



## Overview of the Duty to Defend

- Title insurance policies are contracts.
- Courts enforce them as written.
- Texas “eight- corners rule”:
  - Insurer’s duty to defend is determined by the “four corners” of the policy and “four corners” of the lawsuit.
  - Insurer has a duty to defend if the facts in the pleadings potentially state a cause of action which falls under the policy terms.
  - Insurer has no duty to defend if the pleading does not allege facts even potentially within the scope of coverage under the policy.
  - Extrinsic evidence or facts outside the eight corners are not material to this determination.



## Amended Complaint

- Rhodes v. Chicago Ins. Co., 719 F.2d 116, 119 (5th Cir. 1983)(*if original complaint does not state a claim which falls under the policy, the duty to defend arises where the amended pleading does state such a claim*).
  - Amendment can give rise to the insurer's duty to defend where the initial complaint does not state a cause of action covered under the policy.
  - Amendment can also terminate the duty to defend where the initial complaint alleges a cause of action covered by the policy.



## “In for One, In for All”

- Insurer must defend and provide a “complete defense” even if the pleadings contain some covered matters and some which are not covered.
- Insurer must relieve the insured of the expense of having counsel in court without unreasonable delay.



## Duty to Defend & The Burden of Proof

- Insured bears burden of proof that lawsuit falls within coverage.
- Then, insurer bears burden of proof that an exception or exclusion applies which negates the insurer's obligation.
- Then, the insured bears the burden to prove the exception or exclusion is not applicable.



## Title Insurer's Duty to Defend v. Duty to Indemnify

- The duty to defend is broader than the duty to indemnify.  
*Chicago Title Ins. Co. v. McDaniel*, 875 S.W.2d 310, 311 (Tex. 1994)(citing *Stewart Title Guar. Co. v. Prendergast*, 494 S.W.2d 154, 158 (Tex. 1973)).
  - The **duty to defend** is triggered if facts alleged in the underlying lawsuit potentially state a cause of action falling within coverage.
  - The **duty to indemnify** is triggered when the actual facts establish that the insured has suffered a loss caused by a covered title defect. The policy is not a guarantee or abstract of title.

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