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California Insurance Law Update

Susan E. Firtch **July 2011**

Intentional Conduct Resulting In Unintended Injury Is Not An Accident

On June 22, 2011, in the case of State Farm General Insurance Company v. Frake ("Frake")[1] the California Court of Appeal again addressed the issue of whether intentional conduct resulting in unintended injury constitutes an "occurrence," i.e. an accident, under a Commercial General Liability insurance policy. Frake arose from an assault and battery committed during a game of horseplay. Prior to Frake, the most recent significant decisions relevant to this issue were the California Supreme Court's 2009 decision in Delgado v. Interinsurance Exchange of the Automobile Club of Southern California,[2] holding that the insured's unreasonable belief in the need for self defense did not transform a purposeful and intentional act of assault and battery into an accident; and the California Court of Appeal's 2008 decision in State Farm Fire & Cas. Co. v. Superior Court ("Wright"),[3] holding that an accident occurred when, during horseplay, an insured miscalculated the force needed to throw a friend into a swimming pool, which resulted in the friend being injured when he landed on the pool step instead of in the water.

In Frake, the Second Appellate District of the California Court of Appeal was faced with the question of whether one friend striking another in a game of horseplay constituted an "accident." Frake and his friend King had a longstanding game of horseplay, in which they attempted to hit each other in the groin. During the incident at issue, King attempted to hit Frake in the groin, and Frake retaliated by swinging his arm out with the intent to strike King in his stomach or groin to "horseplay back at him," seriously injuring King. Frake asserted he never intended to injure King or cause him pain, but was just engaging in a game. In reversing the trial court's decision that State Farm owed a duty to defend Frake because he did not intend to injure King, the Court of Appeal examined and applied the long line of cases holding that the term "accident" does not apply to deliberate conduct that directly and immediately causes injury. "Accident" refers to the insured's conduct, rather than the unintended consequences of that conduct.

Rejecting Frake's argument that the Supreme Court's decision in Delgado overruled all prior cases holding that the term "accident" necessarily refers only to the injury-causing act, the court explained that Delgado was based upon the principle that an insured's mistake of fact or law does not transform an intentionally inflicted harm into an accidental injury, and that the decision did not appear to have any effect on cases ruling that "accident" refers to the insured's act, not its consequences. The court also rejected Frake's argument that, under Wright, Frake's intentional act qualified as an accident because he did not intend to cause the resulting injury, noting that in Wright, the insured's miscalculation of the force necessary to throw Wright safely into the water, which caused him to land on the step, was found to be an intervening act of fortuity which was the direct cause of Wright's injury. In contrast, Frake deliberately struck King, directly causing his injury. The Court of Appeal also noted that Delgado, which was decided after Wright, stands in contrast to the reasoning in Wright. Finally, the court noted that to the extent Wright ruled that the term "accident" applies to deliberate acts that directly cause unintentional harm, such a holding contradicts California law holding that "accident" refers to the insured's act, without regard to the intent or lack of intent to injure.

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[1] *State Farm General Ins. Co. v. Frake*, ____ Cal. App 4th __, 2011 Cal. App. Lexis 911 (2011).

[2] *Delgado v. Interinsurance Exchange of the Automobile Club of Southern California*, 47 Cal. 4th 302 (2009).

[3] *State Farm Fire and Casualty Co. v. Superior Court*, 164 Cal. App. 4th 317 (2008).