

Manager/Supervisor Risk Management

#103– 11/2/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: OCCURANCE VS. CLAIMS-MADE POLICIES

The last topic dealt with making sure that the insurance company would still be there if/when you needed them. This topic addresses whether coverage, or the insurance policy, will also be there. There are basically two types of triggers for liability policies, occurrence and claims-made. Under an occurrence policy coverage is triggered when the accident happens, or occurs. Once that coverage is triggered it never goes away. We obviously like occurrence based policies, and should always require that the contractor's liability policies be written on an occurrence basis.

Claims-made coverage means that there needs to be an active insurance policy when the claim is made. There are potential problems at both ends of this type of policy. The policies usually contain an exclusion for claims arising out of incidents that occurred prior to a specified date -- the retroactive date. This keeps a contractor from running out and buying a policy right after an accident. At the other end, there is no coverage for claims made after the policy expires. As long as the insured keeps buying policies, with a retroactive date back to the inception of the first policy, there is no gap, and therefore there is coverage that is very similar in effect to an occurrence policy. Problems arise when a retroactive date is advanced, a policy is canceled or is not renewed. The chain of coverage is broken, and some accident that occurred in the past that suddenly manifests itself in a claim might not be covered.

To get around this problem, contracts commonly require a contractor with claims-made coverage to purchase an extended reporting period – in essence an extension of time, or “tail,” to report claims and trigger coverage under the expired policy. In California the statute of limitations is two years for bodily injury and three years for property damage; a claim for equitable indemnity must be submitted within six months of service of a suit. With this as a potential period of exposure, the minimum contractual requirement for renewal or an extended reporting period might be as much as four years after the conclusion of the contract. This is a long time for an entity to track coverage compliance on a contract after work is completed, and realistically it probably won't be done.

Recognizing the extra work required by the entity's staff to monitor the tail of a claims-made policy, it is obvious that an occurrence policy should always be required. Unfortunately there are certain types of exposures that our entity's face where the insurance industry only writes claims-made policies. Professional liability (malpractice for doctors, lawyers, engineers, architects) and pollution liability policies are only written with claims-made coverage. The potential exposure is further aggravated by the reality that damages and injuries caused by malpractice and pollution often take time to manifest.

Next topic: Coverage Types