IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

NATIONAL AMUSEMENTS, INC., NAI ENTERTAINMENT HOLDINGS LLC, and SHARI E. REDSTONE	)	
Plaintiffs	)	
v.	)	C.A. No. N22C-06-018-SKR CCLD
ENDURANCE AMERICAN SPECIALTY INSURANCE COMPANY, IRONSHORE INDEMNITY, INC., STARR INDEMNITY AND LIABILITY COMPANY, and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA	)	
Defendants.	)	

Submitted: November 25, 2024
Decided: February 17, 2025

Upon Plaintiffs' Motion for Summary Judgment
GRANTED

MEMORANDUM OPINION AND ORDER

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Rennie, J.

I. INTRODUCTION

This is an insurance coverage dispute based on previously resolved litigation. Plaintiffs seek coverage for a stockholder dispute that was settled in the Court of Chancery in 2019 (the "2019 Suit").[1] The 2019 Suit challenged the fairness of the shareholder compensation in a merger between Viacom and CBS (the "Merger"), two companies controlled by Plaintiffs.[2] Defendants, several insurance companies, deny that Plaintiffs' identical 2019 D&O insurance policies (the "2019 Policies"), entitle them to indemnification.[3] Among other contentions, Defendants argue that the claims arising out of the 2019 Suit were not "first made" during the 2019 Policies' coverage period.[4] Rather, Defendants assert that the 2019 Suit relates to earlier 2016 litigation.[5] Therefore, according to Defendants, Plaintiffs must seek indemnification under their 2016 D&O insurance policies (the "2016 Policies"), which generally provide less coverage.[6] Before the Court is Plaintiffs' Motion for Summary Judgment (the "Motion").[7] The Motion asks the Court to declare: (1) that the 2019

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[1] *See* Complaint ¶¶ 1-8, 90-113 (D.I. 1).
[2] *In re Viacom Inc. Stockholder Litigation*, 2020 WL 7711128, at *1-2 (Del. Ch. Dec. 29, 2020).
[3] *See* Defendants' Answering Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment on the Insurers' "Interrelated Claims" Counterclaims and Affirmative Defenses (hereafter "Endurance MSJ Opp'n") at 1-3 (D.I. 154).
[4] *See id.*
[5] *See id.*
[6] *See id.*
[7] *See generally* Plaintiffs' Brief in Support of Their Motion for Partial Summary Judgment on the Insurers' "Interrelated Claims" Counterclaims and Affirmative Defenses (hereafter "NAI MSJ") (D.I. 137).

Suit was a claim "first made" in 2019; and (2) that the 2019 Policies' "Pending and Prior Litigation" exclusion does not bar coverage.[8] For the reasons discussed below, the Court **GRANTS** Plaintiffs' Motion.

II. RELEVANT FACTS

A. The Merger and 2019 Suit

The Court directs the reader to previous Delaware Court decisions, including the 2019 Suit,[9] the Motion to Dismiss ruling,[10] and this Court's previous Motion for Partial Summary Judgment opinion[11] for a full recitation of the facts. Reproduced here are the facts most relevant to resolving the Motion.

Before the Merger, Viacom and CBS were separate companies each controlled by Plaintiff National Amusements, Inc. ("NAI"), which owned approximately 80% of the voting shares in each entity.[12] Plaintiff Shari E. Redstone owed 20% of NAI stock, served as Viacom's director, and sat as Non-Executive Vice Chair of both CBS's and Viacom's boards.[13] Her father, Sumner Redstone, owned the remaining

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[8] NAI MSJ at 1-3.
[9] *Viacom Stockholder Litigation*, 2020 WL 7711128, at *1-10.
[10] *National Amusements, Inc. v. Endurance Am. Spec. Insu. Co.*, 2023 WL 3145914, at *1-8 (Del. Super. Apr. 28, 2023).
[11] *Viacom Inc. v. U.S. Specialty Ins. Co.*, 2023 WL 5224690, at *1-4 (Del. Super. Aug. 10, 2023).
[12] *Viacom Stockholder Litigation*, 2020 WL 7711128, at *4-5.
[13] *Id.* at *5.

80% of NAI's stock.[14] Upon his death, however, control of NAI passed to Ms. Redstone.[15]

In 2016 and 2018, attempts to merge CBS and Viacom failed.[16] The 2016 "merger never left the starting gate," because CBS and NAI could not agree on who would control the resulting entity.[17] CBS engaged in defensive tactics to resist the 2018 merger attempt.[18] This resulted in litigation between CBS and NAI which ultimately settled.[19]

The Merger was consummated on December 4, 2019, effectuated by a Merger Agreement.[20] Viacom shares were converted "into CBS common stock at an exchange ratio of .59625."[21] The combined entity was renamed ViacomCBS Inc., later changed to Paramount Global.[22] After the Merger, "CBS shareholders own[ed] approximately 61% of ViacomCBS and former Viacom shareholders approximately 39%."[23] Describing the magnitude and finality of the combination, a Viacom Director stated that the Merger "

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[14] *Id.*
[15] *Id.*
[16] *Id.* at *6-8.
[17] *Id.* at *7.
[18] *Id.* at *8.
[19] *Id.*
[20] *Viacom*, 2023 WL 5224690, at *2.
[21] *Id.*
[22] *Id.*
[23] *Id.*

[24]

Beginning on November 25, 2019, former Viacom shareholders filed four lawsuits that were consolidated into the 2019 Suit.[25] The consolidated complaint alleged that the Merger consideration was "patently unfair to Viacom shareholders," because the exchange ratio "significantly overpriced CBS stock."[26] Specifically, the 2019 Suit alleged "breaches of fiduciary duty" by the Viacom directors who negotiated the Merger, Ms. Redstone, and NAI.[27] The 2019 plaintiffs sought economic damages based on the allegedly inadequate Merger consideration.[28]

The 2019 complaint decried the Merger as the culmination of Ms. Redstone's four-year scheme "to assume control of the media empire her father Sumner Redstone . . . built so that she can re-unify (and consolidate control over) the two Redstone 'family' businesses."[29] The 2019 Suit alleged that Ms. Redstone made her intentions clear after the failed merger attempts, stating "this Merger was going to happen regardless of" the mechanism needed to effectuate the transaction.[30] The 2019 complaint specifically challenged the "decision to forgo seeking a majority of the

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[24] Endurance MSJ Opp'n, Ex. H - .

