

## Texas Supreme Court Adopts Fraud Exception To Eight-Corners Rule

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The Supreme Court of Texas adopted an exception to the eight-corners rule, ruling that courts may consider extrinsic evidence regarding whether the insured colluded with a third party in order to secure coverage that would otherwise not exist. *Loya Ins. Co. v. Avalos*, 2020 WL 2089752 (Tex. May 1, 2020).

Loya issued an automobile policy to Karla Guevara that expressly excluded coverage for her husband, Rodolfo Flores. An accident occurred while Flores was driving the car, but all parties involved agreed to tell the responding police officer and insurer that Guevara had been driving. When the misrepresentation was discovered, Loya refused to defend a suit brought against Guevara. A trial court ruled in Loya's favor, but an appellate court reversed, ruling that Loya's duty to defend derived solely from the face of the relevant policy and the complaint, which alleged that Guevara was driving at the time of the accident. The Texas Supreme Court reversed, endorsing a new exception to the eight-corners rule.

The Texas Supreme Court ruled that in determining an insurer's duty to defend, courts may consider extrinsic evidence regarding collusion to make false statements for the purpose of obtaining insurance coverage. In addition, the court held that an insurer, when confronted with undisputed evidence of collusion or fraud, need not file a declaratory judgment action before withdrawing its defense. However, if an insurer terminates its defense and it is subsequently determined that there was no collusion, an insurer risks "substantial liability" in terms of damages or attorneys' fees.

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