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Relationships Matter: An Update on Related-Claims Issues Under D&O Policies

Directors and officers (D&O) liability insurance provides liability coverage to the directors or officers of a company, or to the company itself. D&O policies generally afford coverage for a claim that is first made during the policy period and reported to the insurer in accordance with policy terms. Such “claims-made” coverage differs from occurrence-based policies, which generally provide coverage for incidents that occur during a policy period. As the Seventh Circuit recently commented, “The purpose of a claims-made policy is to allow the insurance company to easily identify risks, allowing it to know in advance the extent of its claims exposure and compute its premiums with greater certainty.”

D&O insurance policies also generally provide that two or more claims that are related will be deemed to have been first made on the date that the earliest claim was made. This can have a significant impact on the coverage available to the insured and has spurred substantial litigation between insurance companies and insureds. But what exactly does it mean for two or more claims to be related?

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