

October 2017

THE E&O CORNER

Every Agency or Brokerage Should Think About Natural Disasters Before They Occur

Harvey, Irma, Jose and Maria - this year's Atlantic hurricane season has been extremely active and there are still two more months to go[1]. In October 2012, the coastal areas of New York, along with the surrounding coastal states, were all pounded by Superstorm Sandy which caused tremendous damage from its wind, rain and tidal surges. In August 2011, not only were New York coastal areas affected by tidal surges and wind but inland areas of the state were also flooded by rivers overflowing from the tremendous rains from Hurricane Irene; some entire towns in upstate New York were wiped out by Irene's flooding. This past July, Buffalo was hit by unusually heavy rains that caused flash flooding throughout the area.

Over the years we have seen insurance agents and brokers react to these types of storms and change certain aspects of how they conduct their business to help protect their customers and also help prevent a potential E&O claim or lawsuit. In this issue of The E&O Report, we will discuss a few things that every insurance agency or brokerage should be doing in preparation for another potential catastrophic event. No matter whether your agency or brokerage is located on the coast or inland, it is important that you think about the issues discussed below.

It has been estimated that less than a quarter of the properties that were damaged in Texas and Florida from flooding as a result of hurricanes Harvey and Irma are covered by flood insurance. After Irene and Sandy many of the storm related E&O claims and lawsuits that we saw were brought by customers who suffered a flood loss but did not have flood insurance in effect at the time of the storm. As a result of this type of claim, many New York insurance agencies and brokerages adopted a procedure where they offer every customer the option of purchasing flood insurance regardless of where they are located. Since most customers will usually opt not to purchase flood coverage, unless they are located directly on a body of water, it is a good practice for the agency or brokerage to document the customer's rejection of that coverage. One of the best ways to document the acceptance or, more likely, the rejection of coverage is to use the ACORD 60 Flood Acceptance/Rejection form. The ACORD 60 form should be completed by the customer indicating that the coverage is either accepted or rejected and then it should also be signed and dated by the customer. Once this form is signed it should be retained in the customer file. An added benefit of using the ACORD 60 Flood form is that it specifically states that once it is signed it will apply to all future policy renewals. By adopting an agency-wide practice where the option of purchasing flood coverage is offered to each customer, and the ACORD 60 is then completed by every customer, insurance agencies and brokerages will help protect themselves from potential E&O claims or lawsuits if a customer sustains a loss due to an uncovered flood claim.

Another thing that many insurance agencies and brokerages learned have from the storms during the past few years is that it was only as a result of the storm that customers often discovered that they had insufficient coverage, inadequate limits of coverage, or they did not fully understand how their coverages or deductibles applied. As a result of this, many insurance agencies and brokerages now use these types of storms as learning tools for their customers to think about. For instance, when discussing insurance coverage with a customer, a good practice is to walk the customer through what their insurance coverage, limits of coverage, and applicable deductibles would be in the event a catastrophic event occurred. This is a good practice for any agency or brokerage to follow whether it is a hurricane, ice storm, blizzard, fire, or any other type of catastrophic event. Agents and brokers that follow this practice when discussing coverages and potential losses with their customers have told us that it is a good way to help customers identify possible changes in the coverage that may need to be made in order to have the customer adequately insured.

An additional thing that storms such as Irene and Sandy taught us is that every insurance agency or brokerage, no matter how large or small, should have a disaster plan in effect that is known by and understood by all employees. The first aspect of any disaster plan should be what each employee should do, if a catastrophic event occurs. A key element to any disaster plan should be how the agency or brokerage can remotely access its data in the event its offices are not accessible, or they are not fully functioning. The agency or brokerage should also have the ability to forward the phone lines and the access email so that communications with customers can continue despite the catastrophe that has occurred. An agency or brokerage that plans ahead in this way will be able to continue to operate and assist customers in the crucial time immediately following a catastrophic event.

The prudent insurance agency or brokerage is the one that thinks well in advance of a catastrophic event, and also has its customers do so too, so that both are prepared when a catastrophe occurs. By doing so, the agency or brokerage will not only help protect itself from a potential E&O claim or lawsuit, but it will also help provide better service to its customers, and in the process will very often sell more insurance.

Submitted By:

James C. Keidel, Esq.

Keidel, Weldon & Cunningham, LLP

Keidel, Weldon & Cunningham, LLP concentrates its practice in handling legal matters for insurance agencies and brokerages, including E&O litigation, loss control and education; insurance coverage analysis and litigation; regulatory matters; agency sales and purchases; and non-compete and non-solicitation issues. Please direct any comments or questions to James C. Keidel, Esq. at the main office of the law firm at 925 Westchester Avenue, Suite 400, White Plains, NY 10604, telephone 914-948-7000 or email at jkeidel@kwcllp.com. The law firm also maintains offices in New York, NY; Syracuse, NY; Fair Lawn, NJ; Wilton, CT; Warwick, RI; Philadelphia, PA; Williston, VT; and, Naples, FL

[1] The Atlantic hurricane season runs from June 1st through November 30th each year.