Claims Made Versus Claims Made and Reported Policies: What's the Difference and Does It Matter?

When it comes to coverage provided, the differences between **Claims Made** policies and **Claims Made and Reported** policies are extremely significant. Professional liability policies for Insurance Professionals are typically written on one of these forms. It is critical to understand the two when purchasing professional liability insurance to protect yourself and your business.

Claims Made Coverage

A **Claims Made Policy** provides coverage for an injury or loss if a claim, such as receipt of a demand letter or service of a lawsuit, is first made during the policy period. Claims Made policies provide broader coverage and contain more liberal reporting requirements than Claims Made and Reported policies. The major distinction between the claims made form and the claims made and reported form is that under a claims made policy form the insured typically need only report the claim "as soon as practicable" or promptly, but not necessarily during the policy term. On the other hand, Claims Made and Reported Policies, as the name suggests, require that the claim be made and reported during the same policy period.

- This wording under a claims made policy may read: "This is a claims-made policy which applies to 'claims' first made during the policy period or any extended reporting period."
- Sample insuring language: "We will pay on behalf of the insured 'loss' for which the insured is legally liable caused by a 'wrongful act' committed by an insured arising out of 'professional services' rendered to others.
- This type of insurance applies to "'potential claims' and 'claims' first made against the insured during the 'policy period' arising out of a 'wrongful act' taking place on or after the retroactive date".

Claims Made and Reported Coverage

A **Claims Made and Reported Policy** also requires that the claim be made during the policy period. However, this policy form also requires that the claim be reported to the carrier during the same policy period in force at the time the claim was made. (Some states may provide for an automatic reporting period of 30-90 days providing the insured a grace period to report claims). While often less expensive, Claims Made and Reported coverage is much more restrictive.

- Sample wording under a claims made and reported policy: "We agree to pay on behalf of the insured such 'loss' to which this insurance applies sustained by the insured by reason of liability imposed by law for 'loss' caused by any 'wrongful acts' committed by the insured, arising out of the conduct of the business of the insured in rendering services for others"..

- This insurance applies to "wrongful acts" only if:

  1. The "wrongful acts" did not occur before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period, and
  2. "Loss" because of the "wrongful act" results in a "claim first made and reported to us" during the policy period.

How do these differences play out in real life?

Case Study

An insurance agent is insured by Carrier A for policy period July 1, 2008 through July 1, 2009. On June 27, 2009, the agent is served with a lawsuit alleging that the agent failed to procure the appropriate coverage for her client. On July 1, 2009 the agent changes carriers and moves her coverage to Carrier B. On August 4, 2009, the agent reports the claim to Carrier A.

<u>What is the result?</u>

If the agent was insured by Carrier A on a **claims made and reported policy form, there is** no coverage. The claim was made during the policy period but not reported during the same policy period.

What will Carrier B's position be if its policy is written on a Claims Made and Reported form as well? No coverage. Due to the fact that the claim was made during Carrier A's policy period, the claim was not made and reported during carrier B's policy period.

What if the agent had renewed its claims made and reported coverage with Carrier A? No coverage. Claims Made and Reported forms do not typically provide continuous coverage and the reporting requirement is typically strictly enforced (i.e., that the claim be reported during the policy period in which the claim was made).

If the agent's coverage through Carrier A was provided on a **claims made** basis, <u>the claim is covered.</u> There is coverage under the policy issued by Carrier A because the claim was made during that policy period and, for the purpose of this article, was reported promptly.

<u>Lesson learned</u>

While the agent was continuously insured, there is still a gap in coverage under the claims made and reported form. Because of the less onerous reporting requirements under the claims made policy form, the claim can be reported after the policy period has ended without jeopardizing coverage as long as the claim was made within the policy period and reported promptly.

The distinctions between Claims Made and Claims Made and Reported policies do make a difference. While a Claims Made and Reported policy may cost less than a Claims Made policy in the short run, it is because the Claims Made and Reported is a more restrictive form of coverage. It's important to keep this is mind the next time you recommend or buy professional liability coverage, as the Claims Made and Reported form could end up costing you in the end.