

Micah Skidmore in Law360: 'Insurance Cases to Watch in 2nd Half of 2021'

July 9, 2021 Micah Skidmore

PRACTICES Insurance Recovery

Haynes Boone Partner [Micah Skidmore](#) talked with *Law 360* about top insurance cases to watch in the second half of 2021 as courts return to normalcy following a year dominated by COVID-19 closures.

The first case he discussed was *BITCO General Insurance Corp. v. Monroe Guaranty Insurance Co.* The Texas Supreme Court will need to weigh in on the "eight corners" rule to decide when courts can use information outside a lawsuit's allegations and an insurance contract when determining an insurer's duty to defend a client.

Below is an excerpt:

The Fifth Circuit needs to know if it can consider the date when a drilling bit became stuck, which will determine which of the two insurers must defend a mutual insured in an underlying suit over alleged negligent drilling on an irrigation well. The Fifth Circuit tasked the Texas Supreme Court with clarifying whether there is another exception to the eight corners rule under state law.

Micah Skidmore of Haynes Boone told *Law360* the court will have to grapple with whether evidence can be considered for the purpose of resolving coverage issues that don't overlap with the merits of the underlying case.

"It has the potential to address an issue that comes up with a lot of regularity," said Skidmore. "When the [Texas] Supreme Court speaks, its opinion carries a lot of weight in both the federal and state court."

The second case he discussed was *The Cincinnati Insurance Co. v. Electric Reliability Council of Texas et al.*, case number 1:21-cv-00298, in the U.S. District Court for the Western District of Texas, Austin Division, which reviewed whether coverage is available for a winter storm and whether events that implicate volume limits in an integrated system are covered "accidents."

ERCOT's Insurance Coverage Fight Over Winter Storms

Lawsuits spawned by the deadly February winter storm that killed more than 100 people are at the center of an insurance coverage fight between Electric Reliability Council of Texas Inc. and The Cincinnati Insurance Co. The insurer said ERCOT, the state's primary grid operator, can't tap into coverage.

Legal experts said what's at issue is whether coverage is available for the winter storm, but more importantly whether events that implicate volume limits in an integrated system are covered "accidents."

Skidmore of Haynes called this case "a real headscratcher" considering the insurer has taken on

the burden of demonstrating that ERCOT expected or intended the injuries alleged by plaintiffs in the underlying cases.

Cincinnati's complaint shows a bit of disconnect on the law, Skidmore said, explaining that allegations that ERCOT expected an outage are different from allegations that ERCOT expected the bodily injury or property damage alleged in the underlying cases.

To read the full article, click [here](#). (Subscription required)