

CLAIMS MADE LIABILITY COVERAGE – WHAT IS IT????

By: Ann M. Cowan, Vice President Underwriting

Some of you have heard of Claims Made Liability Coverage, some of you have not. Claims Made Liability Coverage is complicated and confusing to the majority of people even those in the insurance industry.

There are two types of Liability Coverage. One is Occurrence Liability and the other is Claims Made Liability. Occurrence is the better choice for Liability Coverages 99% of the time. Claims Made should always be examined carefully before the choice to move to that coverage is made. Claims Made coverage is usually written on the Professional Lines of Coverage: Wrongful Acts, Employment Practices Liability, Governmental Medical, Employee Benefits, and Law Enforcement. You rarely see it on the General Liability or Automobile Liability.

Occurrence Liability pays for claims that occur during the policy period regardless of when they are reported to the insurance company. So an occurrence that happened in 1990, reported in 2007 would still be covered by the policy in force as of 1990. The Michigan Township Participating Plan has been an occurrence policy on all their liability coverages (General Liability, Law Enforcement, Wrongful Acts, Employee Benefits, Employment Practices, Governmental Medical, Cemetery Professional and Automobile Liability) since the start of the program April 1, 1985.

Claims Made Liability pays for claims that occur after the Retro Date in the policy and reported during the current policy period. There is no coverage for any claims prior to the Retro Date. This date is set and agreed to by the insurance carrier at the time coverage is quoted by the agent. This date can be changed by the insurance carrier at each renewal.

An example of how coverage applies would be: Retro Date 1/1/1998 with policy period 1/1/2007-2008. A claim is reported on 2/1/2007 with an occurrence date of 3/1/2000. That would be covered by the 1/1/2007-2008 policy. You have a claim that occurred on 4/23/2002 reported on 3/5/2007 covered by 1/1/2007-2008 policy. You also have a claim that occurred on 7/2/2005 reported on 10/3/2007 that would be covered by the 1/1/2007-2008 policy. You could have multiple claims that occurred since the 1/1/1998 retro date that are reported during the 1/1/2007-2008 policy period. This could cause an erosion of your liability limit. With an occurrence policy, each claim would be covered by the policy in force at that time. So there would be three policies to respond if coverage was written on an occurrence basis but only one policy responded to all three claims on a claim made basis.

More confusion occurs when an insured tries to leave a claims made policy. Once you leave a claims made policy, you no longer have any coverage for the claims that occurred after the retro date and reported after the expiration date of the policy unless you purchase an Extended Reporting Period (ERP) or sometimes called "Tail Coverage". The claims made policy contains provisions for the cost and terms of this coverage. Usually you can only buy three years and the cost can be 150-200% of the original claims made premium charge. The coverage provided by the ERP is just extended time to report claims to the insurance carrier that occurred after the retro date but before the expiration of the policy. Once that time period is up on the ERP, you no longer have any coverage for the claims that occurred during that time period.

An example would be: Retro Date 1/1/1998, Policy Period 1/1/2003-2004 Purchased ERP for two years 1/1/2004-2006. Claim occurs 3/3/2002, reported on 2/2/2005. This claim would be covered under the 1/1/2003-2004 policy period with the ERP of 1/1/2004-2006.

<u>Retro Date</u>	<u>Policy Dates</u>	<u>Claim Occurs</u>	<u>Claim Reported (made)</u>	<u>ERP Dates</u>	<u>Claim Pd</u>
1/1/1998	1/1/1998-1999				
1/1/1998	1/1/1999-2000				
1/1/1998	1/1/2000-2001				
1/1/1998	1/1/2001-2002				
1/1/1998	1/1/2002-2003	3/3/2002	2/2/2005		
1/1/1998	1/1/2003-2004			1/1/2004-2006	XXXXX

Claim occurs 3/3/2003, reported on 2/2/2006 would not be covered because the ERP has expired.

<u>Retro Date</u>	<u>Policy Dates</u>	<u>Claim Occurs</u>	<u>Claim Reported (made)</u>	<u>ERP Dates</u>	<u>Claim Pd</u>
1/1/1998	1/1/1998-1999				
1/1/1998	1/1/1999-2000				
1/1/1998	1/1/2000-2001				
1/1/1998	1/1/2001-2002				
1/1/1998	1/1/2002-2003				
1/1/1998	1/1/2003-2004	3/3/2003	2/2/2006	1/1/2004-2006	

With an occurrence policy, the claim would fall under the policy in force as of the date of the occurrence without regard to when it is reported. Therefore, the occurrence policy could have expired but it would still respond to claims occurring within the policy period.

