

Navigating the Complexities of Interrelated Claim Disputes

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In the realm of insurance coverage litigation, whether two or more claims filed in different time periods constitute interrelated claims is an often litigated issue that can be critical to determining whether the claims are covered as well as the available policy limits and applicable retentions.

Under the terms of typical claims-made directors' and officers' (D&O) and professional liability insurance policies, multiple claims that arise out of interrelated wrongful acts are treated as a single claim deemed to have been first made at the time the first of the claims was made against the insured.

Such claims will be adjusted as a single claim under the insurance policy in effect when the first claim was made and the terms of that policy will govern with respect to the scope of coverage, exclusions, limits and retentions.

The question of whether two or more claims arise out of interrelated wrongful acts is frequently litigated due to the substantial implications for both insurers and policyholders, the relative unpredictability of court rulings on the subject and the fact that, depending on the circumstances, insurers and policyholders can find themselves on either side of a related claims dispute.

For example, when a claim is made against an insured after expiration of a policy, the insured might argue that the new claim relates back to a prior claim, made before expiration, so that the new claim will be



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deemed made during the policy period and therefore eligible for coverage.

Conversely, if an insurer has issued consecutive annual policies to an insured, the insurer may argue that a given claim is interrelated to a claim from a prior policy period, which would confine coverage for such claims to the limits of the prior policy instead of adjusting the claims under two different policies where two separate policy limits may be implicated.

An insurer may also take the position that a claim relates back to a prior claim in order to trigger application of an exclusion for prior pending or previously noticed claims.

New York and Delaware Tests

The crux of these disputes often lies in the specifics of the underlying claims, which can make it

difficult for stakeholders to confidently predict how a given related claim dispute will be resolved if litigated. Courts have developed various standards to assess interrelatedness, such as the “sufficient factual nexus” test used in New York law.

Under this standard, claims are considered to be interrelated if the claims “are neither factually nor legally distinct, but instead arise from common facts,” and “the ‘logically connected facts and circumstances demonstrate a factual nexus’ among the [c] laims.” *Benefytt Tech., Inc. v. Capitol Specialty Ins. Corp.*, N21C-02-143 PRW CCLD, 2025 WL 84701, at *7 (Del Super Ct. Jan. 6, 2025).

In contrast, Delaware courts apply a “meaningful linkage” test where the applicable policy contains a related claims clause that uses terms such as “arises out of” or similar phrases.

The Delaware Supreme Court has stated that lower courts should broadly construe the meaningful linkage standard to find coverage where feasible, at least in the context of a dispute concerning application of a prior notice exclusion, although the linkage must not be merely tangential. When applying this standard, lower courts have held that it is not sufficient for multiple claims to merely reference “some of the same facts.” See *Options Clearing v. U.S. Specialty Insurance*, CVN20C11001AMLCCLD, 2021 WL 5577251, at *8 (Del Super Ct Nov. 30, 2021).

In other instances, courts applying Delaware law have used the more stringent “fundamentally identical” standard, which interprets related claims clauses to preclude coverage only where the two claims are fundamentally identical. See *Pfizer v. Arch Insurance*, 2019 WL 3306043 No. 18C-01-310 (Del. Super Ct. July 23, 2019) (citing *Weaver v. Axis Surplus*, 2014 WL 5500667, at *12 (E.D.N.Y. Oct. 30, 2014), *aff’d*, 639 Fed. Appx. 764 (2d Cir. 2016)).

Two recently decided Delaware cases demonstrate the potential importance of the standard applied as well as the fact-specific nature of the relevant analysis.

Alexion Pharmaceuticals, Inc.

In *In Re Alexion Pharmaceuticals, Inc. Insurance Appeals*, the Delaware Supreme Court, applying the “meaningful linkage” standard, concluded that claims

related to a subpoena issued by the U.S. Securities and Exchange Commission (SEC) and a subsequent securities class action were related claims arising out of interrelated wrongful acts.. 154, 2024, 2025 WL 383805 (Del. Feb. 4, 2025).

