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Straddle Claims: Managing D&O Gaps During IPO and M&A Transactions

A straddle claim in D&O insurance refers to a lawsuit involving a series of wrongful acts, some committed before a significant transaction (like an IPO or merger/change in control) and others afterward, creating a coverage gap or conflict between the company's prior ("runoff") D&O policy and its new ("go-forward") policy. To address this, "straddle language" can be added to policies, ensuring that the previous policy only covers losses from pre-transaction acts and the new policy only covers losses from post-transaction acts, thus clarifying which policy is triggered and avoiding coverage issues for the directors and officers.

Understanding Straddle Claims

The Scenario: Pre- and Post-Transaction Acts

A company transitions from private to public (IPO) or undergoes a merger/change in control, which usually involves running off its existing D&O policy and purchasing a new one. Future claims may arise with allegations of wrongful acts (or series of wrongful acts) that started before the transaction and continued after the transaction date.

The Problem

The pre-transaction conduct might be covered by the old D&O policy, while post-transaction conduct could be covered by the new policy. Without clear language, it's unclear which policy applies to the "straddling" claim.

How Straddle Language Works

- **Specialized Endorsement:** Straddle language is a policy endorsement that clarifies coverage for such "straddle claims."
- **Clarification:** It adds specific wording to the run-off (old) policy/endorsement:
  - The runoff policy's post-transaction acts exclusion is modified to not apply to that part of a claim attributable to wrongful acts after the transaction date that are interrelated to acts (or series of wrongful acts) that occurred prior to the transaction date.
  - Related/Interrelated Wrongful Acts refers to situations where multiple claims arise from the same or similar facts, circumstances, allegators or with a common nexus. Often these related acts are treated as a single claims for coverage purposes, impacting which policy period applies to each claim.
- **Sample Straddle Wording:** *The Insurer shall not be liable for **Loss** in connection with any **Claim** made against any **Insured** based, upon, arising out of, or attributable to any matter, facts, circumstance, or **Wrongful Act,** committed, attempted, or allegedly committed or attempted on or after the **Run-Off Date;** provided, however, this Exclusion shall not apply to any **Claim** for any **Wrongful Acts** occurring after **Run-Off Date** which are directly related to **Wrongful Acts** prior to **Run-Off Date** will be deemed to have occurred prior to **Run-Off Date. Wrongful Acts** which are based upon, arising from, or in consequence of the same, related or series of facts, circumstances, situations, transactions, or events will be deemed directly related.*
- **Improved Coverage:** Straddle Language ensures that the related wrongful acts that occurred prior to the transaction and related acts post transaction are properly covered for those wrongful acts that "straddle" between the two policies. Essentially, it pushes the later claims back to the policy that is in run-off.

Why It's Important

- **Avoids Uncertainty:** It provides clarity for the insured company and its directors and officers, minimizing confusion about which policy responds to the claim.
- **Minimizes Gap:** It helps prevent gaps in coverage that could leave executives vulnerable when a claim involves a series of related wrongful acts spanning across a transaction date.