

# Timing of Claim Coverage Update

December 2, 2024

## Timing of Claim – 11th Circuit (Florida Law)

*Certain Underwriters at Lloyds, London v. Anchor Insurance Holdings, Inc.*

No. 23-10364, 2024 WL 4836693 (11th Cir. Nov. 20, 2024)

The U.S. Court of Appeals for the Eleventh Circuit examined whether a “claim” had been made against the directors and officers of an insured before or during the policy period. The appellate court held that several formal demands by investors to the insured’s holding company requesting rescission of stock purchases and a deposition subpoena served upon the insured in an underlying suit amounted to a claim, and that the claim was made prior to the inception of the subject policy.

THD Enterprises, LLC and THD Enterprises II, LLC (collectively, THD Entities) were single purpose entities solely created to buy stock in Anchor Insurance Holdings, Inc. and Anchor Property and Casualty Insurance Company (collectively, Anchor). In late 2017, a group of investors purchased shares in THD Entities. Approximately one month later, the investors notified Anchor’s directors that they believed THD Entities failed to disclose that Anchor was conducting a \$15 million to \$20 million debt raise, which could jeopardize the investors’ priority interest. In April and May 2018, the investors sent formal rescission demands and in June 2018, the investors sued THD Entities. As part of that action, the investors subpoenaed Anchor for a deposition. In December 2018, the investors moved to amend their complaint to add Anchor as a defendant.

Anchor sought insurance coverage from Lloyds, London (Lloyds), which issued a claims-made directors and officers policy to Anchor. The policy provided that Lloyds had a duty to indemnify Anchor for any loss from a “Claim first made ... during the Policy Period ... for any Directors and Officers Wrongful Act.” “Claim” was defined as “a written demand for monetary, non-monetary or injunctive relief.” The policy provided that a “Claim shall be considered to have been first made against an Insured when written notice of such Claim is received by any Insured.” The policy at issue defined claim as notice of a “demand for monetary, non-monetary or injunctive relief” surrounding “any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act.”

The trial court held that Anchor had actual knowledge of the potential claims at the time that it applied for the insurance policy. As a result, the trial court rescinded the policy. The appellate court also ruled in favor of Lloyds, but on different grounds. The appellate court concluded that the emails, rescission demands, deposition subpoena and suit against THD Entities constituted claims, and that they were first made prior to the inception of the policy. The appellate court concluded that, because the claims were first made prior to the inception of the Lloyds policy, there could not be coverage for the claims

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under the policy.

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