

## Delaware Supreme Court Rules That Related Claim Provision Bars Coverage For Securities Class Action (Insurance Law Alert)

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The Delaware Supreme Court ruled that a Related Claim provision barred coverage for a later-filed securities class action because the suit was based on facts and wrongful acts that were “the same as or related to” those alleged in a prior class action. *First Solar, Inc. v. National Union Fire Ins. Co. of Pittsburgh, PA*, 2022 WL 792158 (Del. Mar. 16, 2022).

Stockholders of First Solar filed a class action lawsuit in 2012 alleging that the company violated federal securities laws by making false or misleading public disclosures. National Union provided coverage under a claims-made policy in effect from 2011-2012. In 2015, a second set of stockholders brought suit, alleging violations of the same federal securities laws, as well as Arizona statutory and common law causes of action. A National Union policy in effect from 2014-2015 excluded coverage for any “Related Claims,” defined as “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.” After First Solar exhausted coverage under its 2011-2012 policies, it sought coverage for the later-filed action under the 2014-2015 policies.

A Delaware trial court ruled that coverage for the second action was barred by the Related Claim provision. Applying a “fundamentally identical” standard for determining relatedness, the trial court concluded that the two suits stemmed from the same underlying conduct and alleged violations against the same defendants in an overlapping time period.

The Delaware Supreme Court affirmed, but held that the trial court erred in applying a “fundamentally identical” test. Instead, the court explained that the plain language of the policy requires an evaluation of whether a later-filed suit raises claims that “arise out of, are based upon or attributable to any facts or Wrongful Acts that are the same as or related to” those in a prior action. The court held that this standard was met because the second action was based on the same types of misrepresentations made during the same time frame, involved the same overall legal theory, and shared common facts with the first action. The court rejected First Solar’s assertion that the first action centered on “historical performance” representations, while the second action involved predictions and “forward-looking statements,” explaining that such differences were not meaningful. Similarly, the court deemed it irrelevant that the types of damages sought in each action were different.

The court distinguished *Pfizer Inc. v. Arch Ins. Co.*, 2019 WL 3306043 (Del. Super. July 23, 2019) (discussed in our [July/August 2019 Alert](#)),

which held that two complaints were not sufficiently related. The court emphasized that while the two actions in *Pfizer* arose out of the same drug, they involved substantially different omissions and misrepresentations and relied on different evidence.

Finally, the court noted that in a different matter, First Solar filed a “Motion to Transfer Related Case,” which conceded that the two actions were nearly identical.

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