

WEBINAR

Interrelated Claim/ Wrongful Act Analysis

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Wilson Elser Master Class Series 

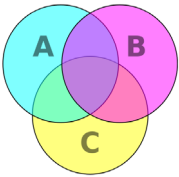



Related Claims/Interrelated Wrongful Acts:
Those who cannot learn from *history* are doomed to repeat it

Jonathan E. Meer
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May 13, 2022

How Related Claim/Interrelated Wrongful Act provisions fit in with the purpose of insurance? Insurance Coverage Master Class


- Why is it important?
- Which policy a claim is under, failure to notice, multiple claims impacting retentions
- No insurance for a burning building
- Related claim can make a later filed claim fall outside of the insuring agreement



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Sample Policy Language Insurance Coverage Master Class

- Related Claims
 - "a Claim alleging, arising out of, based upon or attributable to any facts or Wrongful Acts that are the same as or related to those that were ... alleged in a Claim made against an Insured."
- Interrelated Wrongful Acts
 - "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."

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General Policy Interpretation Insurance Coverage Master Class

- Test and Policy interpretation
- *Brown v. Nat'l Union Ins. Co.*, No. 02-4724 (DWF/SRN), 2004 U.S. Dist. LEXIS 2224, at *5 (D. Minn. Feb. 11, 2004), which held that a court should consider several factors in determining whether the acts are related, including "whether the acts are connected by time, place, opportunity, pattern, and, most importantly, method or modus operandi"
- Recent Decision - *First Solar, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, No. 217, 2021, 2022 WL 792158 (Del. Mar. 16, 2022), focused on looking at the precise language of the policy.

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When Terms are Not Defined Insurance Coverage Master Class


- Courts look towards the dictionary / common usage.
 - Blacks Law Dictionary
 - Ballentine's Law Dictionary
- Concerns on when a related claim is first made
 - Example Policy Language: "All Claims arising out of the same Wrongful Act and all Interrelated Wrongful Acts of the Insureds shall be deemed to be one Claim, and such Claim shall be deemed to be first made on the date the earliest of such Claims is first made, regardless of whether such date is before or during the Policy Period."

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State Application Insurance Coverage Master Class

- California
 - *Bay Cities Paving & Grading, Inc. v. Lawyers' Mut. Ins. Co.*, 855 P.2d 1263 (Cal. 1993)
 - *Previti v. National Union Fire Insurance Company of Pittsburgh, PA*, 639 F. App'x 416 (9th Cir. 2016)
- Florida
 - *Continental Casualty Co. v. Wendt*, 205 F.3d 1258 (11th Cir. 2000)
 - *Capital Growth Financial LLC v. Quanta*, 2008 U.S. Dist. LEXIS 65814 (USDC, SD Fla. 2008)

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State Application (Cont.) Insurance Coverage Master Class



- Illinois
 - *Twin City Fire Ins. Co. v. Permatron Corp.*, 2018 U.S. Lexis 55126 (Mar 30, 2018 ND Ill)
 - *Hanover Ins Co. v. RW Dunterman*, 446 F Supp. 3d 336 *8 (March 17, 2020 ND Illinois)
- New York
 - *Quanta Lines Ins. Co. v. Investors Capital Corp.*, 2009 U.S. Dist. LEXIS 117689 (S.D.N.Y. Dec. 17, 2009)
 - *Seneca Ins. Co. v. Kemper Ins. Co.*, 133 Fed. Appx. 770, 772 (2d Cir. N.Y. 2005)





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State Application (Cont.) Insurance Coverage Master Class


- Pennsylvania
 - *Vito v. RSUI Indem. Co.*, 435 F. Supp. 3d 660 (E.D. Pa. 2020)
- Texas
 - *Tri Core Inc. v. Northland Ins.*, 2002 U.S. Dist. LEXIS 21899 (N.D. Tex. Nov. 12, 2002)
 - *Admiral Ins. Co., Inc. v. Briggs*, 264 F. Supp. 2d 460 (N.D. Tex. 2003)
 - *FDIC v. Mmahat, et al.*, 907 F.2d 546 (5th Cir. 1990)
 - *Gastar Exploration Ltd. V. U.S. Specialty Ins. Co.*, 412 S.W.3d 577 ((Tex. App.—Houston 14th District 2013)

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Impact on Other Policy Provisions Insurance Coverage Master Class

- Prior Knowledge Exclusion
 - . . . alleging, based upon, arising out of, or attributable to any **Incident** that first occurred, arose, or took place prior to the earlier of the effective date of this **Policy**, or the effective date of any policy or coverage part issued by the **Insurer** of which this **Policy** is a continuous renewal or a replacement, and any **Control Group Member** knew of such **Incident**; and, with respect to Insuring Agreements T, E, and F, any **Control Group Member** reasonably could have foreseen that such **Incident** did or could lead to a **Claim**.
- Prior Notice Exclusion
 - . . . based upon, arising out of, or attributable to any fact, circumstance, situation, transaction, event or **Wrongful Act** which have been the subject of any written notice given prior to the inception of this Policy and accepted under any prior directors and officers liability or comparable insurance policy or coverage section.

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Impact on Other Policy Provisions (Cont.) Insurance Coverage Master Class

- Pending Prior Exclusion
 - . . . shall not be liable for any **Claim** based upon or arising out of any fact, circumstance, situation, event, or **Wrongful Act** alleged in any prior or pending proceeding against an **Insured** as of [policy inception / Prior and Pending date]
- Continuous Coverage
 - . . . If **you** have neglected, through error or oversight only, to report a **claim** made against **you** during the period of a previous renewal of this Policy issued to **you** by **us**, then provided that you have maintained uninterrupted insurance of the same type with **us** since the expiry of that earlier Policy, then, notwithstanding **EXCLUSION 20**, **we** will permit the matter to be reported under this Policy and will indemnify **you**, provided that: a) the indemnity will be subject to the applicable **aggregate limit of liability** or limit of liability of the earlier Policy under which the matter should have been reported or the **aggregate limit of liability** or **limit of liability** of the current Policy, whichever is the lower

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Issues in Underwriting Insurance Coverage Master Class

- Preamble of a policy
- Representation section of a policy
- Answers on the application
- Doctrine of Fortuity

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Key Take-Aways for Claims Analysts Insurance Coverage Master Class


- Investigate past incidents, past demands, past lawsuits
- Consult the Loss Run and Application
- Focus on Policy Language
- Consider overlapping parties, acts, injury/damage




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Key Take-Aways for Underwriters Insurance Coverage Master Class


- Understand what coverage is being afforded for possible related claims
- Representations on the Applications can be specifically excluded in an endorsement
- Define the terms and make clear related matters are considered first made when the first claim is filed.



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Thank you! Insurance Coverage Master Class

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