July 1, 2008

State Farm Fire and Casualty Co. v The Superior Court of Los Angeles

6/26/08

Duty to Defend; Homeowner's Policy; "Accident" as unforeseen or undesigned consequence

Jeffrey Lint, age 21, resided with his parents. Joshua Wright was 23. Both men attended a party. They argued and Wright went outside. Lint followed Wright, grabbed him and picked him up, and threw him into the shallow end of the swimming pool. Wright landed on the concrete step, sustaining a broken clavicle.

Lint apologized to Wright. Lint told him that he did not mean to hurt Wright. Lint was arrested for the incident and entered a *nolo contendere* plea to a charge of misdemeanor battery.

Lint was insured under his parent's homeowner's policy. The policy covered "damages because of bodily injury... caused by an occurrence..." An "occurrence" was defined in the policy as "an accident, ...which results in.... a. bodily injury...(1) which is neither expected or intended by the insured..."

Wright's counsel notified State Farm of a claim. Lint, a much larger man than Wright, told State Farm in a recorded statement, "...if I wanted to hurt this guy...I would have just hit him, but I didn't want to hurt him." State Farm told the Lints it was reserving its right to deny a defense and indemnity. In November 2002, State Farm informed Lint that it was denying a defense and indemnity on several grounds, including the fact the injury did not arise out of an accident. Wright filed suit against Lint, alleging negligence.

In deposition, Lint testified his acts were, "...just a party joke." He did not intend to hurt Wright. The Lints again tendered the defense, this time with a copy of the deposition transcript. State Farm again denied a defense or indemnity. Lint then filed a declaratory relief action. Lint and Wright stipulated to entry of judgment in Lint's declaratory relief case in the amount of $60,000.00, and assigned all rights against State Farm to Wright.

The declaratory relief action was consolidated with the negligence action and went to trial. The trial court found State Farm owed a duty to defend. The court found that Lint did not intend to cause injury to Wright. State Farm then brought a writ.

The Second District Court of Appeal discussed the duty to defend. An insurer has a duty to defend an insured if it becomes aware of, or if the third party lawsuit pleads, facts giving rise to the potential for coverage under the insuring agreement. (*Waller v Truck Ins. Exchange, Inc*. (1995) 11 Cal. 4th 1) The duty may exist even where coverage is in doubt and ultimately does not develop. (*Montrose Chemical Corp. v Superior Court* (1993) 6 Cal. 4th 287) Where the extrinsic facts eliminate the potential for coverage, the insurer may decline to defend even when the bare allegations in the complaint suggest potential liability.

The determination whether the insurer owes a duty to defend usually is made in the first instance by comparing the allegations of the complaint with the terms of the policy. Facts outside the complaint give rise to a duty to defend when they reveal a possiblity that the claim may be covered by the policy.

State Farm asserted that where the term "accident" refers to the injury producing act, it is irrelevant that the insured did not intend the injury that flowed from the act. It argued that since Lint indisputably deliberately threw Wright into the pool, his conduct was intentional and not an accident, regardless of whether Lint intended the effect of injuring Wright.

The term "accident" has been used to refer to the unintended or unexpected consequence of the act. When the injury suffered is expected or intended, coverage is denied. The fact that an act which causes an injury is intentional does not take the consequence of that act outside the coverage of the policy

for **if the "consequence" that is the "damage or injury" is not intentional and is unexpected *it is* accidental in character**. An accident can exist when ***either*** the **cause is unintended *or* the effect is unanticipated**. (*Geddes & Smith v St. Paul Mercury Indemnity Co.* (1959) 51 Cal. 2d 558)

An injury is *not accidental* when all of the acts, the manner in which they were done, and the objective accomplished occurred exactly as appellant intended. Conversely, *an accident exists* when any aspect in the causal series of events leading to the injury or damage was unintended by the insured and a matter of fortuity. (*Merced Mutual Ins. Co. v Mendez* (1989) 213 Cal.App.3d 41) **Lint did not intend or expect the consequence that Wright would land on a step. Lint miscalculated one aspect in the causal series of events leading to the injuries.**

The Justices found the act directly responsible for Wright's injury, throwing too softly so as to miss the water, was an unforeseen or undesigned happening or consequence and was thus fortuitous. This was an accident because not all of the acts, the manner in which they were done, and the objective accomplished transpired exactly as Lint intended. *(Interinsurance Exchange v Flores* (1996) 45 Cal.App.4th 661)

The parties disagreed about the effect of Lint's *nolo contendere* plea to misdemeanor battery. Lint stipulated that he intended to pick Wright up in a bear hug, the elements of misdemeanor battery. Regardless of whether the plea may be considered by State Farm, the result remains the same because intent to commit bodily injury is not an element of misdemeanor battery. Therefore, the potential for coverage exists despite the plea.

The trial court properly ruled that State Farm owed a duty to defend Lint.

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