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WHAT IS A PROFESSIONAL?

- Professional
 - Implies Intellectual Skill
 - Special Form of Competence



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EVOLUTION OF PROFESSIONAL LIABILITY - BACKGROUND

- Professional Liability typically covers liability arising out of an insured's acts, errors or omissions committed while performing, or failing to perform, "professional services"
- General Liability and Directors & Officers policies typically don't provide coverage for "professional services"
- PL coverage was traditionally purchased by members of 'learned' professions
 - Doctors & Hospitals (medical malpractice insurance)
 - Lawyers, Accountants, Architects & Engineers
- Some states or professional associations (e.g., state bar) require minimum levels of malpractice coverage for licensing doctors and lawyers. *(which explains why the professional liability market is more developed for these professions)*



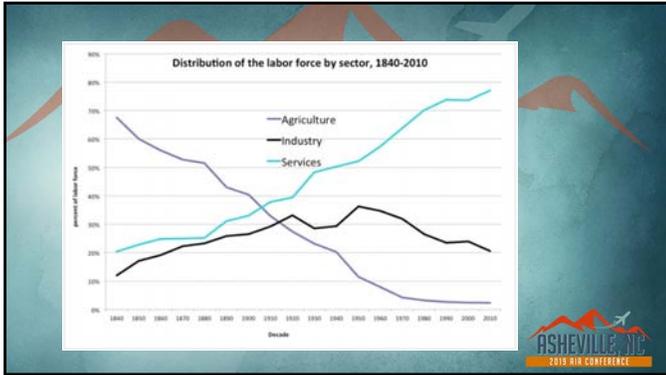
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EVOLUTION OF PROFESSIONAL LIABILITY - BACKGROUND

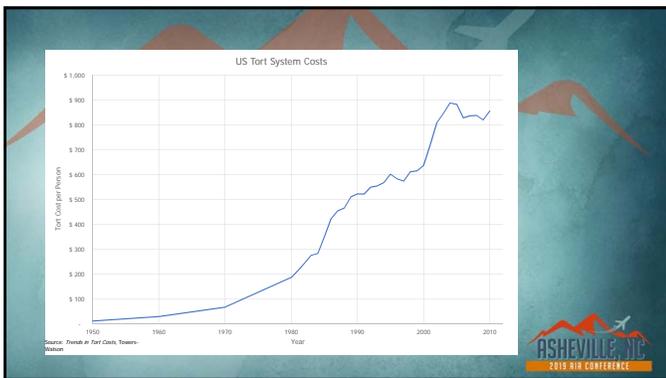
- Professional liability insurance for "miscellaneous" professions has a relatively brief history with tremendous growth over past 10 – 15 years.
- Fueled in part by (1) growth of service industry and (2) increasingly litigious society



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EVOLUTION OF PROFESSIONAL LIABILITY - BACKGROUND

- Professional Services claims do not involve Bodily Injury or Property Damage
- Professional liability claims can arise from:
 - Improper acts or omissions
 - Improper documentation
 - Inaccurate advice
 - Misrepresentation of facts

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PROFESSIONS PURCHASING E&O

Equipment Testing	Interior Designer	Security Consultant
Driving Instructor	Landscape Architect	Acoustic Consultants
Real Estate Appraiser	Graphic Designer	Background Checking Service
Barbers/Beauticians	Tanning Salon	Tour Operator
Safety Inspector	Building Inspector	Event Planner
Urban Planner	Collection Agency	Relocation Agent
Dating Service	Air Quality Consultant	Animal Groomers
Ticket Broker	Game Promoter	Publisher
Editor	Talent Agent	Cosmetologist
Caterers	Freight Forwarder	Paralegal
Fitness Instructor	Tutor	Acupuncturist
Day Care Center	Environmental Consultant	Art Dealer



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LEGAL FOUNDATIONS OF PROFESSIONAL LIABILITY



- Legal duties owed to a professional's client
 - Statutes
 - Case law
 - Generally accepted standards within a profession



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PROFESSIONAL LIABILITY CLAIMS

- Contractual Claims
 - Existence of oral or written contract
 - Wrongful act by professional that results in breach
 - Plaintiff suffered damages as a result of wrongful act



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PROFESSIONAL LIABILITY CLAIMS

- Cause of Action for Negligence
 - Duty to conform to certain standard of conduct
 - Professional fails to conform to standard
 - Proximate cause
 - Damages

Errors in professional judgment are not necessarily negligence!!



