FILED
United States Court of Appeals
Tenth Circuit

October 16, 2023

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

AMERICAN SOUTHWEST MORTGAGE CORP.; AMERICAN SOUTHWEST MORTGAGE FUNDING CORP.,

Plaintiffs - Appellees/Cross-Appellants,

v.

CONTINENTAL CASUALTY COMPANY,

Defendant - Appellant/Cross-Appellee.

Nos. 22-6071 & 22-6075

Appeals from the United States District Court
for the Western District of Oklahoma
(D.C. No. 5:20-CV-00422-PRW)

Richard A. Simpson, Wiley Rein LLP (Pamela L. Signorello, Wiley Rein LLP, and Roger N. Butler, Jr., Secrest Hill Butler & Secrest, with him on the briefs), for Defendant - Appellant/Cross Appellee

George S. Freedman, Spencer Fane LLP (Andrew W. Lester, Spencer Fane LLP, with him on the briefs), for Plaintiffs - Appellees/Cross Appellants

---

Before **McHUGH**, **KELLY**, and **EID**, Circuit Judges.

EID, Circuit Judge.

This case involves a diversity dispute over insurance coverage. American Southwest Mortgage Corporation and American Southwest Mortgage Funding Corporation (together, "the Lenders") loaned money to First Mortgage Company, LLC. Robinson Gary Johnson & Associates, PLLC (the "Auditor") audited First Mortgage's finances for several years. The Auditor's annual reports failed to note that First Mortgage was committing fraud. The Lenders sued the Auditor, and the Auditor's insurer, Continental Casualty, Inc., defended the suit. The parties settled some claims. The district court held that each negligently conducted audit report was not "interrelated" to each other, while also holding that the Lenders' claims on each audit in the same year were "interrelated." Both sides appealed.

Exercising jurisdiction under 28 U.S.C. § 1291, we reverse in part and affirm in part. The district court erred by not finding each audit here interrelated. That is because, under the insurance policy, each audit is logically connected by common facts and circumstances relating to the Auditor's negligence. Although we reverse that part of the court's decision, we affirm that the Lenders' claims pertaining to each individual audit are "interrelated." The policy clarifies that all claims arising out of the same act—here, each audit—are interrelated regardless of the quantity or type of claimants.

I.

The Auditor inspected First Mortgage's finances for 2014, 2015, and 2016, preparing a single annual report each year. The Auditor had a duty to obtain and review the source documents for American Southwest Mortgage Corporation

("ASMC") and American Southwest Mortgage Funding Corporation's ("ASMFC") outstanding loans. The reports all briefly discussed each Lenders' loans to First Mortgage and wrongly stated that all borrowings were collateralized by mortgage loans. The Lenders relied on these reports and extended loans to First Mortgage. Because the Auditor neither caught nor reported the scheme, the Lenders lost millions of dollars.

The Lenders sued the Auditor, and Continental defended the Auditor. The Continental policy at issue would pay up to $1,000,000 per individual claim and up to $3,000,000 in the aggregate. Under the policy's terms, "interrelated claims" are considered one claim and the per-claim $1,000,000 limit applies regardless of the number of interrelated claims or claimants. The insurance policy defines "[i]nterrelated claims" as "all claims arising out of a single act or omission or arising out of interrelated acts or omissions in the rendering of professional services." App'x Vol. I at 80. The policy describes "[i]nterrelated acts or omissions" as "all acts or omissions in the rendering of professional services that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision." *Id.*

Pursuant to a settlement agreement, in exchange for release of the Auditor, Continental agreed to pay each Lender $500,000. The parties next filed motions to answer: (1) whether the claims stemming from all three negligent audit reports were "interrelated" such that the lower liability limit applied regardless of how many negligent audit reports there were; and (2) whether the Lenders' claims arising from a

single audit report were "interrelated," such that the lower liability limit applied regardless of how many claimants existed.

The district court granted the Lenders' motion in part and denied Continental's motion. Specifically, the court held that: (1) the claims arising from each different audit were separate, not interrelated; and (2) the Lenders' claims based on each individual audit were interrelated. In addition, because the Lenders' motion for summary judgment mentioned only the 2014 and 2016 audits, the court held that the Lenders could not claim damages on their 2015 audit. Consequently, Continental owed each of the Lenders an additional $500,000, for a total of $2,000,000. Both sides appealed.