[25] *Viacom Stockholder Litigation*, 2020 WL 7711128, at *1.

[26] NAI MSJ, Ex. 6 (hereafter "2019 Suit Compl.") ¶¶ 1-13.

[27] *Id.* ¶¶ 20-30, Count I-II.

[28] *Id.* ¶ 235.

[29] *Id.* ¶ 2.

[30] *Id.*

minority" vote to approve the Merger.[31] It alleged that decision "show[ed] Ms. Redstone's continued shadow over the entire process," because she also insisted on not conducting a majority of the minority vote in 2016, which tanked the deal.[32] After extensive discovery, the 2019 Suit settled before trial and the Court of Chancery approved the settlement.[33]

B. Plaintiffs' Quest for Coverage and the 2019 Policies

While the 2019 Suit was ongoing, Plaintiffs sought indemnification for their expected defense costs and any potential liability. Ms. Redstone and NAI requested an indemnification advancement from Viacom pursuant to several indemnity agreements, including a 2016 settlement agreement (the "2016 Agreement").[34] The 2016 Agreement resolved several of the 2016 lawsuits discussed below, and provided indemnification only for claims "arising from similar facts and circumstances."[35] In March 2022, two years after the indemnification request, Viacom agreed to indemnify NAI and Ms. Redstone ████ of the fees and costs incurred in the 2019 Suit.[36] Separately, Ms. Redstone sought indemnification under NAI's 2016 Policies.[37] This implicitly required her to argue that the 2019 Suit "alleged Wrongful

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[31] *Id.* ¶¶ 117, 204.
[32] *Id.* ¶¶ 75-76, 204.
[33] *In re Viacom Inc. Stockholder Litigation*, 2023 WL 4761807, at *2 (Del. Ch. July 25, 2023).
[34] *See* ACE MSJ Opp'n, Ex. G.
[35] NAI MSJ, Ex. 14 p. 13.
[36] Endurance MSJ Opp'n, Ex. E.
[37] Endurance MSJ Opp'n, Ex. A; NAI MSJ, Ex. 13.

Acts that are . . . Related Wrongful Acts to those alleged in the 2016 Lawsuits."[38] The 2016 Policies' insurers denied Ms. Redstone's claim, because although they agreed the 2016 coverage period applied, they determined that a policy exclusion barred reimbursement.[39] Similarly, Viacom sought indemnification for the 2019 Suit under its 2016 Policies.[40] Viacom's 2016 Policies insurers rejected the request, asserting that the 2019 Suit fell within the 2019 Policies.[41] Viacom responded that coverage for the 2019 Suit "should be treated as a claim first made under the [2016 policy]."[42] In making that argument Viacom made many of the same points Defendants raise concerning the applicability of the 2016 Policies.[43]

Plaintiffs now seek indemnification under the 2019 Policies.[44] It is undisputed that Plaintiffs are covered by the 2019 Policies, from various insurers, in varying amounts.[45] The contractual provisions relevant to resolving the Motion are identical across NAI's 2019 Policies, and across the materially similar Viacom 2019 Policies.[46] By way of representative example, Viacom's 2019 Policies state, insurers:

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[38] *Id.*
[39] *Id.*
[40] 2019 Defendants' Answering Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment, Ex. G (C.A. No. N22C-06-016 SKR CCLD D.I. 229).
[41] *See* Viacom Inc. n/k/a/ Paramount Global's Opening Brief in Support of its Motion for Partial Summary Judgment, Ex. J (C.A. No. N22C-06-016 SKR CCLD D.I. 210).
[42] 2019 Defendants' Answering Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment, Ex. H. at VIACOM_0000681-84 (C.A. No. N22C-06-016 SKR CCLD D.I. 229).
[43] *Id.*
[44] *See generally* Complaint.
[45] *See* NAI MSJ at 1-6; Endurance MSJ Opp'n at 1-7.
[46] *See* NAI MSJ at 3-6.

> shall pay on behalf of the Insured Persons all Loss for which the Insured Persons are not indemnified by the Company and which the Insured Persons become legally obligated to pay by reason of a Claim first made against the Insured Persons during the Policy Period [for any] Wrongful Acts.[47]

Viacom's 2019 Policies define "Wrongful Acts" as:

> any error, misstatement, misleading statement, act, omission, neglect, or breach of duty . . . actually or allegedly committed or attempted [by] any Insured Person in his or her capacity as such, or any matter claimed against any Insured Person solely by reason of his or her serving in such capacity.[48]

Especially relevant to the Motion, Viacom's 2019 Policies contain an "Interrelated Claims Provision," that states:

> [a]ll Claims arising out of the same Wrongful Act and all Interrelated Wrongful Acts of the Insureds shall be deemed to be one Claim, and such Claim shall be deemed to be first made on the date the earliest of such Claims is first made.[49]

Interrelated Wrongful Acts are defined in Viacom's 2019 Policies as "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."[50]

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[47] Plaintiff's Motion for Partial Summary Judgment on The Insurers' "Interrelated Claims" Counterclaims and Affirmative Defenses (hereafter "Redstone MSJ") (D.I. 214), Ex. 1 (hereafter "Viacom's 2019 Policies") § I(A).

[48] Viacom's 2019 Policies § II(X)(1).

[49] *Id.* § VII.A.

[50] *Id.* § II(L). NAI's 2019 Policies contain a similar "Interrelated Claims" clause and related definitions. *See* NAI MSJ, Ex. 2 § III(D) (Interrelated Claims are Claims "arising from" Interrelated Wrongful Acts); *id.* § I (N) ("Interrelated Wrongful Acts" are "Wrongful Acts that are based on, arising out of, resulting from, in consequence of or involving any of the same or related or series of

Additionally, Viacom's 2019 Policies' "Prior Notice Exclusion" bars coverage for:

> that portion of Loss in connection with a Claim … alleging, based upon, arising out of, or attributable to any Wrongful Act, fact, or circumstance which has been the subject of any written notice given and accepted under any other directors' and officers' liability or employment practices liability policy of which this Policy is a renewal or replacement.[51]

Additionally, the NAI excess 2019 Policies contain a "Pending and Prior Litigation" provision, a representative example of which bars coverage:

> in connection with any Claim alleging, arising out of, based upon or attributable to, as of the June 30, 2017 [sic] any pending or prior ... litigation ….[52]

