

The Most Common D&O Claim Misconception

If you were to ask a D&O claim analyst what is the number 1 most rejected D&O claim, the answer would be one seeking "bodily injury and/or property damages." The reason for this is twofold. First, "bodily injury" and "property damage" claims are normally covered under a general liability policy, subject to other terms and conditions of those policies. The most common misunderstanding of insureds is that if the damage is the result of a board decision or misconduct, it should be covered. However, if the damage is only bodily injury or property damage, they must look to the general liability policy. This can be exemplified as follows:

Example 1

Board Decision

The board decides to install speed bumps throughout the association streets and the bumps are 2 inches higher than code.

Damage or Demand

Due to the height of the speed bump, one of the association members new Mercedes SL Coupe is damaged to the bottom.

Potential Coverage

The alleged property damage is possibly covered by the General Liability policy if the bump's height is determined to be negligent. This would not be covered by the D&O, because of the Bodily Injury or Property Damage exclusion.

Example 2

Board Decision

The board decides to install speed bumps throughout the association streets and the bumps are 2 inches higher than code.

Damage or Demand

A group of association members sue the board and the association to compel them to remove the speed bumps as allegedly being in violation of height requirements

Potential Coverage

The board will be defended by the D&O policy. However, if the board loses, the policy will not pay the cost to remediate the bump height. This will not be covered under the GL policy, because the board's decision was not an "occurrence" (unintentional or accidental act) and therefore not covered.



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