RELATED AND INTERRELATED ACTS PROVISIONS: DETERMINING WHETHER YOUR CLAIMS ARE APPLES AND ORANGES, OR PEAS IN A POD

John E. Zulkey

I. Names ......................................................................................... 85
II. Effects ......................................................................................... 86
   A. Number of Occurrences/Claims ......................................... 87
   B. Timing of Claims................................................................. 91
   C. Focus on Underlying Facts Rather Than Procedure.. 94
III. Determining Relatedness .......................................................... 96
   A. Definitions of “Related” ...................................................... 97
   B. Key Factors in Determining “Relatedness”......................... 99
      1. Identity of Claimants ...................................................... 100
      2. Number of Underlying Causes ...................................... 101
         a. Pattern of Activity ..................................................... 102
         b. Timing of the Acts.................................................... 103
      3. Number of Underlying Results ...................................... 103
IV. Conclusion .................................................................................. 104

Some of the more puzzling and subjective provisions in insurance policies hinge on whether the underlying acts are “related” or “interrelated.” The language of such provisions may vary considerably, such as with the following examples:

- “Two or more claims arising out of a single act, error or omission or series of related acts, errors or omissions shall be treated as a single claim.”

• “Losses arising out of the same Wrongful Act by one or more of the Directors and/or Officers or interrelated Wrongful Acts by one or more of the Directors and/or Officers shall be considered a single Loss.”

• “‘Occurrence’ means an act or threatened act of abuse or molestation. . . . A series of related acts of abuse or molestation will be treated as a single ‘occurrence.’”

• “Related acts, errors or omissions shall be treated as a single claim. All such claims, whenever made, shall be considered first made during the policy period or optional reporting period in which the earliest claim arising out of such act, error or omission was first made.”

Although these provisions may appear most frequently in professional liability and various claims-made policies, they can occasionally be found in occurrence-based comprehensive general liability (CGL) policies as well. These provisions can alter the number of occurrences or claims deemed to have taken place, change when a claim is deemed to have been first-made, or affect insurance claims in additional ways. Depending on whether the claims or occurrences are deemed to be related, they can alter the number of limits and deductibles/retentions at issue or change whether the claims will be deemed to be made within the policy period. Related and interrelated acts provisions can be particularly confusing and difficult to research because, in addition to having different effects, they go by many different names, include many different wordings, and arise in different contexts. The one common denominator among them is the question, “Are the underlying acts that give rise to these claims related?”

An attorney analyzing this issue must be aware of (1) the key factors courts look to in determining relatedness, (2) the controlling decisions on relatedness from the governing jurisdiction, (3) the potential avenues for distinguishing unfavorable decisions, and (4) how to find factually analogous favorable decisions. This article will provide a discussion of the labels and wordings of these provisions, the different contexts and outcomes achieved by different types of provisions, the different ways such provisions have been interpreted, and several key factors upon which courts have predominantly relied in evaluating whether claims are related.

In addition to providing an overview of the above issues, this article is intended to assist the reader in researching these provisions. Researching related and interrelated acts provisions can be difficult in general due to the variability in names and language, the lack of a key number on the

topic, and the scarcity of thorough secondary sources. As a result, searching for a decision in which a specific legal issue or set of facts has been applied to a related or interrelated acts provision is often difficult and time-consuming. This article is intended to help the reader zero in on the decisions addressing those relevant facts and legal issues.

I. NAMES

The variety of names for related and interrelated acts provisions, the labels and text of which are far from uniform, can make for difficult research. An opinion discussing such a provision might refer to a “related acts provision,” an “interrelated acts provision,” a “related wrongful acts provision,” an “interrelated wrongful acts provision,” or something else entirely. The language may even be customized to the risk insured (e.g., “interrelated medical incidents”). Adding to the confusion, the court may not refer to it as a provision but as a clause, section, exclusion, and so forth. For ease of reading, this article will refer to all provisions as “related acts provisions,” although, as explained below, some courts have drawn a distinction between “related” and “interrelated.”

