

Mind the Gap Between Occurrence and Claims- Made Policies

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Overview

- **Occurrence versus claims-made**
 - Commercial general liability
 - Professional liability
- **Mind the gap: switching from claims-made to occurrence**

Occurrence or Claims-Made?

COVERAGE FORM	TRIGGER	POLICY
Occurrence	Bodily injury , property damage, or offense occurs during policy period	CGL PL
Claims-Made	Claim alleging bodily injury or property damage asserted against insured during policy period	CGL PL/E&O D&O

Critical Concepts

1. Event

2. Occurrence (bodily injury, property damage, offense, or negligence)

3. Claim

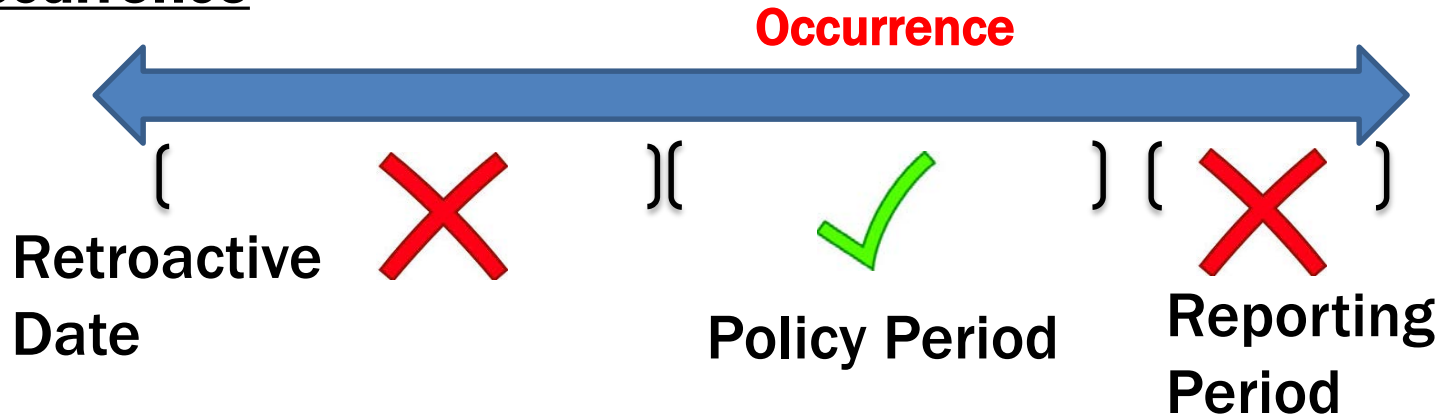
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Example: Slip and Fall

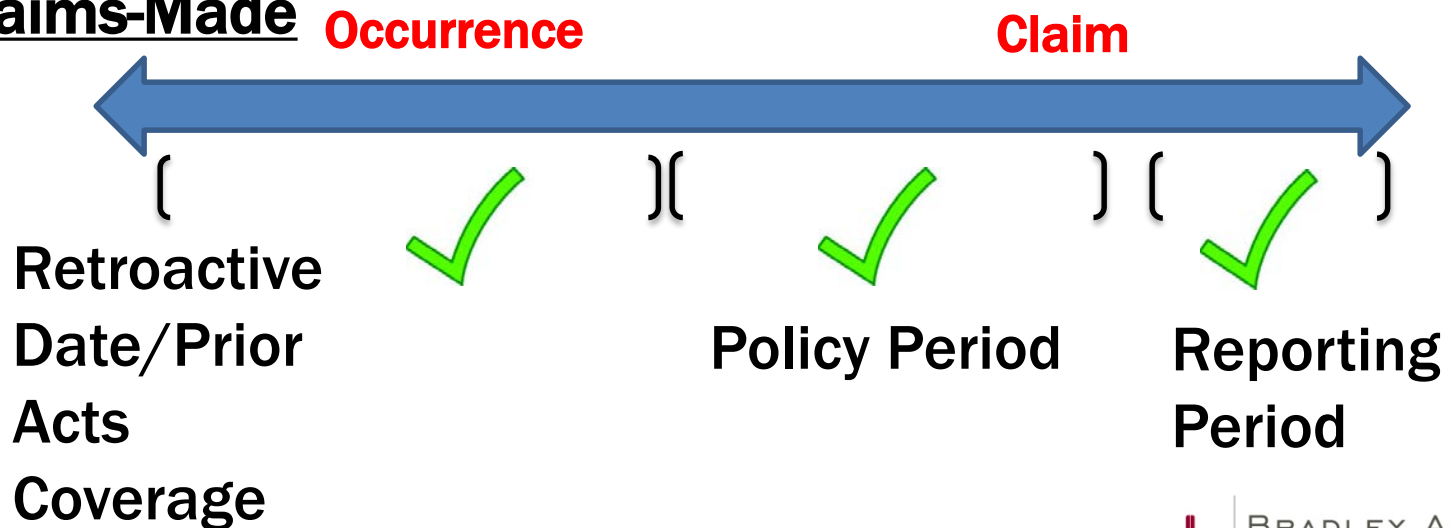
- Plaintiff falls in 2014 and breaks her leg
- In 2014 she receives allegedly negligent medical care
- Plaintiff sues retailer and hospital in 2015 for bodily injury and professional liability
- Occurrence – 2014 policies respond
- Claims-made – 2015 policies respond (retroactive date/prior acts coverage)

