Q. WHAT IS THE DIFFERENCE BETWEEN OCCURRENCE LIABILITY POLICIES AND CLAIMS MADE POLICIES?

OCCURRENCE POLICIES COVER INCIDENTS THAT HAPPEN DURING THE “POLICY PERIOD” REGARDLESS OF WHEN THE CLAIM IS REPORTED. FOR INSTANCE, AN INCIDENT OCCURRED IN 2022, BUT A CLAIM ISN'T MADE UNTIL 2025. THE CARRIER THAT WROTE THE COVERAGE IN 2022 PROVIDES COVERAGE EVEN IF IT NO LONGER WRITES LIABILITY ON THE INSURED.

INCEPTION	INCIDENT	EXPIRATION	CLAIM	CLAIM COVERAGE?
↓	↓	↓	↓	YES/NO

CLAIMS MADE POLICIES ONLY COVER CLAIMS THAT ARE BOTH REPORTED AND OCCUR DURING THE POLICY PERIOD. THE ABOVE CLAIM WOULD NOT BE COVERED SINCE THE CLAIM WAS NOT REPORTED DURING THE POLICY PERIOD. (SEE “DEFINITIONS” FOR “POLICY PERIOD”)

SOUNDS PRETTY SIMPLE, DOESN'T IT? NOT SO FAST. NOTHING IS SIMPLE IN INSURANCE! WHILE OCCURRENCE POLICIES ARE NOT COMPLICATED, ALMOST ALL PROFFESIONAL LIABILITY POLICIES ARE WRITTEN ON A CLAIMS MADE BASIS. FOR INSTANCE, PROFESSIONS THAT TYPICALLY PURCHASE PROFESSIONAL LIABILITY POLICIES ARE ATTORNEYS, ACCOUNTANTS, ARCHITECTS AND ENGINEERS, HEALTHCARE PROVIDER'S AND FINANCIAL PROVIDERS. AS FOR ACCOUNTANTS, TYPICALLY CNA'S, BOOKKEEPERS, TAX PREPARERS AND ACCOUNTING FIRMS KEEP PROFESSIONAL LIABILITY. IN A NUTSHELL, PROFESSIONAL LIABILITY PROTECTS AGAINST **FINANCIAL LOSSES** CAUSED BY MISTAKES IN TAX PREPARATION, INACCURACIES IN FINANCIAL STATEMENTS, BOOKKEEPING, GIVING OUTDATED FINANCIAL ADVICE, MISSING A DEADLINE TO FILE FOR AN EXTENSION, ETC.

SO WHAT ELSE NEEDS TO BE KNOWN ABOUT CLAIMS MADE POLICIES? FIRST, LET'S LOOK AT IMPORTANT DEFINITIONS.

POLICY PERIOD: THE ACTIVE, SPECIFIC TIME FRAME LISTED ON THE DECLARATIONS PAGE DURING WHICH AN INCIDENT MUST OCCUR AND THE CLAIM MUST BE REPORTED TO THE INSURER TO BE COVERED. FOR INSTANCE, IT COVERS INCIDENTS THAT OCCURRED AFTER THE RETROSPECTIVE DATE AS SHOWN ON THE POLICY. THE RETROSPECTIVE DATE CAN BE AS LITTLE AS ONE YEAR OR MULTIPLE YEARS PRIOR TO THE CURRENT POLICY’S INCEPTION.

RETROACTIVE DATE (RETRO DATE): THE EARLIEST POINT FROM WHICH YOUR CLAIMS MADE POLICY WILL COVER INCIDENTS. SO INCIDENTS BEFORE THIS DATE ARE NOT COVERED.

EXTENDED REPORTING COVERAGE (SO-CALLED TAIL COVERAGE): THIS IS A FINITE PERIOD OF TIME, USUALLY 60 DAYS, BEYOND THE END OF CLAIMS MADE POLICY COVERAGE DURING WHICH THE INSURED MAY SUCCESSFULLY REPORT CLAIMS TO THE INSURER. THE EXTENSION ONLY PROVIDES COVERAGE FOR INCIDENTS ARISING FROM ACTS THAT OCCURRED **PRIOR** TO THE INCEPTION OF THE TAIL COVERAGE.

PRIOR ACTS COVERAGE: THIS COVERS INCIDENTS THAT HAPPENED AFTER A SPECIFIC RETROACTIVE DATE LISTED ON THE POLICY, WHICH IS USUALLY THE DATE YOU FIRST PURCHASED CONTINUOUS CLAIMS MADE COVERAGE.

