



PLUS

University

Professional Liability Evolution and Concepts

August 13, 2024

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The contents of these materials may not be relied upon as legal advice.

For Discussion...

- Evolution and History of Professional Liability Insurance (PLI)
- Sources of Exposure
- Coverage Considerations

What is a Profession?

How do we define a “Profession”?

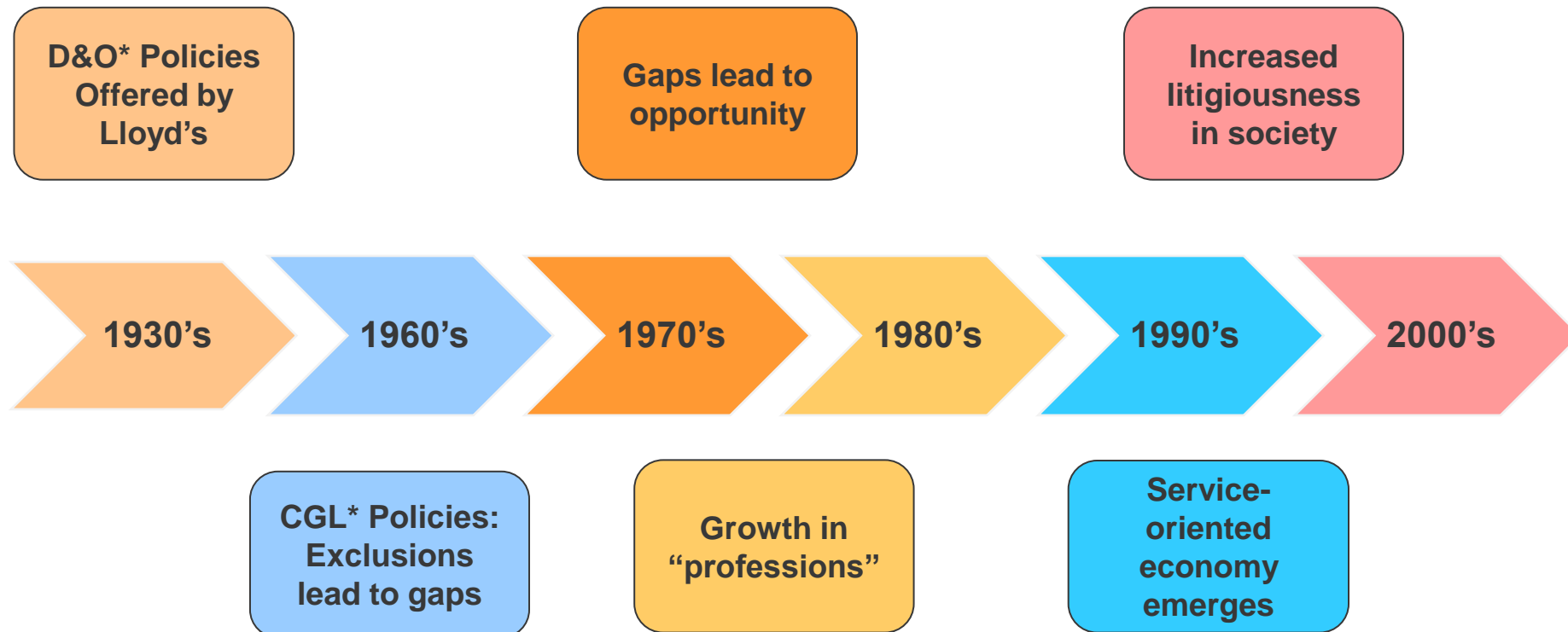
An occupation that requires specialized study, training, and experience.