C. The 2016 Lawsuits

Defendants contend that Plaintiffs are not owed indemnification under the 2019 Policies, because the 2019 Suit was based on "Wrongful Acts" first challenged in 2016.[53] Accordingly, Defendants argue that the Interrelated Claims Provision and Prior Notice Exclusion bar coverage.[54] Defendants identify four relevant 2016 suits.[55]

First, Defendants point to a suit in which former NAI board members

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related facts, transactions or events").
[51] Viacom's 2019 Policies § III(G).
[52] NAI MSJ, Ex. 4, Endorsement No. 5.
[53] *See* Endurance MSJ Opp'n at 1-3.
[54] *Id.* at 1-3; 23-35.
[55] *Id.* at 1 n.1.

challenged their removal from the board and as trustees to the Sumner Redstone Trust (the "Dauman Action").[56] The Dauman Action alleged that Sumner Redstone had become incapacitated and Shari Redstone took advantage of his condition to seize control of his companies.[57] The plaintiffs in the Dauman Action specifically argued that the NAI board members' removal was done to further Ms. Redstone's plans to seize control of Viacom and CBS.[58]

Second, Defendants identify a suit filed by NAI seeking declaratory judgment that it properly used written consents to amend Viacom's bylaws (the "225 Action").[59] The written consent at issue limited Viacom's ability to enter a deal involving Paramount Pictures, one of the company's most valuable assets.[60]

Third, Defendants point to an action challenging the removal of five directors from Viacom's board (the "Salerno Action").[61] The Salerno Action alleged that the directors were removed with "the clear intent of tipping the balance of power on the Board, which [would] impact decisions currently under consideration—most notably, the proper course for one of Viacom's most valuable assets, Paramount Pictures."[62] The 2016 Agreement settled the Salerno Action, 225 Action, and Dauman Action.[63]

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[56] See generally NAI MSJ, Ex. 8 (hereafter "Dauman Compl.").
[57] *See* Dauman Compl. ¶¶1-2.
[58] *Id.* ¶¶ 5, 8-9.
[59] *See generally* NAI MSJ, Ex. 9..
[60] *See* NAI MSJ, Ex. 10 (hereafter "Solerno Compl.") ¶ 20.
[61] *See generally* Solerno Compl.
[62] *Id.* ¶ 2.
[63] NAI MSJ, Ex. 14 at 13.

Finally, Defendants identify a suit filed by Viacom's Class B shareholders against the Plaintiffs here, Sumner Redstone, Viacom, and various Viacom directors (the "Class B Action" together with the Dauman Action, the 225 Action, and the Salerno Action, the "2016 Suits").[64] The Class B Action brought breach of fiduciary duties claims alleging that the defendants allowed an "incapacitated Sumner Redstone to remain as a director and controller of Viacom."[65] Additionally, the Class B Action claimed that Viacom was wrongly stripped of the "power to consummate a transaction involving Paramount Pictures without the prior written consent of Sumner Redstone."[66] It referenced a hypothetical CBS and Viacom merger as a possible transaction that Sumner Redstone lacked the capacity to pursue.[67] The Class B Action asked the Court to declare that Mr. Redstone was incapable of serving as a director and controller of Viacom, and that all actions taken by Mr. Redstone, NAI, and NAIEH since January 2016 were invalid.[68] This included challenging all the actions at issue in the Dauman Action, the 225 Action, and the Salerno Action. In July 2017, the Class B Action was dismissed by stipulation.[69]

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[64] *See generally* NAI MSJ, Ex. 11 (hereafter "Class B Compl.").
[65] Class B. Compl. ¶¶ 161-62.
[66] *Id.*
[67] *Id.* ¶¶ 111-15.
[68] Class B Compl. ¶ 179.
[69] *In re Viacom Class B Stockholder Litigation*, 2017 WL 2937810 (Del. Ch. July 7, 2017).

D. Procedural History

Plaintiffs initiated this action by filing their Complaint on June 2, 2022.[70] In August 2022, Defendants filed Answers to the Complaint.[71] These Answers prompted Plaintiffs to file a Motion to Dismiss.[72] The Court granted in part, and denied in part that Motion.[73] The Court denied the Motion to Dismiss regarding the relatedness issue that is the subject of the Motion.[74] While expressing skepticism that the claims were related,[75] the "minimal" pleading standard compelled the court to permit "limited discovery."[76] In August 2024, after limited discovery, the Plaintiffs moved for summary judgment.[77] Defendants filed a brief opposing the Motion on August 28, 2024.[78] Plaintiffs filed their Reply brief on November 11, 2024.[79] The

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[70] *See generally* Complaint (hereafter "Compl.") (D.I. 1).

[71] *See generally* Defendant Endurance American Specialty Insurance Company's Answer and Affirmative Defenses to Plaintiffs' Complaint and Counterclaims for Declaratory Judgment (D.I. 33); Answer of National Union Fire Insurance Company of Pittsburg, PA (D.I 34); Defendant Ironshore Indemnity, Inc.'s Answer and Affirmative Defenses to Plaintiffs' Complaint and Counterclaims for Declaratory Judgment (D.I. 35); Defendant Starr Indemnity Company's Answer and Affirmative Defenses to Plaintiff's Complaint and Counterclaims for Declaratory Judgment (D.I. 36).

[72] Plaintiffs' Motion to Dismiss Relation-Back Counterclaims and to Strike Relation-Back Affirmative Defenses (D.I. 58).

[73] *See National Amusements*, 2023 WL 3145914, at *1.

[74] *Id.* at *1, *10-11.

[75] *See id.* at *9.

[76] *Id.* at *9-11.

[77] *See generally* NAI MSJ.

[78] *See generally* Defendants' Answering Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment on the Insurers' "Interrelated Claims" Counterclaims and Affirmative Defenses (hereafter "Endurance MSJ Opp'n") at 20-22, (D.I. 154).

[79] *See generally* Reply Brief in Further Support of Plaintiffs' Motion for Partial summary Judgment on the Insurers' "Interrelated Claims" Counterclaims and Affirmative Defenses (hereafter "NAI MSJ Reply") (D.I. 157).

Court held oral argument on November 25, 2024,[80] and the matter is now ripe for decision.