FULL PRIOR ACTS COVERAGE: THIS COVERS ALL YOUR PAST PROFESSIONAL SERVICES WITHOUT A SPECIFIC RETROACTIVE DATE LIMITATION.

NOTE: THERE MUST BE CONTINUOUS COVERAGE IN BOTH OF THE ABOVE. A GAP IN COVERAGE MAY VOID COVERAGE RELATED TO WORK DONE DURING OR BEFORE THE GAP PERIOD.

NOTE: GET EITHER PRIOR ACTS OR FULL PRIOR ACTS COVERAGE IF YOU CHANGE CARRIERS. OR AT LEAST, KEEP THE ORIGINAL RETRO DATE!

NOTE: THE INSURED MAY PURCHASE AN ADDITIONAL "TAIL" PERIOD, USUALLY ONE YEAR UP TO THREE YEARS OR MORE. THIS IS EXPENSIVE, TYPICALLY COSTING 100% TO 150% OF THE EXPIRING POLICY'S ANNUAL PREMIUM FOR A ONE YEAR EXTENSION. **THERE IS NO NEED TO DO THIS AS LONG AS YOU MAINTAIN CLAIMS MADE COVERAGE WITH NO GAPS WHILE MAINTAINING THE ORIGINAL RETRO DATE.** WHEN SHOULD YOU CONSIDER PURCHASING ADDITIONAL TAIL COVERAGE? ANSWER: WHEN YOU RETIRE, CLOSE YOUR BUSINESS, MOVE TO AN OCCURRENCE POLICY, OR GET A NEW RETRO DATE. EVEN THOUGH YOUR PROFESSIONAL LIABILITY POLICY EVENTUALLY ENDS, YOUR LIABILITY FOR PAST WORK DOESN'T. UNCOVERED CLAIMS AFTER RETIREMENT OR MOVING TO AN OCCURRENCE POLICY OR SALE OF BUSINESS COULD POTENTIALLY PUT YOUR PERSONAL ASSETS AT RISK LONG AFTER YOU STOPPED PRACTICING.

- LET'S PUT THE ABOVE INTO PRACTICE

1. CLAIMS MATE - NO PRIOR ACTS COVERAGE

INCIDENT	RETRO DATE	CLAIM	EXPIRATION DATE	COVERAGE?
↓	↓	↓	↓	YES/NO

2. PRIOR ACTS COVERAGE

INCIDENT	RETRO DATE	CLAIM	EXPIRATION DATE	COVERAGE?
↓	↓	↓	↓	YES/NO

3. FULL PRIOR ACTS COVERAGE

INCIDENT	RETRO DATE	CLAIM	EXPIRATION DATE	COVERAGE?
↓	↓	↓	↓	YES/NO

4. PRIOR OR FULL PRIOR ACTS COVERAGE - WITH GAP

RETRO DATE	INCIDENT	GAP	NEW RETRO DATE	CLAIM	COVERAGE?
↓	↓	↓	↓	↓	YES/NO

5. TAIL COVERAGE

RETRO DATE	INCIDENT	EXPIRATION	CLAIM (30 DAYS)	COVERAGE?
↓	↓	↓	↓	YES/NO

6. TAIL COVERAGE

RETRO DATE	INCIDENT	EXPIRATION	CLAIM (80 DAYS)	COVERAGE?
↓	↓	↓	↓	YES/NO

7. TAIL COVERAGE (WITH ONE OF MORE YEARS OF OPTIONAL EXTENSION)

RETRO DATE	INCIDENT	EXPIRATION	CLAIM (300 DAYS)	COVERAGE?
↓	↓	↓	↓	YES/NO

8. CHANGING CLAIMS MADE CARRIERS AND KEEPING ORIGINAL RETRO DATE

RETRO DATE	INCIDENT	NEW CARRIER	CLAIM (100 DAYS)	COVERAGE?
↓	↓	↓	↓	YES/NO

BRAIN BUSTER: IN QUESTION NUMBER 8, WHICH CARRIER WOULD PAY THE CLAIM SINCE THE INCIDENT OCCURRED UNDER THE FIRST CARRIER'S COVERAGE BUT NOT REPORTED UNTIL THE SECOND CARRIER'S COVERAGE?

DIGGING DEEPER

1. I MENTIONED THAT YOU WOULD LIKELY NEED TAIL COVERAGE IF YOU SWITCH FROM CLAIMS MADE COVERAGE TO OCCURRENCE COVERAGE. SUPPOSE AN INSURANCE AGENT PROVIDES A PROPOSAL ON AN OCCURRENCE POLICY, SUGGESTING TO SWITCH FROM THE CURRENT CLAIMS MADE POLICY. WE KNOW THAT OCCURRENCE COVERAGE IS PREFERRED OVER CLAIMS MADE COVERAGE. SO WHAT'S THE PROBLEM IF YOU SWITCH?