Other Elements of a Profession

- Advanced education & training: Law, medicine
- Ethical code of conduct - even *outside* of the work setting

**The number of “Professions” has expanded
over the years**

Evolution of Professional Liability



*Directors & Officers Liability Insurance

*Commercial General Liability Insurance

The 1930s

- The Securities Act of 1933 & the Securities Exchange Act of 1934
- The basis of all securities laws that apply to public corporations & the sales of securities
- Prompted the development of the Directors & Officers Liability insurance industry

The 1970s

- 1975- The Medical Injury Compensation Reform Act (MICRA) tort reform in California
- Claims-made coverage was developed
- Physician-owned malpractice companies were created
- MICRA continues to be a standard for effective tort reform

Sources of Liability for Professionals

Primary sources of legal liability

- Statutes/regulations
- Contractual relationships
- Common-law requirements
 - Especially negligence

Negligence Claims

A primary source of PL claims, arising from

- Duty owed to client, and subsequent
- Breach of that duty, leads to
- Damages resulting from negligence
 - Causal link - between negligence & damages
- Standard of Care – principle establishes a
 - Minimum acceptable level of care
 - Based on “similar professional” (training, background, etc.)
 - Experts may confirm / refute standard was met

Defenses to PL Claims

- **No Negligence-** in Medical Professional Liability, even if there is a bad outcome, there is no negligence IF:
 - The standard of care was metAND
 - Appropriate Informed Consent procedures were followed
- Successful defenses demonstrate that the professional met the standard of care

PL Claim Defenses

State law & statutes determine application

- Contributory negligence
 - Plaintiff receives no award if they contributed to their own injury
- Comparative negligence
 - Award reduced proportionately, depending on how much they contributed to their own injury.
- Statute of Limitations – Vary by State
 - Timeframe within which valid claim can be made
 - Begins when damage/injury “discovered”
 - Prevents legal action after time period expires

Nature of Damages

- PL claims differ from those in CGL cases
 - While CGL reimburses for “bodily injury” or “property damage” liability claims
 - PL damages are typically financial losses
 - Except for medical professional claims
- Punitive damages
 - May or may not be covered
 - Fines/penalties are typically not covered

Professional Standards

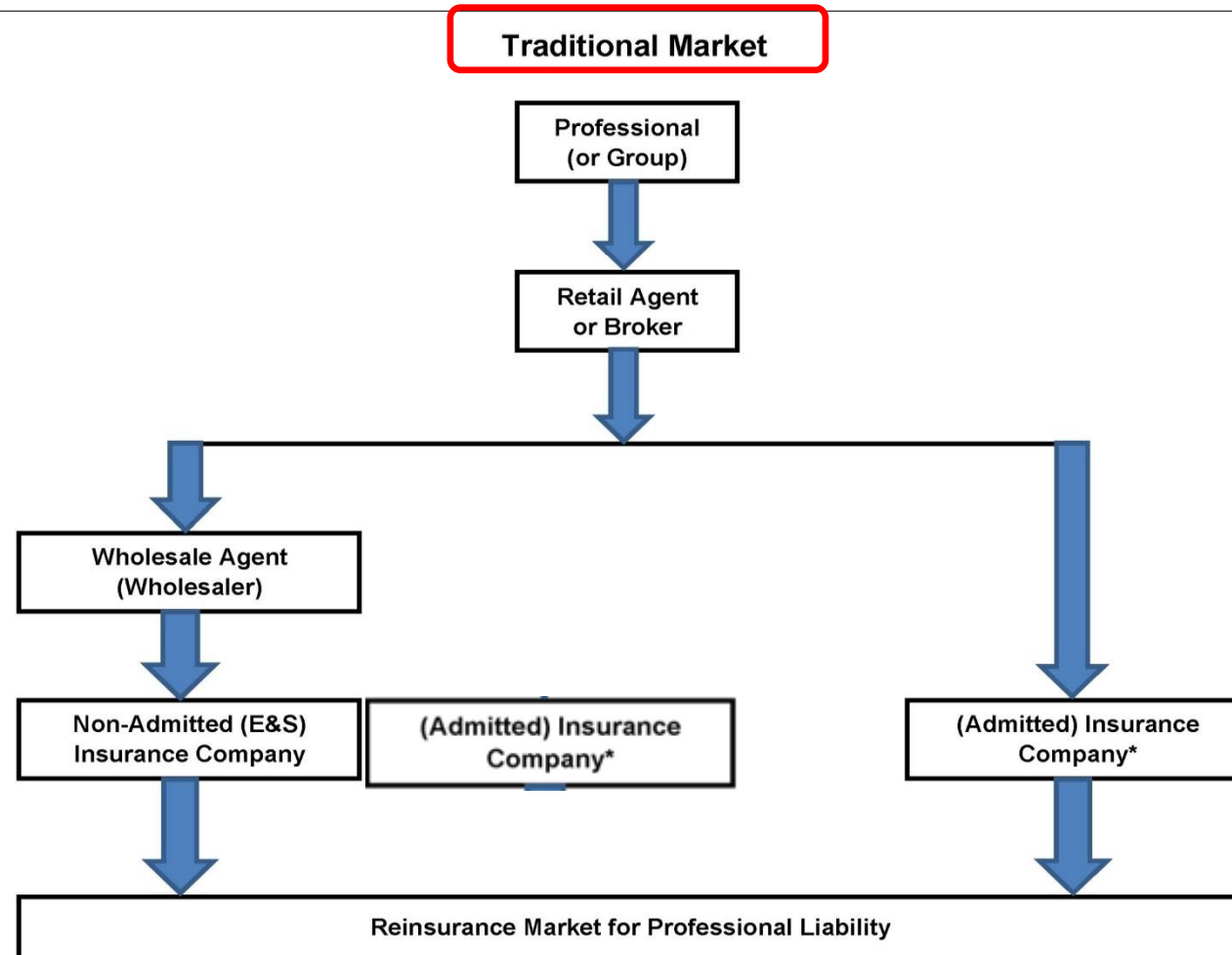
Liability may also arise from...

