

Texas Supreme Court Adopts Exception To Eight-Corners Rule (Insurance Law Alert)

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The Texas Supreme Court ruled that courts may look to certain information outside the allegations in the complaint and the insurance policy in evaluating whether an insurer has a duty to defend. *Monroe Guaranty Ins. Co. v. BITCO Gen. Ins. Corp.*, 2022 WL 413940 (Tex. Feb. 11, 2022).

The coverage dispute arose out of a negligence lawsuit against a drilling company. The company tendered defense of the suit to two insurers, Monroe and BITCO. BITCO agreed to defend under a reservation of rights, but Monroe refused, arguing it had no duty to defend because the property damage did not occur during its policy period. BITCO sued, seeking a declaration that Monroe was obligated to defend the suit. The parties stipulated that the property damage occurred during BITCO's policy period. A Texas district court determined that it could not consider the stipulation related to the timing of the property damage and therefore granted BITCO's summary judgment motion.

On appeal, the Fifth Circuit asked the Texas Supreme Court to address two issues of law: (1) whether 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; and (2) whether a court may consider evidence of a stipulated date related to the underlying occurrence in determining an insurer's duty to defend. (See [April 2021 Alert](#)). 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."

Answering the first certified question in the affirmative, the Texas Supreme Court ruled that courts may consider extrinsic evidence under a standard similar to that set forth in *Northfield*. More specifically, the court held that:

[I]f the underlying petition states a claim that could trigger the duty to defend, and the application of the eight-corners rule, due to a gap in the plaintiff's pleading, is not determinative of whether coverage exists, Texas law permits consideration of extrinsic evidence provided the evidence (1) goes solely to an issue of coverage and does not overlap with the merits of liability, (2) does not contradict facts alleged in the pleading, and (3) conclusively establishes the coverage fact to be proved.

Notwithstanding this exception, the court emphasized that the eight-corners rule remains the “initial inquiry” to determine an insurer’s defense obligations.

As to the second question, the court held that a court may consider extrinsic evidence of the date of an occurrence so long as it meets the aforementioned requirements. The court concluded that here, the extrinsic evidence did not satisfy the test because the date of occurrence stipulation overlapped with the merits of the underlying case. The court explained: “A dispute as to when property damage occurs also implicates whether property damage occurred on that date, forcing the insured to confess damages at a particular date to invoke coverage, when its position may very well be that no damage was sustained at all.”

Authors and
Contacts

[Bryce Friedman](#)
Partner
bfriedman@stblaw.com
[+1-212-455-2235](#)