Comparison of Occurrence and Claims-Made

Occurrence



Claims-Made



CGL Occurrence Coverage

COMMERCIAL GENERAL LIABILITY
CG 00 01 12 04

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against the "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate in the coverage territory;

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

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Example: Event and Subsequent Bodily Injury Under CGL

- Mother ingested drug in 1955
- Alleged cancer diagnosed in 1975
- Daughter allege resulting birth defect caused by 1955 ingestion
- Granddaughter alleges cancer passed through from grandmother
- 1955 occurrence policy would respond
- So 1955 occurrence policy covers three generations

Professional Liability

- Traditional professionals (doctors, lawyers, accountants)
- Errors and omissions while performing professional services



Occurrence Professional Liability

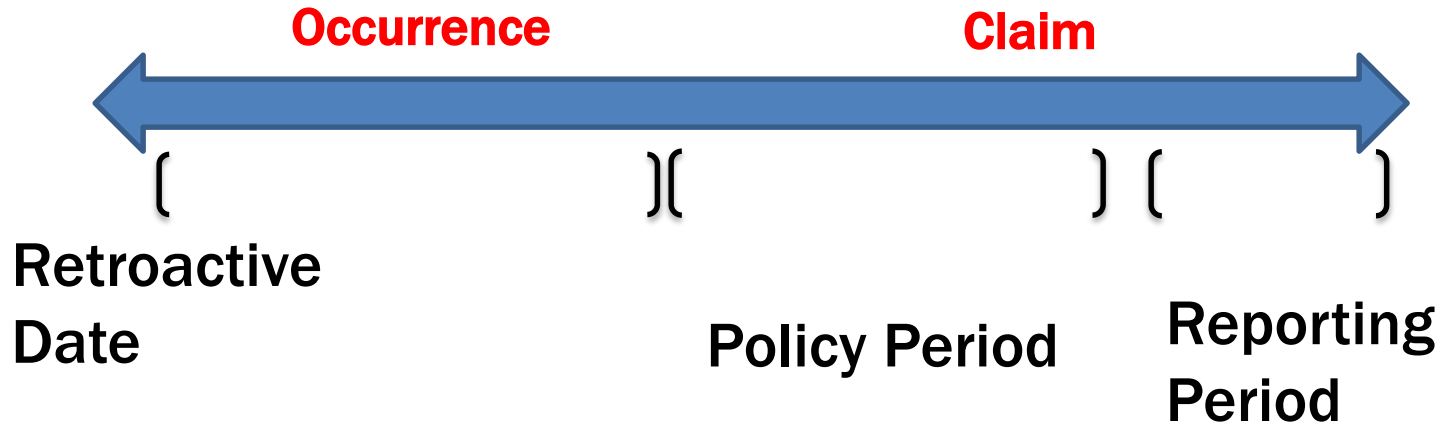
- Available for some professions, including medical liability and hospitals
- Provides coverage for negligence/wrongful act during policy period, regardless of when reported

Occurrence Example: Allegedly Negligent Medical Treatment

- Doctor operates on patient in 2004 and allegedly damages patient's ligament
- Patient sues doctor for negligence in 2006
- 2004 occurrence policy responds



Claims-Made Coverage



Claims-Made CGL

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(1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

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- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" did not occur before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period; and
 - (3) A claim for damages because of the "bodily injury" or "property damage" is first made against any insured, in accordance with Paragraph c. below, during the policy period or any Extended Reporting Period we provide under Section V – Extended Reporting Periods.

Claims-Made PL

PROFESSIONAL LIABILITY COVERAGE FORM

1. Insuring Agreement

The insurer shall pay on behalf of the Insured Loss resulting from a Claim first made against the Insured during the Policy Period or, if applicable, the Optional Extension Period, for a Wrongful Act.

Claims-Made Example: Negligent Medical Treatment

- Doctor operates on patient in 2004 and allegedly damages ligament
- Patient sues for negligence in 2006
- 2006 policy responds



Retroactive Date

- No coverage for bodily injury, property damage, or negligence before a specific date
- Even if claim is first made during policy period
- Typically = inception date for new coverage
- Remedy – prior acts coverage

Prior Acts Coverage

- No retroactive date
- Covers claims arising from acts **any time** before policy inception
- Does not apply to **known** previous incidents
- Can be full or partial

Why Choose Claims-Made?

- Predictable pricing
- Easier to determine trigger date
- Lower premium (at least at first)
- Variable “real time” limits
- No coverage loss for new companies

So You Want to Switch . . .

