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STATE LAW DIFFERENCES: WHEN AN INSURER MUST DEFEND

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Each state has different standards for determining when an insurance carrier has a duty to defend. Generally, however, they follow one of three approaches:

"Eight Corners" Jurisdictions

Some states apply a strict "eight corners" rule. These states compare the "four corners" of the complaint with the "four corners" of the policy to analyze the duty to defend. Courts following this approach will not look outside of a third party complaint to determine whether the allegations are covered by the policy. Known or knowable facts outside of the complaint do not give rise to a defense obligation unless they are alleged in the complaint. Texas is an eight corners jurisdiction.

"Broad View" Jurisdictions

At the opposite end of the spectrum are states such as California and Indiana, which take a broad view of the duty to defend. Under this approach, the insurer has a duty to conduct a reasonably diligent investigation to determine whether any facts extrinsic to the complaint give rise to a duty to defend. The combination of the duty to investigate (with potential bad faith liability for denying a defense without doing so), coupled with the rule that extrinsic facts can give rise to a duty to defend, make these states the most policyholder-friendly with respect to the duty to defend.

"Eight Corners–Lite" Jurisdictions

In the middle are states like Illinois, which apply an "eight corners-lite" rule to analyze the duty to defend. In these states, the duty to defend is determined by the third party complaint and any facts known or made known to the insurer. Unlike "broad view" jurisdictions, however, the insurer has no duty to proactively investigate. The insurer also has no obligation to find facts supporting a duty to defend, but must consider any extrinsic facts it knows of or that are brought to its attention, e.g. by the policyholder. If any of those facts create a potential for coverage, then the insurer has a duty to defend.