IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-20441
Summary Calendar

FARMERS INSURANCE EXCHANGE,

Plaintiff-Appellee,

v.

CHARLES MADISON CLUTTER, ET AL.

Defendants,

CHARLES MADISON CLUTTER,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-4017)

(December 19, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Appellant Charles Madison Clutter appeals from the district court's grant of summary judgment for Farmers Insurance Exchange on the issue of the duty to defend. Finding that the district court should not have looked beyond the pleadings and the policy, we

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

reverse and remand to the district court with instructions to enter summary judgment for Clutter on the duty to defend.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 29, 1993, Jack W. Barrett filed a state court lawsuit against multiple parties, including Clutter, for injuries sustained by Barrett on May 12, 1993. On that evening, Barrett was involved in an altercation with Michael LeBlanc in a Houston bar named "Fat Tuesday's." In his Third Amended Petition, Barrett alleged the following facts:

> Defendants LeBlanc and Clutter negligently and/or recklessly caused bodily injury to Barrett, and negligently and/or recklessly caused physical contact with Barrett which LeBlanc and Clutter knew or reasonably should have believed that Barrett would regard as offensive. Barrett was walking to the restroom when LeBlanc knocked him in the eye with a pool cue. Barrett grabbed the pool cue. Clutter walked up to Barrett and grabbed him. Barrett fell to the ground and sustained injuries and damages as described above. Alternatively, Clutter was attempting to break up the dispute between LeBlanc and Barrett and did so negligently causing Barrett to sustain the injuries and damages described above.

Clutter was insured under a Texas homeowners' policy issued by Farmers Insurance Exchange ("Farmers"). Farmers undertook the defense of Clutter after issuing a reservation-of-rights letter to him. The policy contained the following relevant terms:

> SECTION II LIABILITY COVERAGE -- Coverage C (Personal Liability)
>
> If a claim is made or a suit is brought against an **insured** for damages because of **bodily injury** or **property damage** caused by an **occurrence** to which this coverage applies, we will:
>
> 1. pay up to our limit of liability for the damages for which the **insured** is legally liable.

2. provide a defense at our expense by counsel of our choice even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate.

The policy defines "occurrence" as "an accident, including exposure to conditions, which results in **bodily injury** or **property damage** during the policy period." Moreover, the policy contains an exclusion from personal liability coverage for "**bodily injury** or **property damage** which is caused intentionally by or at the direction of the **insured**."

On December 16, 1993, Farmers brought a declaratory judgment action in federal district court seeking a declaration that Farmers had no duty to defend Clutter in the underlying state court lawsuit. Both Farmers and Clutter filed motions for summary judgment. At a May 3, 1994 hearing on the motions, the district court looked beyond the allegations in the Barrett petition and the terms of the insurance policy to reach its decision.[1] The court repeatedly referred to information obtained from the depositions of Barrett and Clutter to support its conclusion that "[t]his [altercation] is not an occurrence under the policy -- or [it] is an occurrence, but it's in one of the . . . exceptions to coverage." As a consequence, the district court ruled that "Farmers Insurance Exchange does not have to defend Charles Clutter in the underlying case." Clutter appeals from this judgment,[2]

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[1] The district court stated that "I'[m] going to look beyond the petition because lawyers sometimes lie, but very often they don't know the facts of the case when they plead it."

[2] We treat the "Final Judgment" entered on May 13, 1994 as final for purposes of appeal, as have the parties. It was

asserting that Barrett's allegations against him potentially fall within the coverage of the policy, and contending that the district court, in finding otherwise, improperly looked beyond the petition and the policy terms.

II. STANDARD OF REVIEW

We review the district court's grant or denial of summary judgment de novo, "reviewing the record under the same standards which guided the district court." Gulf States Ins. Co. v. Alamo Carriage Serv., 22 F.3d 88, 90 (5th Cir. 1994) (internal quotations omitted). Summary judgment is proper "when no genuine issue of material fact exists that would necessitate a trial." Id. In determining on appeal whether the granting of summary judgment was proper, we view all factual questions in the light most favorable to the non-movant. See Lemelle v. Universal Mfg. Corp., 18 F.3d 1268, 1272 (5th Cir. 1994).