- Codes of professional conduct and ethics
 - Supervision of non-professionals
 - Establish / Termination of relationships
 - Informed consent
- Local/Community vs. National Standards
- Customary practices
- Specialization with a profession

Market Segments

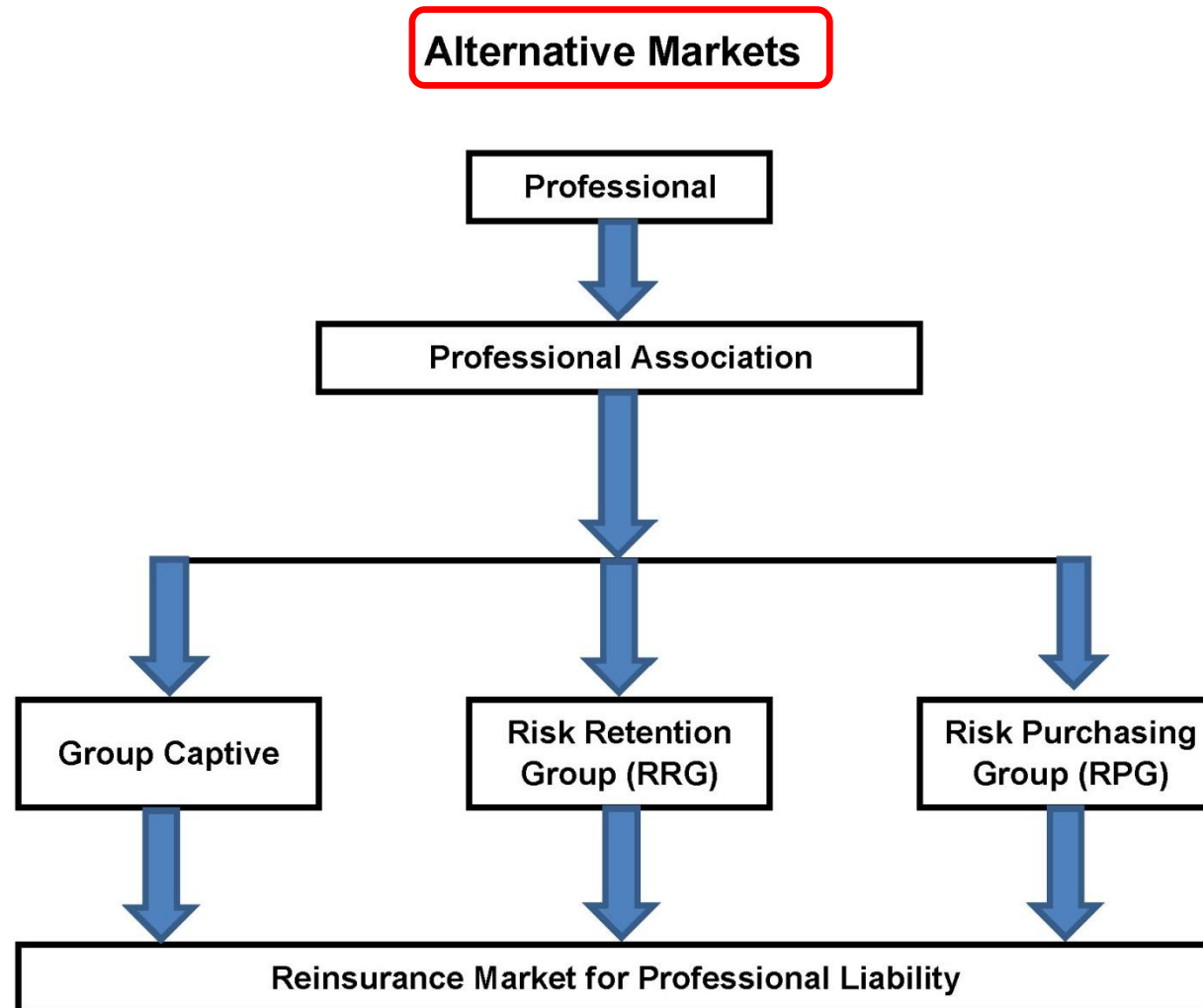
Executive Liability	Medical Professional Liability	Non-Medical Errors and Omissions (E&O)
<ul style="list-style-type: none"> • Directors & Officers Liability (for Public Companies and Private/Non-Profit Companies) • Employment Practices • Fiduciary Liability • Fidelity & Crime • Financial Institution Bonds 	<ul style="list-style-type: none"> • Physicians • Hospitals • Long Term Care (LTC) Facilities • Health Maintenance Organizations • Walk-in Clinics • Ambulatory Surgery Centers • Allied Health Care Professionals 	<ul style="list-style-type: none"> • Lawyers • Accountants • Design Professionals (architects, engineers, & other design professionals) • Insurance Professionals • Real Estate Professionals • Media Professionals • Privacy & Data Security • Miscellaneous

