



The Monroe Doctrine

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

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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

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