

Texas Supreme Court To Consider Exception To Eight Corners Rule

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The Texas Supreme Court agreed to consider whether courts may use certain information outside the allegations in the complaint and the insurance policy in evaluating an insurer's duty to defend. *BITCO General Ins. Corp. v. Monroe Guaranty Ins. Co.*, No. 19-51012 (Tex. Mar. 19, 2021).

The coverage dispute arose out of a negligent lawsuit against a drilling company. The company tendered defense of the suit to two insurers, one of which agreed to defend. The other insurer refused, arguing it had no duty to defend because the parties stipulated that the alleged property damage occurred outside the policy's coverage period. The drilling company sued both insurers, seeking a declaration that they were obligated to defend the suit. A Texas district court granted the drilling company's summary judgment motion. On appeal, the Fifth Circuit asked the Texas Supreme Court to address two issues of law. *Bitco Gen. Ins. Corp. v. Monroe Guaranty Ins. Co.*, 2021 WL 955155 (5th Cir. Mar. 12, 2021).

First, the Fifth Circuit asked the Texas Supreme Court to address whether the narrow exceptions to the eight corners rule, as set forth in *Northfield Ins. Co. v. Loving Home Care, Inc.*, 363 F.3d 523 (5th Cir. 2004), are permissible under Texas law. In *Northfield*, the Fifth Circuit agreed to consider extrinsic evidence in evaluating an insurer's duty to defend "when it is initially impossible to discern whether coverage is potentially implicated," and "when the extrinsic evidence goes solely to a fundamental issue of coverage which does not overlap with the merits of or engage the truth or falsity of any facts alleged in the underlying case."

Second, the court sought guidance as to whether it is permissible for a court to consider evidence of a stipulated date related to the underlying occurrence to determine an insurer's duty to defend. The Fifth Circuit noted that "a definitive answer to this question is important because ascertaining the date of an occurrence is a frequently encountered 'gap' in third party pleadings," and "the omitted date can be key to the question of the duty to defend."

Last month, the Texas Supreme Court accepted certification. We will keep you posted on developments in this matter.

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