

The “Claims Made” policy

The Devil is in the details

Copyright 2013

[HTTP://WWW.WWSPI.COM](http://www.wwspi.com)

The difference between a “Claims Made” policy and an “Occurrence Policy” have long been the subject of review and discussion between brokers and their clients. What is often of interest to the insurance buyer is that the Claims Made policy can be less expensive, or in some cases, may be the only way some insurance coverage may be purchased. For example, an Employment Practices Liability policy is sold almost exclusively on a Claims Made form.

Whether a lower premium or the only coverage available, there are important caveats to the claims made form that the policy holder should understand and plan for.

Putting aside the common defense within the limits design, the most misunderstood provisions within the Claims Made form for policy holders and brokers alike, are the claims notice requirements and dates. This misunderstanding results in uncovered claims.

Knowledge of a Claim or Circumstances of Loss that May Lead to a Claim.

- Any situation that you are aware of that could lead to a claim, should be reported to your insurance carrier as an, “incident”. This puts the carrier on report, should a claim actually develop at some future date. Not reporting also prevents a carrier from offering guidance or support to help mitigate any potential claim.
- A key component to the knowledge of claim or circumstance of loss with a Claims Made Policy is, the date that you become aware of that instance. Effective dates and retro dates come into play here.

Retro Date.

- This date, found on claims made policies, will be a date that is the same as or, prior to, the effective date, of your claims made policy. This date refers to the date a loss occurred (not when you are sued, which can be months or, even years later) Additionally, if you had knowledge of circumstances that can lead to a claim, prior to the retro date, then any claim resulting, in which you had knowledge, would not be covered.
- Here is an example, the effective date of your policy is May 1, 2012, and your retro date is January 1 2005.

You became aware of a circumstance that can lead to loss on August 1, 2006 and report it to your carrier. You do not hear anything until June 1, 2012 when, you are served with suit papers from that August 2006 “incident”. The policy will respond, since the loss occurred after the retro date and was reported to the carrier.

Conversely, you do not report the August 1, 2006 “incident” to your carrier and on June 1, 2012 you are served with suit papers regarding that incident, no coverage because, you had prior knowledge.

You have no prior knowledge of any circumstance that can lead to a claim and on June 1, 2012 you are served with suit papers for a claim that occurred on August 1, 2006, coverage will respond. It responds because, the claim was after the retro date, and you had no prior knowledge

Finally, if a claim occurred before the retro date then, regardless of when you find out about it, there is no coverage. This last bit of information is much like an occurrence policy because even with an occurrence policy, if there was no coverage in effect at the time of the loss, then there is no coverage available.

What should you do?

- Simple if you have knowledge of any circumstance that can reasonably be expected to give rise to a claim, **report it to the carrier immediately**. Prior to renewal be sure there are no known circumstances of loss but, if there are, even if you do not think it will not be a claim, report it. If it does lead to a claim then the policy has the ability to respond.