

Lawyer Insights

Common issues, tips for navigating related insurance claims (Part 1)

Are your insurance claims related? The legal issues surrounding related claims can impact a policyholder's coverage.

By Geoffrey Fehling, Alice Weeks and Alex Pappas
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Editor's note: This is the first of a two-part series discussing the significance of "related" claims under [directors and officer \(D&O\)](#) and other claims-made liability policies.

Most modern liability insurance policies have provisions about "related" or "interrelated" claims. These provisions can result in significant disagreements that can influence whether and to what extent a policyholder is entitled to insurance coverage.

What are "related" or "interrelated" claims and why do they matter? This is the first article in a two-part series that will answer those and many other questions.

First, we will survey two recent federal cases that examined relatedness. We will then place these two decisions (and others) in context by providing several [key points for policyholders](#) to keep in mind as they navigate this intricate and fact-specific legal domain.

What are "related" claims, and why do they matter?

Broadly speaking, [a related-claims provision refers to a provision in an insurance policy that groups together](#) otherwise distinct claims because they are "related" or "interrelated." While the specific wording varies greatly between insurers and forms, a typical related-claim provision may read as follows:

Related acts or omissions mean all acts or omissions that are temporally, logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

Related-claims provisions and disputes are not one-sided. That is, related-claims issues can often favor or negate coverage depending on the circumstances. It follows that policyholders and insurers often argue for and against relatedness, depending on the circumstances, and most of the time the answer is unclear.

For example, related claims can increase available coverage by allowing a policyholder to access an earlier policy that has higher limits, sublimits or fewer exclusions. Related-claims provisions, however,

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also can limit or bar coverage altogether if a claim is considered under a less favorable policy or even considered first made outside the applicable policy period.

Because related-claims provisions can have such wide-reaching — and unpredictable — effects on the availability of coverage, policyholders should understand how they function in practice to be better prepared and minimize any unexpected disputes if a claim arises.

Two recent cases under Florida and Oklahoma law present useful examples of what policyholders should look for as they consider related-claims issues.

Outsideln Architecture

RLI Insurance Co. v. Outsideln Architecture, LLC is a recent example of how related claims play out in practice. This case highlights the fact-specific nature of relatedness disputes.

In *Outsideln*, the Middle District of Florida evaluated a professional liability policy's related-claims provision under Florida law relative to an insurance coverage lawsuit following a death at a construction site demolition that resulted in the decedent's estate suing the architectural firm.

The insurer attempted to limit coverage under the policy's related-claims provision, arguing that the wrongful death lawsuit related to an earlier demand letter first made against an insured outside the policy period. The professional liability policy defined related claim to mean *claims that are "logically or causally connected by common facts, situations, events, transactions, projects, decisions or advice."*

According to the court, in evaluating similar related-claim language, Florida courts consider, among other things, "whether the parties are the same, whether the claims all arise from the same transactions, whether the 'wrongful acts' are contemporaneous, and whether there is a common scheme or plan underlying the acts."

Florida courts also consider "whether the acts in question are connected by time, place, opportunity, pattern, and perhaps most importantly, by method or modus operandi."

Interpreting the policy language under Florida law, the court held that the letter and the lawsuit were unrelated. The court reasoned that, while both "claims stem from the same source" — i.e., the architectural firm's participation in the construction project — and a "similar time period," they were unrelated because they "involve different causes of action, legal duties allegedly breached, types of damages, and alleged victims."

In ruling against relatedness, the court also recognized that each of the claims involved an "entirely different method or modus operandi" and that there was no evidence that the architectural firm "acted with a singular or common purpose" across the various claims.

Outsideln is instructive because it shows that relatedness is a very fact-sensitive inquiry, which helps explain why relatedness disputes are litigated time and again. The court also applied a specific standard for assessing relatedness under governing law, which may have resulted in a different analysis under a different state's laws. These factors are balanced based on the facts, applicable state law and policy language, which often provide viable arguments both for and against relatedness.

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American Southwest

American Southwest Mortgage Corp. v. Continental Casualty Co. tells a similar story but reached the opposite outcome.

American Southwest loaned money to First Mortgage Company, LLC. An auditor examined First Mortgage's financials in 2014, 2015 and 2016, preparing a single audit report each year. Each of the three audits incorrectly stated that the loans were secured when they were not, which resulted in American Southwest losing millions of dollars upon discovering that First Mortgage had engaged in mortgage fraud.

Also seeking to minimize its coverage obligations, the insurer, Continental Casualty, argued that the various audits were related, which, if true, would limit the insurer's obligations under the policy. Similar to the policy discussed above, this policy defined interrelated acts or omission to include "all acts or omissions in the rendering of professional services that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision."

In evaluating this language, the court applied background principles of Oklahoma law. Unlike the Florida-specific factors enumerated above, the court focused on the meaning of "logically" or "causally" connected in Oklahoma. According to the Tenth Circuit, "logically" connected means "connected by an inevitable or predictable interrelation or sequence of events."

In other words, "for two things to be logically connected, one must attend or flow from the other in an inevitable or predictable way." An analysis of logical relation must also assess "what logically connects each act." Here, the policy language supplied the what: "any common fact, circumstance, situation, transaction, event, advice or decision."

Applying these Oklahoma-specific rules, the Tenth Circuit held that the botched 2014, 2015 and 2016 audits were one "interrelated claim." It reasoned that the "same common facts and circumstances tie the recurring negligence acts together." There was one auditor. That auditor performed the same service three separate times. And the auditor made the identical error each time. So the auditor's negligence, the court concluded, was a "common circumstance" that flowed across the different audits. In other words, "the common facts and circumstances" "made additional negligently conducted audits predictable, and therefore, logically connected."

American Southwest, too, is a reminder that related-claims issues can affect available coverage depending on several factors including the applicable law, policy language and specific circumstances giving rise to the claims.

Lessons learned

Both *Outsideln* and *American Southwest* highlight the complexity of related-claim issues. Part two of this article will address these decisions among the broader (and varied) body of related-claim case law. It will also provide common issues that arise in arguing for and against relatedness, as well as outline several helpful tips to understand how to navigate these issues when facing multiple, potentially related claims.

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Geoffrey Fehling is a partner in the firm's Insurance Coverage group in the firm's Boston office. Geoffrey is an experienced litigator and advocate who helps policyholders maximize the value of their insurance assets. He can be reached at +1 (617) 648-2806 or gfehling@HuntonAK.com.

Alice Weeks is an associate in the firm's Insurance Coverage in the firm's Miami office. Alice represents corporate policyholders in complex insurance disputes and bad faith litigation. She can be reached at +1 (305) 810-2554 or aweeks@HuntonAK.com.

Alex Pappas is an associate in the firm's Insurance Coverage group in the firm's Washington D.C office. He can be reached at +1 (202) 955-1887 or apappas@HuntonAK.com.

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