The only constant among the labels for these provisions is that they will include either the term “related” or “interrelated,” but these two words are so ubiquitous that it can be exceptionally difficult to craft a search that captures all of the relevant decisions within a jurisdiction without burying them in a massive haystack of irrelevant decisions. For example, a search for “related acts” is likely to pull up a large number of non-insurance decisions in which the court explains that the allegations involve an action by the defendant “and related acts.” Worse still, that search still may not yield relevant decisions in which the related acts provision is referred to as something else, such as an interrelated medical incidents provision. As such, a successful online search is likely to begin by reading the major and local decisions on this issue (found in this article and other secondary sources on the topic) and then turning to subsequent decisions citing to them, saving as a last resort the expensive and labor-intensive task of sifting through the results of a language search.5

5. Some of the decisions that are most frequently cited in discussions of related acts provisions (even outside their jurisdictions) include Bay Cities Paving & Grading, Inc. v. Lawyers Mutual Insurance Co., 855 P.2d 1263 (Cal. 1993); Gregory v. Home Insurance Co., 876 F.2d 602 (7th Cir. 1989); Arizona Property & Casualty Insurance Guaranty Fund v. Helme, 735 P.2d 451 (Ariz. 1987); Continental Casualty Co. v. Wendt, 205 F.3d 1258 (11th Cir. 2000); Highwoods Properties, Inc. v. Executive Risk Indemnity, Inc., 407 F.3d 917 (8th Cir. 2005); and Zunenshine v. Executive Risk Indemnity, Inc., No. 97 Civ. 5525(MBM), 1998 WL 483475 (S.D.N.Y. Aug. 17, 1998). As such, searching for opinions in the relevant jurisdiction that cite the above decisions is a good start to researching a state’s precedent on the issue.
II. EFFECTS

Related acts provisions generally can have one or both of two effects regarding either the number of occurrences or claims or the timing of the claims. For example, a decision may interpret a related acts provision to determine if the underlying claims should be treated as one occurrence or claim (thereby triggering only one limit of liability and deductible) or several (thereby triggering multiple limits and deductibles). Or else it may interpret such a provision to determine whether a claim should be deemed to have been first-made at the time of an earlier claim, which in turn may determine whether the claim is deemed to fall within the policy period. Many provisions may be drafted to trigger both effects, essentially stating that all related claims will be treated as one and that it will be deemed first-made at the time of the earliest claim. Although provisions can be written to trigger both effects, most decisions will involve only whether one of the effects has been triggered. The body of decisions makes more sense once the distinction between the two possible effects is understood.

The term “related” also can arise in the context of certain exclusions (e.g., an exclusion for claims related to insolvency or to the use of a vehicle). Although such decisions may have useful language regarding how the word “related” should be defined, they are distinguishable from decisions analyzing the relationship between separate claims and occurrences.


A. Number of Occurrences/Claims

To understand this first category of related acts provisions, it is essential first to understand the disputes that can arise regarding the number of occurrences or claims.8 When multiple losses are arguably linked together, e.g., multiple properties damaged in a single storm, an insurer’s responsibilities can differ depending on whether the losses are deemed to constitute one occurrence or several. If the combined losses exceed the policy’s “per occurrence” limit, it may be to the policyholder’s benefit for the court to find that the losses constitute multiple occurrences so that the insurer’s total liability is not capped by a single “per occurrence” limit, but rather by a separate limit for each occurrence. But if the total combined losses do not exceed the policy’s “per occurrence” limit and the policyholder is required to pay a significant deductible or self-insured retention for each loss, it can be to the policyholder’s benefit for the court to find that the losses constitute a single occurrence, which would avoid the necessity of paying multiple deductibles or retentions without lowering the policyholder’s overall amount of coverage. The same principles hold true regarding the number of claims, but where an “occurrence” refers to when the loss occurred, a “claim” refers to when a demand for payment on the underlying loss was made to the policyholder.9