Alexion Pharmaceuticals, Inc. (Alexion), a pharmaceutical company, faced significant legal challenges beginning in March 2015 when it received correspondence from the SEC describing potential violations of securities laws, including potential deficiencies in Alexion’s books and records and inaccurate statements in its public filings.

In May 2015, the SEC followed up with a subpoena (in connection with a formal SEC investigation) for documents related to Alexion’s foreign and domestic grant-making activities, Foreign Corrupt Practices Act (FCPA) compliance and statements concerning the recall of a drug called Soliris. Alexion notified its insurers of the SEC subpoena in June 2015 under D&O policies in effect for the period June 27, 2014 to June 27, 2015.

On Dec. 29, 2016, Alexion was sued in a securities class action in which Alexion and its directors and officers were accused of misleading investors about the company’s financial success, including allegations of unethical and illegal sales and lobbying practices as well as illegal and unethical sales practices related to Soliris that were contrary to the company’s disclosures.

Notably, the class action complaint referenced the SEC Subpoena, the FCPA investigation and a Bloomberg article reporting on the SEC investigation. In January 2017, Alexion submitted notice of the securities class action to its insurers under D&O policies in effect from June 27, 2015 to June 27, 2017.

Alexion ultimately resolved the SEC investigation in July 2020 pursuant to a \$21.5 million settlement. Alexion also subsequently settled the class action lawsuit in September 2023 for \$125 million.

Although the primary insurer initially accepted coverage for the securities class action under the 2015-2017 policy period, it later reassigned the claim to the 2014-2015 policy, asserting that the class action arose out of wrongful acts that were

interrelated to the wrongful acts that were the subject of the SEC investigation.

The insurance policies at issue contained a related claims clause providing that claims “arising out of the same Wrongful Act and all Interrelated Wrongful Acts . . . shall be deemed to be first made on the date the earliest of such claims is first made.” *In Re Alexion Pharmaceuticals*, 2025 WL 383805, at *2.

The policies defined “Interrelated Wrongful Acts” as “all Wrongful Acts that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.” Notably, since the 2015-2017 excess insurance tower included \$20 million more in policy limits than the 2014-2015 excess tower, Alexion had the potential for a greater insurance recovery if the securities class action was adjusted under the 2015-2017 policies.

Alexion sued its insurers, arguing that the claims were not interrelated, and thus that the securities class action should have been covered under the 2015-2017 policy. The Delaware Superior Court ruled in favor of Alexion, finding that the SEC subpoena and securities class action were not materially linked, and as a result, the 2015-2017 policy governed the class action claim. On appeal, the Delaware Supreme Court disagreed.

The Court first noted that the lower court incorrectly treated Alexion’s 2015 notice regarding the subpoena as a notice of claim rather than a broader notice of circumstances with respect to the SEC investigation. According to the Court, the issue presented was whether the securities class action was “meaningfully linked to any of the alleged wrongful acts disclosed in the 2015 Notice.”

In answering that question in the affirmative, the court highlighted that both claims related to the same alleged wrongdoing—Alexion’s worldwide grantmaking activities, including alleged noncompliance with the FCPA. Further, the Court noted that the class action lawsuit “explicitly referred to the SEC [s]ubpoena and the SEC’s [FCPA] investigation into Alexion’s grantmaking to patient advocacy groups.” The court made clear that “it does not matter whether

the SEC and the stockholder plaintiffs are different parties, asserted different theories of liabilities, or sought different relief.”

Rather, “[i]t is the common underlying wrongful acts that control.” The court found that the class action “alleged the same wrongdoing investigated by the SEC and disclosed by Alexion in the 2015 Notice.” As a result, the securities class action claim was deemed made during the 2014-2015 policy period.

Benefytt Technologies, Inc.

In contrast, in *Benefytt Technologies v. Capitol Specialty Insurance*, the Delaware Superior Court, applying New York law, held that certain allegedly related claims against a former health insurance technology company were not interrelated.

During 2018 and 2019, Benefytt Technologies (Benefytt) was involved in seven legal or other enforcement proceedings including alleged violations of securities and federal trade laws and racketeering claims. Two of these proceedings became the focus of a related claims dispute.