Texas law governs this diversity action and informs the interpretation of the insurance policy.[3] See Fireman's Fund Ins. Co. v. Murchison, 937 F.2d 204, 207 (5th Cir. 1991); Atlantic Mut. Ins. Co. v. Truck Ins. Exch., 797 F.2d 1288, 1291-92 (5th Cir.

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clearly intended as a final judgment. The district court recognized that it lacked subject matter jurisdiction over the separate and distinct indemnity issue because that issue was not yet ripe for determination and effectively dismissed that issue without prejudice to the right of either side to reopen the issue when and if it becomes ripe for determination. Our determination infra that Farmers has a duty to defend Clutter does not determine the separate issue whether Farmers has a duty to indemnify Clutter.

[3] The parties do not dispute that Texas law governs the disposition of this appeal.

1986). Whether a liability insurer has a duty to defend is generally reviewed de novo as a question of law. See, e.g., Fidelity & Guaranty Ins. Underwriters, Inc. v. City of Kenner, 894 F.2d 782, 783-85 (5th Cir. 1990).

III. ANALYSIS AND DISCUSSION

A. The "Eight Corners" Rule

Under Texas law, a court determines an insurer's duty to defend "by examining the allegations in the petition filed against the insured and the relevant insurance policy." Gulf States Ins., 22 F.3d at 90. As one court described:

> Under this analysis *we cannot consider anything outside (a) the policy and (b) the pleadings*, even if there is evidence tending to show [that] the suit is utterly specious. The effect of this "eight corners rule" is to minimize uncertainty in assessing a liability insurer's duty, as well as to favor the insured in cases where the merits of the action may be questionable.

Feed Store, Inc. v. Reliance Ins. Co., 774 S.W.2d 73, 74-75 (Tex. App. -- Houston [14th Dist.] 1989, writ denied) (emphasis added); see also American Alliance Ins. Co. v. Frito-Lay, Inc., 788 S.W.2d 152, 153-54 (Tex. App. -- Dallas 1990, writ dism'd) ("This [eight corners] rule requires the trier of fact to examine *only the allegations in the complaint and the insurance policy* in determining whether a duty to defend exists. . . . The duty to defend is not affected by facts ascertained before suit, developed in the process of litigation, or by the ultimate outcome of the suit.") (emphasis added).

In applying this "eight corners" rule, a court "must liberally construe the allegations in the . . . plaintiffs' petition to

determine if they fall within the provisions of the subject insurance policies." Clemons v. State Farm Fire and Casualty Co., 879 S.W.2d 385, 392 (Tex. App. -- Houston [14th Dist.] 1994, no writ). The truth or falsity of the allegations should not be considered in this determination.[4] See, e.g., Heyden Newport Chem. Corp. v. Southern Gen. Ins. Co., 387 S.W.2d 22, 24 (Tex. 1965); State Farm Fire & Casualty Co. v. Wade, 827 S.W.2d 448, 451 (Tex. App. -- Corpus Christi 1992, writ denied). As the Clemons court noted, "if there is any doubt about whether the allegations reflect a potential liability, such doubt must be resolved in favor of the insured." 879 S.W.2d at 392. In other words, the general rule is that the insurer is obligated to defend if the complaint contains a *potential* cause of action within the coverage of the policy. See Heyden, 387 S.W.2d at 26.

The Texas Supreme Court has noted, however, that "the insurer is entitled to rely on the plaintiff's allegations in determining whether the facts are within the coverage. If the petition only

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[4] As part of the reason that the district court looked beyond the pleadings to find no duty to defend, the court made the following observation:

> [T]he fact that he [Barrett] pleaded it, as he had a powerful motivation to plead, so that it appears to fall within the policy, is fine. It's just I'm not bound by make-believe. If the Legislature says that day is dark and night is light, it doesn't make it so. If he pleads that this event was an accident, it doesn't make it so.

