

PUBLICATION

Definition of a Claims-Made Policy

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The two most common methods utilized by insurance policies for determining whether coverage is triggered are the “claims-made” and “occurrence” approaches.

Occurrence Policies

Most auto, homeowners, and general commercial liability insurance policies are written via the “occurrence” approach. In an occurrence policy, coverage is triggered based upon the date of the event giving rise to the claim. Occurrence policies do not provide coverage for events or acts occurring prior to the effective date of the policy. Because coverage is triggered based upon when the accident or injury occurred, the policy in force on the date of such event is the one which responds to the claim regardless of when the claim was presented to the insurance company. A claim may arise years after the occurrence policy has expired. However, the policy – in effect at the time of such loss – must nonetheless respond with defense costs (principally attorney fees) and settlement or judgment indemnification.

Claims-Made Policies

The claims-made approach is commonly used with professional liability insurance such as directors & officers’ coverage, medical and legal malpractice insurance, and errors & omissions policies. In a claims-made policy, coverage is triggered by the date the insured first became aware of the possibility of a claim and notified the insurer of such knowledge. The insurance policy in force on the date the insured gained such awareness is the one which responds to the claim. The policy period for a claims-made policy will extend backwards in time to a “retroactive date” years before the policy was purchased. Therefore, the policy will provide coverage for claims made today stemming from actions or events all the way back to that retroactive date. A claims-made policy requires the claim be made during the policy period or an extended reporting period (“ERP”). The most widely used claims-made policy is the “Claims-Made & Reported” form. This form provides coverage only for losses which: (a) occurred after the retroactive date and, (b) were reported during the policy period or ERP. In contrast is the less commonly used “Pure Claims-Made” form. The major distinction between this form and the claims-made & reported form is that with the pure claims-made form, the insured need only report the claim “as soon as practicable,” or “promptly,” and not necessarily during the policy term.

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