In other contexts, the difference between a “claim” and an “occurrence” can be crucial because it may determine whether the policy period is triggered by the timing of the occurrence that caused the damage or by the timing of the claim by the plaintiff. But in analyzing related acts provisions, courts typically employ the same analysis regardless whether the issue is the number of claims or occurrences. Moreover, courts determining the application of such provisions to the number of claims frequently cite to decisions regarding the number of occurrences and vice versa.10 It is rare

8. Among other good sources, Randy Maniloff and Jeffrey Stempel provide a fifty-state survey of the number of occurrences issue outside of the context in RELATED ACTS PROVISIONS IN GENERAL LIABILITY INSURANCE COVERAGE: KEY ISSUES IN EVERY STATE (2011). See also EDWARD J. ZULKEY, Number of Occurrences or Claims—Deductibles and Limits, in LITIGATING INSURANCE DISPUTES § 7 (2009).


10. E.g., Gregory v. Home Ins. Co., 876 F.2d 602 (7th Cir. 1989) (in determining whether two “claims” were related, relying primarily on the analysis in Arizona Property & Casualty Insurance Guaranty Fund v. Helme, 735 P.2d 451 (Ariz. 1987), which analyzed whether two “occurrences” were related; although the court ultimately departed from Helme’s conclusion, the court drew no distinction based upon the difference between “occurrences” and “claims,” implying that it made no difference to the analysis of relatedness).
for a court to distinguish a decision because it analyzed whether “claims” were related rather than “occurrences” (or the other way around).11

A related acts provision triggering a number-of-occurrence/claim effect may tip the scales in favor of a finding of a single occurrence or claim by stating that any occurrences/claims that share related underlying acts will be deemed to be a single occurrence/claim. In other words, if a court were going to determine that certain losses constituted separate occurrences or claims, this effect could require the court to nonetheless treat the injuries as a single occurrence or claim if they shared related underlying facts. As such, the argument boils down to whether the occurrences/claims are sufficiently related as to be deemed a single occurrence/claim.12

11. But see S P Syntax LLC v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa., No. CV 2011-019071 (Ariz. Sup. Ct., Maricopa Cnty., June 28, 2012) (distinguishing Ariz. Prop. & Cas. Ins. Guar. Fund v. Helme, 735 P.2d 451 (Ariz. 1987), partly on the basis that relatedness was analyzed in Helme in the context of the definition of “occurrence,” whereas the matter before the court interpreted relatedness in the context of an exclusion in a claims-made policy; given that Helme had been almost universally rejected by other courts, it could be inferred that the Arizona Superior Court took the unusual step of drawing this distinction in order to avoid applying a much-maligned precedent).

Although the wording varies, examples of number-of-occurrence/claim related acts provisions read as follows:

- “Two or more claims arising out of a single act, error or omission or series of related acts, errors or omissions shall be treated as a single claim.”

• “[T]he limit of liability stated for ‘each claim’ is the maximum we will pay for all claims and claim expenses arising out of, or in connection with, the same or related wrongful acts.”

• “Losses arising out of the same Wrongful Act by one or more of the Directors and/or Officers or interrelated Wrongful Acts by one or more of the Directors and/or Officers shall be considered a single Loss.”

Alternatively, the issue may arise when a policy defines an “occurrence” or “claim” along the following lines:

• “[A]ny incident, act or omission, or series of related incidents, acts or omissions resulting in injury.”

• “[A]n error, negligent omission or negligent act or a series of related errors, negligent omissions or negligent acts, regardless of the number of claims or claimants.”

• “‘Occurrence’ means an act or threatened act of abuse or molestation. . . . A series of related acts of abuse or molestation will be treated as a single ‘occurrence.’”