The applicable primary insurance policy provided that multiple claims “involving the same Wrongful Act or Interrelated Wrongful Acts” are to be considered one claim, which is deemed to have been made at the time the first of the related claims was first made or deemed to have been made against the insured. *Benefytt Technologies*, 2025 WL 84701, at *2.

The *Keippel* lawsuit, initiated during the 2018-2019 policy period, was a securities class action alleging that Benefytt failed to disclose an alleged scheme involving health insurance provider, Simple Health, and made related false representations to its investors.

This lawsuit settled for \$11 million, with Benefytt also incurring \$4.2 million in legal fees. Benefytt’s insurers initially covered the *Keippel* lawsuit under the 2018-2019 policies, but they subsequently argued that the lawsuit properly fell under the 2017-2018 policies because it arose out of wrongful acts that were the same or related to wrongful acts that had been the subject of certain prior claims.

The *Belin* lawsuit involved allegations of RICO violations and additional claims related to the sale of

Benefytt's insurance products through Simple Health. Ultimately, the lawsuit settled for \$27.5 million. Benefytt had provided notice of the *Belin* lawsuit to its insurers during the 2018-2019 period.

However, the initial complaint did not name an insured person as a defendant or seek relief from an insured person (and the policy only covered claims against insured persons), and none of the amended complaints were filed until after expiration of the 2018-2019 policy period.

Accordingly, Benefytt's insurers denied coverage of the *Belin* lawsuit on the grounds that it fell outside of the coverage period. Benefytt argued that the *Belin* lawsuit was first made during the 2018-2019 policy period, or otherwise that it was an interrelated claim covered under a prior policy, and thus should be covered.

The Delaware Superior Court ruled that the *Keippel* lawsuit was covered by the 2018-2019 policy and was not interrelated with prior claims that had been first made during the 2017-2018 policy period, which largely concerned a Florida third-party administrator application and not the Simple Health scheme.

Based on a side-by-side comparison of the actions, the court reasoned that the *Keippel* lawsuit "does not share a sufficient factual nexus" with the other actions, highlighting that the *Keippel* lawsuit "cites to completely different evidence . . . to highlight different claims of wrongdoing" and that, unlike the other actions, did not involve allegations against individuals. See *Benefytt Technologies*, 2025 WL 84701, at *12-13.

The court also highlighted the fact that Simple Health was a critical non-party in the *Keippel* lawsuit, but was not mentioned in the other actions. In so ruling, the court explained that the claims do need "numerous logically connected facts and circumstances" to be considered interrelated and that claims should not be deemed interrelated where their relation to each other is "tenuous at best."

The court then went on to find that the *Belin* lawsuit was not covered by the 2018-2019 policy because no claim was made against an insured person during that policy period. Moreover, the *Belin* lawsuit was not interrelated with any of the prior claims such that it could be covered under a previously issued policy.

For example, the court noted that the *Belin* lawsuit was a class action filed by consumers "alleging they were tricked by Simple Health into thinking they were buying comprehensive medical insurance from Benefytt when they really weren't."

In contrast, the *Keippel* action involved violations of the Exchange Act and related regulations, and the claims made during the 2017-2018 policy period related to Benefytt's false claims and material omissions related to the Florida third-party administrator application.

With respect to the *Belin* and *Keippel* lawsuits, the court noted that, "[e]ven though Benefytt's misconduct related to Simple Health is central to all the claims, there are insufficient factual overlaps between the [*Belin* and *Keippel* lawsuits]. The alleged wrongful acts are separated by multiple years and involve different transactions – e.g. insurance policy sales as compared to shareholder disclosures."

Looking Forward

The abundance of litigation surrounding interrelated claims reflects the challenges courts face in reaching consistent results despite the factual nuances of particular cases. While the Delaware and New York courts apply different standards, the outcome of most cases appears to depend on the specific facts – and the degree of overlapping wrongful acts – and not the standard applied. As a result, related claims disputes involving material claims are likely to continue to lead to litigation.

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