

Viacom Coverage Win Pushes Boundaries For Related Claims

By **Abraham Gross**

Law360 (March 13, 2025, 9:31 PM EDT) -- A recent Delaware Superior Court ruling that allowed National Amusements Inc., Shari Redstone and Viacom Inc. to draw from two pools of insurance coverage for underlying shareholder litigation cemented the state's treatment of related claims while outlining areas of uncertainty for future disputes.

Judge Sheldon K. Rennie ruled March 6 that shareholder litigation against Redstone, NAI and Viacom following Viacom's 2019 merger with CBS did not relate to claims brought in prior litigation in 2016 despite sharing certain things in common, reinforcing the factors Delaware courts use to determine whether two claims are interrelated.

Judge Rennie's opinion comes on the heels of the Delaware Supreme Court's Feb. 4 ruling that found a coverage claim from Alexion Pharmaceuticals over potential stockholder claims belonged under an insurance tower along with potential liabilities disclosed in a "notice of circumstances." The justices reversed a lower court decision allowing the insurer to tap into a separate, larger tower.

Experts for policyholders and insurers found that comparing the two decisions was instructive, and while some found the cases revealed clear areas of agreement and greater certainty for future disputes, others saw outlines of future uncertainty on key aspects of the related claims issues.

"Now that we have this decision, can we be confident going forward that we know exactly how this related claims analysis is going to play out? I would say the answer is no," said policyholder attorney Freya Bowen of Neal Gerber & Eisenberg LLP.

The question posed to the court in the NAI case was whether the 2016 suits and the 2019 litigation were "interrelated wrongful acts" or whether the claims were distinct and therefore covered under separate, identical directors and officers insurance towers for 2016 and 2019.

Judge Rennie determined that though the underlying claims seemed related "on the surface" for alleging that similar corporate officers breached their fiduciary duties, they challenge different wrongful acts under different theories.

The 2016 suits focused on allegations that Redstone improperly influenced her father — the chairman of NAI — despite his lacking capacity, while the 2019 suit challenged the fairness of the CBS merger price on the premise that the two company boards overlooked issues and undervalued Viacom's stock for Redstone's benefit, the court found.

Judge Rennie's decision cited the Delaware justices' two-tier related factor analysis in *Alexion* that places prime importance on whether the underlying wrongful conduct allegations are the same, while also analyzing what he deemed as secondary factors: the parties, relevant time-period, a sampling of evidence and the claimed damages.

Thomas Breen of Mound Cotton Wollan & Greengrass LLP, who represents insurers, said it wasn't clear why the Superior Court did not side with the insurers' argument that the alleged wrongful conduct was the same: Redstone obtaining sufficient control of corporate powers to effectuate the CBS merger on her terms.

"The NAI decision has made it less clear as to how, specifically, Delaware courts should handle interrelated coverage issues," he said. "There is an issue as to exactly how you apply this meaningful linkage standard, and I think NAI applies a standard that someone could reasonably contend was different from how the Supreme Court handled it in *Alexion*."

The Supreme Court stated that once it determined the wrongful conduct was the same, "it does not matter whether the [U.S. Securities and Exchange Commission] and the stockholder plaintiffs are different parties, asserted different theories of liabilities, or sought different relief."

In a footnote to the NAI decision, Judge Rennie asserted that the *Alexion* decision "did not hold that consideration of those factors is never relevant."

Policyholder experts noted that since both cases ultimately made clear determinations on the key factor, there was uncertainty over predicting how Delaware courts would weigh secondary factors in a case with a more ambiguous relationship between alleged conduct.

"It's a multifactor plus, but there's no question that a lot of work, or most of the work, in most cases, is really being done at the surface at the first stage," said Bradley Nash, a policyholder attorney for Hoguet Newman Regal & Kenney LLP.

Neal Gerber's Bowen agreed that the first factor was the primary focus, but that the secondary factors could come into play as a tie-breaker if it wasn't clear whether the wrongful conduct was the same.

The Superior Court may have also created confusion over how to apply the factor test depending on what was being compared.

In a footnote, Judge Rennie acknowledged differences between the *Alexion* decision and his own, stating that the justices had taken on an "expanded standard" to determine the relationship between a notice of circumstances and a lawsuit, differing from the analysis in his own case, which only focused on litigation.

Bowen said that while the NAI analysis confined itself to the pleadings itself, the *Alexion* ruling criticized a lower court's treatment of a subpoena as a form of pleading and instead recognized that a notice listed all circumstances that may lead to a future claim, which was broader than the subpoena itself.

She added that while the most recent decision didn't especially clarify how future courts would apply their analyses, each decision on the issue offers a point of comparison.

"You're going to want to reason by analogy, so every additional decision applying these factors creates more clarity, and that creates this body of law you can use to determine how your case should play out," Bowen said.

For Emily Garrison, policyholder attorney at Morgan Lewis & Bockius LLP, two claims involving the same company will inevitably share facts, and the process of courts drawing the line between related and unrelated claims will involve some subjectivity.

"Figuring out where that line between tangential or meaningful linkage is, it's just not a bright-line test, and it'll continue to be clarified as more decisions come out that apply this meaningful linkage test," she told Law360.

Nash of Hoguet Newman said that policyholders and insurers can often trade places for supporting or opposing whether two claims are the same for the purpose of coverage depending on the facts and the policies, and that the NAI decision provided clarity for future disputes even beyond Delaware.

"I think it keeps people, hopefully, a little more intellectually honest because you don't know which side of this argument you're going to be on in the future," he said. "It's helpful that Delaware has articulated a clear standard of meaningful linkage, and I think that's going to influence the law in other jurisdictions as well."

--Additional reporting by Elizabeth Daley and Jeff Montgomery. Editing by Abbie Sarfo and Nick Petruncio.