

No Such Thing As A Stupid Question

By Richard F. Lund, J.D., Vice President, Senior Underwriter, Swiss Re*

“There are naive questions, tedious questions, ill-phrased questions, questions put after inadequate self-criticism. But every question is a cry to understand the world. There is no such thing as a dumb question.”

— [Carl Sagan, *The Demon-Haunted World: Science as a Candle in the Dark*](#)

"There's no such thing as a stupid question so feel free to ask whatever you want." That is one of the first things you hear from a teacher, professor or educator when you go into any learning environment once you reach the high school level. As a matter of fact, I say the very same thing when I'm presenting at an E&O risk management seminar. How many times have you been in a seminar where you're afraid to ask a question, because you think it seems so obvious, that you're afraid other people will think you're foolish for asking it? Trust me, if you are thinking it there are probably at least 3 other people who are thinking the same thing but THEY ALSO don't want to ask because THEY don't want to appear to be foolish. So, let's forget about the risk of appearing foolish and ask the question! It's been said before that pride goeth before a fall so if you fail to ask the question, you might just be opening yourself up to an E&O claim.

As the risk management coordinator for the Swiss Re Corporate Solutions/Westport Insurance Corporation Insurance Agents Errors and Omissions Professional Liability program, I am asked questions all the time about any number of E&O subjects. While I may have answered the same question many times, I treat each one as if it's a brand new question. The reason is simple: if the person knew the answer, they wouldn't be asking and while it may be old hat to me it's new to them. They have never run across the subject before because they might be new to the insurance industry, be a new agent, a new E&O insured, or maybe even a more seasoned insurance veteran. My experience has been that they are really asking because something is going on in their business that could ultimately lead to an E&O incident and they don't know what to do.

So what kind of questions do I get asked? The questions may be simple, complex and anything in between. While some might be general in nature, some may also depend on a specific state law or regulation. But I don't rely on just my knowledge. I'll ask our claims team and insurance experts I know, for their opinion, before I provide an answer. Why do I do that? Because I'm not afraid to ask a stupid question.

Here are just a few of the most common:

Q: Do I really have to document every phone call with my customers? I know which are important and which aren't. I'll remember.

A: Yes, you should document every phone call, even if it is just a short note. If your customer is calling you, it's because they are having an issue that may or will involve their insurance policy. Why else would they be calling? Even if it is something so innocuous as to ask what the limits are on their policy or what their premium is, what is the underlying reason why they are asking? If it is about limits, have they had a claim? Why do they need to ask about that? If it's about their premium, do they owe it? Are they trying to reduce it? Are they looking for another quote? If they call about their auto policy and ask who is listed on it, why do they want to know? Little things can mean a lot when it comes to an E&O claim and consistency, especially when it comes to documentation can be the key to making it defensible.

Q: I heard at an E&O seminar that I shouldn't call my customers who have company direct bill policies when their premium is due. But I know they won't remember to pay the bill if I don't call them. They just expect that as part of my customer service. Do I really have to quit calling them?

A: YES, yes, a thousand times yes. If you haven't stopped calling them, stop immediately. But before you do, send a letter to all of your company direct bill customers, preferably certified mail-return receipt requested, that effective immediately you will no longer be calling them to advise them when their premium is due. The reason is simple, by calling them you have created a duty that you did not otherwise have. And the one time you forget or miss calling them is the one time they don't pay their premium, their policy is cancelled for non-payment, they then have an uncovered claim, and they blame YOU because they didn't get your call telling them the premium was due. We recently had a claim where an agency didn't call any of their direct bill customers, except one. It was a big account and they knew that they would only pay their premium when the agency called them. Of course, the agency person who was responsible for calling the customer was on an extended vacation, and no one called the customer when the premium was due. The customer received the direct bill notice of payment, but ALWAYS waited to pay it until they received the call from the agency. Since they didn't get the call, they forgot to pay the premium, the policy cancelled, they had an uncovered loss of \$65,000 and made a claim against the agency. The agency is clearly in error but had they not taken on that duty, they would not have been responsible. The agency has now sent a letter to the customer, certified mail, and return receipt requested, that they will no longer be notifying them when their premium is due.

Q: Why do you want to send the letter certified mail with return to receipt requested?

A: To document in your file that your client received the letter advising them that they would no longer be notified by the agency.

Q: Our office has recently gone paperless, i.e. we scan and store all documents electronically. Do we still need to retain the paper files and documents?

A: No, once you have scanned the documents and store them electronically, the original documents should be shredded and disposed of. The underlying question from an E&O standpoint here is whether an electronic copy of an original document can be used as evidence when there is a claim, and the answer is yes. The Uniform Electronic Transactions Act (UETA) was developed by the National Conference of Commissioners on Uniform State Laws (NCSL) in the late 1990's and has been adopted by all states except Illinois, New York and Washington, which developed their own laws regarding electronic transactions. Among the basic tenants of the law is that any document that is electronic is the same as a paper document and as such, is admissible as the original of the document. In addition, in 2000 the United States Congress enacted the Electronic Signatures in Global and National Commerce Act (E-SIGN) which established the validity of electronic records and signatures under federal law. The key to remember is that once you create an electronic record, you should immediately destroy the paper document.

And here is the most recent question I received.

Q: Our agency is trying to get our arms around some social media opportunities to help promote our agency. When we started our web-site redesign last year, I recall that we went through some hoops with our E & O carrier about what was permissible and what was not. This year we are crawling into Facebook and Twitter and wonder about the E & O implications, if any. Do you have any information about that?

A: Swiss Re Corporate Solutions and the IIABA have a module that specifically addresses Social Media in the new E&O seminar materials, "E&O Risk Management: Meeting the Challenge of Change". Those materials are available on the E&O Happens Website. I also went to the E&O Happens website and entered "social media" in the search tool and got 30 responses. I then did the same thing on the IIABA main site and got 150 responses that are throughout the website including E&O Happens, ACT, and Virtual University, some of which specifically reference Facebook and Twitter. I recommend you go to the websites and do the same and take a look at those that are of particular interest to you.

These are just a few of the questions that have come to me in the last year. The first three I have been asked several times before and the answers are readily available on several different IIABA resources, including the E&O Happens Website, the Virtual University, and the Agents Council for Technology. As you can see from the last

question, many times I'll take the subject that is being asked about, enter it in the Search feature on the main page of the IIABA website or on the E&O Happens page, and I'll get numerous results pointing to different places in all three of those locations where the answers can be found. The reason I do this is not necessarily because I don't know the answer, but because I want to know if there is a place for you as an agent and member of the IIABA and a Swiss Re Corporate Solutions policyholder to locate that information in the quickest manner possible and then to be able to pass that on to you.

So remember, there's no such thing as a stupid question. The only stupid question is the one left unasked.

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Sidebar: If you would like to ask a question about anything involving insurance agents errors & omissions, you have many resources available to you. If you have question about your E&O Policy or would like more information about the Swiss Re Corporate Solutions E&O Policy, contact your state IIABA and ask for the E&O Administrator. If you are a Big "I" member and have a question about how to prevent E&O claims or have a question about E&O risk management, go to the E&O Happens Website at www.IIABA.net/eohappens. You can also contact Richard Lund at richard_lund@swissre.com. If you have questions about insurance in general, go to the IIABA Virtual University at www.iiaba.net/vu and use the search tool. If you can't find an answer and are a Big "I" member, you can use the VU "Ask An Expert" and utilize the shared experience of the VU faculty to find an answer. If you have a technology question, go to the Agents Council for Technology www.iiaba.net/act. Regardless of what your question is, if it has anything to do with insurance, you have a wealth of resources available to you.