

Consideration of Documents Referenced in Pleadings Not Proper Under Texas "Eight-Corners" Rule

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The United States District Court for the Southern District of Texas, applying Texas law, has held that the "eight-corners" rule, which precludes a court from examining documents other than the policy and the pleadings in determining whether there is a duty to defend, does not allow a court to examine documents referenced within the pleadings or otherwise to consider extrinsic evidence. *Am. Guarantee & Liability Ins. Co. v. Hoeffner*, 2009 WL 1011176 (S.D. Tex. April 15, 2009).

The policyholder, an attorney who represented multiple plaintiffs in a silicosis litigation, was sued by his clients for his alleged participation in a kickback scheme that affected settlement amounts in the silicosis cases. After agreeing to provide a defense under a reservation of rights, the attorney's professional liability insurer instituted a declaratory judgment action seeking to establish that it had no duty to defend or indemnify the attorney. The carrier contended that the insured was aware of the alleged misconduct prior to the inception of the policy, and thus coverage was precluded by the policy's prior knowledge exclusion.

The district court denied the insurer's motion for summary judgment as to the duty to defend, noting that there were no allegations in the underlying complaints that indicated that the insured was aware of his misconduct prior to the policy's inception. The court also determined that the issue of the duty to indemnify was not ripe. [That ruling was summarized in the April 2009 Executive Summary.] The insurer subsequently moved for reconsideration, arguing that one of the underlying complaints referenced an indictment of the attorney and that the indictment itself cited the relevant dates establishing the attorney's prior knowledge.

In reviewing the motion for reconsideration, the court addressed the insurer's argument that consideration of extrinsic evidence was proper in assessing the duty to defend. The court noted that the authority on which the insurer primarily relied, *Selko v. Home Insurance Co.*, 139 F.3d 146 (3d Cir. 1998), was contrary to Texas law, as it did not follow the "eight-corners" rule, which limits the information to be considered in assessing the duty to defend to the complaint and the policy. The court then considered the argument that, because the attorney's indictment was mentioned in one of the underlying complaints, the contents of the indictment itself could be considered. According to the district court, this argument was presented without legal support and

was contrary to the "eight corners rule," which took "its name from the fact that only *two documents* are ordinarily relevant to the determination of the duty to defend: the policy and the pleadings in the underlying lawsuit." Accordingly, the court determined that the insurer had failed to demonstrate it was entitled to relief from the prior ruling and denied the motion for reconsideration.