

## In The News

# Exceptions To '8 Corners Rule' Are Invalid, Texas Justices Told

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Law360 (October 16, 2019, 8:20 PM EDT) -- State Farm Lloyds should not be able to use a judge's exception to a Texas litigation rule to avoid defending a Texas couple in a suit over an ATV accident that killed their grandson, saying the judge's exception is his own invention and has never been used by another court.

A Fifth Circuit panel had asked the Texas Supreme Court last month to weigh in on the case, in which policyholders Melvin and Janet Richards are seeking to force State Farm to fund their defense of an underlying suit brought by their grandson's mother, Amanda Meals, who claims the couple is to blame for the boy's 2017 death. Meals is also involved in the insurance dispute because she wants to preserve her ability to seek coverage from State Farm for any judgment she may ultimately secure against the Richardses.

In a merits brief filed with the Texas high court late Monday, Meals said the justices should refuse to recognize any exception to the Lone Star State's prevailing "eight-corners rule," which generally establishes that, when deciding whether an insurer has a duty to defend its policyholder, a court may refer only to the relevant policy terms and the factual allegations in the suit against the insured. The Richardses adopted Meals' arguments as their own in a separate filing.

Meals and the Richardses are seeking to upend U.S. District Judge John McBryde's 2018 decision allowing State Farm to introduce outside documents, commonly known as "extrinsic evidence," to deny its duty to defend the couple in Meals' suit. Judge McBryde found that the documents proved that two exclusions in the Richardses' homeowners policy relieved State Farm of any obligation to defend them.

Critically, the judge noted that the policy lacked common language providing that the insurer will defend "all actions against its insured no matter if the allegations of the suit are groundless, false or fraudulent." In the absence of such language, the judge held, the eight-corners rule doesn't apply, and an insurer can present extrinsic evidence to contests its coverage obligations.

But Meals and the Richardses told the Texas Supreme Court that Judge McBryde's "policy language-based" exception to the eight-corners rule is not supported by any of the state high court's jurisprudence. In fact, they said, the exception was first created by Judge McBryde himself in his 2006 decision in *B. Hall Contracting v. Evanston Insurance*, and it has not been adopted by any other Texas state or federal court since then.

"A purported language-based exception would substitute chaos, for the orderly (and predictable) manner in which the eight corners rule currently governs an insurer's duty to defend," Meals and the Richardses contended.

The case dates back to the summer of 2017, when the Richardses' grandson, 10-year-old Jayden Meals, died in an ATV accident near the couple's Weatherford, Texas, home. Shortly thereafter, Meals sued the Richardses in Texas state court, saying that they negligently failed to instruct Jayden on how to use the vehicle or require him to wear appropriate safety gear.

The Richardses asked State Farm to pay their legal fees under their homeowners policy, which required the insurer to defend them in any suit "for damages because of bodily injury to which this coverage applies," according to court documents. State Farm agreed to defend the Richardses while reserving its rights to challenge its coverage obligations in court, then filed the current suit in Texas federal court in September 2017.

In its March 2018 motion for summary judgment, State Farm presented a variety of outside documents to bolster its position that a pair of policy exclusions foreclosed coverage for the Richardses.

First, the insurer pointed to the policy's "motor vehicle exclusion," which, among other things, barred coverage for any injuries stemming from a person's use of the Richardses' ATVs away from the couple's "insured premises," or property. To back that argument, State Farm presented an official crash report that indicated Jayden's accident occurred off the Richardses' property, according to court documents.

Second, the insurer invoked the policy's "insured exclusion," which eliminated coverage for certain residents of the Richardses' home, including any children in their care. In support of that contention, State Farm produced a legal order indicating that, at the time of the crash, the Richardses shared custody of Jayden with his mother, court papers indicate.

Over the Richardses' objections, Judge McBryde agreed to set aside the eight-corners rule and consider State Farm's extrinsic evidence. He granted the insurer's motion for summary judgment in May 2018, ruling that State Farm has no duty to defend the Richardses or indemnify them for any judgment that Meals may obtain against them.

The Richardses and Meals then appealed to the Fifth Circuit. After hearing oral arguments, a panel of the appellate court issued an order on Sept. 9 asking the Texas Supreme Court to weigh in on the case to decide whether the state recognizes a policy language-based exception to the eight-corners rule.

Meals and the Richardses urged the Texas justices to reject any such exception, noting that the state high court has consistently enforced the eight-corners rule in every case that has come before it over the past five decades.

"This court never has endorsed an exception of the kind or held the operation of the eight-corners rule is dependent upon whether an insurer commits to defend 'even if the allegations of [a] suit are groundless, false, or fraudulent,'" Meals' attorneys wrote in Monday's brief.

According to the brief, if the Texas Supreme Court adopted Judge McBryde's policy-language-based exception to the rule, policyholders and insurers alike would be able to introduce a variety of extrinsic evidence to bolster their arguments about why defense coverage should or should not be triggered, which could result in "wide-open, unwieldy and costly parallel litigation."

"It is not at all clear why the federal district court has perceived that to be a superior state of affairs for either the insurance industry or insureds in Texas," Meals' attorneys wrote.

Counsel for the parties did not immediately respond to requests for comment on Wednesday.

Meals is represented by Nolan Cornelius Knight and Michael Wallace Huddleston of Munsch Hardt Kopf & Harr, P.C.

The Richardses are represented by Russell Wayne King of King Law Office PC.

State Farm is represented by Mark A. Lindow, Jana Marie Richard and Theodore Christian Schultz of Lindow Stephens Treat LLP.

The case is State Farm Lloyds v. Richards et al., case number 18-10721, in the U.S. Court of Appeals for the Fifth Circuit.

The full article can also be viewed by clicking [here](#).

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