

To Cancel, or Not to Cancel, that is the Question

E&O Risk Management and the Coronavirus/COVID-19

Best Practices from Swiss Re Corporate Solutions and the IIABA

Just as you are probably receiving a lot of questions from your customers about how their insurance will respond to the events surrounding the Coronavirus/COVID 19, we are also receiving a lot of questions from agents and brokers asking what they should do regarding those questions. How do you respond when someone asks you whether or not there is coverage under their policies? Luckily, the IIABA and Swiss Re Corporate Solutions have already provided information about the policies, coverages, how they might respond, and what you should do when you are presented with those questions. Here are the links to that information:

[Big "I" Coronavirus Resource Page](#)

[Statement from Swiss Re Corporate Solutions regarding the Coronavirus \(COVID-19\) Pandemic](#)

[Big "I" Response Re Carrier Directives to Deny BI Claims Related to Coronavirus](#)

[FOLLOW-UP to Claim Denials Directives from Carriers](#)

One of the questions we received at first sent us into virtual orbit: "Is there a sample letter for insureds to sign when they insist on cancelling their business coverage against agent's advice?"

With what is going on right now with COVID 19, the immediate thought was "Why on earth would ANYONE want to cancel a business policy right now?" Our next thought was that we were glad the agent was thinking about the E&O implications of doing so. Our third thought was that when the agent sends the letter and acknowledgement for the customer to return confirming that they have been advised that this is a bad idea, the agent needed to fire the client as this would ultimately lead to problems and the agent needed to get away from this customer as fast as they could. So, then we began preparing a sample letter and sample acknowledgement for the agent to send to their customer.

While working on the documents, and after calming down a bit, we thought that maybe we needed to ask more questions: "What is the context for the request? Why do they want to cancel the coverage?"

Answer: "It is restaurant based, specifically, bars saying they want to cancel because they don't know if they will be back in business after the shut down."

We stopped in our tracks. We realized that these are different times. Businesses are closing indefinitely, or maybe forever, due to these events. Underlying this request is a realization that this customer may not be able to pay for their business insurance going forward. Not just business income coverage, but EVERYTHING. After thinking about this a little longer, we realized that while our advice is still correct, there are things that the agent needs to discuss with their customer BEFORE that request is sent into the carrier to cancel those policies. This is not an exhaustive list, but definitely things that the agent needs to discuss with the customer BEFORE they make their final decision.

- Why do they want to cancel the policy?

- Is it because they have heard that carriers are refusing to cover claims that could arise from COVID-19 for business interruption?
- Is there a possibility that coverage could be provided in the future due to some government action?
- Are there other ways to reduce premium costs such as increasing the deductible or lowering limits, with cautions about doing so?
- Explain that by cancelling the policy, the insured may be subject to coverage denials for future liability claims depending on the facts of the injury or damage;
- Explain that the insured may be in violation of a contract, lease or other agreement and that it is not the agent's responsibility to confirm or affirm the insured is in compliance with any signed documents;
- State that by cancelling a gap in coverage periods is created that must be disclosed on all future insurance coverage applications which may or may not have an effect on the ability to secure needed coverage; and
- State that by cancelling the insured may lose any favorable rating or underwriting accommodations and that there is no guarantee the insured will receive such accommodations when coverage is rewritten.
- Cancelling this policy mid-term may not yield premium return due to minimum earned premiums on the policy.
- If they resume operations, emphasize that coverage must be back in place BEFORE they do so, and making that happen may be difficult, much more expensive or impossible if the coverage has been cancelled previously.
- It may not be possible to cancel any policies due to individual state regulatory directives, including due to non-payment of premiums.
- The agency cannot advise if the customer is eligible for any assistance under any federal or state programs including the CARES Act, but you should consult with your accountant or financial advisor to determine if you may be eligible for monetary assistance."

These are just a few of things that you MUST discuss with your customers before ANY decision is made by them to cancel their current insurance coverages or policies. Then, and only then, and before anything is cancelled, you MUST DOCUMENT, DOCUMENT, DOCUMENT that it is THEIR decision to make the cancellations using the letter and acknowledgement. Sample letters and an acknowledgement are available on E&O Happens under "Claims Prevention">"Sample Customer Letters". Firing the customer could also be a drastic determination. Whether you do that, is up to you. But whatever happens, make sure you are taking appropriate steps to protect yourself.

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