Texas law is clear, however, that the duty to defend should be determined *without considering* the truth or falsity of the allegations in the plaintiff's petition. The district court appears to have ignored this principle in its choice to circumvent the "eight corners" rule.

alleges facts excluded by the policy, the insurer is not required to defend." Fidelity & Guaranty Ins. Underwriters, Inc. v. McManus, 633 S.W.2d 787, 788 (Tex. 1982). Moreover, it is important to understand that "[i]t is not the cause of action alleged which determines coverage but the *facts* giving rise to the alleged actionable conduct." Adamo v. State Farm Lloyds Co., 853 S.W.2d 673, 676 (Tex. App. -- Houston [14th Dist.] 1993, writ denied), cert. denied, 114 S. Ct. 1613 (1994). Simply put, "[i]f a petition alleges *facts* that, *prima facie*, exclude the insured from coverage, the insurer has no duty to defend." Id. at 677 (emphasis added).

This "eight corners" or "complaint allegation" rule is firmly established both in Texas law and in our Fifth Circuit precedents. See, e.g., Gulf Chem. & Metallurgical Corp. v. Associated Metals & Minerals Corp., 1 F.3d 365, 369 (5th Cir. 1993); Continental Sav. Ass'n v. United States Fidelity and Guaranty Co., 762 F.2d 1239, 1243 (5th Cir. 1985); Argonaut Southwest Ins. Co. v. Maupin, 500 S.W.2d 633, 635 (Tex. 1973); Clemons v. State Farm Fire and Casualty Co., 879 S.W.2d 385, 392 (Tex. App. -- Houston [14th Dist.] 1994, no writ). As mentioned, the general rule is that the duty to defend is determined only by the policy and the pleadings; the duty "is not affected by facts ascertained before suit, developed in the process of litigation, or by the ultimate outcome of the suit." American Alliance Ins. Co., 788 S.W.2d at 153-54.

B. A Narrow Exception

Texas law recognizes one narrow exception to this "eight corners" rule. In State Farm Fire & Casualty Co. v. Wade, the insured owned a private boatowners policy that excluded coverage arising from the use of the boat in a business pursuit. A wrongful death action was filed in state court, but the underlying petition failed to allege any facts relating to how the boat was used. See 827 S.W.2d at 450-51. Thus, the court encountered difficulty in attempting to apply the "eight corners" rule:

> The problem in this case is that by reading the underlying petition broadly, in favor of the insured, it is impossible to determine if the claim is potentially within the coverage of the policy. It is impossible to know how the boat was used when it left the Brown & Root dock at Port O'Connor. To determine whether there is coverage and a duty to defend, the use of the boat must be ascertained. The underlying petition in the . . . wrongful death lawsuit does not address this issue.

Id. at 453.

To overcome this problem, the Wade court cited its prior decision in Gonzales v. American States Ins. Co., 628 S.W.2d 184, 186 (Tex. App. -- Corpus Christi 1982, no writ), for the proposition that "[w]hen the petition in the underlying lawsuit does not allege facts sufficient for a determination of whether those facts, even if true, are covered by the policy, the evidence adduced at the trial in a declaratory judgment action may be considered along with the allegations in the underlying petition." Wade, 827 S.W.2d at 452. Seizing on this departure from the "eight corners" rule, the Wade court concluded:

> [T]he underlying petition, read broadly, does not address the issue of how the boat was used, which is an essential fact for determining coverage under this private boatowner's policy, and whether [the insurer] has a duty

> to defend the wrongful death suit. It makes no sense to us, in light of these holdings, to say that extrinsic evidence should not be admitted to show that an instrumentality (boat) was being used for a purpose explicitly excluded from coverage[,] particularly when doing so does not question the truth or falsity of any facts alleged in the underlying petition filed against the insured.

Id. at 453.

As support for its conclusion, the Wade court cited two opinions, International Service Insurance Co. v. Boll and Cook v. Ohio Casualty Insurance Co., that allowed extrinsic evidence in applying the "eight corners" rule. Boll and Cook were also cited in the prior Gonzales opinion. In Boll, a liability insurance policy excluded coverage for "any claim arising from accidents which occur while any automobile is being operated by Roy Hamilton Boll." 392 S.W.2d 158, 160 (Tex. Civ. App. -- Houston 1965, writ ref'd n.r.e.). In a lawsuit stemming from an automobile accident, the underlying petition alleged only that the automobile was driven by the insured's son, but the fact that Roy Hamilton Boll was the insured's only son was not disclosed in the policy or in the petition. See id. at 160. As the Gonzales court described, "[t]he [Boll] court held that since Roy Hamilton Boll was the insured's only son, *a fact not apparent from the petition*, the insurer was not obligated to defend the suit because of the exclusi[on]." Gonzales, 628 S.W.2d at 186 (citing Boll, 392 S.W.2d at 161). Thus, the Boll court clearly considered information outside of the claimant's petition -- i.e., the fact that Roy Hamilton Boll was the insured's only son -- in reaching its conclusion.

