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Deep Dive: The Batch/ Deemer Clause

Most D&O policies in the U.S. contain some version of a batch or deemer clause, also known as a related claims or interrelated claims provision. These clauses are essential to claims-made policies and without them, timing technicalities and renewals may create gaps in coverage.

In many modern D&O forms, batch/deemer clauses have become so broad that they may eliminate coverage for claims insureds often reasonably expect to be covered. As a result, what was initially designed to preserve coverage has become a reason coverage is denied.

The purpose of the clause

Batch/deemer clauses serve two legitimate functions:

1. **Batch function:** Treats multiple related claims as a single claim for purposes of applying one retention.
2. **Deemer function:** Deems claims that were filed at a later date to have been "first made" at the time of the earliest claim, enabling them to be covered under the original policy period despite renewals and "prior notice" exclusions.

This structure protects insureds from losing coverage simply because related claims unfold over time. Courts have long recognized the necessity of this function in claims-made policies, including D&O insurance.

Why wording matters

In its best form, the clause smooths timing issues rather than creating new ones. Problems can stem from language stating that all related claims are treated as having been first made on the date of the earliest claim, even if that date is outside the policy period.

By stating all related claims are treated as having been first made on the date of the earliest claim, how the clause works is changed completely. Instead of preserving coverage, it may eliminate it altogether. An insurer can argue that a claim made during the policy period isn't covered simply because it's loosely connected to an earlier issue unrelated to D&O coverage.

This wording – which is now included in many D&O policies – is easy to miss. And the broader the connection language, the more dangerous it becomes. For example, "same" is a narrow term but "related" is broader. "Interrelated" is used in the broadest sense and ultimately can give carriers the most flexibility to bundle claims across different years and policies, as well as different types of claims.

Deemer language can undo favorable exclusions.

Broad batch/deemer wording can also undermine negotiated protections. A policy may backdate pending and prior claim exclusion by a decade, signaling broad coverage. The deemer clause can quietly erase that benefit by tying coverage to a much more recent claim and effectively resetting the clock to policy inception.
The same dynamic can play out with enhanced prior notice exclusions. Even if prior notice is intentionally limited to earlier D&O policies, deemer language can act as a functional prior notice exclusion for claims first reported under CGL, EPL, fiduciary, cyber or E&O policies. Enhancements that took months to negotiate can vanish in practice.

When an entity claim turns into a D&O claim

One common scenario involves entity-only claims that evolve into D&O exposure. For example, a cyber or privacy class action may initially target the company. Months later, a securities or derivative action follows, alleging board-level failures. Insureds reasonably expect the D&O policy to respond. Under a poorly worded batch/deemer clause, however, the carrier in this scenario argues the D&O claim was first made when the earlier entity claim was filed, even though it was never reported to the D&O insurer. The result is no coverage at all.

This problem is not limited to cyber claims. The same issue arises with product liability, employment, professional liability, pollution and other entity-level matters that could later spawn D&O allegations.

Takeaway

D&O claims are increasingly interconnected, and carriers are more aggressive in testing aggregation arguments. General liability claims can morph into D&O claims. Investigations often precede lawsuits. Timing lines become blurred. And when batch/deemer language is too broad, insureds face uncovered claims that may have been covered with more precise drafting.

The market is still catching up, but progress is possible with awareness and persistence. Solutions exist but require coordination among insureds and brokers, as well as excess and **Side A or DIC** carriers in certain instances (e.g., when Side A Match coverage becomes critical in a specific program).

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We help you win

The batch/deemer clause does not change allegations or reduce liability. It controls how insurance responds. When written properly, the clause can help protect insureds from technical traps. When written poorly, it can create them.

The risk is real, supported by claims experience and case law and it deserves far more attention than it typically gets at placement. Working with the professional lines specialists at Amwins helps ensure that coverages are properly aligned, minimizing your clients' exposure and safeguarding their projects from financial and legal setbacks.

Whether your clients operate in the private, public or nonprofit sector, partnering with a wholesale broker that understands these issues well is key. Amwins delivers broad market access and has the proven ability to negotiate favorable D&O terms with underwriters to offer the best protection for your clients.

No matter what segment your clients operate in, we've got your back.

Insight provided by:

− **Jason White**, EVP, Amwins Brokerage

CONTACT

To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

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