SPECIAL REPORT

11 Really Stupid Things New Agents Do To Get Sued

A few years ago, no one knew what ***market conduct*** meant. Today there are class action suits and negligence claims filed against insurers and agents alike amounting to millions of dollars for a variety of sales and legal conduct violations. Of course, agent conflict is nothing new. Our research found cases dating back to the early 1800's. What is different between cases of today and the ones that occurred years ago is the trend toward fiduciary responsibility. In essence, the courts are viewing agents as ***more than mere salesmen***. Recent cases, for example, lean toward the precedent that agents, as insurance professionals, ***should have known*** something was wrong compared to years ago where agent liability was generally limited to issues of ***outright negligence***. There ***is*** a world of difference between the two that is best explained by the ***legal precedent theory***. In a nutshell, because our legal system makes legal decisions based on precedents, it is destined to constantly expand. Each decision in the chain sets the stage for the next step of expansion. The result can be demonstrated court cases. In Southwest v Binsfield (1995), for example, the agent ***should have known*** that a specific coverage option was important to the business he insured. In Brill v Guardian Life (1995) the agent ***breached his fiduciary duty*** by not using an ***optional*** conditional receipt. Clearly, these cases represent an expansion of agent liability . . . from decades-old "contract" issues to fiduciary duties. Dozens of cases may have proceeded these cases: in each, the level of agent duty was notched higher and higher as attorneys convinced attorneys that agents should be held more accountable.

Agent accountability today may also come with a high price tag. Consider the following court cases where the actual dollar losses incurred by client victims was extremely low compared to the ***high punitive damages*** levied against agents and their insurers:

State Farm v Grimes	*$1,900 Actual losses*	*$1.25 Million Punitive Award*
Independent v Peavy	*$412 Actual losses*	*$250,000 Punitive damages*
National Life v Miller	*$258 Actual losses*	*$350,000 Punitive damages*

As you read these amounts you may be thinking that the damages were high because insurance companies have ***deep pockets***. They can afford to pay these sums of money, which is why juries awarded them. However, you must also keep in mind that virtually every agency agreement in existence has some kind of ***indemnification clause*** or wording that entitles the

insurer to demand reimbursement from you, the agent, for malpractice, negligence or action leading to a jury award. In other words, if you have a contributing exposure to a problem that caused the insurer to pay-out big bucks, you probably have the same exposure when the ***insurer*** comes after you personally!

Ok, after pouring through hundreds of agent lawsuits, what are the dumbest things new agents can do to get sued?

1. Mishandle Applications: Seemingly small things like taking charge of the application, your interpretation or advice on an underwriting issue or an honest mistake in transmitting paperwork can be blown completely out of proportion in court.

2. Misrepresent Authority: Look for legal maneuvering to establish that YOU have been authorized by your principal to act in the way you did. Clients who convince the court that they were made to believe an agent possesses this authority can win!

3. Goof-up Conditional Coverage: What should you know about conditional coverage? At best, it is temporary. It is your job to read and understand the conditional receipt or special terms of the insurance application, agency agreements, applicable state codes and adequately explain the limits of this coverage to your clients.

4. Fail to Procure Coverage: When an agent negligently fails to obtain coverage for a client, he steps in the shoes of the insurance company and becomes liable for the loss or damage up to the limits of the policy until insurance is found.

5. Misrepresentation & Negligence: Misrepresentation and negligence in the insurance business cover a wide variety of problems. Insurers use untrue representations made by you to deny coverage thus making you, the agent, as liable as the insurer! Insureds can use agent misrepresentations as a defense to force payment of policy proceeds. Why would the insurer pay? Possibly to avoid a bad faith lawsuit or they might think it would be easier to pay then turn around and sue you for indemnification under terms of your agency agreement. In most misrepresentation and negligence issues, the standard for what is reasonable is never clear.

6. Fraud & Abuse: As an agent, you have an obligation to be alert to the possibility of fraud and abuse and you are required to report any knowledge or reasonable belief that such acts have been committed. The deception can occur at many levels: from the application to the claim. And, of course the fraud and abuse may be the doing of the agent himself through misrepresentation of policy terms or values, false statements about coverage, misstatements on applications, back-dating applications, signing client names and much more.

7. Fail To Recognize Gaps in Coverage: There are situations where agents may be liable to an insured for the damage suffered by his failing to inform him as to a potential source of loss or gap in coverage and by his failing to recommend insurance to cover it. Your individual ***standard of care*** is critical to determining your exposure.

8. Mishandling Policy Cancellations: Insurance coverage is often denied based on a policy expiration or cancellation. More likely than not, the decision to cancel is unilateral, meaning the action is taken solely by the insured or the insurer. Rarely is it a mutual event and rarely is it straightforward despite state rules on grace periods and timely notice. Either way, the result is a failure in coverage that presents significant liability for agents.

9. Anti-Stacking: A consumer might rely on a representation, by an insurer's agent, that coverages in multiple policies of insurance will be cumulative - that is, that the consumer may obtain benefits under more than one policy - even though there are anti-stacking provisions in each policy. Bottom line? When an insurance agent knows that the customer is relying upon his expertise, the agent may have a duty to exercise reasonable care in advising the customer of these issues.

10. Reasonable Expectations: No matter how clear the language, all policies contain areas of ambiguity. When conflicts arise, the courts generally turn to theories of reasonable expectation. In a nutshell, if a policy could imply to a reasonable or average policy holder that coverage is in force, yet that exact language does not exist in the policy, then coverage DOES extend to the policyholder. In other words, the courts generally favor the insured. As you might imagine, it's easy for agents to be involved in claims from contract ambiguity.

11. Insurer Claims: When most agents ponder professional liability, they think client lawsuits. But agents and brokers also face exposure from the insurers they represent. When agents are sued by their insurer it is most likely for a violation of the law of agency or terms of their agency agreement involving matters such as: indemnification (reimbursement for claim losses paid to policyholders), privacy (speaking out when you shouldn't), agent promises, supplemental agreements and more. Your agency agreement will also spell out the consequence of these violations including the ability of the insurer to terminate you ***at will***.

Want to know more? Our agent library includes several excellent courses on the subject of agent liability: Agents on Trial, Preferred Practices, Suitability Issues and Insurance Marketing Issues.