Similarly, in Cook, the relevant insurance policy excluded any liability incurred while the insured was driving an automobile "owned by a relative who was a resident of the same household." 418 S.W.2d 712, 714 (Tex. Civ. App. -- Texarkana 1967, no writ). The insured, Mrs. Cook, lived with her mother and was driving her mother's automobile when she was involved in an accident. See id. These facts were not apparent from the pleadings filed against Mrs. Cook; nevertheless, citing Boll, the court allowed extrinsic facts to be considered, and it affirmed the insurer's refusal to defend. See id. at 715-16.

From these cases, we conclude that the Gonzales/Wade exception to the "eight corners" rule -- extrinsic evidence is allowed "[w]hen the petition in the underlying lawsuit does not allege facts sufficient for a determination of whether those facts, even if true, are covered by the policy" -- was premised on situations where the pleadings and the policy do not provide *any* basis for determining whether coverage is applicable.[5] In Wade, there were

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[5] Farmers quotes the following language from Gonzales in support of its position that extrinsic evidence may be considered in this case:

> Where the insurance company refuses to defend its insured on the ground that the insured is not *liable* to the claimant, the allegations in the claimant's petition control, and facts extrinsic to those alleged in the petition *may not be used* to controvert those allegations. But, where the basis for the refusal to defend is that the events giving rise to the suit are *outside the coverage* of the insurance policy, facts extrinsic to the claimant's petition *may be used* to determine whether a duty to defend exists.

Gonzales, 628 S.W.2d at 187. In context, however, this "rule" established by the Gonzales court was not meant to be read in isolation; instead, it only comes into play "where the petition

no allegations as to how the boat was used, but there was a specific "commercial use" exclusion that depended on how the boat was used. In Boll, there were no allegations as to the "insured's son" being Roy Hamilton Boll, but there was a specific exception for automobiles operated by Roy Hamilton Boll. In Cook, there were no allegations that the automobile was owned by Mrs. Cook's resident mother, but there was a specific exclusion for such instances. We will consider application of the exception only in similar circumstances.

Our interpretation is strengthened by three well-settled principles of Texas insurance law. First, in applying the "eight corners" rule, allegations are to be liberally construed. See Clemons, 879 S.W.2d at 392. Second, "[t]he duty to defend is broader than the duty to indemnify." Gulf Chemical, 1 F.3d at 369. Third, the duty to defend "is determined by the allegations against the insured *without regard to the truth or falsity of those allegations*." Wade, 827 S.W.2d at 451 (emphasis added).

Based on these three principles, it is clear that *some* basis in a petition for determining whether coverage is applicable should lead a court to adhere to the "eight corners" rule, as the allegations can be expansively interpreted, and the broad duty to defend gives the insured the benefit of the doubt. Moreover, when *some* basis is provided, the relevant information must be taken as

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does not allege facts sufficient for a determination of whether those facts, even if true, are covered by the policy." Id. at 186. Thus, we do not construe the language as an *unconditional* invitation to use extrinsic evidence to determine whether a duty to defend exists.

true, and there is no inquiry as to whether the allegations are misleading. However, with *no* basis in a petition for determining whether coverage is applicable, as in Wade, Boll, and Cook, liberal construction and "face value" acceptance is impossible, and the exception to the "eight corners" rule is sensible. With such a significant amount of Texas law and Fifth Circuit precedent adhering to and strictly applying the "eight corners" rule, we believe that this narrow construction of the exception is appropriate.

In the instant case, it is quite clear that the district court abandoned the "eight corners" rule and looked to extrinsic deposition testimony. Aside from the above-mentioned statement by the court that "I'[m] going to look beyond the petition because lawyers sometimes lie," the district court repeatedly referred to a "headlock" performed by Clutter on Barrett, and to Clutter's actions of "yanking back" on Barrett's "head." These allegations were obtained from deposition testimony, and they were not included in the pleadings or the policy.