THE CLAIMS MADE COVERAGE POLICY WILL ONLY PROVIDE COVERAGE FOR INCIDENTS AFTER THE RETROACTIVE DATE AND IF THE CLAIM IS ALSO REPORTED DURING THE "POLICY PERIOD". BUT UNDER THIS SCENARIO THE CLAIMS MADE COVERAGE IS GONE, HAVING BEEN REPLACED BY THE OCCURRENCE POLICY. SO IF THE CLAIMS MADE POLICY IS NO LONGER IN EFFECT WHEN THE CLAIM IS MADE, THERE IS NO COVERAGE UNLESS IT IS REPORTED DURING THE STANDARD 30 OR 60 DAY REPORTING PERIOD. THE OCCURRENCE POLICY WILL ONLY COVER CLAIMS THAT OCCURRED DURING ITS POLICY PERIOD, SO IT WON'T COVER INCIDENTS THAT TOOK PLACE DURING THE PRECEDING CLAIMS MADE COVERAGE.

SOLUTION: REQUEST THAT PRIOR ACTS COVERAGE BE ADDED TO THE OCCURRENCE POLICY, (UNLIKELY TO BE APROVED), OR PURCHASE TAIL COVERAGE. THIS IS EXPENSIVE, AND WILL ALSO HAVE A TIME LIMIT, USUALLY ONE OR TWO YEARS. SO SWITCHING FROM CLAIMS MADE TO OCCURRENCE COVERAGE IS LIKELY NOT A GOOD OPTION

2. WHAT IF I HAVE REASON TO BELIEVE A CLAIM MAY ARISE OUT OF AN INCIDENT THAT HASN'T BEEN REPORTED DURING THE CLAIMS MADE COVERAGE PERIOD OR WITHIN 30 OR 60 DAYS THEREAFTER? THIS IS ESPECIALLY IMPORTANT IF YOU RETIRE, CLOSE YOUR BUSINESS, OR SWITCH TO AN OCCURRENCE POLICY. WHILE CLAIMS MADE COVERAGE VARIES FROM INSURER TO INSURER, A COMMON CLAUSE MAKES AN EXCEPTION FOR INCIDENTS THAT ARE REPORTED TO THE INSURER THAT MAY GENERATE A FUTURE CLAIM. THIS TYPICALLY LOCKS IN COVERAGE SOMETIMES FOR AS MUCH AS FIVE YEARS OR LONGER.

3. **FAQ.** CAN YOU CHANGE CLAIMS MADE CARRIERS WITHOUT LOSING COVERAGE? (NOTE: IF YOU ARE NON-RENEWED, YOU HAVE NO CHOICE) YOU CAN, BUT THERE ARE SOME THINGS TO CHECK TO PRESERVE PROTECTION.

1. BE SURE THE EFFECTIVE DATE OF THE NEW POLICY MATCHES THE EXPIRATION OF YOUR CURRENT COVERAGE.

2. BE SURE THE NEW POLICY CONTINUES WITH THE SAME RETRO-ACTIVE DATE AS THE CURRENT POLICY, AND PROVIDES PRIOR ACTS COVERAGE. FOR INSTANCE, YOU HAVE BEEN WITH YOUR OLD CARRIER WITH A RETRO DATE 5 YEARS AGO. BE SURE YOUR NEW CARRIER PROVIDES THE SAME RETRO DATE.

3. REPORT ANY INCIDENTS, OR POTENTIAL CLAIMS THAT YOU MAY BE AWARE OF TO YOUR OLD INSURER PRIOR TO ITS EXPIRATION DATE. YOUR NEW CARRIER WILL ALMOST CERTAINLY EXCLUDE COVERAGE FOR ANY ISSUES THAT SHOULD HAVE BEEN REASONABLY KNOWN PRIOR TO THEIR EFFECTIVE DATE.

4. VERIFY THE DEDUCTIBLE AND LIMITS ARE THE SAME.

5. CHECK POLICY DEFINITIONS AND EXCLUSIONS TO VERIFY YOU HAVE EQUIVALENT COVERAGE.

6. CHECK THE ENDORSEMENTS. YOU MAY BE SURPRISED BY WHAT THEY DO TO AFFECT COVERAGES, GOOD AND BAD.

NOTE: ITEMS 1 – 6 SHOULD BE HANDLED BY YOUR AGENT. IT MIGHT BE A GOOD IDEA TO GIVE THE AGENT THIS LIST TO VERIFY.