II.

We review "the grant of summary judgment de novo, applying the same legal standard used by the district court and examining the record to determine if any genuine issue of material fact was in dispute." *United States ex rel. Sorenson v. Wadsworth Bros. Constr. Co., Inc.*, 48 F.4th 1146, 1159 (10th Cir. 2022) (citation omitted). We make all reasonable inferences in favor of the nonmoving party, and we need not defer to the district court's factual findings. *See Lincoln v. BNSF Ry. Co.*, 900 F.3d 1166, 1180 (10th Cir. 2018). "When the district court makes nondiscretionary legal determinations based on stipulated facts, our review is de novo." *Hofer v. Unum Life Ins. Co. of Am.*, 441 F.3d 872, 875 (10th Cir. 2006).

In a diversity-jurisdiction case like here, "we apply the law of the forum state." *Essex Ins. Co. v. Vincent*, 52 F.3d 894, 896 (10th Cir. 1995). The parties do not dispute that Oklahoma law applies because Oklahoma is the forum state.

> Under Oklahoma law, an insurance policy is a contract. The rules of construction and analysis applicable to contracts govern equally insurance policies. The primary goal of contract interpretation is to determine and give effect to the intention of the parties at the time the contract was made. In arriving at the parties' intent, the terms of the instrument are to be given their plain and ordinary meaning. Where the language of a contract is clear and unambiguous on its face, that which stands expressed within its four corners must be given effect. A contract should receive a construction that makes it reasonable, lawful, definite and capable of being carried into effect if it can be done without violating the intent of the parties.

Disney v. United Nat'l Life Ins. Co. of Am., 497 F. Supp. 3d 1090, 1096 (W.D. Okla. 2020) (cleaned up).

Turning to the insurance policy at issue here, we find its language related to "interrelated claims" and "interrelated acts or omissions" unambiguous. We do so in large part because this Court has twice before determined that the same language was not ambiguous. *See Berry & Murphy, P.C. v. Carolina Cas. Ins. Co.*, 586 F.3d 803, 809–10 (10th Cir. 2009) (reciting nearly identical provisions and concluding that "they all have plain and ordinary meanings that can be applied to the language of the insurance policy"); *Pro. Sols. Ins. Co. v. Mohrlang*, No. 07–cv–02481–PAB–KLM, 2009 WL 321706, at *9 (D. Colo. Feb. 10, 2009) (same), *aff'd*, 363 F. App'x 650

(10th Cir. 2010) (Gorsuch, J.).[1] Also, Oklahoma courts "are not free to rewrite the terms of an insurance contract." *Crown Energy Co. v. Mid-Continent Cas. Co.*, 511 P.3d 1064, 1068 (Okla. 2022). As such, we will enforce the insurance policy as written and "accept the contract language in its plain, ordinary, and popular sense." *Nat'l Am. Ins. Co. v. New Dominion, LLC*, 499 P.3d 9, 16 (Okla. 2021) (citation omitted).

The question here is whether the 2014, 2015, and 2016 audit reports were "interrelated acts" as defined under the policy. App'x Vol. I at 80. In other words, we must determine if the different audit reports were "logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision." *Id.* In the end, we hold that they are logically connected.

To start, we note that the insurance policy's definition of "interrelated acts" uses disjunctive phrasing. The word "or" between "logically" and "causally" creates two alternatives for interpreting the policy. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 116 (2012) (discussing the disjunctive canon of interpretation). As such, we may find the different audits "interrelated" if they are either "logically" connected *or* "causally" connected. Here,

[1] Relying on an unpublished case, *Stauth v. Nat'l Union Fire Ins. Co. of Pittsburgh*, the Lenders argue that the language in the policy should be construed against the insurer in favor of greater coverage under Oklahoma law. 185 F.3d 875, at *10 (10th Cir. 1999) (unpublished). But that standard only applies if we find an insurance provision "ambiguous." *Haworth v. Jantzen*, 172 P.3d 193, 197 (Okla. 2006). As this Court has determined twice before, the policy here is unambiguous. So we need not construe the policy "in favor of the insured" and "against the insurer." *Id.*

we can resolve the case by exclusively exploring what it means to be "logically" connected.[2]

As we have said before, "logically" connected means "connected by an inevitable or predictable interrelation or sequence of events." *Berry & Murphy, P.C.*, 586 F.3d at 811–12 (citation omitted). Put differently, "for two things to be logically connected, one must attend or flow from the other in an inevitable or predictable way." *Id.* at 811 (citation omitted).

