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## P&C Trends

### **E&O and the Midwest Floods**

*Avoiding E&O claims once the water recedes.*

As Midwesterners continue to recover from one of the worst floods in the last decade, many independent agencies are processing claims and helping their insureds get back on dry land. However, some agents are facing questions from customers stranded in high water without flood coverage.

Most agents can write coverage through the National Flood Insurance Program (NFIP), a part of the Department of Homeland Security/Federal Emergency Management Agency (FEMA), provided their community participates in the program. Yet, not everyone in NFIP-participating communities is aware of the coverage or chooses to opt-in -- especially those in low to moderate-risk flood areas --- which could leave agents facing E&O claims when the water recedes.

Approximately 5% of E&O claims involve flood coverage, according to the Big "I" Professional Liability Program. Typically, E&O claims involving flood pertain to: a failure to offer flood coverage; failure to advise clients of limitations in flood coverage; or failure to offer or recommend contents coverage, which makes it a good idea to offer coverage regardless of flood risk, according to Dave Hulcher, director of Big "I" agency E&O risk management.

"From an E&O perspective, it is a good idea to offer flood coverage to even those clients not required to carry limits by their mortgage lender," Hulcher says. "Offering coverage to customers can prevent exposure to gaps in coverage, offers another way to serve the customer and provides an opportunity to earn additional revenue through the sale of more coverage."

But what E&O issues arise when a community isn't participating in the NFIP program and flood coverage is not easily attainable? And what obligation does an agent have to provide coverage when a community isn't enrolled and there is not a market readily available? According to Hulcher, the answer varies by state, depending on the standard of care and insurance laws and regulations.

"There are some things you can do to protect the agency from potential E&O claims when the community you service does not participate," he says. "The first thing the agency can do is to be upfront with the client and let them know that you will have difficulty meeting their insurance needs. You can draw attention to the exclusion of flood coverage in their policies and let them know that their community does not participate in the NFIP. Having this in writing contained in the client file will provide the basis for a solid defense should a claim arise from failure to provide coverage. Further, if you work with an excess and surplus lines brokers with access to flood coverage outside the NFIP, let the client know how you are going to help them attain coverage."

Agents who place coverage on an E&S policy form need to make the client aware that the policy is not subject to the state guarantee fund in most states --- if the carrier becomes unable to meet its claims obligations at a future date. Agents may also need to look a little harder at the financial ratings of E&S carriers and share this information with their clients. Finally, Hulcher suggests agents without a market for coverage should let their clients know, in writing, that the agency does not have a market and coverage will not be put in place, and encourage customers to look for coverage elsewhere.

*Editor's Notes: This is the second article in a two-part series on flood coverage. The first installment,*

*"Community Flood Coverage," was published in the June 26 edition of IN&V.*

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