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Texas Supreme Court Cements Exception to "Eight-Corners" Rule Through Two Recent Rulings

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The Texas "eight corners" rule precludes insurers from disclaiming a defense obligation based on facts not alleged in the underlying pleadings. Texas federal and appellate courts have been issuing rulings addressing exceptions to the eight corners rule and recently sought guidance from the Texas Supreme Court on whether Texas law recognizes such exceptions to the "eight corners" rule. The Texas Supreme Court has now spoken on the issue.

Monroe Guar. Ins. Co. v. BITCO Gen. Ins. Corp., 65 Tex. Sup. Ct. J. 440 (2022).

In *Monroe*, David Jones contracted with 5D Drilling & Pump Services in the summer of 2014 to drill a 3,600-foot commercial irrigation well on his farmland. In 2016, Jones sued 5D for breach of contract and negligence relating to 5D's drilling operations on Jones's property. Jones's pleading was silent as to when the damage flowing from 5D's alleged acts of misconduct occurred. BITCO and Monroe stipulated that 5D's drill struck a bore hole during 5D's drilling operations in or around November 2014.

The coverage dispute was between two insurance companies who both insured 5D Drilling & Pump Services but during different periods: BITCO General Insurance Corporation insured 5D from 2013-2015 and Monroe Guarantee Insurance Company from 2015 to 2016. The policies issued by both insurance companies only afford coverage if "property damage" occurs during the policy period. Monroe denied coverage on the basis that "property damage" occurred prior to the inception of its policy in 2015.

The Texas Supreme Court specifically referenced and approved of the exception to the eight-corners rule applied in *Lova Ins. Co. v. Avalos*, 610 S.W.3d 878 (Tex. 2020), which allowed consideration of extrinsic evidence if it is relevant to collusion between the insured and a third party to make false representations of fact to create coverage where it would not otherwise exist. The *Monroe* court acknowledged, however, that principles governing when (and what) extrinsic evidence can be considered have not been uniform among Texas intermediate courts.

After addressing various other rulings considering the use of extrinsic evidence relevant to the duty to defend, the Texas Supreme Court also "expressly approve[d] of the practice of considering extrinsic evidence in duty-to-defend cases to which *Avalos* does not apply." The court was clear that it is not abandoning the eight corners rule, which "will resolve coverage determinations in most cases." But, where there is a gap in the plaintiff's pleading against the insured, courts can rely on extrinsic evidence to determine an insurer's duty to defend when 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.

The court also considered whether the date of an occurrence is the type of extrinsic evidence that can be considered under the three-part test. The court held that such evidence may be considered, but the stipulation offered in the case before it could not be considered because it "overlaped" with the merits of liability. Specifically, in the underlying case, 5D would likely have sought to prove that the sticking of the drill bit was not the cause of Jones's damage, meaning 5D would necessarily argue that some of Jones's damages occurred after November 2014.

*Pharr-San Juan-Alamo Indep. Sch. Dist. v. Tex. Pol. Subdivisions Prop./Casualty Joint Self Ins. Fund, No. 20-0033, 2022 Tex. LEXIS 149, at *1 (Feb. 11, 2022)*

The Texas Supreme Court also decided a separate case on the same day as *Monroe* further addressing the contours of exceptions to the "eight corners" rule. In *Pharr-San*, Alexis Flores was injured after being thrown from a golf cart driven by an employee of the Pharr-San Juan-Alamo Independent School District. The underlying lawsuit against the School District alleged that the employee was acting within the scope of his employment when he recklessly and negligently operated the golf cart. Flores's petition specifically alleged that the employee suddenly, and without warning, turned the golf cart abruptly, throwing Flores from the vehicle.

The School District had automobile-liability insurance through the Texas Political Subdivisions Property/Casualty Joint Self Insurance Fund. The School District requested that the Insurance Fund provide a defense against Flores's claims and indemnify it against any resulting liability. The policy at issue provided, in relevant part, coverage for bodily injury or property damage related to use of a "covered auto." The policy defined "auto" to mean "a land motor vehicle [. . .] designed for travel on public roads [. . .]." The Insurance Fund refused to defend, asserting that a golf cart was not designed for travel on public roads and was thus not an "auto" as defined by the policy.

The coverage dispute that made its way to the Texas Supreme Court turned on whether a golf cart is designed for travel on public roads. The Texas Supreme Court found that golf cards are not designed for travel on public roads and, in turn, found that the Insurance Fund had no duty to defend.

To reach its conclusion, the Texas Supreme Court looked to the common, ordinary meaning of the term "golf cart" in light of the context of its use within the underling petition. The Court found that the term golf cart as alleged in the underlying lawsuit refers to a motorized cart designed for use on a golf course, not designed for travel on public roads. Applying the eight corners rule (i.e., looking at only the underlying petition and the insurance policy), the Texas Supreme Court found that the petition did not include an allegation that Flores was thrown from a vehicle "designed for travel on public roads." Rather, the petition only alleged that Flores was "thrown from a golf cart." The Insurance Fund, therefore, had no duty to defend.

The Texas Supreme Court further concluded that its new exception to the eight-corners rule in *Monroe* did not apply. The Court found that the allegations conclusively established that the vehicle from which Flores was thrown was not "designed for travel on public roads." Of significance, the Court explained:

"If Flores had alleged only that Alexis was thrown from a "vehicle," without any indication of the type of vehicle or whether it was designed for travel on public roads, a gap would exist that prevents us from determining the duty to defend based solely on the petition's allegations and the policy's provisions, and extrinsic evidence proving that the vehicle was or was not designed for use on public roads would not contradict the general allegation that the accident involved a "vehicle." But by pleading that the vehicle was a "golf cart," the petition provided all the information necessary to determine the duty to defend."

These two decisions significantly impact the analysis of an insurance company's duty to defend under Texas law. The now-recognized exception to the eight-corners rule is a fact-specific inquiry that will require consideration of the allegations against the insured, policy terms, nature of the extrinsic evidence, theories of liability against the insured, and the insured's defenses to liability.