Keeping in mind the meaning of "logically connected," the definition of "interrelated acts" does not end there. We must determine *what* logically connects each act. And that is where the policy's language gets "even broader." *Kilcher v. Cont'l Cas. Co.*, 747 F.3d 983, 989 (8th Cir. 2014) (interpreting language in a professional malpractice insurance policy that similarly expands the definition of "interrelated act" beyond merely a logical or causal connection). What logically connects the "interrelated acts" is "*any* common fact, circumstance, situation, transaction, event, advice or decision." App'x Vol. I at 80 (emphasis added).

Taken together, the policy language and our precedent tell us how to determine if multiple acts are "interrelated acts." To find a logical connection, we look for whether the acts here inevitably or predictably flow from each other. *Berry & Murphy, P.C.*, 586 F.3d at 811. And what determines whether the acts flow from one

[2] For that reason, many of the Lenders' arguments that pertain to the "causally connected" phrase and a "causal link" do not impact our analysis here. *See, e.g.*, Aple. Br. at 12 (citing language from *Mohrlang*, 2009 WL 321706, at *11, that only related to the causally connected phrase).

another is whether each act shares "any common fact, circumstance, situation, transaction, event, advice or decision." App'x Vol. I at 80. For example, we have explained that "[w]here there is one injury flowing from multiple acts of malpractice, it seems logical to connect those multiple acts of malpractice as 'related.'" *Berry & Murphy, P.C.*, 586 F.3d at 813 (citation omitted). Again, that is because we can determine whether the "negligent acts" are logically connected if there is a common fact or circumstance—like one injury—that "encompasses" each act. *Id.* at 813–14; *cf. Mohrlang*, 363 F. App'x at 651–52 (finding no logical connection between different injuries that did not share a common fact or circumstance).

With that as our framework, we turn to this case. The "relevant act or omission" here is the "failure to identify the absence of security interests in each of the three audit reports." Aple. Br. at 3.[3] And we hold that each audit report is logically related because the same common facts and circumstances tie the recurring negligent acts together.

There was one Auditor—one who performed the same service for the same clients three times. And each time, that Auditor made the same error and perpetuated the same fraud scheme. The Auditor's "same pattern" of negligence shows how each audit is logically connected. *Kilcher*, 747 F.3d at 990; *see Am. Cas. Co. of Reading,*

[3] The Lenders argue that Continental is using the wrong factual predicate to analyze whether the Auditor's acts or omissions are logically connected. But as we explain, even using the exact factual predicate that the Lenders want—the "failure to identify the absence of security interests in each of the three audit reports"—common facts and circumstances logically connect each audit report. Aple. Br. at 3.

Penn. v. Belcher, 709 F. App'x 606, 609–10 (11th Cir. 2017) (holding that the "myriad [of] shared facts, circumstances, and decisions [flowing from the same health and safety violations] logically connect[ed] the defendants' claims"). Moreover, because only "one injury flow[ed] from [the] multiple acts of" negligence—the Lenders seek one total amount of loss due to the three negligent audits—"it seems logical to connect those multiple acts." *Berry & Murphy, P.C.*, 586 F.3d at 813.

Each audit report "flow[ed] from the other" as a result of one common circumstance: the Auditor's negligence. *Id.* at 811. True, just because the Auditor was negligent in 2014 does not make it "inevitable" that he would be negligent again in 2015 and so on. *Id.* But the common facts and circumstances underlying the recurring negligence here make it "predictable" that the Auditor may make the same mistake—just as he did. *Id.* Because the multiple audits here are logically connected by common facts and circumstances, we reverse the district court's decision. Both audits should be considered one "claim" under the policy, which means that the Lenders, collectively, *see infra* Part III, can only get up to $1,000,000 for the individual claim.

In response, the Lenders make several arguments. Each falls short. To begin, the Lenders reiterate the same logic as the district court, arguing that the "audits were discrete, siloed efforts" and that "the omissions made in each, though similar, are not connected in an inevitable and predictable way." Aple. Br. at 11, 29. Not so. For the reasons explained above, that narrow logic cabins the broader policy. Again, the

common facts and circumstances here made additional negligently conducted audits predictable, and therefore, logically connected. *Berry & Murphy, P.C.*, 586 F.3d at 811.