III. STANDARD OF REVIEW

Summary Judgment is appropriate if the record "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[81] The movant has the burden to show that its motion is supported by the undisputed facts.[82] If successful, "the burden shifts to the non-movant to demonstrate that a genuine issue for trial still exists."[83] The Court "views the facts and draws all reasonable inferences in the light most favorable to the non-movant."[84] On a motion for summary judgment, "[t]he Court only determines whether genuine issues of material fact exist, and does not decide such issues."[85] Summary judgment "is particularly appropriate in matters of insurance contract interpretation because interpretation of an insurance policy is a question of law for the court."[86]

The Court may refuse to grant summary judgment, or order a continuance to

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[80] Judicial Proceeding Worksheet for Mon. Nov. 25, 2024 (D.I. 168).
[81] Del. Super. Ct. R. 56(c).
[82] *Valley Forge Ins. Co. v. National Union Fire Ins. Co. of Pittsburg, Pa.*, 2012 WL 1432524, at *2-3 (Del. Super. Mar. 15, 2012).
[83] *Id.*
[84] *Id.* (citing *Envolve Pharmacy Sols., Inc. v. Rite Aid Headquarters Corp.*, 2023 WL 2547994, at *7 (Del. Super. Mar. 17, 2023).
[85] *Id.* (citing *Merrill v. Crothall-American Inc.*, 606 A.2d 96, 99 (Del. 1992)).
[86] *Id.* at *6 (citing *Stonewall Ins. Co. v. E.I. du Pont de Nemours & Co.*, 996 A.2d 1254, 1258-59 (Del. 2010)).

permit greater discovery, if "it appear[s] from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition."[87]

IV. DISCUSSION

As an initial matter, Defendants argue that the Motion is procedurally improper under Rule 56(f).[88] If the Motion is procedurally proper, Plaintiffs ask the Court to grant summary judgment, holding that neither the 2019 Policies' Interrelated Claims Provision nor the Prior Notice Exclusion bar coverage for the 2019 Suit.[89] Specifically, Plaintiffs ask the Court to conclude that the 2019 Suit is not related to the same Wrongful Acts alleged in the 2016 Suits.[90] The Court addresses each argument in turn.

A. Rule 56(f) Does Not Prevent the Court from Addressing the Motion's Merits.

Defendants argue that Rule 56(f) prevents the Court from ruling on the merits of the Motion.[91] Rule 56(f) provides:

> Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other

[87] Del. Super. Ct. Civ. R. 56(f).
[88] Endurance MSJ Opp'n at 20-22.
[89] *See id* at 1-3.
[90] *Id.*
[91] Endurance MSJ Opp'n at 18-22.

order as is just.[92]

Defendants contend that Plaintiffs have not produced all "materials relevant to the 'interrelatedness' issue."[93] Specifically, Defendants argue that Plaintiffs failed to produce documents related to NAI and Ms. Redstone's request for an indemnification advancement from Viacom for the 2019 Suit under the 2016 Agreement.[94] Defendants identify several forms of evidence they contend need to be disclosed before the Court can rule on summary judgment.[95] This includes emails between NAI and its defense counsel,[96] Plaintiffs' communications with law firms,[97] and depositions of 17 additional individuals.[98] Defendants argue that this evidence shows Plaintiffs made previous statements inconsistent with their current argument that the 2019 Suit does not relate to the 2016 Suits.[99]

Plaintiffs respond that no further discovery is warranted and assert three arguments in support.[100] First, Plaintiffs contend that the "limited discovery" authorized in the Court's previous decision, is complete and was certified as such in the Court's prior discovery dispute ruling.[101] Second, Plaintiffs argue that the

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[92] Del. Super. Ct. Civ. R. 56(f).
[93] Endurance MSJ Opp'n at 20.
[94] *Id.* at 21.
[95] *See* Affidavit of Brandon D. Almond (hereafter "Almond Affidavit") ¶¶53-98.
[96] *Id.* ¶¶ 53-74, 90-98.
[97] *Id.* ¶¶ 75-83.
[98] *Id.* App'x A.
[99] Endurance MSJ Opp'n at 20-22.
[100] NAI MSJ Reply at 16-23.
[101] *Id.* at 17 (citing NAI MSJ Reply, Ex. 20 at 33, 44, 62).

additional discovery Defendants seek is privileged work product, irrelevant, and unduly burdensome.[102] Finally, Plaintiffs assert that Defendants failed to diligently pursue their requested additional discovery.[103] Plaintiffs' arguments carry the day.

At the threshold, the Court notes that Defendants appear to have not diligently pursued the additional discovery they seek. Delaware courts have consistently rejected Rule 56(f) requests where a proponent "had ample time to engage in any discovery it might have needed."[104] That is especially true when the additional discovery sought includes numerous depositions.[105] Defendants' conclusory allegations that they "first learned" of the documents they now seek "in August of 2024" is unavailing.[106] Defendants identify no specific facts that first arose in August 2024, which suddenly revealed to them the need to depose 17 additional individuals. That Defendants sat on their rights to seek the requested discovery suggests that their Rule 56(f) argument is not meritorious.[107]

Additionally, the Court finds Defendants' argument that Plaintiffs "withheld" discoverable material unconvincing.[108] After Defendants disputed Plaintiffs certification that discovery was complete, this Court held that Plaintiffs "compl[ied]"

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[102] *Id.* at 18-21.
[103] *Id.* at 22-23.
[104] *See, e.g.*, *Corkscrew Min. Ventures, Ltd. v. Preferred Real Estate Investments, Inc.*, 2011 WL 704470, at *6 (Del. Ch. Feb. 28, 2011) (denying a Rule 56(f) request on that basis alone).
[105] *See, e.g.*, *Szubielski v. Centurion*, 2022 WL 2818872, at *4 (Del. Ch. July 19, 2022).
[106] Almond Affidavit ¶68.
[107] *See Corkscrew*, 2011 WL 704470, at *6.
[108] *See* Endurance MSJ Opp'n at 20-22.

with its previous discovery directives and told Plaintiffs to respond to Defendants' newly raised requests.[109] Plaintiffs complied with that order, and Defendants did not challenge the sufficiency of any supplemental discovery.[110] The fact that Defendants "failed to discover credible evidence [in the supplemental discovery] to support" their argument, militates against denying or staying the Motion under Rule 56(f).[111]

