Update on the Eight-Corners Rule & the Duty to Defend

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EIGHT CORNERS RULE

- Duty to defend in Texas is generally based upon the four corners of the lawsuit and four corners of the insurance policy.

- Exceptions for extrinsic evidence?

EIGHT CORNERS RULE

- The duty to defend is governed by the “eight-corners” rule, which holds that the duty to defend is determined solely from the terms of the policy and the pleadings of the third-party claimant.
- Only these two documents are ordinarily relevant to the duty-to-defend inquiry. If the complaint alleges facts that are within the scope of coverage, the insurer ordinarily is held to owe the insured a duty to defend.
- However, if the complaint clearly alleges facts that exclude coverage under the insurance policy, there is no duty to defend. The insured bears the initial burden of showing that there is coverage; while the insurer bears the burden of showing that any exclusion in the policy applies

EIGHT CORNERS RULE

- Courts focus on the "petition's factual allegations showing the origin of the damages rather than on the legal theories alleged."
- "The insurer's duty to defend is limited to those claims actually asserted" and does not extend to "a claim that might have been alleged but was not" made against the insured.
- Facts outside the pleadings, even those easily ascertained, are not ordinarily material to the determination of whether the duty to defend exists, and allegations against the insured are liberally construed in favor of coverage.

EIGHT CORNERS RULE

- The rationale behind the eight-corners rule is to require insurers to defend the insured against all claims, even those without merit.
- Likewise, “ambiguous provisions in insurance policies are strictly construed against the insurer in favor of coverage to the insured.” In short, “insurers are advised to chart a cautious course” and “when in doubt, defend.”
- When faced with a coverage dispute, the court must give effect to the intention of the parties as that intention is expressed in the insurance policy itself.

TEXAS COURTS PERMIT EXTRINSIC EVIDENCE IN LIMITED CIRCUMSTANCES

- *International Service Ins. Co. v. Boll*, 392 S.W.2d 158 (Tex. Civ. App.--Houston [1st Dist.] 1965, writ ref'd n.r.e.)
- *Cook v. Ohio Cas. Ins. Co.*, 418 S.W.2d 712 (Tex. Civ. App.--Texarkana 1967, no writ)
- *State Farm Fire & Cas. Co. v. Wade*, 827 S.W.2d 448 (Tex. App.--Corpus Christi 1992, writ denied)

EXCEPTION IN FEDERAL COURTS

- *Ooida Risk Retention Grp v. Williams*, 579 F.3d 469 (5th Cir. 2009) (allowing extrinsic evidence in the absence of sufficient allegations to determine application of fellow employee exclusion)

- *Star-Tex Resources, LLC v. Granite State Ins. Co*., 553 F. Appx 366 (5th Cir. 2014) (allowing consideration of extrinsic evidence to in absence of sufficient allegations to determine application of auto exclusion)

- *Evanston Ins. Co. v. Kinsale*, 7:17-cv-327(S.D. Tex. July 12, 2018) ("[T]he Court also agrees with Defendant that this is a situation in which the extrinsic evidence exception applies. The alleged date of construction goes solely to a fundamental issue of coverage and does not implicate the merits or depend on the truth of the facts alleged.)

EXCEPTION IN FEDERAL COURTS

- "[1]When it is initially impossible to discern whether coverage is potentially implicated and [2] when the extrinsic evidence goes solely to a fundamental issue of coverage [3] which does not overlap with the merits of or engage the truth or falsity of any facts alleged in the underlying case." *Northfield Ins. Co. v. Loving Home Care, Inc.*, 363 F.3d 523, 531 (5th Cir. 2004).

TEXAS SUPREME COURT TRILOGY

- *GuideOne Elite Ins. Co. v. Fielder Road Baptist Church*, 197 S.W.3d 305 (Tex. 2006)
- *Zurich Am. Ins. Co. v. Nokia, Inc.*, 268 S.W.3d 487 (2008)
- *Pine Oak Builders v. Great American Lloyds*, 279 S.W.3d 650, 655 (Tex. 2009)

TWO NEW (2020) TXSC CASES – *State Farm v. Richards*

- Jayden Meals was killed in an all-terrain vehicle accident while under the temporary care of his grandparents, the Richards. Jayden's mother sued the Richards in Texas state court, essentially alleging they were negligent in failing to supervise and instruct Jayden. The Richards sought a defense from State Farm Lloyds pursuant to their homeowner's insurance policy.

Richards

- Insurance policy required State Farm to provide a defense "[i]f a claim is made or a suit is brought against an insured for damages because of bodily injury . . . to which this coverage applies, caused by an occurrence."
- State Farm initially defended this suit pursuant to a reservation of rights, but later sought a declaration that it had no duty to defend or indemnify the Richards. In a summary judgment motion, State Farm argued that two exclusions barred coverage.