Next, the Lenders argue that caselaw supports that the individual audits were not interrelated. Relying on *Stauth v. National Union Fire Insurance Co. of Pittsburgh*, the Lenders argue that our application of "interrelated acts" ignores how the unpublished opinion dealt with the phrase "causally connected." 185 F.3d 875, at *10 (10th Cir. 1999) (unpublished). But *Stauth* remains inapposite to this case for two reasons.

First, the case did not analyze the phrase at issue here: logically connected. Instead, it only looked at another phrase that does not apply here: "causally connected." *Id.* at *9. Thus, *Stauth*'s reasoning on looking for "a continuous unbroken sequence of events"—that is, a causal link—does not map onto our interpretation of a different phrase. *Id.* Second, *Stauth* afforded relief on the grounds that the policy there was ambiguous, *see id.* at *10, whereas here, we have already determined that the policy is unambiguous. With that in mind, how *Stauth* interpreted its policy has no bearing on our analysis. Otherwise, we would conflate two different phrases in the policy and afford the Lenders the benefit of an ambiguous contract phrase that we do not have here.

Next, the Lenders cite *Professional Solutions Insurance Co. v. Mohrlang*, and argue that the phrase "logically connected" requires the acts to "attend or flow from the other in an inevitable or predictable way." 2009 WL 321706, at *11, *aff'd*, 363 F.

App'x at 652. We do not dispute that requirement, as explained above. But the Lenders go further, arguing that the policy language and facts here are like those in *Mohrlang*. The question then turns to whether we can distinguish *Mohrlang* (where two acts were not logically connected) from this case (where we hold that the acts are). The short answer: we can.

In *Mohrlang*, then-Judge Gorsuch wrote a unanimous decision holding, among other things, that no logical connection existed between two different injuries. 363 F. App'x at 652. On the one hand, one plaintiff brought a claim "based on [an] insured's negligence in structuring a corporate stock sale." *Id.* On the other, a second plaintiff brought a claim on an "alleged breach of fiduciary duties based on the insured's misrepresentations that caused him to release a deed of trust he held against the corporate entity." *Id.* The Court held that the "insured's breach of fiduciary duties" was not "logically . . . connected to the stock sale." *Id.* No "common fact, circumstance, [or] situation" logically connected the different acts because "neither the deed of trust nor the promissory note it secured was incorporated into the final sale agreement" of the stock. *Id.* at 652 & n.2.

That lack of common facts or circumstances between each act in *Mohrlang* distinguishes it from this case. As we already examined, the three audit reports are "logically connected" by many shared facts and circumstances. For these reasons, we reverse the district court's decision because it improperly found that the audits were not interrelated.

III.

Now we address whether the district court erred when it concluded that both Lenders' claims are interrelated to the same year's negligent audit. We hold that no error occurred because the policy clarifies that the Lenders' claims arising from a single audit report are interrelated, irrespective of the number or type of claimants.

Again, we look to the unambiguous policy and enforce its plain meaning. *Nat'l Am. Ins. Co.*, 499 P.3d at 16. To start, we repeat the definition of "interrelated claims." That language is clear: claims are "interrelated" if they arise from the same "single act or omission." App'x Vol. I at 80. The "act or omission" here—as the Lenders argue—is the "failure to identify the absence of security interests in each of the three audit reports." Aple. Br. at 3. Given our single act—a negligently conducted audit—any claims arising from it are "interrelated claims."

And under the policy, "interrelated claims" do not separate when more than one claimant brings a claim arising from the same act. Instead, the policy states that "[t]he limits of liability shown in the Declarations and subject to the provisions of this Policy is the amount we will pay as damages and claim expenses *regardless of the number of you, claims made or persons or entities making claims*." App'x Vol. I at 86 (emphasis added). In other words, even if multiple parties make separate claims of liability, the policy limits the amount among all parties by treating the separate claims as "interrelated claims" if they arise from the same act.