The Court also agrees with Plaintiffs' argument that Defendants' request for additional discovery intrudes on privilege and is unduly burdensome. Defendants seek internal communications between NAI and its defense counsel regarding the relatedness of the 2019 Suit and 2016 Suits,[112] *the exact question at issue here*.[113] Indeed, the Court previously held that many of the documents Defendants request, are protected by privilege.[114] The Delaware Supreme Court recently reaffirmed the principle that Rule 56(f) does not provide a mechanism for parties to get backdoor

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[109] NAI MSJ Reply, Ex. 20 at 33, 44, 62.
[110] Affidavit of Lucas Moench in Support of NAI MSJ Reply (hereafter "Moench Affidavit") ¶¶ 26-31.
[111] *Wharton v. Worldwide Dedicated Services*, 2007 WL 1653131, at *2 (Del. Super. May 31, 2007).
[112] Almond Affidavit ¶¶ 53-74, 90-98.
[113] Though not raised by any party, the Court concludes the "rare and discretionary" at-issue exception to attorney-client privilege does not apply. *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 2008 WL 498294, at *4 (Del. Super. Jan. 14, 2008) (citing *Wolhar v. GMC*, 712 A.2d 457, 463 (Del. Super. 1997). The at-issue exception only applies "when either the party put the communication itself at issue, or when the issue raised by the party cannot be resolved without examining the attorney-client protected communication." *Id.* (citing *Fitzgerald v. Cantor*, 1999 WL 64480, at *2-3 (Del. Ch. Jan. 28, 1999)). Defendants have not shown either of those conditions apply such that the at-issue exception abrogates the attorney-client privilege's protection of the requested documents.
[114] Order Regarding Defendants Motion to Compel ¶ 4 (Apr. 12, 2024) in C.A. No. N22C-06-018 SKR CCLD, D.I. 133.

access to privileged documents.[115] Similarly, Defendants provide no non-conclusory reasons for why they need to engage in the burdensome task of deposing 17 additional individuals. Moreover, the blanket request to depose all those individuals, many of whom are Plaintiffs' defense counsel, is overbroad given that the Court previously ordered only "limited discovery" on the relatedness issue.[116] Thus, Rule 56(f) does not compel denying or staying the Motion.[117]

B. Plaintiffs' Indemnification Claims Regarding the 2019 Suit Did Not "First Arise" in 2016.

Having determined the Motion is procedurally proper, Plaintiffs ask the Court to grant summary judgment holding that the 2016 Suits and 2019 Suit are not "Interrelated Claims."[118] Plaintiffs contend that the suits are not "meaningfully linked" because they: involve "substantially different . . . Wrongful Acts";[119] were based on "materially" different "legal theories"[120] sought "different relief";[121]

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[115] *See Zurich Am. Ins. Co. v. Syngenta Crop Protection LLC*, 314 A.3d 665, 683 (Del. 2024) ("We decline Zurich's invitation to prolong this case so that it can peek into Syngenta's privileged communications.").
[116] *See National Amusements*, 2023 WL 3145914, at *10.
[117] *See Options Clearing Corp. v. U.S. Specialty Ins. Co.*, 2021 WL 5577251, at *8 (Del. Super. Nov. 30, 2021) (denying insurer 56(f) request for discovery of communications "beyond the pleading documents," and granting insureds' summary judgment on lack of relatedness).
[118] *Id.*
[119] NAI MSJ at 23-25 (the 2019 Suit challenging the fairness of the merger price and the 2016 Suits questioning Sumner Redstone's capacity and challenging a variety of board governance and control decisions) (citing *National Amusements*, 2023 WL 3145914, at *9).
[120] *Id.* at 25 (the 2019 Suit alleged breaches of fiduciary duties, and the 2016 Suits asserted a theory that the late Mr. Redstone was not fit to serve as a corporate director.).
[121] *Id.* at 25-26 (the 2019 Suit sought damages, and the 2016 Suits sought declaratory and injunctive relief).

"'challenged conduct occurring in different time periods'";[122] and involved different "material facts."[123] Defendants respond that the claims are interrelated, because they "have a common nexus of any fact," and reference a "series" of events.[124] They argue that a series of events exists because both the 2019 Suit and the 2016 Suits related to "Shari Redstone's alleged scheme to seize control of the boards of NAI, Viacom, and CBS in order to force CBS and Viacom to combine."[125] Defendants note that the Class B Action specifically mentioned a CBS/Viacom merger.[126] Additionally, Defendants argue that both the 2019 Suit's allegations and Plaintiffs' previous indemnification efforts support their position.[127]

Whether claims are interrelated "is decided by the language of the policy."[128] Hence, the starting place for determining if claims are interrelated is interpreting the insurance contract at issue.[129] The principles of insurance contract interpretation are well-settled:

> Under Delaware law, insurance policies are construed as a whole, to give

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[122] *Id.* at 26 (quoting *National Amusements*, 2023 WL 3145914, at *9 (the 2019 Suit delt with a merger negotiated in 2019, and the 2016 Suits challenged governance decisions from in and around 2016.).

[123] *Id.* at 26-27 (the 2019 Suit focused on alleged evidence relating to negotiations of the 2019 merger, and the 2016 Suits focused on the late Mr. Redstones alleged incapacity and Ms. Redstone's alleged undue influence.).

[124] Endurance MSJ Opp'n at 6, 23-27, 30-31.

[125] *Id.* at 31.

[126] *Id.* at 25-17.

[127] *Id.* at 20-22, 28-30.

[128] *First Solar, Inc. v. National Union Fire Ins. Co. of Pittsburgh, Pa*, 274 A.3d 1006, 1013 (Del. 2022).

[129] *National Amusements*, 2023 WL 3145914, at *9.

> effect to the intentions of the parties. When the language of an insurance policy is clear and unambiguous, the parties' intent is ascertained by giving the language its ordinary and usual meaning. An insurance policy is not ambiguous merely because the parties do not agree on its construction. Rather, a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings. Delaware courts will not destroy or twist the words of a clear and unambiguous insurance contract.[130]

While the insured "bears the burden of proving a claim is covered,"[131] the insurer had the burden "to show an exclusion applies."[132]

Here, the 2019 Policies are the relevant contracts. Viacom's 2019 Policies preclude coverage for claims that "aris[e] out of . . . Interrelated Wrongful Act[s]," first asserted before the 2019 Policies' coverage period.[133] An "Interrelated Wrongful Act" is defined as "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."[134] Thus, the question before the Court is whether the 2016 Suits and 2019 Suit are "Interrelated Wrongful Act[s]."

