind that the more specific the inquiry is that you receive, the more likely an accurate response can be provided whether there is coverage or not.

After providing the written inquiry concerning coverage for the potential claim to the insurance company, it is prudent to then request that the company provide its response in writing. If a request for a written response is rejected by the insurance company, this should possibly raise some red flags. Nonetheless, to exercise caution, it may be wise to confirm any conversations in writing, and then be sure to save that writing.

It is also wise to forward the verbatim response that is received from the insurance company back to the person who has asked for the information. Once again, this helps to avoid any miscommunication or information getting lost in translation.

As with any communication that concerns issues of coverage, the agency or brokerage should be certain to retain in the customer's file the writing containing the inquiry, along with the transmittal email or telefax and the response from the insurance company, so that information is available in the event an issue arises later on.

One additional thing to keep in mind is that any potential claim or potential claim that you receive from an insured should be submitted to all insurers an insured may have that may possibly provide coverage for the claim. Again, it should be the insurer that makes the coverage decision and not the insurance agent or broker.

Careful handling of coverage inquiries will help guide the customer in connection with any claim that they may potentially have, even if it is related to the coronavirus. In addition, allowing the insurance company to respond to the inquiry will help the insurance agency or brokerage protect itself against possible E&O claims and lawsuits related to the claim.

Submitted by:

James C. Keidel, Esq.
Keidel, Weldon & Cunningham, LLP

[1] The Big Book of Form Letters and Other E&O Tools published by Big I NY is a valuable resource that contains checklists, disclaimers and over a hundred sample form letters, including policy transmittal letters for the following situations: mailing a policy by US Mail, emailing a policy, hand delivery of a policy, delivery of an auditable policy, and receipt of a direct billed policy. If you are interested in purchasing the Big Book of Form Letters and Other E&O Tools, please contact the association at 800-851-8853.

Keidel, Weldon & Cunningham, LLP concentrates its practice in the defense of insurance agents and broker's errors and omissions claims and litigation, errors and omissions loss control counsel and education, insurance coverage analysis and litigation and insurance regulatory matters. Please direct any comments or questions to James C. Keidel, Esq. by mail to the main office of Keidel, Weldon & Cunningham, LLP, at 925 Westchester Avenue, Suite 400, White Plains, NY 10604, telephone at (914) 948-7000 or e-mail at jkeidel@kwcllp.com. The law firm also maintains offices in Syracuse, New York; New York City, New York; Wilton, Connecticut; Fair Lawn, New Jersey; Warwick, Rhode Island, Philadelphia, Pennsylvania, Williston, Vermont and Naples, Florida.

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