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DUTY TO DEFEND > DUTY TO INDEMNIFY

- Defense provided for an alleged covered act under the policy
- Selection of counsel
- Insurer responsible for trial vs. settlement decisions
 - Two advantages for policyholders:
 - Insurer control of process
 - "All Allegations" defense



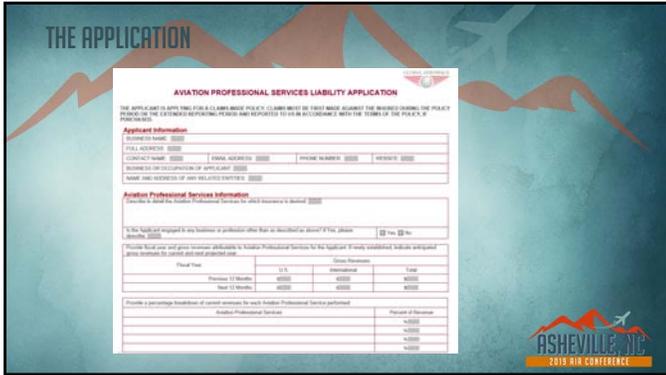
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CLIENT REPRESENTATION

- Key Broker/Agent function
- Quality of submission
 - Application complete
 - Financials
 - Brochure of services
 - Sample contracts



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LOSS REPORTING

- **Benefits of prompt reporting**
 - Memories are fresh
 - Insurer early intervention
 - Claims don't become lawsuits
 - Broker plays an important role



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LOSS REPORTING

- **Broker educating clients around pitfalls**
 - Cloud over their professionalism
 - Human tendency to avoid unpleasant episode
 - False belief it will go away
 - Settlement sensitivity



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INDUSTRY TRENDS

- **Proliferation of requirement in contracts**
- **Service economy and overall health of business environment**
 - More clients require protection
 - More claims
 - QA with staffing challenges, generation gap with baby boomers exiting workforce
 - Rise in potential liabilities
 - Arm's-length transaction, high standard of care, no more honest mistakes, relations as strong as last transaction



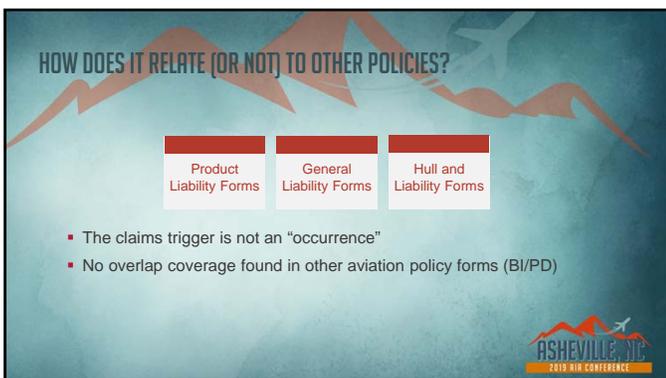
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WHAT DOES THE POLICY COVER?

- Financial loss and defense costs arising from acts, errors or omissions in the performance of **aviation professional services**
- Financial loss describes a loss that is measurable in monetary terms but which does not occur as a result of bodily injury or property damage
- Wrongful acts are errors or omissions committed by an insured which arise out of the rendering of or failure to render **aviation professional services**

Coverage for financial losses	Wrongful Act
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AVIATION PROFESSIONAL SERVICES

Aviation professional services are services performed by an insured

- on or after the **retroactive date**, and
- prior to the expiration date shown in the Declarations, or the policy's earlier cancellation or termination date,
- In connection with the insured's product or work
- Arising out of the insured's aviation operations



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POLICY FEATURES

Retroactive Date	Claims Made Policy	Extended Reporting Period
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DEFENSE COSTS PROVISIONS VARY



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RETROACTIVE DATE

- Date usually first inception date of APS coverage
- Can be earlier in limited circumstances
- Eliminate "stale" claims
- Limit moral hazard
- Manage the risk from an insurer perspective

"Prior Acts" Coverage



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CLAIMS-MADE VS. OCCURRENCE

- Traditional insurance policies (occurrence policies) cover an injury that takes place during the policy period. However, there are different theories as to what that means:
 - **Injury-in-Fact Theory**
Triggers policies in effect at the exact time that an injury or damage actually took place.
 - **Exposure Theory**
Triggers policies in effect during exposure to the harmful or injurious conditions.
 - **Manifestation Theory**
Triggered when the injury or damage is discovered (manifests).
 - **Continuous Theory**
Multiple policies triggered if in effect during exposure, actual injury or manifestation



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CLAIMS-MADE VS. OCCURRENCE

- These theories were developed to address injuries that occur over a period of time or take a while to be discovered (e.g., occupational diseases, asbestos, repetitive stress)
- Claims-Made policies attempt to address challenges surrounding when a wrongful act took place and to shorten the period of time between the end of the policy and the resolution of claims



