

THOUGHT LEADERSHIP

News

FIFTH CIRCUIT APPLIES STRICT VERSION OF EIGHT-CORNERS RULE DESPITE POLICY LANGUAGE

Newsbrief

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The Fifth Circuit recently revisited the issue of the application of the eight-corners rule to the duty to defend. *GuideOne Specialty Mut. Ins. Co. v. Missionary Church of Disciples of Jesus Christ*, ___ F.3d ___, 2012 WL 2892409 (5th Cir. July 17, 2012). It did so in the context of the insurer's argument that the policy language at issue contracted around the eight-corners rule. The policy language provided that the insurer would only pay for covered claims, and the insurer used this language to argue that the eight-corners analysis did not apply. In a bizarre analysis, the court conceded that the parties *could* contract around the eight-corners rule but then held that they could not do so as to the duty to defend analysis. The Fifth Circuit reasoned that the eight-corners rule is a judge-made analysis that does not find its basis in the insurance policy. The Fifth Circuit did not overrule its previous opinions that the eight-corners rule could be contractually negated.

The insurer then argued that, even if the eight-corners rule applied, it should be allowed to present extrinsic evidence under a limited exception. While the Fifth Circuit tacitly agreed that a limited exception existed, it did not find the case before it to be within the exception. The Fifth Circuit vacated the district court's judgment, reversed the judgment, and rendered judgment that the insurer owed a defense and that the indemnity issue was not justiciable at this time.