United States District Court
Southern District of Texas
ENTERED
July 07, 2025
Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ADMIRAL INSURANCE COMPANY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. H-24-1838
	§	
LA MICHOACANA LTD., *et. al.*,	§	
	§	
Defendants.	§	

ORDER

Pending before the Court are Plaintiff Admiral Insurance Company's Motion for Summary Judgment (Document No. 17); and Defendants' Cross-Motion for Summary Judgment on the Duty to Defend (Document No. 24). Having considered the motions, submissions, and applicable law, the Court determines that the plaintiff's motion should be denied, and the defendant's motion should be granted.

I. BACKGROUND

This matter regards an insurance coverage dispute. On April 2, 2022, Plaintiff Admiral Insurance Company ("Admiral") issued a Commercial Insurance Policy (hereinafter "the Policy") to Defendant Roade Properties LTD, naming Defendant La Michoacana LTD as a named insured (collectively "the Insured"). Admiral contends that the Insured have made a claim under the Policy seeking both defense and indemnity for a lawsuit alleging personal injuries that arose out of work

performed by Defendant Carlos Romero, at the Insured's store located at 7649 Clarewood Drive in Houston, Texas (the "Premises").[1] Admiral seeks a declaratory judgment from this Court that Admiral has no duty to defend or indemnify the Insured in connection with the Underlying Lawsuit under the Policy.

Based on the foregoing, on May 15, 2024, Admiral filed suit in this Court, pursuant to the court's diversity jurisdiction. On February 10, 2025, Admiral moved for summary judgment. On February 28, 2025, Defendants filed a cross-motion for summary judgment.

II. STANDARD OF REVIEW

Summary judgment is proper when "there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court must view the evidence in a light most favorable to the nonmovant. *Coleman v. Hous. Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir. 1997). Initially, the movant bears the burden of presenting the basis for the motion and the elements of the causes of action upon which the nonmovant will be unable to establish a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317,

[1] Romero brought suit in the 269th Judicial District Court of Harris County, Texas against the Insured in this case, seeking damages for his injuries related to a workplace injury while performing a maintenance related service request at the La Michoacana Meat Market. *See Carlos Romero v. La Michoacana Meat Market, Inc., et. al.*, Cause No. 2022-55686 (the "Underlying Lawsuit").

323 (1986). The burden then shifts to the nonmovant to come forward with specific facts showing there is a genuine dispute for trial. *See* Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). "A dispute about a material fact is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5th Cir. 1993) (citation omitted).

But the nonmoving party's bare allegations, standing alone, are insufficient to create a material dispute of fact and defeat a motion for summary. If a reasonable jury could not return a verdict for the nonmoving party, then summary judgment is appropriate. *Liberty Lobby, Inc.*, 477 U.S. at 248. The nonmovant's burden cannot be satisfied by "conclusory allegations, unsubstantiated assertions, or 'only a scintilla of evidence.'" *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)). Uncorroborated self-serving testimony cannot prevent summary judgment, especially if the overwhelming documentary evidence supports the opposite scenario. *Vais Arms, Inc. v. Vais*, 383 F.3d 287, 294 (5th Cir. 2004). Furthermore, it is not the function of the Court to search the record on the nonmovant's behalf for evidence which may raise a fact issue. *Topalian v. Ehrman*, 954 F.2d 1125, 1137 n.30 (5th Cir. 1992). Therefore, "[a]lthough we consider the evidence and all reasonable inferences to be drawn therefrom in the light most favorable to the

nonmovant, the nonmoving party may not rest on the mere allegations or denials of its pleadings but must respond by setting forth specific facts indicating a genuine issue for trial." *Goodson v. City of Corpus Christi*, 202 F.3d 730, 735 (5th Cir. 2000).

III. LAW & ANALYSIS

Both Admiral and the Insured move for summary judgment, contending there is no genuine issue of material fact for a jury to consider in this matter. The Court will consider both motions for summary judgment and the proffered summary judgment evidence therein.

First, Admiral contends that it owes no duty to defend or indemnify the Insured because the Policy contains an independent contractor exclusion clause. Admiral alleges that Romero, the injured party in the Underlying Lawsuit, was a business invitee at the Insured's establishment, at which he was asked to access the roof structure to perform cleaning, and subsequently fell through the allegedly defective roof sustaining injuries as a result. Admiral makes references to an "Injury to Contractor Exclusion" contained within the Policy, which provides, in relevant part that "this insurance does not apply to 'bodily injury' ... to ... [a]ny contractor;" or "[a]n employee of any contractor."[2] Admiral further contends that based on the exclusion contained within the Policy, the Court should issue a declaratory judgment

[2] *See Plaintiff Admiral Insurance Company's Motion for Summary Judgment*, Document No. 17 at 5, *see also Plaintiff Admiral Insurance Company's Complaint*, Document No. 1, Exhibit 1 at 54 (*The Insurance Policy's Injury to Workers Exclusion*).

finding that Admiral has no duty to defend or indemnify the Insured in the Underlying Lawsuit. In response, the Insured contend that a long-established rule in Texas case law requires Admiral to defend the Insured.

