

Wrongful Acts “Related” If there Is Factual Tie Between Acts

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The United States District Court for the Southern District of New York, applying New York law, held that the term “related” in a professional liability insurance policy is unambiguous and held that the insured's alleged wrongful acts are “related” if there is a factual tie or linkage between the wrongful acts. *Dormitory Auth. of N. Y. v. Cont'l Cas. Co.*, 2013 WL 840633 (S.D.N.Y. Mar. 5, 2013). The court also held that two errors in the design of a building's exterior wall were not factually linked because the genesis and manifestation of the design errors were distinct.

The insured, an architectural firm, was retained to assist with a building's design. During construction, the building owner demanded damages from the architectural firm for alleged deficiencies in the design of the building's exterior wall supports. After construction of the building, the building owner alleged that the use of corrugated panels and components on the building's sloped exterior caused the build-up of ice, which created hazardous conditions when falling from the building. The insurer contended that the claims for the design errors for the building support and ice build-up constituted related claims, which was defined as claims arising out of “related wrongful acts.”

The court first held that the term “related” was unambiguous and required a factual tie or linkage between wrongful acts. The court then held that there was no factual tie between the design errors because the errors were caused by two different design teams, involved different architectural considerations, resulted in separate harms and caused harm at different times. Rejecting the insurer's contention that the design errors were related because they both concerned the exterior wall, the court reasoned that there was no “factual linkage of one or more aspects of the design that gave rise” to the errors. In addition, the court held that generalized allegations of design errors in the claim made for alleged deficiencies in the exterior wall supports did not encompass “design errors relating to all aspects of the project or even the exterior wall” but only those specific design errors outlined in the claim.