

The Importance of Continuity in the Insured-Insurer Relationship

WHITE PAPER

**A White Paper Summarizing the
Complexities of Claims-Made
Coverage in the Lawyers
Professional Liability Marketplace**



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HIDDEN DANGERS OF SHOPPING FOR PRICE

To say that the selection of a professional liability insurance plan for law professionals involves substantially more than a comparison of premiums among various insurers, is to engage in gross understatement. The facts are that a thorough awareness of insurance carrier and policy considerations can be far more important than premium cost in the overall scheme of comprehensive protection. Switching carriers based on price alone can lead to serious gaps in continuous coverage.

Unless a lawyer or law firm truly understands the significance of prior acts coverage and extended reporting endorsements (sometimes referred to as “tail coverage”), they can easily end up thinking they have saved money, while actually being uninsured or underinsured.

When switching coverage from one carrier to another, there are several policy conditions and features that must be considered, some of which include:

- **Eroding coverage: Are defense costs “inside” or “outside” of the policy? If inside, the actual amount of coverage may decrease.**
- **First dollar expense costs: Does the deductible apply to liability only, or are defense costs also included?**
- **Settle without consent: Attorneys want the ability to consent before a case can be settled. Insurers, on the other hand, want to settle without the insured attorney’s consent.**
- **Prior acts coverage: Without prior acts coverage, gaps may occur when a lawyer changes insurance companies.**

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Limits on deductibles based on policy language may also be a critical factor in comparing policies. Deductibles treated on an aggregate basis offer more protection.

Claims-made policies are complex. Changing from one claims-made policy to another can be achieved without gaps, but it requires careful compliance with each policy's reporting provisions. Lawyers and law firms should always consult with an experienced professional liability insurance expert who knows what to look for in a claims-made policy, and what to avoid.



PRIOR ACTS COVERAGE

The practice of insurers adding additional coverage limitations at renewal is becoming more commonplace ...

There is always a great amount of uncertainty about which client relationship or representation in an attorney's practice will lead to a malpractice claim. One thing is certain, a lawyer's risk or probability of a claim increases with each year of practice. So it stands to reason that a lawyer or law firm must have coverage in place today for any negligence, error or omission which took place before the current policy period year.

Prior acts coverage is the ideal way to secure protection against this risk. A coverage extension without time limitations is most definitely preferred, so that a claim would be covered regardless of when the incident occurred. The cost for this additional protection will most likely be based on the number of previous years of coverage required by the lawyer or law firm.

But beware. The road to transferring the risk of prior malpractice exposures can be sharp-curved and sprinkled with land mines! It's possible that an insurance carrier will not include "full prior acts" coverage because of underwriting policies or in response to information gleaned from the application process.

It's also possible that full prior acts coverage is available, but more restrictive than the attorney's prior coverage form. The practice of insurers adding additional coverage limitations at renewal is becoming more commonplace, and could lead to even more serious and costly gaps in protection.

While it is certainly prudent to make sure that full prior acts coverage is available if an attorney or law firm is switching insurance carriers, lawyers must also make certain to carefully review the new policy for any hidden limitations on this essential protection.



CLAIMS MADE POLICIES

... a claims-made liability policy provides the insured with coverage for incidents and liability claims ...

Essentially, there are two types of coverage available to lawyers and law firms to protect against the risk of lawsuits arising from professional practice. Those two forms are both claims-made, with one being claims-made and reported, and the other being claims-made. Claims-made policies are generally written for professional liability insurance risk management.

Because the insured is protected against liability claims or incidents when they are actually reported, while the insurance policy is actually in force, a claims-made liability policy provides the insured with coverage for incidents and liability claims that occur even prior to the effective date of the claims-made insurance policy.

Not to be confused with occurrence policies, which provide an insured with liability insurance protection for any claim that happens to actually take place and "occur" during the policy period, claims-made policies are triggered by the date you first become aware and notify the insurer of a claim or potential claim. The insurer's policy in force on the date you became aware and give notice is the insurer who will most likely defend the claim and settle the case. The major downside with occurrence policies is uncertainty for policyholders and insurance companies.

A claims-made policy, on the other hand, may extend backwards in time and provide coverage for claims made today from negligent acts, errors or omissions that occurred years before the policy was purchased. That's why these policies are better suited for the risks presented by practicing law.

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Continuity in the Insured-Insurer Relationship

Claims-made insurance can be somewhat complex in many situations, and does create challenges for insurance brokers ...

Claims-made insurance can be somewhat complex in many situations, and does create challenges for insurance brokers, consultants and professionals who try to help provide the exact coverage needed by a lawyer or law firm. Notification procedures for both claims and potential claims must be adhered to with precision, and since coverage is triggered by an awareness and notification of a claim or potential claim scenario, failure to properly provide notification to the insurance carrier may render coverage null and void!

Claims-made policies may include a provision that allows lawyers and law firms, or other legal organizations, to notify the insurer of a potential claim situation. But many carriers will require that a specific, identifiable error or omission be reported, rather than a record of possible mistakes or grievances from a potential list of clients. Many claims begin as complaints or controversies that take months, and sometimes years, to develop into actual claims, so the expert guidance and advice of a insurance professional is an absolute necessity.



PROACTIVE PRECAUTIONS

The single most important thing a lawyer, law firm or other legal organization can do to make sure their risk management needs are being adequately met, is to rely on an experienced insurance expert who understands the many complex features and provisions of claims-made lawyers professional liability protection.

Attempting to navigate the maze of complexity that makes up claims-made insurance policies without the trained eye of a lawyers professional liability expert is a recipe for disaster.

Remember, a law firm's exposure to claims and lawsuits grows over time. The more clients represented ... the more cases being handled, which presents more and more risks. That's why USI Affinity concentrates on ways to lower risk factors and improve risk management to a safe level that provides adequate protection to you or your law firm.

There are many actions, errors and omissions which may result in lawsuits. Some of the more obvious include:

- **Missing important deadlines**
- **Inaccurate legal and tax advice**
- **Disputes regarding fees**
- **Conflicts of interest**
- **Improperly structured settlements**

You or your law firm may be named as a defendant in a shareholder lawsuit, or a lawsuit which arises from a complex real estate transaction performed for a client. Today, your firm must be aware of potential lawsuits which could arise from issues surrounding the use of social media sites and organizational websites... the new Cyber Risk!

continued ...



... when you're switching from one carrier to another, make certain that you're comparing apples to apples ...

At USI Affinity, we work with you to help eliminate the underlying factors which lead to malpractice lawsuits, and help create an environment for your firm that allows you to confidently deal with new risks... as well as new opportunities to grow your business.

By all means, you should shop and compare lawyers professional liability coverage from a variety of insurance carriers. But when you're switching from one carrier to another, make certain that you're comparing apples to apples... not apples to lemons!

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USI AFFINITY RESOURCES

For over 75 years, the divisions of USI Affinity have developed, marketed and administered insurance and financial programs that offer affinity clients and their members unique advantages in coverage, price and service. Our programs offer clients, from associations and unions to law firms, the edge they need to both retain existing and attract new clients and partners. As the endorsed provider of affinity groups representing over 20 million members, USI Affinity has the experience and know-how to navigate the marketplace and offer the most comprehensive and innovative insurance packages available. USI Affinity specializes in providing comprehensive professional liability insurance programs to large and small law firms and legal organizations. Our lawyers professional liability consultants have on average 20 years of experience in the marketplace.



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