

## No Tomorrow?

*The E&O challenges of business continuity planning* By Janice S. Blanton

Between now and the day you retire, unforeseeable outcomes may get in the way of your workplace farewell. What will happen to your agency, and how can you minimize disruption?



Here are a few real-life claims examples that should encourage you to start changing “I’ll do it tomorrow” into “I’ll do it today.”

**Untimely demise.** After an agent’s client has an auto accident but no coverage in place, they make an errors & omissions claim against the agency. But in the midst of the ensuing lawsuit, the agency owner unexpectedly passes away.

Because it was one of the household’s major assets, the grieving widow has little choice but to take over running the agency. She has no experience in insurance or running a business and, worse, no idea how to locate documents and information to assist in the defense.

Without the testimony of the owner, the agency must rely on a long-time employee to assist with locating supporting documentation. Fortunately, the owner was diligent in his documentation, so the loyal employee is able to locate materials that result in a favorable outcome for the agency.

**Disability.** An agency owner has a stroke that leaves him permanently incapacitated. The owner’s daughter had started her career at her father’s agency, moved to another state and works in a much larger agency in a large city. Upon learning of her father’s stroke, she returns home to take the reins.

When she arrives, she finds that a 30-year employee of the agency has already taken over and claimed the agency as her own. Her story: She had planned to leave 10 years earlier to start her own agency, but the owner talked her out of it. Instead, her commissions were decreased slightly as a way for her to buy her way into agency ownership.

According to this employee, the owner told her that, upon his retirement, the agency would be hers. She provides evidence of the discussion in the form of notes and draft agreements, although nothing formal was ever completed or signed.

Westport denies coverage because an E&O policy does not cover internal ownership disputes. The last we heard, the daughter and the employee were fighting it out in court. Is this the legacy the agency owner intended?

Retirement. An agency owner sells his agency and retires after a long, successful career. The new owners merge the purchased agency customers into their existing insurance agency.

A few years later, a client files a lawsuit against the former agency, prompting the original owner to report an E&O claim under the tail coverage he had purchased. When counsel requests his file documents for both sides, the retired owner is shocked to learn that the purchasing agency destroyed his agency records, despite the state's record retention requirement of seven years.

The former owner and Westport are left trying to defend a suit with no agency file—increasing defense costs and eventually resulting in a settlement with the plaintiff under less favorable terms than the owner expected.

It's never too early to put a plan in place that will protect your family, partners, employees and customers.

*Janice S. Blanton is an assistant vice president, claims specialist with Swiss Re Corporate Solutions and teleworks out of the office in Overland Park, Kansas. Insurance products underwritten by Westport Insurance Corporation, Overland Park, Kansas, a member of Swiss Re.*

*This article is intended to be used for general informational purposes only and is not to be relied upon or used for any particular purpose. Swiss Re shall not be held responsible in any way for, and specifically disclaims any liability arising out of or in any way connected to, reliance on or use of any of the information contained or referenced in this article. The information contained or referenced in this article is not intended to constitute and should not be considered legal, accounting or professional advice, nor shall it serve as a substitute for the recipient obtaining such advice. The views expressed in this article do not necessarily represent the views of the Swiss Re Group ("Swiss Re") and/or its subsidiaries and/or management and/or shareholders.*

Copyright © 2017, Big "I" Advantage, Inc. and Westport Insurance Corporation. All rights reserved. No part of this material may be used or reproduced in any manner without the prior written permission from Big "I" Advantage. For permission or further information, contact Agency E&O Risk Manager, 127 South Peyton Street, Alexandria, VA 22314 or email at [info@iiaba.net](mailto:info@iiaba.net).