In some instances, the number-of-occurrences/claims effect can be used to ensure that later occurrences/claims are affected by the same disqualifiers that precluded coverage for earlier occurrences/claims. For example:

19. E.g., Attorneys Ins. Mut. of Ala., Inc. v. Smith, Blocker & Lowther, P.C., 703 So. 2d 866 (Ala. 1996) (arguing that insured’s failure to notify the insurer of one claim barred coverage for a subsequent claim); Westrec Marina Mgmt., Inc. v. Arrowood Indem. Co., 163 Cal. App. 4th 1387 (2008) (same); Cmty. Health Ctr. of Buffalo, Inc. v. RSUI Indem. Co., No. 10-CV-813S, 2012 WL 713305, at *3 (W.D.N.Y. Mar. 5, 2012) (failure to give notice of an administrative charge precluded coverage for a related lawsuit); TIG Specialty Ins. Co. v. PinkMonkey.com, Inc., 375 F.3d 365 (5th Cir. 2008) (personal profit exclusion barred coverage not only for stock fraud claims against CEO but also for securities fraud claims against corporation because they were considered the same claim under related acts provision); Cont’l Cas. Co. v. Jones, No. 3:09-CV-1004-JFA, 2011 WL 3880963 (D.S.C. Sept. 2, 2011), order amended on reconsideration, 2012 WL 530002 (D.S.C. Feb. 17, 2012) (coverage for one claim against a law firm was barred because an attorney had prior knowledge of it; therefore, coverage for related claims by different claimants was also barred). Contra Am. Auto. Ins. Co. v. Marlow, 666 F. Supp. 2d 1209 (D. Colo. 2009) (insured unsuccessfully attempted to argue that an untimely later claim was covered because it was related to a timely reported earlier claim); Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Holmes & Graven, 23 F. Supp. 2d 1057 (D. Minn. 1998) (insured argued that unreported claim was related to reported claim and thus coverage should be afforded for both); Sirius XM Radio Inc. v. XL Specialty Ins. Co., No. 650831/2013, 2013 WL 5958390 (N.Y. Sup. Ct. Nov. 7, 2013), aff’d, 117 A.D.3d 652 (N.Y. App. Div. May 29, 2014) (in which an insured survived a motion to dismiss in arguing that its timely tender of related claims excused its late tender of the claim at issue).
example, if coverage is denied for a claim because it was not timely reported and the policyholder then timely reports a subsequent claim, the insurer may argue that the claims are related and thus constitute a single claim that was disqualified due to the untimely reporting.

B. Timing of Claims

The other type of effect occurs in claims-made policies and alters when a claim will be deemed made. Ordinarily, a claim will not be covered in a claims-made policy unless it is first-made (or both made and reported) within the policy period. The purpose of the timing-of-claim is to deem a claim to be first-made at the time that any previously made related claims were first-made. Most commonly, insurers rely on such provisions to argue that claims that are made during the policy period should be deemed to have been made prior to the inception of the coverage period—and thus are not covered by that policy—because they are related to claims that were first-made before the inception date.20 Insurers may use the same

reasoning to argue that claims should be deemed first-made during a period that was covered but that included a lower limit of liability. Policyholders have relied on such provisions to argue in favor of coverage for claims made after the end of the coverage period on the basis that they were related to claims that were made within the coverage period.21 Examples of language that trigger a timing-of-claims effect are as follows:

- “Claims based upon or arising out of the same act, error or omission or related acts, errors or omissions shall be deemed to be a single claim, . . . all such claims shall be deemed to be first made as of the date that the earliest of such Claims was first made.”22

---


• “Claims based on or arising out of the same act, interrelated acts or one or more series of similar acts of one or more of the Insured shall be considered a single claim which, for the purpose of this policy, shall be deemed to have been made at the time the first of such claims is made against any Insured.”

• “Related acts, errors or omissions shall be treated as a single claim. All such claims, whenever made, shall be considered first made during the policy period or optional reporting period in which the earliest claim arising out of such act, error or omission was first made.”

However some provisions invoking the timing-of-claim effect are worded so as to eliminate coverage for claims related to those made before the policy period without the possibility of creating coverage for claims made after the expiration of the policy period. For example:

[Insurer] shall not be liable to make any payment for Loss in connection with any Claim [made against Insured that is] based upon, arising from, or in any way related to any demand, suit, or other proceeding against any Insured which was pending on or existed prior to the applicable Prior Litigation Date specified by endorsement to this Policy, or the same or substantially the same facts, circumstances or allegations which are the subject of or the basis for such demand, suit, or other proceeding.

