**Is Bigger Better?**
*M&As can create E&O exposures*
By Barbara Rocco

It's a familiar tale: An agency has enjoyed great success, so its principals decide the time is right to expand their business and acquire another agency. After finding one that will blend in perfectly, they arrange meetings, sign contracts and the deal is done. Nothing left to do but enjoy the payoff, right?

Not so fast. The assumption that "bigger is better" can lead to disaster if the agency's focus is on growth alone, with no attention to E&O risks.

What if the agency you're acquiring made a few missteps that escaped attention? When those mistakes finally come to light, how can you ensure your agency isn't stuck footing the bill? Here are a few steps to keep in mind.

1) **Learn about the acquired agency's policies and practices as soon as you can.** Multiple locations increase exposure to professional liability claims: The larger the agency, the more people involved, and the greater the opportunity for error.

2) **Establish a plan regarding each employee's responsibilities.** This should include a review of current responsibilities and training on how to handle business the acquired agency previously procured.

3) **Actively integrate successful, well-established procedures into the merged agency.** Meet with new employees and educate them on procedures and expectations. Consistent and uniform utilization of policies and procedures is imperative as an agency grows.

4) **Before finalizing the deal, the acquiring agency should confirm** that the purchase contract includes indemnification language protecting it from claims related to the negligence of the acquired agency, in case it committed a wrongful act prior to the acquisition. Similarly, the acquired agency should purchase tail coverage for its own protection.

5) **Notify your E&O carrier about the acquisition**. Acquiring another agency typically means a change in risk, so E&O policy language commonly requires reporting of all mergers & acquisitions within 90 days. But not all E&O policies are created equal: Effective Sept. 1, for example, Swiss Re Corporate Solutions will add an enhancement to its policy which increases the maximum reporting time to 120 days.

Bigger can be better, but only if you take the proper steps to learn about the new agency, instill your culture, educate your people and clearly document that your firm is not taking on the liabilities of the acquired agency for past mistakes.

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