Richards

- The first, the "motor-vehicle exclusion," exempts coverage for bodily injury "arising out of the . . . use . . . of . . . a motor vehicle owned or operated by or loaned to any insured." The policy defines "motor vehicle" to include an "all-terrain vehicle . . . owned by an insured and designed or used for recreational or utility purposes off public roads, while off an insured location." The policy defines "insured location" to mean "the residence premises."

Richards

- In support of its summary judgment motion, State Farm attached a vehicle crash report showing that the accident occurred away from the Richards' premises, as well as the Richards' admissions that the accident occurred off an insured location.

Richards

- According to State Farm and the district court, the eight-corners rule does not apply if a policy does not include language requiring the insurer to defend “all actions against its insured no matter if the allegations of the suit are groundless, false or fraudulent.”
- Fifth Circuit certified to TXSC based upon policy language.

Richards

- The Supreme Court found that the insurer had not "contracted around" the "eight corners" rule by omitting the "express agreement to defend claims that are 'groundless, false or fraudulent.'"
- Rather, the court specifically held that the duty-to-defend is a "creature of contract" and "'a valuable benefit granted to the insured by the policy.'"
- The court stated that insurers should be aware of the decades of Texas jurisprudence ruling this way, and that if the insurer wished to draft policies to avoid the "eight corners" rule, it could certainly do so in light of that understanding.

Loya Insurance Company v. Avalos

- Loya issued policy to wife but specifically excluded husband.
- Claimants and husband got into an accident.
- Claimants and husband agreed that Claimants would file suit that alleged wife caused accident.
- Wife agreed to plot, until after her husband died and shortly before her deposition.

Loya

- Based on the wife's admission that she knowingly lied about driving the insured vehicle to secure coverage and avoid the named driver exclusion, Loya considered any coverage forfeited, denied the claim, and withdrew its defense of the wife in the underlying lawsuit.

Loya

- Despite their complicity in the fraud, Claimants pursued their claim against wife and obtained a default judgment awarding them $450,343.34, prejudgment interest, and costs. Wife assigned her rights against Loya to Claimants.
- Claimants filed suit against Loya.

Loya

- Claimants, as assignees, alleged (1) negligent claims handling, (2) breach of contract, (3) breach of the duty of good faith and fair dealing, and (4) violations of the Texas Deceptive Practices Act.
- Trial court granted summary judgment in favor of Loya.
- But appellate court reversed, relying upon eight corners rule. Loya appeals to TXSC.

Loya

- The Supreme Court in *Loya Insurance* recognized, for the first time ever, a very narrow exception to the "eight corners" rule where "collusive fraud" exists.
- In that case, the court stated that an insurer can rely on extrinsic evidence if there is "conclusive evidence that groundless, false, or fraudulent claims against the insured have been manipulated by the insured's own hands in order to secure a defense and coverage where they would not otherwise exist."
- Given the egregious facts and the manner in which the court framed the exception, the likelihood is that the exception will be applied only in extremely narrow circumstances.

Bitco General Insurance Company v. Monroe Guaranty Insurance Company, Case No. 19-51012 (5th Cir. March 12, 2021)

- In the summer of 2014, a farm hired 5D Drilling & Pump Service, Inc. ("5D") to drill a 3600-foot deep commercial irrigation well through the Edwards Aquifer.
- In June 2016, the farm sued 5D for breach of contract and negligence after 5D purportedly drilled the well with "unacceptable deviation" and then abandoned the well after it "stuck" the drill bit in the bore hole.
- 5D notified two insurance companies claiming they both had a duty to defend it against the suit.

Bitco

- One of the insurers refused to defend, claiming it had no duty to do so because the alleged property damage occurred outside the policy's coverage period.
- The policy provided coverage from October 6, 2015 to October 6, 2016, and, according to the parties' stipulation, the drill bit became stuck "in or around November 2014."
- Key to deciding this case is whether a court, applying Texas law, can consider extrinsic evidence-the stipulated date the drill bit became stuck-when deciding whether a duty to defend exists.

Bitco

- We certify the following questions of state law to the Supreme Court of Texas:
  1. Is the exception to the eight-corners rule articulated in *Northfield Ins. Co. v. Loving Home Care, Inc.*, 363 F.3d 523 (5th Cir. 2004), permissible under Texas law?
  2. When applying such an exception, may a court consider extrinsic evidence of the date of an occurrence when (1)it is initially impossible to discern whether a duty to defend potentially exists from the eight-corners of the policy and pleading alone; (2) the date goes solely to the issue of coverage and does not overlap with the merits of liability; and (3) the date does not engage the truth or falsity of any facts alleges in the third party pleadings?

QUESTIONS?

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