C. Focus on Underlying Facts Rather Than Procedure

In determining relatedness, the focus is on the relationship between the facts that give rise to the claim rather than on any procedural grouping that occurs during litigation. For example, in Home Insurance Co. of Illinois v. Spectrum Information Technologies, Inc., the Eastern District of New York rejected arguments for relatedness of claims based upon their inclusion in the same suit, stating that

the concept of “claim” is distinct from that of “suit,” and neither the initial amalgamation of claims in one suit nor the variety of procedural metamorphoses which a suit often undergoes, whether via consolidation or amendment, alters the distinctive nature of individual claims or the consequent loss potentially incurred therefrom.

25. HR Acquisition I Corp. v. Twin City Fire Ins. Co., 547 F.3d 1309, 1312 (11th Cir. 2008).
26. Policies may be drafted that contradict the general rule that relatedness is determined solely by the relation of the facts and not by procedural grouping. For example, Zurich Policy STF-DFI-100-A CW (12/99) contains in the definition of “Interrelated Wrongful Act” a statement that “All Wrongful Acts or Wrongful Employment Acts that are alleged in the same Claim shall be considered Interrelated Wrongful Acts.” However, such a provision appears to be uncommon.
Accordingly, it is of little consequence whether the claims at issue are brought within the same underlying action. Oftentimes, typically in decisions involving the number of claims or occurrences, all of the subject claims or occurrences will have been raised in a single suit by one or multiple claimants. For example, in *Beale v. American National Lawyers Insurance Reciprocal*, the court was asked to decide whether the respective claims in a single underlying malpractice lawsuit brought by five different clients were related enough to be deemed a single claim. Other times, more frequently in decisions involving the timing of claims, parties will argue that the claim(s) raised in the underlying suit are related to claims that have not been raised in the underlying suit—whether they were raised in a previous suit or were never litigated at all. For example, in *Hrobuchak v. Federal Insurance Co.*, the insured had been sued in a class action over allegedly unlawful debt collection practices and the insurer argued that there was no coverage because the claims were related to claims that formed the basis of suits in other jurisdictions that had been filed prior to the policy period, thereby deeming the class action to have also been first-made prior to the policy period.

Similarly, it makes little difference whether the claims are pled under different causes of action or in different jurisdictions. The focus remains on the relationship between the underlying facts.

---


Having covered the various names, wordings, and effects of these provisions, the million dollar question is: what makes claims “related”? While many courts have ruled that the term is not ambiguous, the term nonetheless retains an element of “I know it when I see it,” which precludes easy categorization of claims as “related” or “not related.” Courts and secondary sources both have noted a lack of consistency in decisions on relatedness, part of which may stem from the subjectivity inherent in the question of relatedness and part of which may come from courts leaning toward finding coverage—which alternatively can promote either broad or narrow findings of relatedness depending on the circumstances unique to the case. Moreover, the burden of proving relatedness may vary depending upon the policy at issue. All that being said, numerous courts have opined that relatedness requires either a causal or logical link, and a survey of those decisions reveals a number of factors that often prove determinative.


33. E.g., Borough of Moosic v. Darwin Prof’l Underwriters, Inc., No. 12-3141, 2014 WL 407477 (3d Cir. Feb. 4, 2014) (all provisions that limit coverage constitute exclusions and must be interpreted against the insurer); Reeves Cnty. v. Houston Cas. Co., 356 S.W.3d 664 (Tex. App. 2011) (burden of proving lack of relatedness fell on insured where language at issue fell under the section “Other Conditions and Agreements,” thereby framing the issue as whether the claim fell within the coverage grant. The court implied that the burden of proving relatedness would have been on the insurer if the relevant language had fallen within an exclusion). But see Gastar Exploration Ltd. v. U.S. Specialty Ins. Co., 412 S.W.3d 577 (Tex. App. July 16, 2013) (interpreting a policy that specifically held that titles and headings did not affect policy provisions, holding that a condition regarding “interrelationship of claims” was “effectively an exclusion”); Regal-Pinnacle Integrations Indus., Inc. v. Philadelphia Indem. Ins. Co., No. A. 12-5465, 2013 WL 1737236 (D.N.J. Apr. 22, 2013) (holding that related acts provisions and prior-and-pending litigation exclusions should be strictly construed against the insurer).
A. Definitions of “Related”

The two leading interpretations of relatedness require either a causal or logical relationship. A causal relationship has been defined as “where one person or thing brings about the other” and a logical relationship as “connected by an inevitable or predictable interrelation or sequence of events.” More recent policies may specify that one or the other or both is to be used, but in the absence of such an election, courts have differed as to which is appropriate.

