



The Monroe Doctrine

The Duty to Defend under Texas Law and When Insurers Must Pay for Counsel

Greg Sapire, Maynard Nexsen PC
Josh Baker, Maynard Nexsen PC
Travis Maples, Maynard Nexsen PC



Duty to Defend vs. Duty to Indemnify

Duty to Defend

- Requires insurer to defend against claim made against insured
- Issue: Whether costs of litigation will be borne by insurer or by insured
- Determined at outset of claim

Duty to Indemnify

- Requires insurer to pay covered claims and judgments against insured
- Issue: Whether claim is covered under policy
- Determined by facts establishing liability (evidence generally required)

D.R. Horton-Texas, Ltd. v. Markel Int'l Ins. Co., 300 S.W.3d 740, 743 (Tex. 2009).
Gilbert Texas Const., L.P. v. Underwriters at Lloyd's London, 327 S.W.3d 118, 132 (Tex. 2010)



Duty to Defend

- Strictly contractual (no common-law or statutory duty)
- Among insurance policy's most important features
 - Protects insured from bearing cost of defense (which may exceed cost of damages/settlement)--even if claim is ultimately found not to be covered under policy
- Under Texas law, insurers should not be obligated to defend claims that are not covered—BUT, coverage is often difficult to determine at outset of claim



The “Eight Corners” Rule

- “Four corners” of contract + “four corners” of pleading = “eight corners”
 - NOT considered:
 - Truth/falsity of allegations
 - Extrinsic evidence/facts outside pleading
- First adopted in *Heyden Newport Chem. Corp. v. S. Gen. Ins. Co.*, 387 S.W.2d 22 (Tex. 1965)
- AKA “Complaint Allegation” Rule



The “Eight Corners” Rule (cont.)

- Liberal standard
 - Insured has initial burden, but only needs to show that pleadings state a claim that is potentially covered
 - Doubts/ambiguities resolved in favor of coverage
 - EX: *Gomez v. Allstate TExas Lloyds Ins. Co.*, 241 S.W.3d 196 (Tex .App.--Fort Worth 2007, no pet.)



Problems with “Eight Corners” Rule

- Gaps in coverage-determinative facts
 - Factual allegations in pleadings insufficient to clearly bring claim either within or beyond scope of coverage
 - Still construed in favor of coverage
- Extrinsic evidence that would conclusively negate coverage — not considered
- Gamesmanship and artful pleading

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: The Monroe Doctrine: The Duty to Defend under Texas Law and When Insurers Must Pay for Counsel

Also available as part of the eCourse

[Hooked on CLE: August 2023](#)

First appeared as part of the conference materials for the 2023 The Monroe Doctrine: The Duty to Defend under Texas Law and When Insurers Must Pay for Counsel session

"The Monroe Doctrine: The Duty to Defend under Texas Law and When Insurers Must Pay for Counsel"