Accordingly, the policy explains that all claims arising out of a single act or omission are interrelated regardless of the number of claimants. It does not matter

how many parties relied on or were affected by an incorrect audit report. The Lenders' claims all arose out of the same audit for each given year and are thus interrelated. As such, we affirm the district court on this issue.[4]

In response, the Lenders argue that each of their claims pertaining to an audit are not "interrelated" because the Auditor owed them each a separate duty of care. The policy, however, makes no exception for special professional duties. Instead, the policy's plain language treats ASMC's claim arising from an audit as interrelated to ASMFC's claim arising from the same audit. That is because, again, all claims arising from the same act—here, the audit—are interrelated. And as Oklahoma courts hold, we "are not free to rewrite the terms of an insurance contract." *Crown Energy Co.*, 511 P.3d at 1068. So we refuse to add in an exception dealing with professional duties or multiple claimants as the Lenders would have us do.

Nonetheless, the Lenders point us to a series of inapposite cases to try to support their claim that ASMC's claims are not interrelated to ASMFC's claims. They reason that the Auditor is a professional who owed them each a duty of care.[5]

---

[4] On cross appeal, the Lenders also argue that the district court erred by considering two audits instead of the three audits stipulated by the parties. But deciding whether the court erred on the number of audits—whether two or three—does not change the outcome of this case. Either way, each audit logically connects to the other audits by common facts and circumstances, and therefore, affords the same limited relief to the Lenders: one shared amount of $1,000,000. So we need not and will not decide the issue. *See, e.g.*, *Griffin v. Davies*, 929 F.2d 550, 554 (10th Cir. 1991) ("We will not undertake to decide issues that do not affect the outcome of a dispute.").

[5] We note that because the Auditor "dons the mantle of a professional," Oklahoma courts would be "mindful of [his] enhanced obligations and

It is true that in some cases where a professional was negligent, courts have found that subsequent insurance claims are not interrelated because the professional owed a distinct, separate duty to more than one plaintiff, each plaintiff had different, distinct rights, or each plaintiff suffered separate, distinct damages even when there was arguably only one act or omission. *See, e.g.*, *Scott v. Am. Nat'l Fire Ins. Co.*, 216 F. Supp. 2d 689, 695 (N.D. Ohio 2002); *Vill. of Camp Point v. Cont'l Cas. Co.*, 578 N.E.2d 1363, 1374 (Ill. App. Ct. 1991) (concerning "four separate occurrences resulting in four separate and distinct injuries"); *Fed. Deposit Ins. Corp. v. Mmahat*, 907 F.2d 546, 554 (5th Cir. 1990) (holding that claims were not interrelated because the professional made different "discrete acts" and "discrete losses").

But here, the Auditor's conduct relates to the *same* audit, the Auditor owed the Lenders the *same* duty, the Lenders had the *same* rights, and the Lenders suffered the *same* injury. So the caselaw, which uses a "separate duty and distinct harm approach" or looks at whether one's "rights are separate" from another, points the opposite direction. *Scott*, 216 F. Supp. 2d at 695. Even under such an approach, we would reach the same conclusion: claims arising from the Auditor's negligent audit are interrelated claims.

Moreover, some cases find the contract terms "interrelated" and "related" ambiguous, and as such, construe the contract against the insurer because they do not have a clear policy definition—unlike the one that we have here. *See Beale v. Am.*

---

responsibilities owed to the public." *Stroud v. Arthur Anderson & Co.*, 37 P.3d 783, 789 (Okla. 2001).

Nat'l Laws. Ins. Reciprocal, 843 A.2d 78, 89 (Md. Ct. App. 2004); *St. Paul Fire & Marine Ins. Co. v. Chong*, 787 F. Supp. 183, 187–88 (D. Kan. 1992) (finding the claims not related because a professional "render[ed] separate services" to each of the three individual defendants), *aff'd*, 979 F.2d 858 (10th Cir. 1992) (unpublished). And others don't even analyze whether professional duties owed to different claimants can make claims not interrelated. *See Stauth*, 185 F.3d 875; *Mohrlang*, 2009 WL 321706, *aff'd*, 363 F. App'x 650.

In any case, here, the Lenders' claims arose out of a "single act or omission" (the negligent audit report). We affirm the district court's decision on this issue because under the clear terms of the policy, ASMC's claim and ASMFC's claim both arise from the same audit and thus are "interrelated claims."

IV.

For these reasons, we REVERSE the district court in part and hold that each negligent audit is interrelated. We also AFFIRM the district court in part and hold that ASMC's claim arising from an audit is interrelated to ASMFC's claim arising from the same audit.