In determining whether an insurer has a duty to defend, Texas courts apply the "eight corners rule." *See Mid-Continent Cas. Co. v. JHP Dev., Inc.*, 557 F.3d 207, 212 (5th Cir. 2009). The Supreme Court of Texas has explained the "eight corners" rule as follows: "where the [complaint] does not state facts sufficient to clearly bring the case within or without the coverage, the general rule is that the insurer is obligated to defend if there is, potentially, a case under the complaint within the coverage of the policy." *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Merchants Fast Motor Lines, Inc.*, 939 S.W.2d 139, 141 (Tex. 1997) (quoting *Heyden Newport Chem. Corp. v. Southern Gen. Ins. Co.*, 387 S.W.2d 22, 26 (Tex. 1965)). The Fifth Circuit has made clear that the "eight corners" rule is "very favorable to insureds because doubts are resolved in the Insured's favor." *See Gore Design Completions, Ltd. v. Hartford Fire Ins. Co.*, 538 F.3d 365, 369 (5th Cir. 2008). In 2022, the Texas Supreme Court recognized the *Monroe Exception* to the "eight corners" rule, allowing courts to consider extrinsic evidence in determining the duty to defend when: "the underlying petition states a claim that could trigger the duty to defend, and the application of the eight-corners rule, due to a gap in the

plaintiff's pleading, is not determinative of whether coverage exists." *Monroe Guar. Ins. Corp. v. BITCO Gen. Ins. Corp.*, 640 S.W.3d 195, 201–02 (Tex. 2022).

Here, the Insured contend that the petition in the Underlying Lawsuit is satisfactory for purposes of invoking a duty to defend under the "eight corners" rule, with no exception being applicable in the present matter to allow for the consideration of extrinsic evidence. The Insured make reference to the Policy, which states that the insurer "will pay those sums that the Insured becomes legally obligated to pay as damages because of 'bodily injury' caused by an 'occurrence.'"[3] The Insured argue that no dispute exists in the Underlying Lawsuit that bodily injury occurred on the premises of the Insured, further contending that under the "eight corners" rule, the facts alleged in the underlying lawsuit clearly brings the case within the scope of coverage, thus obligating Admiral to defend. In response, Admiral does not contest the potential duty to defend if the eight corners rule is applied in this matter, and instead contends that the Court should find a gap in the Underlying Lawsuit's pleadings, and thus, rely on the *Monroe Exception* to consider the extrinsic evidence of Romero's status as a third-party contractor subject to the Injury to Contractor Exclusion found within the Policy. Thus, the question before

[3] *Plaintiff Admiral Insurance Company's Complaint*, Document No. 1, Exhibit 1 at 13 (*The Insurance Policy*).

the Court is whether there is a gap in the underlying pleadings such to allow the Court to consider extrinsic evidence under the *Monroe Exception*.

Admiral's sole contention regarding a gap in the Underlying Lawsuit's pleadings is that the underlying pleading "does not identify which defendant hired the contractor."[4] In response, the Insured contend that there is no gap in the underlying pleading, noting for the Court that Romero alleges why he was there the day of his injury, and what tasks he was performing on the premises. The Insured further contend that Admiral does not point the Court to where specifically the gap in the underlying pleading exists, and infer for the Court that the perceived gap occurs when Romero alleges in the alternative, that he was employed by a contractor of the named defendants therein. The Insured further contend that a complaint's mere allegation, made in the alternative, naming multiple defendants as being potentially liable for one's injuries, is not a sufficient gap in the pleadings for purposes of invoking the *Monroe Exception*.

Having considered the motions, submissions, and applicable law, the Court finds that Admiral has failed to identify a gap in the underlying pleadings such to justify the Court's invocation of the *Monroe Exception* to consider extrinsic evidence. Accordingly, the Court determines that the Texas Supreme Court's "eight

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[4] *See Plaintiff Admiral Insurance Company's Motion for Summary Judgment*, Document No. 17 at 2.

corner" rule applies, and as such, finds that the underlying pleadings state facts sufficient enough to invoke the duty to defend with respect to Admiral's obligations to defend the Insured in the Underlying Lawsuit. Furthermore, considering the Court's finding that Admiral has a duty to defend the Insured in the Underlying Lawsuit, and the Underlying Lawsuit is still ongoing at the time of this Order, the Court determines that a ruling on Admiral's duty to indemnify is not yet ripe. Accordingly, the Court will defer ruling on Admiral's duty to indemnify the Insured and stay this matter pending the final outcome of the Underlying Lawsuit.

IV. CONCLUSION

Based on the foregoing, the Court hereby

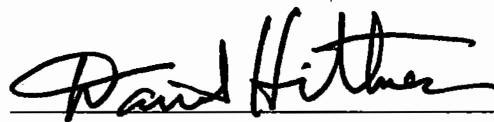
ORDERS that Plaintiff Admiral Insurance Company's Motion for Summary Judgment (Document No. 17) is **DENIED**. The Court further

ORDERS that Defendants' Cross-Motion for Summary Judgment on the Duty to Defend (Document No. 24) is **GRANTED**. The Court further

STAYS AND ADMINISTRATIVELY CLOSES this matter pending the outcome of the Underlying Litigation in the 269th Judicial District Court of Harris County, Texas. The Court further

ORDERS the parties provide the Court with a joint status report within 180 days of this Order, notifying the Court of any outstanding issues for the Court's consideration.

SIGNED at Houston, Texas, on this 7 day of July, 2025.



DAVID HITTNER
United States District Judge