OCCURRENCE VS. CLAIMS MADE FORMS

Liability Insurance policies can be written in one of two ways: On an ‘Occurrence’ form or on a ‘Claims Made’ form. An Occurrence form covers claims that occur during the policy term. That is, the occurrence (e.g. – the fire, injury, etc. that gave rise to the claim) actually occurred during the term of the policy in question. A Claims Made form covers claims that are made against the insured during the policy term (e.g. – when the statement of claim from the third party was made against the Insured). As a general rule, the Occurrence coverage form offers superior protection but it can be significantly more expensive than the Claims Made coverage form.

The Occurrence form protects against covered lawsuits as long as the policy is in force when the bodily injury or property damage occurs. As long as this condition is met, coverage is not jeopardized if the policy is cancelled or non-renewed and if the claim or lawsuit papers are subsequently filed. This is of particular value in long-tail claims such as abuse (no statute of limitations for child abuse).

On the other hand, the Claims Made form protects against covered lawsuits only when the following two conditions are met: (i) The policy is in force when the bodily injury or property damage occurs (just like the Occurrence form) and (ii) the policy or a renewal of the policy is still in force when the claim is made. The second condition makes the Claims Made form more risky than the Occurrence form since the Claims Made policy may not be renewed if the Insured can’t afford the renewal premium, shuts down operations, or if renewal terms are not offered by the carrier.

Insureds that have Claims Made coverage and that shut down or sell their operations may elect to buy ‘tail’ coverage which in effect converts their prior Claims Made policies into an Occurrence policy; however, this can be expensive and needs to be addressed before there is any change in control.

Changing a Claims Made policy from one carrier to a new carrier upon renewal can be tricky because of a provision in a Claims Made policy known as a "Retroactive Date." This being the specified date in which a client states they are not aware of any new incidents that may come claims. It is of critical importance that the "Retroactive Date" is always set to be the first date that the first Claims Made policy was effective.

For Claims Made policies, the Policy may be endorsed to respond to incidents which occurred before the policy start date, also referred to as the policy retroactive date. No Prior Acts coverage is needed on an Occurrence form.

Some Liability Insurance such as Errors & Omissions, Professional Liability, Directors’ & Officers’, and Employers’ Liability are mostly only available using a Claims Made form. This makes the handling of these types of coverage more complicated and you should always deal with an insurance broker proficient in these coverages’.