The dispute over whether a relationship must be logical or causal can be traced back to Webster’s, which defines “related” as “show[ing] or establish[ing] a logical or causal connection between.” In applying this definition in Arizona Property & Casualty Insurance Guaranty Fund v. Helme, the Arizona Supreme Court strongly rejected the notion of a logical relationship, stating that the term was far too ambiguous:

We do not believe that the word “related” as used in the policy can be equated with the phrase “logical connection.” Logic, like beauty, is in the eye of the beholder and greatly depends upon the subjective mental process of the reviewer. Incidents may be “logically related” for a wide variety of indefinable reasons. Causal connection depends, to a much greater extent, on objective facts in the record. If we were compelled to equate “related” with “logically connected,” we would be compelled to find the policy provision ambiguous, and for that reason to find in favor of the claimant. We have attempted to abandon this approach. We prefer, instead, to determine the meaning of a clause which is subject to different interpretations or constructions by examining the purpose of the clause, public policy considerations, and the transaction as a whole.

As such, the court found that acts were “related” only if they were “causally connected.” This finding mirrors the rule applied in the majority of states to the number-of-occurrences issue (discussed above), which hold that multiple occurrences exist if the losses stem from distinct causes, whereas only a single occurrence exists if multiple losses stem from the same cause.

The Helme court’s narrow reading of “related” provided for greater certainty, but it was almost universally rejected. In Gregory v. Home Insurance Co., the Seventh Circuit found that the concept of logical relation was not so broad as to be deemed ambiguous and should thus be applied:

---

37. MANILOFF & STEMPHEL, supra note 8, at 154.
We agree with the *Helme* court that the common understanding of the word “related” covers a very broad range of connections, both causal and logical. However, we don’t think the rule requiring insurance policies to be construed against the party who chose the language requires such a drastic restriction of the natural scope of the definition of the word “related.” Parties are generally free to include language of their choice in contracts, and courts should refrain from rewriting them. At some point, of course, a logical connection may be too tenuous reasonably to be called a relationship, and the rule of restrictive reading of broad language would come into play. The facts of this case, though, as concisely explained by Judge Dillin, comfortably fit within the commonly accepted definition of the concept.38

The overwhelming majority of courts have likewise found that “related” can refer to either causal or logical relationships.39 Other courts have found the term “related” to be ambiguous and resolved the ambiguity in favor of the insured. This could result in differing interpretations depending on the facts of the case.40

---

38. 876 F.2d 602, 606 (7th Cir. 1989) (citations omitted).
Several courts, particularly those applying New York law, have found that relatedness requires the claims to share a “sufficient factual nexus.” Some policies have incorporated similar language into the definition of “related” or “interrelated”:

- “Wrongful act’ includes related ‘wrongful acts’ which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or cause as the same ‘wrongful act’ for the purposes of this insurance.”
- “Interrelated Wrongful Acts means 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.”

Still other courts have supplied their own definitions. Furthermore, although many decisions refer to opinions interpreting both “related acts” and “interrelated acts” as if the terms were interchangeable, a handful have suggested that the term “interrelated” either is ambiguous or else requires a closer relationship than does “related.” For example, in Sigma Financial v. American International Specialty Lines Insurance, the U.S. District Court for the Eastern District of Michigan found that the term “interrelated” was more restrictive and that “while many situations may be ‘related’—connected in some manner—significantly fewer situations will be ‘interrelated’—involving a mutual relationship.” Ultimately, the definition of “related” and “interrelated” will depend upon the policy language, facts of the case, and state precedent.