This journey outside of the pleadings and the policy, however, is proper only if there was no basis for determining whether coverage was potentially applicable. This determination, as Farmers argues, depended upon a consideration of the "occurrence" requirement and the "intentional injury" exclusion. As mentioned, the policy defined "occurrence" as "an accident, including exposure to conditions, which results in **bodily injury** or **property damage** during the policy period." The Texas Supreme Court has noted that

an "accident" occurs when "the effect is not the natural and probable consequence of the *means which produce it*." State Farm Fire & Casualty Co. v. S.S., 858 S.W.2d 374, 377 (Tex. 1993) (emphasis added). Thus, the existence of an "occurrence" depends upon some basis in the petition for ascertaining the means, or the act, that produced the harm. Similarly, an "intent to injure" takes place when an insured "intends the consequences *of his act*, or believes that they are substantially certain to follow." Id. at 378 (citing Restatement (Second) of Torts § 8A (1965)) (emphasis added). Thus, the existence of an "intent to injure" depends upon some basis in the petition for ascertaining the act that produced the harm and the mental state of the actor.

In the instant case, there is some basis for determining coverage because we have information on Clutter's acts and mental state. As mentioned, the relevant portion of the petition alleged the following:

> Barrett was walking to the restroom when LeBlanc knocked him in the eye with a pool cue. Barrett grabbed the pool cue. *Clutter walked up to Barrett and grabbed him. Barrett fell to the ground and sustained injuries and damages as described above*. Alternatively, Clutter was attempting to break up the dispute between LeBlanc and Barrett and did so *negligently* causing Barrett to sustain the injuries and damages described above.

(emphasis added). From these allegations in Barrett's third amended petition, we are told the relevant act (Clutter "grabbed" Barrett), and we have an indication of Clutter' subjective mental state (Clutter did not intend to cause injury, but was merely negligent). Cf. Rhodes v. Chicago Ins. Co., 719 F.2d 116, 119 (5th Cir. 1983) ("[T]he duty to defend is determined by examining the

latest, and only the latest, amended pleadings."). It is true that these allegations reveal a paucity of information about the incident, but unlike Wade, Boll, and Cook -- where there was *no* basis for determining coverage -- the allegations in this case do provide *some* basis for determining the applicability of coverage, as the act and the mental state are described. The veracity of these allegations is not to be questioned. Thus, we conclude that this was not a situation where resort to extrinsic evidence was necessary to determine the applicability of coverage. The district court should have adhered to the "eight corners" rule, and in considering deposition testimony, the district court erred.

C. Was There an "Occurrence?"

Having concluded that the district court improperly looked outside of the pleadings and the policy, it is still necessary for us to correctly apply the "eight corners" rule to determine if Farmers has a duty to defend. As mentioned, an occurrence is essentially defined as an "accident." In State Farm v. S.S., the Texas Supreme Court made the following observation about an "accident":

> [W]hen "the effect is not the natural and probable consequence of the means which produce it -- an effect which does not ordinarily follow and cannot be reasonably anticipated from the use of the means, or an effect which the actor did not intend to produce, and which he cannot be charged with a design of producing -- it is produced by accidental means."

858 S.W.2d at 377 (quoting Republic Nat'l Life Ins. Co. v. Heyward, 536 S.W.2d 549, 555-56 (Tex. 1976)). Similarly, the court noted that a person insured against accidental injury would expect

coverage for "any fortuitous, unexpected, or undesigned injury." Id. Finally, in construing the term "occurrence" in a similar general liability policy, we have held that "an occurrence takes place where the resulting injury or damage was unexpected and unintended, regardless of whether the policyholder's acts were intentional." Hartford Casualty Co. v. Cruse, 938 F.2d 601, 603 (5th Cir. 1991) (internal quotations omitted). As we noted, "[t]he requisite accident may inhere in the scope of damages." Id.