- From one insurer to another—mind the gap
- From occurrence to claims-made—mind the gap (retroactive date/prior acts coverage)
- From claims-made to occurrence—mind the gap



Switching Claims-Made Carriers

- Different retroactive dates
- Different definitions of “claim”
- Different reporting periods



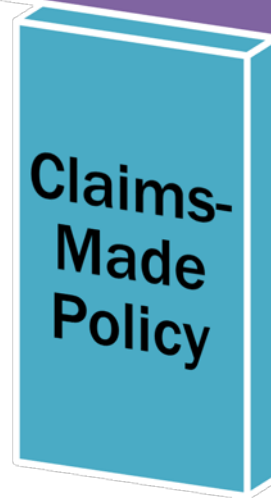
Example: Occurrence to Claims-Made



Example: Claims-Made to Occurrence



2014



2013



2012

Tail Coverage

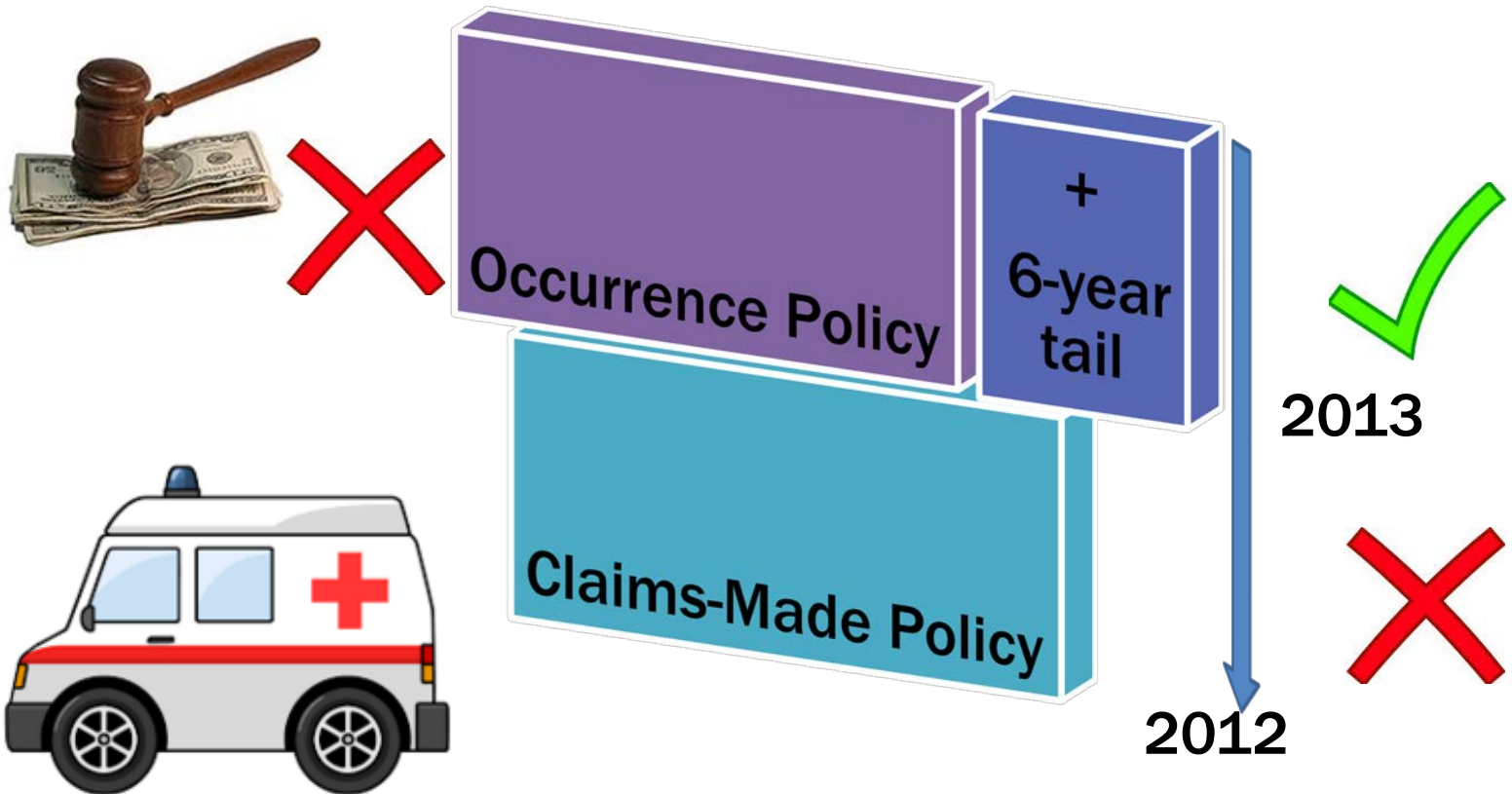
- **Covers claim during reporting period arising out of injury or negligence before policy termination**
- **Basic extended reporting period – automatic protection for five years (CGL) or less (PL)**
- **Supplemental extended reporting period available for additional premium**

Solution: Tail Coverage

- Mind the statute of limitations



Tail Coverage



Take-Aways

- **Understand type of coverage purchased**
- **Understand type of coverage available – occurrence versus claims-made**
- **Be mindful of gaps when switching insurers or switching from claims-made to occurrence coverage**

Questions?

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