

## Another Court Broadly Construes “Interrelated Wrongful Acts” Provision

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### Introduction

A key component to any claims-made policy is the existence of an “interrelated wrongful acts” provision. Claims-made policies typically provide coverage only for claims first made during the given policy period. Interrelated wrongful acts provisions allow insurers to aggregate all “Claims” made against an insured alleging “interrelated” wrongful acts into a single “Claim” first made on the earliest date any such claim is made. These provisions help insurers determine whether a claim submitted for coverage for any given policy period was actually first made during an earlier policy period. If the claim at issue was actually first made during an earlier policy period, there may be no coverage available for the submitted claim.

On May 21, 2018, in *Associated Industries Insurance Company v. Brad Williams, LLC*, 2018 U.S. Dist. LEXIS 84721 (S.D. Miss., No. Div. 2018) (*Associated Industries*), the United States District Court for the Southern District of Mississippi, Northern Division, reviewed an insurer’s application of such an interrelated wrongful acts provision to a series of claims made against an insured with differing facts. In the court’s view, the policy at issue defined “Interrelated Wrongful Acts” as existing whenever there is a “common nexus” of “any fact, circumstance, situation, or event” and therefore the insurer that was seeking to be relieved of its coverage obligations was required to show the existence of only one commonality, even if many factual distinctions existed among the underlying claims. Notably, the court certified its order for an interlocutory appeal because the court determined that no binding authority existed to aid it in its construction of the interrelated wrongful acts provision at issue. Given the court’s certification, we will likely see the Fifth Circuit’s view on this subject in the near future.

### Background

This matter arises out of four separate underlying claims asserted against the defendant/insured, RevClaims. RevClaims operated as a business that assisted hospitals and healthcare centers nationwide by asserting liens on potential third-party recovery sources that could fully satisfy charges and costs incurred by patients. RevClaims maintained two relevant insurance policies provided by two separate insurers: Landmark American Insurance Company (Landmark) provided a claims-made policy to RevClaims during a policy period that expired on May 1, 2016; and Associated Industries Insurance Company (AIC) provided a claims-made policy after May 1, 2016. The first underlying claim (the Wiggins Action) at issue was filed in February 2016 during the Landmark policy period by Wiggins who received medical treatment following a motorcycle accident. She claimed her medical providers wrongfully engaged RevClaims to file a lien against her instead of billing her health insurer at its negotiated reimbursement rates. Landmark provided RevClaims with a defense with respect to the Wiggins Action.

The next three underlying claims at issue were filed between July and September 2016, during the AIC policy period. Each claim was similar to the Wiggins Action; the claimants were individuals who had filed actions against RevClaims alleging that RevClaims was wrongfully engaged to assert liens against them for the full amount of medical costs instead of submitting those costs to the claimants’ respective health insurers at the negotiated reimbursement or Medicaid rates.

AIC provided a defense to RevClaims for each of these actions. RevClaims also tendered the last of the underlying claims (the Pledger Action) to Landmark. Unbeknownst to AIC, Landmark also agreed to provide a defense to RevClaims under a reservation of rights. When AIC discovered that Landmark was already providing a defense to RevClaims for the Wiggins Action, AIC filed this declaratory judgment action seeking a determination by the court that it had no duty to defend RevClaims in connection with any of the four underlying claims at issue pursuant to the terms of its policy.

The AIC policy provided coverage for "Claims" first made against RevClaims during the relevant policy period. Where multiple "Claims" are asserted "alleging, based upon, arising out of or attributable to the same Wrongful Act(s) or Interrelated Wrongful Acts," the policy "treats them as a single Claim ... considered first made during the Policy Period ... in which the earliest Claim arising out of such Wrongful Act(s) or Interrelated Wrongful Acts was first made." The AIC policy defined "Interrelated Wrongful Acts" as:

Wrongful Acts that are causally or logically related and include all Wrongful Acts that have as common nexus any fact, circumstance, situation, or event, or which are the same, related or continuous acts, regardless of whether the Claim or Claims alleging such acts involve the same or different claimants, Insureds or legal causes of action.

AIC argued that the four underlying claims involved "Interrelated Wrongful Acts" because they shared a nexus of at least one fact, circumstance, or situation "because all four lawsuits are premised on RevClaims' business decision to assert liens against patients at the hospitals' full rates." Landmark and RevClaims argued that the four underlying claims were not connected in any "direct and traceable way" and involved different claimants.

## The Court's Holding

The district court, applying Mississippi state law on contract construction, agreed with AIC and found that "the way RevClaims asserted its claims was the common fact, circumstance or situation that actually premised the four claims and logically connected them." Each underlying claim was based on a "common business decision." Central to its finding was that the AIC policy defined "Interrelated Wrongful Acts" as "Wrongful Acts" that have a *common nexus of any fact*. Because all four cases had at least one fact in common, Landmark and RevClaims' reliance on the distinctive facts in the four underlying actions was of no moment. In finding that AIC had established a logical nexus with "any fact, circumstance, or event," the court also noted the breadth of the "Interrelated Wrongful Acts" definition, which includes "Claims alleging acts [that] involve the same or different claimants, Insureds or legal causes of action."

## Conclusion

Interrelated wrongful acts provisions preserve the essential workings of claims-made policies, and allow insurers to rightfully deny coverage for claims that are not actually first made during a given policy period. Cases like *Associated Industries* show that courts around the country tend to agree with insurers' positions on this issue when the interrelated wrongful acts language is sufficiently broad. In order to secure the benefit of such a provision, insurers should be mindful of the precise definitional construction of the interrelated wrongful acts definition in their policies.

Finally, as noted by the court, there is no binding authority under Mississippi state law directly on point with respect to the application of an interrelated wrongful acts provision. It will be interesting to see how the Fifth Circuit addresses this issue.

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