Once there is some basis for determining the applicability of coverage, Texas law requires a broad duty to defend, a liberal construction of the pleadings, and resolution of doubt in favor of the insured. The petition alleges that Clutter "grabbed" Barrett, and that Barrett fell to the floor sustaining injury. From this information alone, it is possible that Clutter did not reasonably anticipate that "grabbing" would lead to Barrett falling and sustaining severe injury. In other words, we cannot definitively rule out that in some circumstances, falling and suffering severe injury may not be the "natural and probable consequence" of being "grabbed." Moreover, along the lines of our Cruse opinion, we cannot rule out the possibility that Clutter may have intended the *act* (the "grabbing"), but he may not have intended the resulting injury.[6] Thus, giving the benefit of the doubt to Clutter, as we

[6] Farmers argues that the Maupin court noted that "[w]here acts are voluntary and intentional and the injury is the natural result of the act, the result was not caused by accident even though that result may have been unexpected, unforeseen and unintended." 500 S.W.2d at 635 (internal quotation omitted). Falling and suffering severe injury, however, may not be the "natural result of the act" of being "grabbed."

must, we find that the allegations of the petition give rise to an "occurrence" within the meaning of the policy.

D. Was There an "Intent to Injure?"

The policy contains an exclusion from personal liability coverage for "**bodily injury** or **property damage** which is caused intentionally by or at the direction of the **insured**." Initially, we note that an intent to commit the act is distinct from an intent to injure. See Commercial Union Ins. Co. v. Roberts, 7 F.3d 86, 88 (5th Cir. 1993); State Farm v. S.S., 858 S.W.2d at 378 n.2. In this case, the policy exclusion applies when there is an intent to *injure*. As the Texas Supreme Court has noted, "other jurisdictions recognize that the resulting damage may be unintended although the acts leading to the damage are intentional." State Farm v. S.S., 858 S.W.2d at 377. The S.S. court explained that intent to injure occurs when the insured "intends the consequences of his act, or believes that they are substantially certain to follow." Id. at 378 (citing Restatement (Second) of Torts § 8A (1965)). Along these lines, the court noted that:

> [t]he defendant who acts in the belief or consciousness that the act is causing an appreciable risk of harm to another may be negligent, and if the risk is great the conduct may be characterized as reckless or wanton, but it is not an intentional wrong. In such cases, the distinction between intent and negligence obviously is a matter of degree. The line has been drawn by the courts at the point where the known danger ceases to be only a foreseeable risk which a reasonable person would avoid, and becomes in the mind of the actor a substantial certainty.

Id. (quoting W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 8, at 35-36 (5th ed. 1984)).

Farmers repeatedly argues that Clutter intentionally put Barrett in a "headlock" and "pulled back as hard as he could," thereby intentionally causing Barrett injury. A correct application of the "eight corners" rule, however, only reveals that Clutter "grabbed" Barrett and that he did not *intend* to cause Barrett's injuries. Giving Clutter the benefit of the doubt, we cannot definitively conclude that Clutter believed injury was "substantially certain" to follow from his "grabbing" of Barrett. Indeed, liberally construing the allegations in the petition, a potential negligence action could arise from these facts, as the "grabbing" may have been unreasonable, and Clutter may not have intended for Barrett to fall down and injure himself.

Similarly, we decline Farmers invitation to infer an intent to injure from Clutter's intent to act. An intent to injure may be inferred "only when the character of an act is such that the degree of certainty that the conduct will cause injury is sufficiently great to justify inferring intent to injure as a matter of law." State Farm v. S.S., 858 S.W.2d at 379 (internal quotations omitted). The relevant act or conduct is not, as Farmers maintains, Clutter's "headlock" and "pulling back" on Barrett's head; rather, applying the "eight corners" rule, the relevant conduct is Clutter's "grabbing" of Barrett. Especially in light of the deference given to the insured, we cannot conclude that "grabbing" a person presents such a great risk of injury that intent to injure will be inferred as a matter of law. Simply put, we can conceive of a case where "grabbing" a person is an act of

negligence. Because we can conceive of this potential cause of action from Barrett's allegations -- liberally construed, of course -- we find that Farmers has a duty to defend.

IV. CONCLUSION

For the foregoing reasons, we REVERSE the judgment of the district court in favor of Farmers and we REMAND the case with instructions to enter judgment for Clutter on the duty to defend.