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[130] *In re Solera Ins. Coverage Appeals*, 240 A.3d 1121, 1131 (Del. 2020) (internal quotations omitted).
[131] *Zurich Am. Ins. Co. v. Syngenta Crop Protection, LLC*, 2020 WL 5237318, at *5 (Del. Super. Aug. 3, 2020).
[132] *Origis USA LLC v. Great American Insurance Company*, 2024 WL 2078226, at *4 (Del. Super. May 9, 2024).
[133] Viacom's 2019 Policies § VII(A).
[134] *Id.* § II(L). The operative policy language in NAI's 2019 Policies is similar, as discussed above. *See* NAI's 2019 Policies, §§ I(N), III(D).

While "[r]elatedness inquiries are not governed by a single generic standard . . . insurers are creatures of habit, and certain phrases tend to recur."[135] The Delaware Supreme Court has defined "'arising out of' to mean 'some meaningful linkage' in the insurance policy context."[136] Here, the Interrelated Claim Provision, for both the NAI and Viacom policies, uses the "arising out of" language, so for claims to be interrelated they must have "some meaningful linkage."[137]

To determine if a meaningful linkage exists, courts compare the pleadings in the two suits at issue.[138] The Supreme Court of Delaware recently stated the primary factor which determines whether two claims are meaningfully linked, is if they

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[135] *Alexion Pharm. Inc. v. Endurance Assur. Corp.*, 2024 WL 639388, at *7 (Del. Super. Feb. 15, 2024), *rev'd on other grounds*, *In re Alexion Pharmaceuticals, Inc. Insurance Appeals*, 2025 WL 383805 (Del. Feb. 4, 2025).

[136] *Immunomedics, Inc. v. Hudson Ins. Co.*, 2024 WL 1235407, at *11 (Del. Super. Mar. 18, 2024) (quoting *First Solar*, 274 A.3d at 1014 n. 51); *See also In re Alexion*, 2025 WL 383805, at *6 ("we agree with the Superior Court that 'meaningful linkage' is the appropriate standard of comparison."); *Sycamore Partners Mgmt., L.P. v. Endurance Am. Ins. Co.*, 2021 WL 4130631, at *12 (Del. Super. Sept. 10, 2021) (discussing other phrases similar to "arising out of" where Delaware courts have applied the "meaningful linkage" standard.).

[137] *See In re Alexion*, 2025 WL 383805, at *6 (applying the "meaningful linkage" standard to contractual language almost identical to the 2019 Policies'); *First Solar*, 274 A.3d at 1014 n. 51 (same); *Options Clearing*, 2021 WL 5577251, at *8 (same); *Immunomedics*, 2024 WL 1235407, at *7 (same).

[138] *First Solar*, 274 A.3d at 1014. Notably, unlike the Supreme Court of Delaware's recent *In re Alexion* decision, which considered the interrelatedness of a lawsuit and a "notice of circumstances that may give rise to a claim," this case requires the Court to determine whether two lawsuits are interrelated. *In re Alexion*, 2025 WL 383805, at *6-7; *See* NAI MSJ at 1-3. In *In re Alexion* the Supreme Court of Delaware expressly criticized the lower court for "treating the 2015 Notice as a claim," which improperly "narrowed the scope of the inquiry to the wrongful acts alleged in the [later issued subpoena at issue]." *In re Alexion*, 2025 WL 383805, at *7. Therefore, that the relatedness analysis in *In re Alexion* was broadened by the fact that one of the claims at issue was a notice, rather than a lawsuit, that expanded standard is not applicable here.

"involve the same conduct."[139] Beyond the relatedness of the underlying conduct, courts also consider, "(1) the parties, (2) the relevant time period, . . . ([3]) [a] sampling of relevant evidence, and ([4]) the claimed damages."[140] While "absolute identity is not required,"[141] a "tangential link" is insufficient.[142] Thus, "it is not enough for the two claims to mention some of the same facts."[143] The Delaware Supreme Court has "instructed lower courts to implement 'meaningful linkage' in a coverage context broadly, where possible, to find coverage."[144] Thus, ambiguity is resolved in favor of finding coverage.[145] Here, comparing the pleadings in the 2019 Suit and 2016 Suits shows that the claims are not interrelated.[146]

The primary relatedness factor–the conduct underlying the 2019 Suit and Class B Action–weighs in favor of finding the claims are not meaningfully linked. On the surface, the complaints seem to suggest the opposite result. Both assert claims for

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[139] *In re Alexion*, 2025 WL 383805, at *7.

[140] *Immunomedics*, 2024 WL 1235407, at *12. While the *In re Alexion* court stated that "[b]ecause both the SEC investigation and the Securities Class Action involve the same conduct, it does not matter whether the SEC and the stockholder plaintiffs are different parties, asserted different theories of liabilities, or sought different relief," it did not hold that consideration of those factors is never relevant. *In re Alexion*, 2025 WL 383805, at *7. Indeed, immediately after making that statement the Supreme Court of Delaware went on to briefly analyze the relatedness of the parties, time-periods, and theories of liability in the two claims at issue. *Id.*

[141] *Id.* at 1016.

[142] *In re Alexion*, 2025 WL 383805, at *6-7.

[143] *Options Clearing*, 2021 WL 5577251, at *8.

[144] *Id.* (citing *Pac. Ins. Co. v. Liberty Mut. Ins. Co.*, 956 A.2d 1246, 1256-57 & n.42 (Del. 2008)).

[145] *Id.*

[146] Rather than comparing the 2019 Suit with each of the 2016 Suits, for the brevity's sake the Court compares the 2019 Suit with the Class B Action, which included allegations relating to the wrongful conduct alleged in the other 2016 Suits.