<u>Policy Dates</u>	<u>Claim Occurs</u>	<u>Claim Reported (made)</u>	<u>Claim Pd</u>
1/1/1998-1999			
1/1/1999-2000	3/5/1999	5/4/2007	XXXXX
1/1/2000-2001			
1/1/2001-2002			
1/1/2002-2003			
1/1/2003-2004	3/3/2003	2/2/2006	XXXXX

Some carriers will provide Prior Acts coverage when you move from Claims Made to Occurrence. This will then provide coverage to the insured through the new carrier depending on what option the insured would choose. The Michigan Township Participating Plan can provide this coverage to those insureds joining the program from a Claims Made Coverage. Should you consider a Claims Made Liability Coverage policy, be sure to ask for a letter from the agent or insurance carrier fully explaining the coverage, options and costs including cost of the Extended Reporting Period.



THE PAR-PLAN NEWS



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Par-Plan Annual Business Meeting

The Par-Plan is pleased to announce that this years annual business meeting and 1st quarterly board of directors meeting will be held on Thursday July, 12, 2007 at the Ojibway Ramada Plaza, Saulte Ste. Marie, Michigan beginning at 9:30 am in the Mac Arthur room.

The annual business meeting will include detailed reports from the Program Administrator and each of the programs service providers on their activities over the past year and the goals of the program for the coming year.

We encourage all members to attend.

**MTPP BOARD / COMMITTEE SCHEDULED MEETINGS
2007 Year**

MTPP BOARD OF DIRECTORS
Term: July 1, 2006 through
June 30, 2007

ZONE 1
Paul Lehto
Calumet Township
(906) 337-2410

ZONE 2
Marvin Besteman, Jr.
Vice Chairman
Kinross Charter Township
(906) 485-5381

ZONE 3
Pat Mead
Secretary
Benzonia Township
(231) 882-4411

ZONE 4
Terry Wright
Grayling Township
(989) 348-4361

ZONE 5
Jim Beelen
Chairman
Allendale Charter Township
(616) 895-6295

ZONE 6
Jon Sherwood
Beaverton Township
(989) 465-9175

ZONE 7
John Jones
Ira Township
(586) 725-0263

ZONE 8
John Buckhout
Charter Township of Kalamazoo
(269) 381-8080

ZONE 9
William Bamber
Oceola Township
(517) 546-3259

Election/Bylaw Committee	May 15, 2007 9:30 a.m. Par-Plan Office Auburn Hills, MI
Newsletter Committee	May 18, 2007 11:00 a.m. Benzonia Twp. Benzie, MI
Budget/Finance Committee	June 7-8 9:00 a.m. Guy Carpenter Chicago, IL
Fire/EMS Committee Law Enforcement Committee	June 13-15, 2007 9:00 a.m. Par-Plan Office Auburn Hills, MI
Election/Bylaws Committee	June 29, 2007 9:30 a.m. Par-Plan Office Auburn Hills, MI
MTPP Annual/Quarterly Board Meeting	July 11-13, 2007 9:30 a.m. & 1:30 p.m. Ojibway Plaza Hotel Sault Ste. Marie, MI
Quarterly Board Meeting	October 18-19, 2007 9:30 a.m. Holiday Inn Midland, MI

Par-Plan Board Nomination Results

On April 4th, 2007 nomination forms were mailed to all members in Zones 3, 6, & 9. Nominations were then confirmed on May 7th by the Par-Plan Election Committee and election ballots were mailed on June 1st.

The following candidates are seeking election:

Zone 3: Incumbent, Pat Mead, Clerk, Benzonia Township, Benzie County.

Zone 6: Incumbent, Jon Sherwood, Trustee, Beaverton Township, Gladwin County.

Daniel J. Cline, Supervisor, Ingersoll Township, Midland County.

Zone 9: Incumbent, William Bamber, Supervisor, Oceola Township, Livingston County.

Election ballots must be postmarked by June 22, 2007 to receive consideration. Ballots will be confirmed and results to follow in our next newsletter publication.

Are Your Township Employees “At-Will”?

