

Texas Supreme Court Adopts a Revised *Northfield* Exception to the Eight-Corners Rule

In February, the Supreme Court of Texas issued two opinions important to Texas's duty-to-defend analysis. First, the court settled a split among Texas appellate courts by endorsing a limited exception to the eight-corners rule. *Monroe v. BITCO*, No. 21-0232, 2022 WL 413940, at *8 (Tex. Feb. 11, 2022) (*Monroe v. BITCO* or *Monroe*). And second, the court, in considering the exception, reaffirmed that eight-corners is still the keystone of the duty-to-defend analysis in Texas. *Pharr-San Juan-Alamo I.S.D. v. Texas Political Subdivisions*, No. 20-0033, 2022 WL 420491, at *5 (Tex. Feb. 11, 2022) (*Alamo ISD*).

“Eight-Corners” Rule and the *Northfield* Exception

Under the eight-corners rule, the duty to defend is determined by considering solely (1) the complaint against the insured, and (2) the terms of the insurance policy. *Loya Ins. Co. v. Avalos*, 610 S.W.3d 878, 879 (Tex. 2020) (*Avalos*). *Monroe* and *Alamo ISD* consider an exception to the longstanding eight-corners rule articulated by the Fifth Circuit in *Northfield Ins. Co. v. Loving Home Care, Inc.*, 363 F.3d 523 (5th Cir. 2004) (*Northfield*). The *Northfield* panel opined that an eight-corners exception would apply, if at all, “when it is initially impossible to discern whether coverage is potentially implicated *and* when the extrinsic evidence goes solely to a fundamental issue of coverage which does not overlap with the merits of or engage in the truth or falsity of any facts alleged in the underlying case.” *Id.*

Since *Northfield*, Texas appellate courts have disagreed on the extrinsic evidence issue; some flatly rejecting any exception to eight corners, and others choosing to consider it under the *Northfield* or a similar standard. Moreover, courts that have considered extrinsic evidence in the duty-to-defend analysis have done so inconsistently. The Supreme Court of Texas had only recognized one limited exception until now: extrinsic evidence regarding collusion by the claimant and insured to allege false facts to invoke a defense duty. See *Avalos*, 610 S.W.3d at 879 (the collusion exception).

Monroe v. BITCO

Monroe v. BITCO settled the split among Texas courts by expressly endorsing the practice in Texas of considering extrinsic evidence in the insurer's duty-to-defend analysis under a modified *Northfield* standard. The court declined to recognize a categorical prohibition against a particular type of extrinsic evidence so long as the *Monroe* standard is met. See *Monroe*, at *6-8.

Factual Background

Monroe concerned the timing of “property damage.” At issue was whether one or both successive CGL insurers were required to defend. The extrinsic evidence offered was a stipulation that the property damage began in the first insurer's policy period, exonerating the second of its duty. The complaint in the underlying lawsuit was imprecise on the timing of the damage.

The High Court's Decision

The court held that “Texas law permits consideration of extrinsic evidence under a standard similar to that articulated in *Northfield*.” *Id.*, at *6. However, the court made clear that under Texas law the first inquiry in determining whether a duty to defend exists remains the eight-corners rule. *Id.* The *Monroe* standard largely follows *Northfield*'s language, with three modifications. *Id.*

First, the court opted for a facially stricter threshold inquiry than proposed in *Northfield*: “does the



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pleading contain the facts necessary to resolve the question of whether the claim is covered?” *Id.* The court cautioned that the *Northfield* standard — applied when it is initially impossible to discern “whether coverage is *potentially* implicated” — invites courts to “read facts into the pleadings” which Texas law prohibits. *Id.*

Second, the court rejected *Northfield*’s requirement that extrinsic evidence go to a “fundamental” coverage issue. The court reasoned that this avoids unnecessary debate over which issues are “fundamental,” since “the rationale for considering extrinsic evidence is sound regardless.” *Id.*

Third, the court added that “the proffered extrinsic evidence must conclusively establish the coverage fact at issue.” The evidence must leave no doubt as to the fact necessary to resolve the issue of whether the claim is covered. *Id.*, at *7.

Having endorsed extrinsic evidence under certain circumstances, the court took up the narrower issue of whether a court applying the exception *could* consider evidence of the date of an occurrence? The court rejected a prohibition on any type of extrinsic evidence, and held that “evidence of an occurrence date could be considered if the guidelines in *Monroe* were met.” *Id.* That said, since the stipulation at issue “overlapped with the merits” of the underlying lawsuit (i.e., whether property damage occurred, and, in cases of continuing damage, when) the extrinsic evidence did not fit the *Monroe* exception requirements and could not be considered. *Id.*, at 8.