"Breach of Fiduciary Duty" against the relevant corporate controllers.[147] Looking beyond the titles of the claims, however, shows that the suits challenge distinct wrongful acts and involve different legal theories. The 2019 Suit "challenged the fairness of the merger price" while the Class B Action "questioned Sumner Redstone's capacity and challenged a variety of board governance and control decisions."[148] More specifically, the theory of liability in the 2019 Suit was that the Viacom and CBS boards systematically, and for Ms. Redstone's benefit, ignored CBS's financial difficulties and undervalued Viacom's stock.[149] The 2019 Suit alleged that such conduct breached fiduciary duties and resulted in inadequate consideration for Viacom stockholders.[150] Conversely, the Class B Action's theory of liability was that Sumner Redstone–despite remaining in control of NAI, Viacom, and CBS in name–lacked capacity and was improperly influenced by Ms. Redstone.[151] The Class B Action sought to invalidate actions taken by the companies while Sumner Redstone lacked capacity yet technically remained in control.[152] Thus, despite both alleging breaches of fiduciary duty, the suits challenged different acts and involved different legal theories. Accordingly, the most important

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[147] 2019 Suit Compl. Count I-III; Class B Compl. Count I.
[148] *National Amusements*, 2023 WL 3145914, at *9.
[149] *See* 2019 Suit Compl. ¶¶ 113-200.
[150] *Id.* ¶¶ 213-219, 230-244.
[151] *See* Class B Compl. ¶¶ 34-91.
[152] *Id.* ¶¶ 92-141.

meaningful linkage factor supports finding that the two suits are not related.[153]

The second factor–the parties in the 2019 Suit and Class B Action–does not squarely support either side's interrelatedness argument. NAI, NAI Entertainment Holdings LLC ("NAIEH"), Ms. Redstone, and numerous Viacom directors[154] were named in both lawsuits.[155] Critically, however, the Class B Action named Sumner Redstone as defendant and levied most of its allegations against him.[156] Additionally, the plaintiffs in both actions were slightly different. The Class B Action plaintiffs were a specific set of Viacom stockholders,[157] while the 2019 Action plaintiffs represented all Viacom stockholders.[158] At bottom, there was substantial overlap in the parties to the two actions, but a critical defendant in one was not named in the other. Hence, this factor does not support either parties' relatedness position.[159]

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[153] *See First Solar*, 274 A.3d at 1015 (concluding the third factor weighed in favor of relatedness because "[b]oth Action allege violations of the same federal securities laws," and asserted theories with only "minor differences."); *Sycamore*, 2021 WL 4130631, at *13 (finding that two suits were not related when one challenged board actions "not the Merger," and the other "sought to avoid the Merger as improperly approved.").
[154] The Court notes that there is little overlap in the specific directors named in the two suits. This, however, is unsurprising because the composition of Viacom's board changed between 2016 and 2019. Because the Board members were named in their capacity as directors at Viacom, rather than as individuals, that the specific names are different is only tangentially relevant to the interrelatedness issue.
[155] 2019 Suit Compl. ¶¶ 17-30; Class B Compl. ¶¶ 13-33.
[156] Class B Compl. ¶¶ 23, 34-71.
[157] *Id.* ¶ 12.
[158] 2019 Suit Compl. ¶ 14.
[159] *See Immunomedics*, 2024 WL 1235407, at *12 (finding the first factor weighed against relatedness when a critical party was only "a nominal defendant" in one of the suits). *But see First Solar*, 274 A.3d at 1014 (finding the first factor weighted in favor of relatedness when there were only minimal differences in the parties to the two actions).

The third factor–the suits' time periods–slightly supports the conclusion that the claims are not interrelated. The 2019 Suit challenged the Merger, negotiated in 2019 and announced on August 13, 2019.[160] In comparison, the Class B Action challenged "a variety of board governance and control decisions that were proposed or employed in and around 2016."[161] That being said, the 2019 complaint is not devoid of references to facts before 2019. Indeed, the 2019 complaint describes the Merger as "long-anticipated yet much-maligned,"[162] and references conduct in 2016 that formed the basis of the 2016 Suits.[163] The majority of the 2019 complaint, however, deals with actions after 2016.[164] Accordingly, this factor weights slightly in favor of finding the suits are not meaningfully linked.[165]

The fourth factor–a sampling of the relevant evidence in the suits–also supports finding that they are not related. Because the Class B Action primarily challenged Sumner Redstone's capacity, the complaint makes clear that the relevant evidence pertained to his mental capability and Ms. Redstone's improper influence on the Viacom, CBS, and NAI boards.[166] The 2019 Suit focused on the Merger

[160] *See* 2019 Suit Compl. ¶¶ 9, 113-18, 213-219.
[161] *National Amusements*, 2023 WL 3145914, at *9.
[162] 2019 Suit Compl. ¶ 1.
[163] *See* 2019 Suit Compl. ¶¶ 2-6, 42-58.
[164] *See id.* ¶¶ 80-227.
[165] *See Immunomedics*, 2024 WL 1235407, at *12 (finding the second factor weighed against relatedness when there was no overlap in the time periods of the relevant allegations). *But see First Solar*, 274 A.3d at 1014 (finding the second factor weighted in favor of relatedness when the time period of one suit was fully contained in the time period of the other's allegations).
[166] *See* Class B Compl. ¶¶ 40-91, 116-141.

negotiations.[167] Thus, the relevant evidence dealt with the valuation of CBS and Viacom, as well as the process by which the boards negotiated and approved the Merger.[168] While there is some overlap, most of these pools of evidence are distinct, in no small part, because much of the evidence in the 2019 Suit did not exist when the Class B Action was filed in 2016. Hence, the fourth factor supports finding the two suits are not meaningfully linked.[169]

The result is the same regarding the fifth factor–the damages claimed in each suit. The 2019 suit sought "monetary damages" to compensate the Viacom shareholders who were allegedly underpaid in the Merger.[170] The Class B Action primarily requested "declaratory" and "injunctive relief" to undo or affirm governance decisions.[171] As such, the fifth factor supports concluding that the 2019 Suit and Class B Action are not meaningfully linked.[172]

Because the 2019 Suit and 2016 Suits challenged different "underlying wrongful acts," they are not meaningfully linked.[173] If there was any remaining doubt

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[167] *See* 2019 Suit Compl. ¶¶ 69-227.
[168] *See id.*
[169] *See Immunomedics*, 2024 WL 1235407, at *12 (finding the fourth factor did not supported relatedness where "there is very little, if any, overlap between what could be considered relevant evidence to the [two actions].").
[170] 2019 Suit Compl. ¶¶ 230-44, Prayer for Relief.
[171] Class B Compl. ¶¶ 160-179, Prayer for Relief.
[172] *See Immunomedics*, 2024 WL 1235407, at *13 (concluding the fifth factor did not support finding relatedness when one action sought injunctive relief to prevent "substantial harm to the company itself" while the other sought monetary damages for "economic losses in the form of devalued stock that was purchased at artificially high prices.").
[173] *In re Alexion*, 2025 WL 383805, at *6-7.

concerning the relatedness of the 2019 and 2016 Suits, the other meaningful linkage factors also support finding the claims are not interrelated. Hence, the Court holds the 2019 Suit and 2016 Suits are not "Interrelated." This conclusion is in sync with the Court's early intuition on the interrelatedness issue.[174] Defendants' contention that the Court of Chancery's decision in the 2019 Suit compels a different result, is unavailing.[175] As this Court previously stated, "the Court of Chancery already expressly concluded that the plaintiffs in the Merger Litigation were not bringing claims relating to the 2016 Actions, but simply 'stating facts relating to those actions' to support their new claims."[176] Defendants two other arguments about why the suits are related also fail.

