

Commercial General Liability Insurance
Claims-Made Form
(Lecture 10)

Overview of Lecture 10 (chapters 3 and 4 CPCU 4)

I. Occurrence vs. Claims-Made Form

- A. Occurrence form*
- B. Claims-made form*
- C. Advantages and disadvantages of claims-made form*

II. Insuring agreement

III. Features of the Claims-Made Form

I. Occurrence vs. Claims-Made Form

A. Occurrence form

1. Occurrence means "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." An accident is a loss causing event that is sudden, unforeseen, and unintentional.
 - Bodily injury or property damage to a third party must occur during the policy period (occurrence is the coverage trigger). Claim can be made this year or some later year.

2. Legal theories of when harm occurs

i. Manifestation theory-

ii. Exposure theory-

iii. Triple-trigger theory-

3. Problems resulting from occurrence-type coverage in latent injury cases

B. Claims-made form

- claims-made policy in effect when the claim is made covers the claim (assuming the injury occurred after the retroactive date stated in the renewal policy).

C. Advantage and disadvantages of claims-made form

1. Advantages:

2. Disadvantages:

- if policy canceled, no coverage for claims after cancellation date, even for an injury that occurred during policy period (as a result, extended reporting periods are available for the insured)

II. Insuring agreement

- same as occurrence form except:

A. Coverage A - Bodily Injury and Property Damage Liability

1. BI or PD must occur after the retroactive date, if any, shown in the declarations and before the end of the policy period; and
2. notification of an occurrence alone does not trigger coverage

B. Coverage B - Personal and Advertising Injury Liability

III. Features of the Claims-Made Form

A. Retroactive date (retro date)

definition: the occurrence (BI, PD, PI or AI) must take place after this date and before the end of the policy period in order for coverage to apply.

three choices:

- 1.
- 2.
- 3.

B. Limitations on advancing the retro date

1.

2.

3.

4.

C. Potential coverage gaps (assumes no tail coverage, "pure claims-made")

1.

2.

Example

3.

Example

4.

Example

D. Extended reporting period (tail)

definition: the purpose of the extended reporting period is to provide coverage under an expired claims-made policy when the claim is first reported after the policy expires

1. basic extended reporting period (BERP)

- automatic, no extra premium, claims made on occurrences between retro date and end of policy period, no new limits, no coverage if other subsequent insurance applies

i) notice of occurrence

ii) notice of claim

Example

2. supplemental extended reporting period (SERP)

- unlimited tail

E. Laser beam endorsement (“exclusion of specific accidents, products, work or locations”)

1. placing the retroactive date concurrent with the new policy’s inception would serve the purpose of excluding ALL injury and damage that occurred before the policy’s inception
2. an alternative to excluding all prior occurrences is to exclude injury and damages (known or unknown) associated with SPECIFIC accidents, products, work or locations
 - this permits the insurer to include an earlier retroactive date in the new claims-made policy without providing coverage for the excluded risks
 - insurer must offer extended reporting period endorsement for excluded risks (does not provide any coverage for occurrences after the end of the expired policy’s period)

F. Other insurance

- This insurance is excess over any other insurance that is effective prior to the beginning of the policy period and is an occurrence-type policy,

Example