

# Insurance Agent E&O Episode 3

**PLUS Staff:** [00:00:00] Thank you for listening to this plus podcast insurance agent e and l. Before we get started, we would like to remind everyone that the information and opinions expressed by our speakers today are their own and do not necessarily represent the views of their employers or of, plus, the contents of these materials may not be relied upon as legal advice.

With the housekeeping announcements out of the way, I'm pleased to turn it over to Dana Gilman.

**Dana Gittleman:** Thanks, Tyla. My name is Dana Gittleman. I am a shareholder in the Philadelphia office of Marshall Dennehey, where I have been practicing in the professional liability department for nearly the entirety of my career.

My practice focuses on the defense of professionals, including insurance agents and brokers, real estate professionals, lawyers and directors and officers. I also have experience in product liability and coverage matters.

**Jeremy Zacharias:** My name is Jeremy Zacharias. I am a member of the Professional Liability Department of Marshall Dennehey.

This is our third installment of our podcast on risk management, tips for insurance [00:01:00] professionals, claims handling, best practices, and tips for navigating complex issues and professional liability litigation. Just a little background about Marshall Dennehey. Marshall Dennehey is a regional defense firm with 18 offices in seven states from Connecticut to Florida.

In terms of my practice, I represent and defend attorneys, accountants, insurance producers, corporate directors and officers, and financial institution institutions among other clients. I also represent clients in privacy and data breach matters, and handle cases involving intellectual property, copyright, and trademark infringement, as well as trade secret trade dress technology, and media related litigation.

I'm also an active member of plus, where I currently serve on the Plus Board of Trustees and the plus MidAtlantic Chapter Steering Committee. As indicated earlier, this is our third and final podcast in a three part series on risk management tips for insurance agents and brokers. In this third installment, we

will focus on four areas, consideration of other litigation, [00:02:00] business and personal relationships, staying organized and getting creative.

**Dana Gittleman:** Often with lawsuits filed against insurance agents and brokers. There is a related or underlying litigation. As a preliminary matter. Any related or underlying litigation should be carefully reviewed, including the pleadings, discovery, expert discovery, and motions. A simple docket search can uncover information about other lawsuits involving the parties and impact potential damages exposure.

A prior personal injury or evidence of preexisting financial troubles can aid in establishing that the insurance transaction, giving rise to a claim or lawsuit was not the exclusive cause or source of damages. It is important to run the names of the plaintiffs and as necessary other defendants.

Through a thorough state and federal court docket search to obtain this information. Relevant pleadings and motions can often be pulled from the docket, and [00:03:00] specific documents can be requested in request for production of documents tailored to the facts of the underlying or related action, or in unrelated case, that bears on the liability or damages claims at issue in the subject claim.

I had a case involving an underlying business dispute with large damages allegations. However, review of the docket showed that a settlement had been reached in the underlying related case with an assignment of rights for much less than the purported damages sought in the case I was handling. There were no viable claims for attorney's fees or punitive damages.

Thus, the inflation of the damages sought was simply not plausible given that the damages claimed in the case were for coverage limits that would've been paid, had insurance been effect on the date of loss.

Those are interesting

**Jeremy Zacharias:** points, Dana, on that point. Another point to consider is the preexisting relationship between the insured and the customer. The insured and their customer may have a longstanding business or personal relationship [00:04:00] that they seek to preserve. A preexisting relationship may impact the party's attitude towards the lawsuit, including testifying about unfavorable interactions and conversations, engaging in aggressive discovery tactics, or favoring an early resolution. While this should not color the litigation strategy, it is important to consider any pre-existing relationships between the parties,

which could impact their desired outcome. Especially considering this pre-existing relationship, you could determine early on whether a case could be resolved quickly or whether there's going to be an aggressive approach for discovery and motion practice within that. A relationship is really key to determine how that's going to go forward.

Dana, with the next step of staying organized what are your thoughts on staying organized?

**Dana Gittleman:** I have learned over the course of my career that an organized file is an invaluable asset in litigation, compiling key documents, keeping them in chronological order and readily accessible, and [00:05:00] creating a timeline of salient events facilitates convenient access to important records throughout the litigation.

This is especially true in a trial setting where times of the essence and putting one's finger on a document to impeach a witness is a matter of seconds, not minutes. Further, an organized file enables the attorney, claims professional and client to remain aligned in the defense handling plan and apprised of all developments.

The organization is not limited to litigation, however. It cannot be emphasized enough that organized agency files are critical to best serving insurance customers and ensuring their needs are met and any unmet needs are documented.

**Jeremy Zacharias:** Dana, that's very important in terms of that organizational file. Being in a trial setting and catching a witness, clearly fabricating their truth or going against a deposition testimony, having that evidence and those deposition transcripts at the ready in a second's notice, that's extremely [00:06:00] imperative in order to further defense on behalf of the insured.

The last tip we want to present on this podcast is the most fun tip to be honest, is get creative with the case. Every case is different and a one size fits all approach will not suffice. Anyone that's has a handled cases know it's not a cookie cutter approach.

It's a nuanced and a patterned approach that it could be different in terms of a puzzle being put together. Depending on the nature of the allegations, it could be equally, if not more important to issue record subpoenas to prior brokers and carriers as a subsequent brokers and carriers. Suit specific subpoenas based on the nature of the case can uncover important evidence for impeachment,

financial records, computer hardware, or software medical records, surveillance footage, and social media exports should also be considered. Electronically stored information in electronic discovery, especially with the age of artificial intelligence as well as the different services [00:07:00] out there for document evidence, it's all key to utilize.

In terms of getting creative, definitely be adept, be knowledgeable of what services are out there to help you and aid you with litigation to streamline the process, to use the different documents on a document heavy case to afford your benefit for your client.

Just want to thank you again for your time today during this third installment of the top 10 tips for risk management.

Dana and I very much enjoyed presenting this podcast and hope to present more in future sessions. We appreciate your attentiveness to these podcasts. For those of you who have not listened to Parts one and two, we encourage you to do so. Should you have any questions regarding the contents of this podcast or the nature of the subject area of this podcast, please feel free to contact Dana or myself via email or telephone.

Thank you.

**PLUS Staff:** Thank you for listening to this PLUS podcast. If you have ideas for a future PLUS [00:08:00] podcast, please complete the Content Idea form on the PLUS website.