Out of Bounds

Don't let client advocacy go too far

By Brian Butcher

When you and your client disagree with a carrier's decision to deny a claim, your natural impulse is to vigorously contest the carrier's coverage position. But your continued attempts to convince the carrier to reconsider its coverage position could have dire consequences for you down the road.

Why? It is quite common for a disgruntled policyholder to sue both the carrier and his agent when the carrier disclaims coverage for a loss. That means you could possibly be a defendant in a coverage lawsuit. In many states, the standard of care for an agent is to obtain the coverage requested by the customer or advise the customer if he or she cannot obtain the requested coverage. However, presenting yourself as an expert and assisting the customer in challenging coverage could have the unintended consequence of shifting more responsibility to you—placing additional liability exposure on you for failing to obtain a policy that covered the claim at issue. Here are some steps to consider taking when the customer disagrees with the carrier's coverage position:

1.   Immediately report the matter to your professional liability carrier.
2.   Limit inquires with the carrier on coverage decisions to phone conversations, with the goal of obtaining more information on the carrier's analysis and justification for denying the claim.
3.   Make it a habit to tell your customers you submit all reported claims, but that the carrier is the final arbiter of coverage. Always refrain from offering opinions on coverage.
4.   Don't make admissions to the carrier in an effort to convince them to reconsider their coverage position.
5.   Keep communications as factual as possible.
6.   Don't retain coverage counsel without consent from your professional liability carrier.

Brian Butcher is an Assistant Vice President of Claims and Liability Management with Swiss Re Corporate Solutions, and handles claims against insurance professionals out of the Overland Park, KS office.