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SUPREME COURT OF TEXAS ADOPTS EXCEPTION TO EIGHT CORNERS RULE

After more than fifty years, the Supreme Court of Texas adopted an exception to the "eight corners" rule in *Monroe Guaranty Insurance Company v. BITCO General Insurance Corporation*, No. 21-0232, 2022 WL 413940, -- S.W.3d – (Tex. Feb. 11, 2022). This rule allows for the consideration of information outside the confines of a live Petition in specific situations.

In 1965, the Supreme Court of Texas articulated the "eight corners" rule whereby *only* the live Petition and insurance policy could be considered when deciding whether an insurer owed a duty to defend. *Heyden Newport Chem. Corp. v. S. Gen Ins. Co.*, 387 S.W.2d 22, (Tex. 1965). While most Texas courts strictly applied this rule in the ensuing half-century, certain Texas intermediate appellate courts and the Fifth Circuit Court of Appeals allowed the consideration of extrinsic evidence in certain, limited situations. See e.g., *Northfield Ins. Co. v. Loving Home Care, Inc.* 363 F.3d 523 (5th Cir. 2004).

Although the Supreme Court of Texas recognized an exception to the eight corners rule in 2020, that exception was limited to a very specific set of facts. *Loya Ins. Co. v. Avalos*, 610 S.W.3d 878 (Tex. 2020) (allowing extrinsic evidence of false representations of fact by the insured to create coverage). In *Monroe*, the Supreme Court of Texas articulates the now-controlling rule, holding that extrinsic evidence might be considered when:

the extrinsic evidence (1) goes solely to the 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.

2022 WL 413940 at *1. The Court is clear that this exception is just that, an exception to the still-controlling "eight corners" rule. "Eight corners" will still dictate whether the duty to defend is owed in most cases. In fact, in only one of two cases decided on February 11, 2022, did the Supreme Court of Texas consider extrinsic evidence.

In *Monroe*, the court found it could consider extrinsic evidence, but concluded that the evidence presented (a stipulation) overlapped with the merits of the underlying litigation and, as such, did not satisfy the exception's requirements. In a second case, the Court found no need to consider extrinsic evidence because the issue of the duty to defend was answered by applying the "eight corners" rule. *Pharr-San Juan-Alamo Indep.Sch. Dist. v. Texas Political Subdivisions Prop./Cas. Joint Self Ins. Fund*, No. 20-0033, 2022 WL 420491, -- S.W.3d – (Tex. Feb. 11, 2022).

The *Monroe* ruling will impact future coverage litigation as the Texas state and federal courts work to apply the extrinsic-evidence exception. We at HFW USA, LLP have extensive experience in representing insurers in all manners of coverage litigation, and we remain prepared to assist insurers in navigating the changing Texas jurisprudence.

Please contact us with any questions or if you would like to discuss the recent Supreme Court of Texas decisions in more detail.

For more information, please contact the author(s) of this alert



AMANDA KUJDA
Partner, Houston
T +1 (713) 917 0888
E Amanda.kujda@hfw.com



MICHAEL CARRER
Of Counsel, Houston
T +1 (281) 305 5151
E Michael.carrer@hfw.com

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