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Insured vs. Insured (Ivl) Exclusion Explained

The "insured vs. insured" exclusion (Ivl) is a standard provision in Directors and Officers (D&O) liability insurance policies that precludes coverage for claims brought by one insured person (a director or officer) against another insured person within the same company.

Purpose of the Exclusion

The primary rationale behind this exclusion is to prevent "friendly" or collusive lawsuits where insured parties might work together to recover losses from their own insurer for poor business decisions or internal disputes that would not typically be covered. The exclusion aims to eliminate coverage for situations such as:

- Internal infighting/disputes
- Employment practices claims (if covered by the D&O policy instead of a separate Employment Practices Liability Insurance (EPLI) policy)
- Claims involving collusion between insureds
- Claims by an organization against its own directors and officers for imprudent business practices (which may be addressed via an "entity vs. insured" exclusion)

Key Exceptions (Carve-Backs)

Because a blanket exclusion can lead to unintended coverage gaps, D&O policies typically contain "carve-back" provisions that create exceptions to the Ivl exclusion, preserving coverage in specific, legitimate scenarios. Common "carve-backs" often include:

- **Derivative Lawsuits**: Claims brought by a shareholder on behalf of the company against the directors/officers, provided the shareholder is not also an insured person (e.g., a director/officer themselves).
- **Cross-Claims by an Insured Person for Contribution or Indemnification:** Claims when an Insured Person is sued by a third party (shareholder) and then files a cross-claim or third party claims against another Insured Person for contribution or indemnification.
- **Employment Claims:** Claims related to employment practices (e.g., wrongful termination, discrimination) brought by a former employee who is also a former insured person.
- **Employee Claims:** Claims brough by an Employee who is not an Executive. Often claims brought in their capacity as a shareholder of the Company.
- **Bankruptcy/Insolvency:** Claims brought by a bankruptcy trustee or debtor-in-possession, who is considered a representative of the creditors and a distinct legal entity, rather than the insured entity itself.
- **Whistleblower Actions:** Claims brought under acts like the Dodd-Frank Act or Sarbanes-Oxley, where the whistleblower may be an insured person.
- **Former Directors/Officers:** Claims brought by a former director or officer, especially if they have been gone for a certain period of time (e.g., a one-year or two-year "time buffer").
- **Non U.S. Foreign Common Law Jurisdictions:** Claims brough outside the United States, Canada or any other common law jurisdiction.

Summary

The specific wording of the policy and its exceptions is critical and can significantly impact coverage. Consulting with an experienced insurance broker or coverage counsel is essential to understand the full scope of a particular D&O policy's Ivl exclusion and its potential carve-backs.

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