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CLAIMS-MADE VS. OCCURRENCE

- Claims against the insured by a third party
- "and reported" to us by the insured
- During the policy period or the Extended Reporting Period
- For wrongful acts occurring after the Retroactive Date



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EXTENDED REPORTING PERIOD

Basic Extended Reporting Period

- Sixty (60) days after the end of the *policy period*
- *Wrongful act* during the *policy period*
- *Claim* made against the insured during the *policy period* or BERP and reported to us during the BERP
- No separate or additional limits



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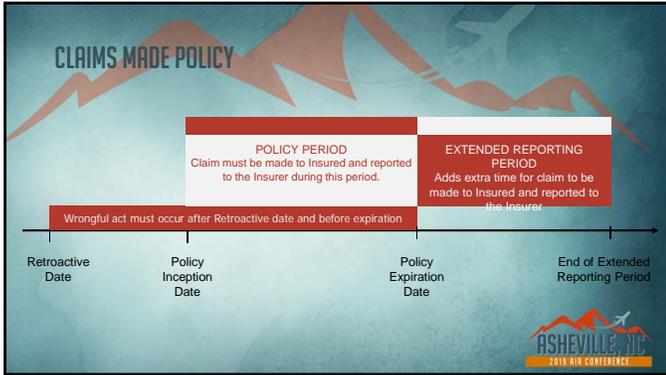
EXTENDED REPORTING PERIOD (CONT.)

Additional Extended Reporting Period

- Available by endorsement in some states for an additional premium
- Starts when the BERP ends
- *Wrongful act* during the *policy period*
- *Claim* made against the insured during the *policy period*, BERP or AERP and reported to us during the AERP
- Several states require the original policy limits to be reinstated



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PROSPECTIVE CUSTOMERS

Auditors, engineers, safety experts, consultants, maintenance providers, FBOs and aircraft dealers, aircraft service providers, (manned and unmanned)

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LIMITS/DEDUCTIBLES

- **Liability Limits**
 - \$250K to \$10M
 - Most in the \$1M to \$5M range
- **Deductibles**
 - Typically \$ value from \$2,500 upwards

$$\frac{X - X_1}{X_2 - X_1} = \frac{y - y_1}{y_2 - y_1}$$

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UNDERWRITING CONSIDERATIONS

Primary factors

- Nature of operations performed including criticality
- Revenue attributable to professional services
- Limit and deductible




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UNDERWRITING CONSIDERATIONS

Secondary factors

- Quality of contracts
- Time in business
- Claims experience
- Prior acts (retroactive date) and claims
- Continuity or support business
- Experience, education and training of personnel
- Risk management culture




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COMMON COVERAGE ISSUES

- Demands for Punitive Damages
 - Policy itself excludes or public policy forbids
 - Most Favorable Jurisdiction Basis
 - Where Punitives awarded
 - Act giving rise to Punitives occurred
 - Insured's place of business
 - Insurer's place of business

- Fraud, assault, intentional acts
- Trigger issues – claims case

May not be able to circumvent state law...



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IDIOSYNCRASIES OF AVIATION PROFESSIONAL LIABILITY

- Delay
- Independent Contractors
- Electronic Data – tangible property and loss of use related to compromised electronic data (employee exception but writing out external forces)
- AI/WOS protocols
- Fines and Penalties – Business Risk?
 - Not to be confused with Punitive Damages
- Cyber



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AVIATION CLAIMS SCENARIOS

STUFF HAPPENS



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CLAIMS SCENARIO #1

Aircraft dealer who performs pre-buy inspections and makes recommendations to clients



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CLAIMS SCENARIO #2

Company that designs and project manages hangar construction and other airport infrastructure



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CLAIMS SCENARIO #3

Engineering firm retained by Airport Commission to design a bridge over a taxiway at its airport.



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CLAIMS SCENARIO #4

Drone service provider that collects images of offshore drilling platform infrastructure health but provides limited analytical advice



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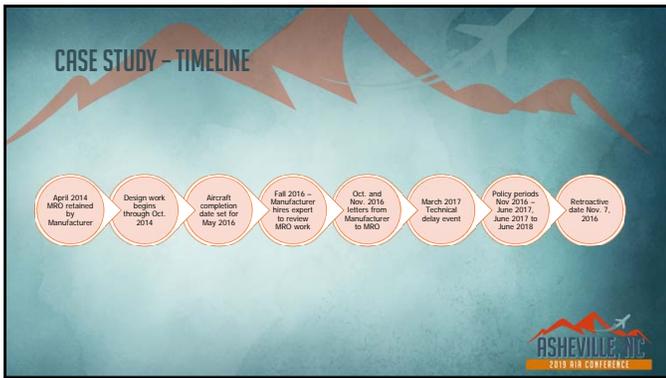
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