PL Insurance Markets



* Note- In some cases the insurance company may be accessed through a Managing General Agent that performs the underwriting function on behalf of the company

Other PL Markets



Alternative Markets

Captive Insurance Companies	Risk Retention Groups (RRGs)	Risk Purchasing Groups (RPGs)
<ul style="list-style-type: none"> • Created to provide coverage for a single parent company • Vary in size • Group captives are created when a group of similar companies decide to band together • Categorized as “risk-bearing” 	<ul style="list-style-type: none"> • Federal legislation allows similar groups to create an insurance vehicle • State approval necessary only in the state of domicile • Numerous & provide coverage for many PLI exposures • Categorized as “risk-bearing” 	<ul style="list-style-type: none"> • Purchasing vehicle-utilizes the buying power of a larger group • Works with a larger insurance company that members may access through the RPG • Not “risk-bearing”

Professional Liability Coverage Considerations

Key Policy Concepts

- Insuring Agreement
- Covered Services/Acts
- Application – Scope of Services
- Prior Acts
- Outside Activities
- Coverage Territory

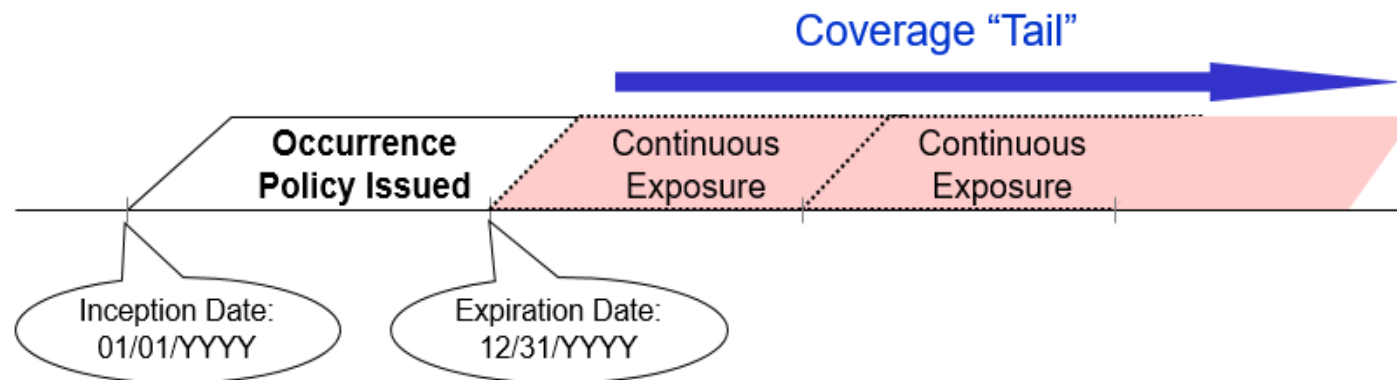
Key Policy Concepts

- Covered persons:
 - Named Insured
 - Past, current, future Insured persons
 - Outside persons- volunteers, etc.
 - Heirs, spouses, executors, etc.
- Covered organizations:
 - Professional Firm
 - Predecessor organizations
 - Newly formed or acquired

Coverage Triggers

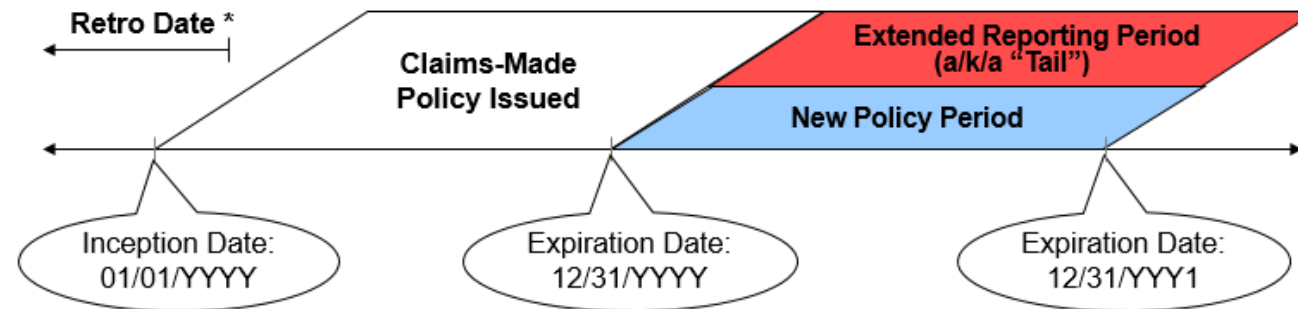
CGL historically written on an Occurrence basis

- Covers incidents that occur during the policy - regardless of when the claim is brought
- Challenges of “occurrence based” PLI
 - Claim delays in reporting are typical, making
 - Cost of the coverage difficult to estimate
 - Professional services provided over period of time – difficult to pinpoint date when loss “occurred”



Evolution of Claims-Made Coverage

- PLI is now generally written on Claims Made basis
 - Covers “claims made” during policy period, resulting in
 - Finite number of claims at the end of year
 - Development can be more easily estimated
- Important Claims Made concepts
 - Retro (retroactive) Date – “prior acts”
 - Extended Reporting Period - the “Continuity Issue”
 - Run-off

