

Texas Supreme Court Adopts Monroe Exception To The Eight-Corners Rule Defining An Insurer's Duty To Defend

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For more than fifty years, an insurer's duty to defend its insured under Texas law has been governed by the "eight-corners rule," which excludes consideration of anything outside (1) the insurer's policy; and (2) the pleadings or allegations against the insured. The Fifth Circuit Court of Appeals has since recognized exceptions to the "eight-corners rule," including in the case of *Northfield Insurance Company v. Loving Home Care, Inc.*, 363 F.3d 523 (5th Cir. 2004), but historically, the Texas Supreme Court has resisted recognizing any exception that would justify review of extrinsic evidence. *GuideOne Elite Ins. Co. v. Fielder Rd. Baptist Church*, 197 S.W.3d 305 (Tex. 2006). Now, the Texas Supreme Court has ruled in two companion cases that, while the eight-corners rule "remains the initial inquiry to be used to determine whether a duty to defend exists," courts may consider extrinsic evidence "if 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, ... 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."

In the case of *Monroe Guaranty Insurance Company v. BITCO General Insurance Corporation*, Case No. 21-0232, two liability insurers fought over Monroe's duty to defend an underlying lawsuit that alleged a drilling contractor negligently drilled an irrigation well, causing damage to farmland, without alleging when the damage occurred. The two insurers—BITCO and Monroe—stipulated that the damage occurred before Monroe's policy incepted. But the trial court hearing BITCO's suit to compel Monroe's contribution to the drilling contractor's defense ultimately ruled that the stipulation was extrinsic evidence that improperly exceeded the eight-corners rule. After Monroe appealed the trial court's order finding that property damage could have occurred during Monroe's policy period, the Fifth Circuit certified two questions to the Texas Supreme Court, including the following: "[i]s the exception to the eight-corners rule articulated in [*Northfield*] permissible under Texas law?"

In response to this question, Justice Huddle underscored that the eight-corners rule remains the law in Texas, but the Texas Supreme Court has now recognized an exception to the rule that resembles *Northfield*, with some important distinctions. The exception will not apply if, as a threshold matter, the pleadings contain facts necessary to resolve the question of whether the claim is covered. Where the *Northfield* exception addressed extrinsic evidence relevant to a "fundamental" coverage issue, the *Monroe* formulation does not distinguish between fundamental and other coverage issues. But the *Monroe* exception adds the qualification that even coverage-only evidence is not admissible "if there would remain a genuine issue of material fact as to the coverage fact to be proved."

In responding to the second certified question—dealing with the application of the exception to evidence of the date of an occurrence—the Texas Supreme Court reasoned that in this particular case, evidence of “when” property damage occurred necessarily overlaps with “whether” property damage occurred. While there is no categorical prohibition against evidence of the date of an occurrence, here, the evidence improperly intersects with the merits of the underlying liability claim in *Monroe*.

In the second of the two companion cases—*Pharr-San Juan-Alamo Independent School District v. Texas Political Subdivisions Property/Casualty Joint Self Insurance Fund*, Case No. 20-0033—a school district sought a defense under an automobile liability policy against allegations of injuries sustained from “being thrown from a golf cart.” The insurer refused any obligation to defend on the basis that a “golf cart” is not a covered “auto,” *i.e.*, a land motor vehicle designed for travel on public roads. In subsequent litigation, the school district relied on extrinsic evidence to establish that a “golf cart” did qualify as a covered “auto.” After the trial court granted summary judgment in favor of the school district, which was reversed on appeal, the Texas Supreme Court heard the case. Before analyzing the newly framed *Monroe* exception to the eight-corners rule, the Court relied upon a variety of sources, including dictionaries, statutes, court decisions and similar authorities, to determine the common and ordinary meaning of the term “golf cart.” That meaning, the Court ultimately found, extended to vehicles designed for use on a golf course, not for travel on public roads.

Having concluded that a golf cart was not a “covered auto” as a matter of law, the Court did not find that there was a “gap” in the underlying pleadings leaving the Court unable to determine whether a duty to defend exists. Importantly, the Court reasoned that “[m]ere disagreements about the common, ordinary meaning of an undefined term do not create the type of ‘gap’ *Monroe* requires.” And “sources” like dictionaries, statutes, legal decisions and similar authorities, used to aid in the interpretation and usage of words, do not constitute extrinsic evidence for purposes of the eight-corners rule.

Monroe opens a new chapter in Texas jurisprudence over an insurer’s duty to defend. As demonstrated by the differing practical results in *Monroe* and *Pharr-San Juan*, this development may ultimately benefit insurers or insureds depending on individual facts and circumstances. There will inevitably be new disputes over what qualifies as a “gap” in pleadings, what evidence is limited to coverage issues without engaging the truth or merits of an underlying liability claim, and whether individual evidence conclusively establishes coverage as a matter of law. But at least for now, the separation between *Northfield* and *GuideOne* has been narrowed, and policyholders can pursue the defense of underlying claims with greater clarity and certainty over the scope of the eight-corners rule in Texas.

If you have any questions about an insurer’s duty to defend or about insurance recovery in general, please contact one of Haynes Boone’s [Insurance Recovery Practice Group](#) partners listed below.