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Insurance insights

Brand loyalty in professional indemnity insurance: risks of shifting insurance cover

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The case scenario: A registered health practitioner was involved in the treatment of a cardiac patient in 2008. The practitioner heard nothing further about the patient until receipt of a letter from the Coroner's Court of Victoria in 2012 requesting a statement concerning the patient's cardiac management in 2008.

The practitioner had retired from practice in 2011. From 1992 to 2009 the practitioner had professional indemnity insurance (PII) with Insurer A, which was renewed each year during that period.

In 2009 the practitioner switched PII to Insurer B on the basis that Insurer B was offering a more competitively priced policy. The practitioner continued to renew the PII with Insurer B until retiring in 2011, at which time that policy's 'run-off' cover came into effect.

The practitioner forwarded the letter from the Coroner's Court of Victoria to Insurer B and sought assistance under the policy (which provided cover for legal assistance in relation to coronial investigations) in relation to the matter.

The run-off cover clause in Insurer B's PII policy provided cover for claims made against the retired practitioner (as defined in the policy) but only to the extent those claims arose from facts or circumstances occurring after the retroactive date and during a period in which the practitioner was covered under a policy with Insurer B.

The treatment had occurred prior to policy inception with Insurer B and therefore the claim was not covered under the retiree's cover clause.

The practitioner then sought to notify Insurer A on the basis that the treatment which gave rise to the claim occurred during a policy period with Insurer A. The practitioner recalled that Insurer A's policy also provided for 'run-off' cover.

But Insurer A's policy did not respond to the claim because the claim was not made and notified and did not arise from any known facts or circumstances during any period of PII cover with Insurer A.

The 'run-off' cover in Insurer A's policy did not apply because the practitioner had not stopped working when that policy ceased.

By changing policies in 2009 and not checking the terms and conditions of the policy including retroactive dates and retiree's cover provisions, the practitioner was in an unenviable position of not being covered for a claim despite apparent seamless and continuous PII cover throughout the practitioner's professional career.

What to consider before switching insurers

We see and hear advertising for insurance everyday on television, radio, online and in print media.

Insurers are offering to beat premiums for comparable policies and gift cards to attract new business. And why wouldn't someone want to change insurers for comparable cover at a more affordable price?

Most of the advertising we see and hear is for home and contents and insurance, which are generally 'occurrence based' insurance policies. What this means is the policy provides cover for claims and liabilities for an event occurring during the period of cover. An insured generally makes a claim on the policy immediately after the event and within the period of cover.

In the world of PII, most insurance policies are 'claims made policies'. These policies provide liability cover for professionals in relation to claims made against them and reported to the insurer during the period of cover. These claims often arise long after the professional service which gives rise to the claim.

When taking out a PII, an insurer usually requires the client to disclose any known facts or circumstances which might give rise to a future claim. And the insurer usually imposes a 'retroactive date' based on the disclosures and the insurer's underwriting criteria.

The PII policy provides cover for claims made against the insured and notified to the insurer during the period of cover. And the retroactive date defines the period of professional services which can give rise to a claim covered by the policy.

For example, a professional indemnity (claims made) policy with an inception date of 1 June 2017 and a retroactive date of 1 June 2017 will not provide cover for any claims arising from professional services prior to 1 June 2017 even if the claim is first made and notified during the period of cover.

Similarly, a policy with an unlimited retroactive date provides the insured with peace-of-mind that they are covered for claims first made and notified during the period of cover regardless of when the professional service which gives rise to the claim occurred (subject to known circumstances exclusions and policy inception disclosures).

Many PII policies also provide 'run-off cover' or 'retiree's cover' at minimal or no cost, or it can be purchased separately.

Run-off or retiree's cover is cover that continues to protect an insured from claims arising from their professional services after they have retired or ceased working.

It is a regulatory requirement under Australian law for many professionals that they have PII insurance while practicing their profession and 'run-off'/'retiree's cover'.

Implications

PII (claims made) policies are different from occurrence based policies and the economic principles that might apply to selecting an occurrence based policy do not necessarily apply to claims made PII policies.

Furthermore, in the world of liability for professional services, claims are often made where it is not entirely clear when the fact, situation or circumstance which gives rise to the exposure actually occurred. Claims often arise from repeated conduct over time. The onus is on an insured to establish that a claim falls within cover under an applicable insurance policy. If an insured has had a number of different insurers across different periods of a career, and he or she is unable to pin-point when the fact, situation or circumstance occurred, then the insured may struggle to establish cover under any or all of the policies notwithstanding apparent seamless and continuous cover through his or her career.

Put simply, by changing insurers one risks introducing new policy terms and definitions, new 'known circumstances' periods, and different retroactive dates.

The message of this article is not to stay loyal to a non-competitive insurer, but to carefully consider the implications of switching insurers before doing so. The annual premium cost should not be the only factor.

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