

Supreme Court of Delaware Clarifies Standard for Related Claims

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On March 16, the Supreme Court of Delaware rejected the “fundamentally identical” standard for assessing related claims. Instead of applying a uniform test for relatedness, Delaware courts now should look to the precise language of the related claims provision.

Background

The primary insurer issued claims-made policies to the insured, First Solar, Inc., for the 2011-2012 and 2014-2015 policy periods. The policies contained a provision that excluded coverage for related claims initiated prior to the relevant policy period. In 2012, the insured’s shareholders initiated a class-action lawsuit against the insured, alleging violations of federal securities laws by making false or misleading public disclosures (*Smilovitz* Action). The primary insurer provided coverage for the *Smilovitz* Action and paid its limits. In 2015, some of the insured’s shareholders opted out of the *Smilovitz* Action and filed a separate class-action lawsuit (*Maverick* Action), claiming violations under the same federal securities laws, but adding state claims for fraud and negligent misrepresentation. The insured sought coverage for the *Maverick* Action under the 2014-2015 policy. The primary and excess insurers denied coverage, with the primary insurer claiming the *Maverick* and *Smilovitz* actions were related.

Superior Court of Delaware Decision (2021)

In 2021, the insured sued the insurers, seeking declaratory relief that the insurers were obligated to provide coverage.^[1] The insured claimed the actions were unrelated, as they involved different plaintiffs, claims, conduct, and time periods. Relying on *Pfizer Inc. v. Arch Insurance Co.*,^[2] the Superior Court of Delaware assessed whether the *Smilovitz* and *Maverick* actions were “fundamentally identical” and thereby excluded under the related claims provision. The court noted the “fundamentally identical” standard required the claims to have the “same subject” and “common facts, circumstances, transactions, events, and decisions.” The court held the actions were fundamentally identical, as they alleged violations under the same securities laws, relied on the same disclosures, and were against the same defendants.

End of “Fundamentally Identical” Standard

The Supreme Court of Delaware affirmed the Superior Court’s decision on March 16 but held the Delaware Superior Court applied an incorrect standard for assessing related claims.^[3] The Supreme Court reasoned that the “fundamentally identical” standard stemmed from an earlier case that analyzed a specific policy’s related

claims provision and was never meant to serve as the standard for assessing all related claims provisions. Instead of applying the “fundamentally identical” test, Delaware courts should look to the precise language of the related claims provision at issue. Applying this new standard, the court noted the policy at issue broadly defined a “related claim” as any claim “alleging, arising out of, based upon, or attributable to any facts or Wrongful Acts that are the same as or related to” an earlier claim against the insured. The court affirmed the earlier decision, holding the *Smilovitz* and *Maverick* actions were related, as they focused on the same misrepresentations by the insured.

[1] *First Solar, Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, No. N20C-10-156 MMJCCLD, 2021 Del. Super. LEXIS 489, 2021 WL 2563023 (June 23, 2021).

[2] 2019 WL 3306043 (Del. Super. July 23, 2019).

[3] *First Solar, Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, No. 217, 2021, 2022 WL 792158 (Del. Mar. 16, 2022)

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