Published on *The National Law Review* https://natlawreview.com

# Tenth Circuit: Remain Thoughtful About Whether Your Insurance Claims Are Related

Article By:

Geoffrey B. Fehling

S. Alice Weeks

Most modern liability insurance policies have provisions addressing whether different claims are “related” (or “interrelated”) for assessing potential coverage. Because the answer of whether two claims are “related” depends heavily on the facts giving rise to the underlying claims, the policy language, and applicable law, questions about relatedness can lead to significant insurance coverage disputes.

The Tenth Circuit’s recent decision in *Am. Sw. Mortgage Corp. v. Continental Cas. Co.* lays out one such dispute—involving at least $3 million in losses—about the scope of an “interrelated claims” provision in a professional liability policy issued to an accounting and audit firm. *See* 2023 WL 6798929 (10th Cir. Oct. 16, 2023) (applying Oklahoma law). There, the court agreed with the insurer’s view of related claims, limiting the policyholder’s potential recovery to only $1 million.

As detailed below, *American Southwest* is a reminder that companies and their directors and officers should understand not only the specific language of insurance policies that may respond

to a claim, but also the law that will govern, since state law varies and can drive outcomes. Interpretation of related-claims provisions is especially critical since relatedness is often unpredictable and turns on a confluence of factors. By carefully considering these provisions, policyholders can mitigate their unpredictable nature and best ensure that they are receiving the coverage they expected and paid for.

## Background

American Southwest loaned money to First Mortgage Company, LLC. An auditor examined First Mortgage's financials in 2014, 2015, and 2016, preparing a single audit report each year. Each of the three audits incorrectly stated that the loans were secured when they were not, which resulted in American Southwest losing millions of dollars upon discovering that First Mortgage had engaged in mortgage fraud. American Southwest sued claiming the auditor negligently prepared its audit reports. An Oklahoma state court entered judgments against the auditor totaling more than $15 million.

The auditor sought coverage from its professional liability insurer, Continental Casualty, which agreed to defend the auditor in the litigation. The parties settled some claims but not others. Eventually, a dispute arose, however, about whether the claims arising from each of three audits were separate or "interrelated" under the policy, which impacted the coverage available to resolve the rest of the lawsuit.

The Continental policy provided limits of $1 million per claim and up to $3 million in the aggregate. The policy defined "interrelated claim" as "all claims arising out of a single act or omission or arising out of interrelated acts or omissions in the rendering of

professional service." The policy further provided that interrelated acts or omissions are "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." The practical effect of the provision takes multiple "related" claims and treats them as one claim, restricting the policyholder to a single $1 million limit.

Continental agreed to pay the full $1 million per claim policy limit, but American Southwest sued Continental for the remaining $2 million in potential recovery under the theory that each audit was separate and entitled to a separate limit. The parties filed motions in the district court seeking a determination of whether the three audits were one "interrelated claim" under the policy.

The district court held that claims stemming from the same audit report are interrelated, but claims arising from different reports are not. This put Continental on the hook to cover multiple claims, potentially triggering coverage greater than $1 million.

## The Tenth Circuit's Decision

Continental appealed and prevailed in the Tenth Circuit. The appellate court started its analysis by recounting prior decisions where it had found that similar policy language—*i.e.*, "logically connected" language—was unambiguous as a matter of state law. Pertinent to this dispute, the Tenth Circuit applied Oklahoma state law, which governed the interpretation of the auditor's insurance policy.

So what does "logically connected" mean under Oklahoma law in the Tenth Circuit? According to the Tenth Circuit, "logically connected" means "connected by an inevitable or predictable

interrelation or sequence of events." In other words, "for two things to be logically connected, one must attend or flow from the other in an inevitable or predictable way." An analysis of logical relation must also assess "*what* logically connects each act." Here, the policy language supplied the what: "*any* common fact, circumstance, situation, transaction, event, advice or decision."

Applying this legal framework, the Tenth Circuit held that the botched 2014, 2015, and 2016 audits were one "interrelated claim." The reason is that the "same common facts and circumstances tie the recurring negligence acts together." There was one auditor. That auditor performed the same service three separate times. And it made the identical error each time. So the auditor's negligence, the court reasoned, was a "common circumstance" that flowed across the different audits. In other words, "the common facts and circumstances" "made additional negligently conducted audits predictable, and therefore, logically connected."

Because the audits were interrelated, the Tenth Circuit reversed the lower court's ruling and held that the Continental policy afforded, at most, $1 million in insurance coverage.

## Takeaways

The Tenth Circuit's decision is significant because it underscores that related-claims analysis is highly fact-specific and turns on many factors, including the specific policy language, underlying allegations giving rise to the claims and losses, and applicable state law. For example, not all insurance policies define "interrelated acts" in the same way. Divergent allegations about parties, conduct, and resulting damages may also impact "related" claim outcomes. Here, for instance, the Tenth Circuit stressed an

overarching pattern of negligence across all three audits. Choice-of law-principles can also be dispositive if, for example, the policy provision is unclear or courts have adopted and employed a different standard to assess related claims. In this dispute, the case turned on the Tenth Circuit's interpretation of Oklahoma law, which, of course, would not bind courts applying the law of different states.

Because of the considerable variations in related claims provisions, policyholders must consider the effect of related-claim provisions early-on, whether that be during the initial placement of insurance or later renewals. Understanding the scope of related-claim provisions and how they work along with policy conditions, exclusions and other provisions can minimize any surprises should a claim arise.

*This article was co-authored by Alex D. Pappas.*



National Law Review, Volume XIII, Number 305