Alamo ISD v. Political Subdivisions Insurance Fund

Alamo ISD considered whether an auto insurer owed its insured a duty to defend and/or indemnify against claims resulting from an accident involving a “golf cart.” In concluding that no coverage existed because “golf cart” did not describe a covered “auto” as defined by the policy, the court illustrated how the *Monroe* exception differs from *Northfield*, and confirmed that the eight-corners rule still controls the duty-to-defend analysis under Texas law. *Alamo ISD*, at *5-9.

Factual Background

The issue in determining coverage was whether a golf cart was an “auto” under a policy. The policy defined auto as “a land motor vehicle ... *designed for travel on public roads* but does not include mobile equipment.” The petition in the underlying lawsuit alleged only that a person suffered bodily injury after being thrown from “a golf cart.” *Id.* In support of its summary judgment motion the insured offered extrinsic evidence, including online resources and deposition testimony about the golf cart. The trial court refused to consider the evidence, but granted summary judgment for a duty to defend regardless. The Court of Appeals, reversing summary judgment, considered the extrinsic evidence but concluded that fact existed *in view of* such evidence precluding summary judgment. *Id.*, at *3-5 (emphasis ours).

The High Court’s Decision

The *Alamo* Court considered whether the insured’s extrinsic evidence concerning a golf cart should be considered under the *Monroe* exception to determine whether the petition “states a claim that could trigger the duty to defend.” Because the policy did not define the term golf cart used in the pleadings, the issue became whether a “gap” existed making it impossible to determine coverage by way of the eight-corners rule. *Id.* Concluding it did not, the court held that “[m]ere disagreements about common, ordinary meaning of an undefined term do not create the type of ‘gap’ *Monroe* requires.” *Id.*, at *8.

Applying general rules of contract construction, the goal of which is to ascertain the intent of the parties as expressed in the agreement, the court considered whether the meaning of the undefined term golf cart could be ascertained by applying its “ordinary and generally accepted meaning” in light of its usage. *Id.*, at *5. Looking first to dictionary terms, then to Texas statutory usage, and finally to Texas lower court opinions and similar authorities, the court concluded that “the meaning of the term ‘*golf cart*’ necessarily refers to a cart designed for use on a golf course,” not a vehicle designed for travel on public roads. *Id.*, at *6-7.

In view of its “ordinary and generally accepted meaning,” the court concluded that golf cart was not a covered auto as defined by the policy. Because the court was able to answer this coverage issue by comparing the underlying pleadings with the terms of the policy (interpreted under rules of

contract construction), it was not left with a gap required by *Monroe* to support its consideration of the extrinsic evidence offered by the insured.

The court added that to consider extrinsic evidence suggesting the vehicle involved in the underlying accident was anything other than “a cart designed for use on a golf course” would contradict the facts alleged in the pleadings that the accident involved a golf cart. Alternatively, if the petition described “a ‘vehicle,’ without any indication of the type of vehicle or whether it was designed for travel on public roads,” a gap would exist preventing the court from determining whether a duty to defend existed by application of the eight-corners rule alone. In that scenario, where a gap exists, extrinsic evidence could be considered if remaining *Monroe* standards are met.

Takeaways

With its *Monroe* opinion the Texas Supreme Court settled the extrinsic evidence debate, endorsing the consideration of extrinsic evidence in the duty-to-defend analysis subject to a standard similar to that proposed in *Northfield*.¹

Now, the question of when and what extrinsic evidence courts may consider will be debated between insurers and policyholders alike. *Monroe* provides a roadmap for future litigants and courts considering the issue: Extrinsic evidence may be considered if all the following requirements are satisfied: the underlying action allegations could trigger the duty to defend, *and* the application of the eight-corners rule is not determinative of duty due to a gap in the pleading, *and* the extrinsic evidence proffered 1) relates solely to coverage, not liability; 2) does not contradict facts alleged in the pleading; and 3) conclusively establishes the coverage fact. That said, the established eight-corners rule is still the initial inquiry under Texas law.

Based on the examples provided by the court, overcoming the *Monroe* gap requirement may be a high hurdle. In *Alamo ISD*, the *Monroe* exception did not apply because the coverage issue was capable of being determined by comparing allegations in a petition (applied their plain and ordinary meaning) to the terms of a policy (i.e., no *impossible* gap existed). A difference of opinion as to what an undefined term means will not create the impossible *Monroe* gap where the common, ordinary meaning of such term in the context of its usage would be determinative.

The court removed *Northfield*'s “fundamental” coverage issue requirement, consistent with recent lower court cases, reasoning that, where the *Monroe* requirements are met, the justification for considering extrinsic evidence will be consistent regardless of whether the coverage issue is considered fundamental.

A final note, as plainly stated by the court: “parties dissatisfied with the common-law rule we adopt today remain free to provide, by contract, for additional or different rules governing the scope of the duty to defend.” *Monroe*, at *7.

¹ The collusion exception outlined in *Avalos* is unaffected by *Monroe* and *Alamo*.