In Michigan, employment relationships are presumed to be “at-will”, which means that either the employer or the employee may terminate the employment relationship, with or without notice, for any or no reason, so long as it is not discriminatory. Despite efforts by many Townships to clarify the at-will status of their employees, issues are increasingly arising for Townships regarding this issue. Our Township Law Newsletter this month focuses on two recent cases from the Michigan Court of Appeals that addressed the at-will status of Township employees.

ADOPTING STANDARD CODES MAY CREATE “JUST CAUSE” EMPLOYMENT

The Michigan Court of Appeals recently reviewed an appeal filed by a former Township building inspector who argued that the Township could only terminate him for “just cause.” The former building inspector relied upon a provision of the 1996 BOCA National Building Code, which the Township had adopted, stating that the “code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.”

The Township argued that the former employee was a “building inspector”, not a “code official,” and not protected by the code. The Township argued that the building inspector’s performance of some duties of a “code official” did not cause the former building inspector to become the “code official.” In response, the former building inspector argued that he was the Township’s only building official for fourteen years, and was the sole person in charge of enforcing the Township’s building code. The former building inspector was also a certified and registered building official, building inspector, and plan reviewer with the State of Michigan in compliance with MCL 338.2313. The Court of Appeals rejected the Township’s position and decided that the former building inspector’s claim had to be considered by a jury.

As a result of the Stille-DeRossett-Hale Single State Construction Code Act, the various former standard building codes have all now been replaced by the Michigan Building Code. Although the Michigan Building Code is based on the International Building Code, it fortunately does not adopt Appendix A containing “for cause” protection for building officials.

Many Townships still adopt other standard codes that contain “for cause” provisions, however. Standard codes such as the 2003 International Property Maintenance Code (Section 103.2), 2000 International Fire Code (Section 103.1) and 2000 International Fuel Gas Code (Section 103.2) all contain “for cause” provisions. These provisions may overcome the presumption that employment is “at will,” and Townships that have adopted these codes may have inadvertently increased the risk of liability if they terminate employees identified by these codes.

The Plan provides insurance coverage to handle EEOC claims, before an employment issue goes into litigation. Contact Par Plan Risk Control department or Midwest Claims Service, Inc. on any issue that may rise to an employment dispute. If necessary we will retain appointed counsel like Brian Goodenough at the firm of Foster, Swift, Collins & Smith P.C. to assist in resolving any employment dispute.

To minimize or eliminate risk incurred through the adoption of standard codes, Townships should undertake the following actions: (1) specifically exclude any “for cause” provisions in the adoption of any standard codes; (2) draft employment contracts that define the employment relationship and override any contrary standard code provisions; and (3) draft or revise employment handbook policies and employment applications to clarify the at-will relationship and disclaim any standard code provisions to the contrary. Please contact a member of our Township Services Team if you have any questions about how these issues may affect your Township.

DEPUTY CLERK DEEMED AN AT-WILL EMPLOYEE

Our Township Services Team recently obtained a favorable employment decision for a Township before the Court of Appeals in Weaver v Handy Township (Mich.Ct.App.2007). In that case, the plaintiff was employed by the Township as the deputy clerk. After the Township Clerk terminated her employment, the former deputy clerk filed a lawsuit alleging, in part, that she was wrongfully discharged. The former deputy clerk argued that there was an express oral agreement between her and the Township Clerk.

The Court of Appeals found that, even if the Township Clerk did not make such statements, the statements did not rise to the level of specificity required to overcome the presumption of at-will employment. The Court also held that the deputy clerk’s mere subjective expectation of just cause employment was insufficient to rebut the at-will employment presumption. The deputy clerk was an at-will employee, and therefore the Township Clerk retained the right to terminate her for any or no reason.

Although Townships cannot prevent all wrongful discharge claims from being filed, we recommend the following steps to limit your Township’s exposure to such claims: (1) include a provision in your employment application stating that employment with the Township is on an at-will basis; (2) include an at-will policy in your employee handbook; (3) prohibit oral modifications of any Township policy; and (4) review Township policies to ensure the policies do not create an expectation of just cause employment.

Our Township Services Team has worked with many Townships to help prepare and defend Township employment policies, including issues of at-will employment. Please contact us if you need assistance on a particular matter or issue.

The above article was published in the Foster, Swift, Collins & Smith P.C. Township Newsletter. On behalf to the Michigan Township Participating Plan we would like to thank the firm for permission to use the article in our newsletter.