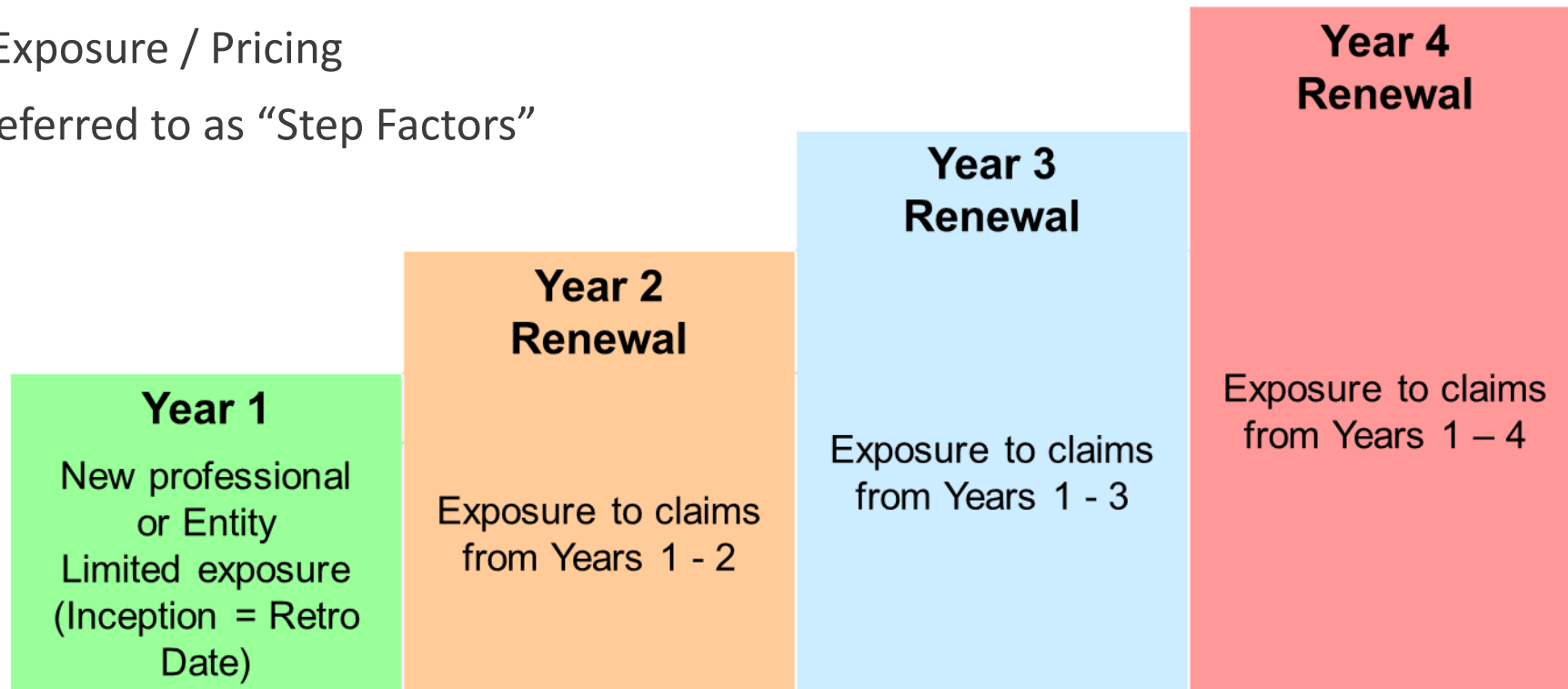


* May be same as effective date or earlier (“Full Prior Acts”)

Claims-Made “Simplified”

Increases in Exposure / Pricing

Commonly Referred to as “Step Factors”



- Exposure accumulates with number of years (professional or entity) in business
- Impacts underwriting and pricing
- “Maturity” in exposure/rates/pricing usually contemplated within 3 - 5 years

Claims-Made Policies

- Fundamental rationale for claims made
 - Ease in determining responsible insurer
 - Increased predictability in results
 - Development can be more easily estimated
- Potential disadvantages
 - Difficulty in explaining coverage to insureds
 - Claims reporting by some insureds (“laundry listing”)
 - “Hammer clauses” in some classes
 - Changes in tort/liability implications

Special Concerns

- Claims-made coverage “gaps”
 - Restrictive policy form – varies by company
 - Retroactive Date advancement
 - Cancellation or Non-renewal of coverage
 - Changing to/from an occurrence-based policy form

Application Considerations

- Representations & Warranties
- Application as “part of the policy”
- Completing the application
 - Past & potential claims
 - Changes after completion
 - Supporting data/financials
 - Signature

PL Underwriting Considerations

Applications for Insurance

Varies by profession - typical information

- Company/Partnership information & data
- Nature of the operations / profession
- Background & staffing
- Financial data & records
- Prior insurance & coverage
- Claims experience
- Website & advertising materials

Rating PL Exposures

- Rating Bases – vary by PL coverage
- Modification Factors
 - Discipline or specialty
 - Mix of services
 - Clients
 - Experience & Longevity
 - Location

Other Rating Factors

Additional Modification Factors

- Claims History
- Extent of Prior Acts Coverage
- Limits
- Deductible/Retention levels
- Risk Management Programs

Q&A

Thank you!