B. Key Factors in Determining “Relatedness”

The question of whether claims will be deemed “related” is highly dependent upon the facts at issue. Courts pay close attention to the following factors, none of which by itself is outcome-determinative.

---

1. Identity of Claimants

Where the claims are made by the same party(ies), that fact weighs in favor of relatedness, whereas if the claims are made by separate claimants, that fact weighs against relatedness.


2. Number of Underlying Causes

Where all claims arise from the same act or acts, that fact weighs in favor of relatedness, whereas if they arise from separate acts, that fact weighs against relatedness. Some courts have found where separate clients bring a malpractice claim against an attorney for a single error in their common case, those claims are unrelated due to the attorney’s distinct duty to each client.

upon the same failure to properly calculate retirement benefits under the tax code); Knowledge Learning Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa., 475 F.App’x 137 (9th Cir. 2012) (sexual abuses of different victims were related); Bryan Bros. Inc. v. Cont’l Cas. Corp., 704 F. Supp. 2d 537, 543 (E.D. Va. 2010), aff’d, 660 F.3d 827 (4th Cir. 2011) (embezzlements by insured employee of accounting firm that occurred before policy inception were related to embezzlements against different clients that occurred after because they were part of the same scheme to defraud); ProCentury Ins. Co. v. Ezor, No. 10-7293 (C.D. Cal. July 25, 2011), aff’d, 2014 WL 323420 (9th Cir. Jan. 30, 2014) (rejecting insurers’ arguments that claims cannot be related unless made by the same claimant and seeking the same remedy); Nomura Holding Am., Inc. v. Fed. Ins. Co., No. 13 Civ. 5913, 2014 WL 4473374 (S.D.N.Y. Sept. 11, 2014) (different in underlying plaintiffs outweighed by fact that all relied on same misrepresentations).


a. Pattern of Activity—Where claims arise from separate acts, they are more likely to be deemed related than if they arose from a pattern of similar activity\(^{51}\) or from a common omission.\(^ {52}\)

policies have declined to find that the claims were the same or related where an attorney has provided separate services to multiple clients.\(^ {51}\); Ettinger & Assoc., LLC v. Hartford/Twin City Fire Ins. Co., 2014 WL 2134599 (E.D. Pa. May 22, 2014) (claims by clients in separate cases that alleged that attorney wrongfully failed to inform them that their claims were frivolous were related; claim by one for dual representation was unrelated to other claims).


b. Timing of the Acts—A significant lapse in time between the causes giving rise to claims weighs against them being deemed a pattern of activity, thereby making it less likely that the resultant claims will be deemed related.\textsuperscript{53}

3. Number of Underlying Results

Where claims arise from the same result, e.g., separate wrongful acts that each contributes to the same ultimate harm, that fact weighs in favor of relatedness,\textsuperscript{54} whereas if they lead to different harms, that fact weighs against relatedness.\textsuperscript{55}


IV. CONCLUSION

Given the wide variety found in the language of related acts provisions and in the contexts in which they are applied, it should not be surprising that they do not lend themselves to a clear-cut, bright-line rule. Nonetheless, it is hoped that this article has provided the reader with sufficient tools to pick out those aspects of a case that may help or hurt the case for relatedness; find relevant case law in the applicable jurisdiction; and, if necessary, distinguish that case law and find decisions that are more favorable when applied to the facts at issue.56

56. For further reading on related acts provisions, three recommended sources are Jacobs & Scarbrough, supra note 32; Mark E. Cohen, How Many Degrees of Separation? Determining the Degree of “Relatedness” Required for Multiple Claims to Be Deemed “Related” Under Related or Interrelated Acts Provisions in Claims-Made Policies, DRITODAY (Aug. 28, 2012); and Chesler & Jack, supra note 32. The Defense Research Institute’s PROFESSIONAL LIABILITY INSURANCE: A COMPREHENDU OF STATE LAW (2012) also provides a very thorough state-by-state analysis of common issues in professional liability policies, including a section under each chapter on that state’s treatment of related acts provisions.