Claims Corner: Occurrence and Claims-made policy
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Errors and Omissions insurance protects you when your client suffers a financial loss as a result of your negligent act, errors, or omissions. Almost all professional liability policies fall into one of two categories: occurrence or claims-made. The nuanced differences between these two can be confusing to consumers. The following Errors & Omissions claim examples will demonstrate the differences.

Claim Review 1: Freight Forwarder delivers goods late and damaged.
You arranged pickup for a 40 foot high cube container containing one piece of machinery at your client’s warehouse for shipment to Datong, China. The shipment was covered by a letter of credit which included two important factors – a latest delivery date to the buyer as well as the machine was to be in good working order for payment.

The container discharged in Shanghai and you were responsible for arranging delivery to the consignee. You hired an agent in Shanghai to handle on your behalf, however, neglected to advise your agent of the delivery deadline.

The warehouse dropped the machinery when loading on a flatbed at a private warehouse. There was little damage on the exterior and the warehouse decided to release the shipment in this condition to the motor carrier for delivery to the ultimate consignee. Neither you nor your agent were notified the machinery had been dropped. When the machinery was put into use, it did not work properly. To make matters worse it was delivered nine days after the latest delivery date specified in the letter of credit. Given these circumstances, the bank did not pay the shipper.

The shipper contacted you regarding the discrepancies against the letter of credit asking if you were aware the shipment had been delivered late and was damaged. You advised you were not aware and assumed no liability. You heard nothing more from your client and thought the issue had “gone away”.

On April 2017, you are served with a lawsuit in the amount of $430,000 damages and loss of business from the shipper.

Occurrence Policy – Claim is covered.
The occurrence policy term was January 1, 2016 through January 1, 2017 and the date of the occurrence was in November 2016. In this case the occurrence took place during the policy term, so the claim would be covered under the policy. Had the policy been canceled prior to the filing of the claim, the claim still would be covered under the occurrence because the claim “occurred” while the policy was in effect.
Claims-made Policy – Claim is not covered.
The occurrence took place in 2016, however you were not aware of the claim until you were served with the lawsuit in April of 2017, therefore unable to report it to your insurer until that time. Under a Claims-made policy, the claim must occur and be filed during the policy term in order to be covered. In this situation, it was not; therefore, there would be no coverage under the policy.

In this case you would incur legal fees in addition to any judgment by the court. If you were found liable for the full extent of the damages your company would be faced with paying the legal fees plus the $430,000 in damages which would likely be $450,000 in total. How would your business be affected by writing a check for $450,000?

Claim Review 2– Customs Broker misses a costly call.
A Customs broker cleared a shipment valued at $280,000 through US Customs and Border Patrol (CBP) on behalf of his client and left a voice mail advising accordingly. While he was at lunch, the client called his office and spoke with a co-worker and gave instructions to hold the shipment as they were waiting for payment from the ultimate consignee.

The message never reached the broker and the shipment was dispatched to the ultimate consignee’s premises. Two days later the broker’s client contacted him and requested he move the container out of the port and strip it at a local warehouse as they had not received payment from their customer and wanted to avoid demurrage charges.

In researching, the broker realized the shipment had been delivered, therefore the ultimate consignee was in possession of the shipment without payment to his client. Five months later in April 2017, the broker is served with a lawsuit in the amount of $280,000 holding him liable as the consignee never paid the importer.

Occurrence Policy – Claim is covered.
The broker’s policy went was effective January 1, 2016 through January 1, 2017. The date of the occurrence was in December 2016. In this case the occurrence took place during the policy term, so the claim would be covered under the policy. Had the policy been cancelled prior to the filing of the claim, the claim still would be covered under the occurrence because the claim “occurred” while the policy was in effect.

Claims-made Policy – Claim is not covered.
Given the suit was brought in 2017 after the policy term ended on January 1, 2017, the claim would not be covered. Under a claims-made policy, the claim must occur and be filed during the policy term in order to be covered. In this situation, it was not; therefore there would be no coverage under the policy. The broker would look to a minimum judgement against him of $280,000, plus legal fees and possibly the clients’ legal fees.
Gaps in coverage may occur when switching from a claims made policy to an occurrence policy. To protect your exposure, there are a couple of options – Prior Acts coverage can be purchased on the new Occurrence form policy or Extended Reporting options are available on the expiring claims-made form. But how would you determine the number of years in the past you need to protect? Will it be difficult to find this type of protection? How much would it cost? An occurrence policy eliminates these complications. Your business assumes the risk of errors and omissions claims 365 days a year. Avalon provides a Combined Transit Liability (CTL) Program covering the unique needs of the transportation and logistics industry. The CTL policy is written on an occurrence basis and includes E&O coverage with options such as Prior Acts and First Dollar Defense coverage. This policy gives you peace of mind knowing that you are covered. Contact an Avalon representative today to learn more about this important coverage.