

D&O “Capacity Exclusion” May Bar Coverage When Acting Outside the Scope of Insured Status

Articles

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Directors’ and officers’ (D&O) policies insure against claims arising from alleged wrongful acts attributed to directors and officers of the insured entity—provided they were principally engaged in that capacity at the time the alleged wrongful conduct was committed. In other words, such coverage is placed in question when the insureds accused of the alleged wrongful conduct were not acting strictly within their insured role. In that circumstance, the D&O insurer will undoubtedly invoke its policy’s “capacity exclusion” to bar coverage.

Not many cases have addressed this coverage issue, and only a few appellate courts have rendered rulings on the exclusion. Recently, a New Jersey appeals court, in a case of first impression, applied the exclusion and barred coverage. That decision and other more recent decisions on the D&O policy’s capacity exclusion are the subject of this article, written by Archer partner [Ellis Medoway](#), Co-Chair of the firm’s [Insurance Recovery and Counseling Practice Group](#).

To read the complete article, click [here](#).

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