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Texas Federal Court Holds Duty to Defend Question Is Premature Without a Pending Liability Lawsuit

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Texas strictly follows the “eight corners rule” when determining whether a duty to defend exists. Under the rule, a duty to defend may only be determined by the facts alleged in the complaint and the coverage provided in the insurance policy. In *Atl. Cas. Ins. Co. v. Taylormade Heat & Air, LLC*, No. 3:19-CV-01618-E, 2020 WL 707801, at *2 (N.D. Tex. Feb. 11, 2020), the U.S. District Court for the Northern District of Texas found that the court lacked subject matter jurisdiction over a declaratory judgment action when no underlying liability lawsuit against an insured was filed, because four of the eight corners required for the eight-corners rule were missing.

Atlantic Casualty issued a commercial general liability insurance policy to Taylormade. During the policy period, Taylormade installed a water heater in a Dallas condominium. The installation activated an overhead sprinkler system in the unit. The sprinkler system remained on for several minutes before the water supply to the building was shut down. There was damage to the unit where the water heater was installed and the surrounding units.

Atlantic Casualty filed a preemptive declaratory judgment action seeking a determination that any damage arising out of the water heater installation by Taylormade was not covered under the policy, such that Atlantic Casualty owed no duty to defend or indemnify. Taylormade and others moved to dismiss Atlantic Casualty's complaint arguing that without an underlying lawsuit by the injured parties, the declaratory judgment action is premature.

Atlantic Casualty argued that an underlying liability lawsuit is not always required because residents made claims on the insurance policy and two insurance companies asserted subrogation claims against the policy. Atlantic Casualty cited to Georgia and Mississippi case law for support, but the court was not persuaded by the out-of-state cases because those jurisdictions do not strictly follow the eight corners rule as Texas does. The court adhered strictly to the “eight corners rule” finding that any determination of a duty to defend would be premature without an underlying complaint.

On March 10, 2020, Atlantic Casualty appealed the Northern District's ruling to the Fifth Circuit Court of Appeals.