First, Defendants contend that while the specifics of the 2019 Suit and the 2016 Suits may be different, both are related to "Shari Redstone's alleged scheme to seize control of the boards of NAI, Viacom, and CBS in order to force CBS and Viacom to combine."[177] They note the 2019 Policies' definition of "Interrelated Wrongful

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[174] *National Amusements*, 2023 WL 3145914, at *9 ("The NAI Policyholders' argument that the 2016 Actions and the Merger Litigation are not based on Interrelated Wrongful Acts and do not fall within the PPL Exclusion is a compelling one. There are substantial differences between the Merger Litigation, which challenges the fairness of the merger price, and the 2016 Actions, which questioned Sumner Redstone's capacity and challenged a variety of board governance and control decisions that were proposed or employed in and around 2016. Among other differences, the two groups of actions made different claims, sought different relief, and challenged conduct occurring in different time periods.").
[175] Endurance MSJ Opp'n at 28-30.
[176] *National Amusements*, 2023 WL 3145914, at *9 (quoting *In re Viacom Inc. Stockholder Litigation*, 2020 WL 7711128, at *17 n. 197).
[177] Endurance MSJ Opp'n at 31.

Acts," contains language about a "series," which includes such a scheme.[178] Delaware courts have rejected similar arguments that allegations of a "pattern of misconduct" means cases are necessarily "meaningful[ly] link[ed]."[179] Thus, Defendants' "scheme" argument does not overcome the fact that the factors the Supreme Court of Delaware outlined to determine relatedness, weigh against finding the that 2019 and 2016 Suits are interrelated.

Second, Defendants argue that Plaintiffs took actions prior to filing this suit, which are inconsistent with the position that the 2019 Suit and 2016 Suits are related.[180] For example, Defendants argue that in their request for an indemnification advancement from Viacom, both NAI and Ms. Redstone represented that the 2019 Suit was related to allegations in the 2016 Suits.[181] Defendants contend that the Court can consider this evidence, which falls outside the 2019 Policies' text, under the Delaware Supreme Court's ruling in *First Solar*.[182] Defendants reliance on *First Solar* for that proposition, however, is misplaced. The *First Solar* court stated it could "rely on what [the insured] said about the two Actions when insurance coverage was not at issue," only "if there is any remaining doubt about relatedness under the

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[178] *Id.* at 30-31.
[179] *Immunomedics*, 2024 WL 1235407, at *13; *see also Sycamore*, 2021 WL 4130631, at *14 (rejecting a similar argument that the fact the first challenged action "was a precursor to the [other challenged action] or that the [first challenged actions] were cited in the [later suit] is not dispositive because the [first challenged actions] did not form the basis of the [first suit]."
[180] *See* Endurance MSJ Opp'n at 20-22, 32.
[181] *Id.*; *see* Endurance MSJ Opp'n, Ex. A; NAI MSJ, Ex. 13.
[182] Endurance MSJ Opp'n at 32.

[policy's] language."[183] Here, all the *First Solar* factors are either neutral or weigh in favor of finding that the claims are not related. Moreover, the primary relatedness fact – whether the claims deal with the same underlying conduct – supports the conclusion that the 2016 and 2019 Suits are not meaningfully linked. Accordingly, there is no "remaining doubt" that the 2016 Suits and 2019 Suit are not related such that the Court can consider Defendants' extrinsic evidence. Because the 2016 Suits and 2019 Suit are not "Interrelated Claims," the Court **GRANTS** Plaintiffs' Motion for Summary Judgment on the relatedness issue.

C. The 2019 Policies' "Prior Notice" and "Pending or Prior Litigation" Exclusions Do Not Bar Coverage for the 2019 Suit.

Viacom's 2019 Policies bar coverage in connection with claims "alleging, based upon, arising out of, or attributable to any Wrongful Act, fact, or circumstance which has been the subject of any written notice given and accepted."[184] NAI's 2019 Policies also contain a "Prior Notice Exclusion." The Court previously granted Plaintiffs' motion to dismiss Defendants' defense/counterclaim that argued NAI's 2019 Policies' "Prior Notice Exclusion" barred any coverage.[185] In granting that motion, the court stated "it is apparent from the record that the plain language of that exclusion does not apply in this case."[186] The parties present no new argument

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[183] *First Solar*, 274 A.3d at 1017.
[184] Viacom's 2019 Polices § III(G).
[185] *National Amusements*, 2023 WL 3145914, at *1.
[186] *Id.*

suggesting the Court should revisit its prior ruling.

Even absent the previous Motion to Dismiss, the "Prior Notice Exclusion['s]" plain text shows that it also requires a "meaningful linkage" between the noticed litigation and the suit at issue, for coverage to be barred.[187] As discussed above, there is no meaningful linkage between the 2016 Suits and the 2019 Suit. Therefore, the Prior Notice Exclusion does not bar coverage for the 2019 Suit.[188] The Court **GRANTS** Plaintiffs' Motion for Summary Judgment on the Prior Notice and Pending or Prior Litigation Exclusion issue.

V. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment, is hereby **GRANTED**.

IT IS SO ORDERED.

Sheldon K. Rennie, Judge

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[187] *See In re Alexion*, 2025 WL 383805, at *6-7 (construing nearly identical language to require a meaningful linkage); *Options Clearing*, 2021 WL 5577251, at *8 (same).

[188] For the same reasons, the Court reaches the same conclusion as to the NAI excess 2019 Policies' "Pending or Prior Litigation" exclusion.