ALERTS AND UPDATES

The Court Gets It Wright: Unintended Injury Arising from Drunken Horseplay Is Not a Covered "Accident"

July 18, 2011

***State Farm General Ins. Co. v. Patrick Frake* (July 13, 2011)**

The California Second District Court of Appeal published an opinion this week in *State Farm v. Frake* ("*Frake*") holding that a $450,000 jury verdict for injuries resulting when an insured purposely struck his friend in the groin was not a covered "accident" and was not covered under his renter's liability policy. This decision is important because it affirms the long-standing case law in California on this issue, which had become the subject of increasing debate over recent years, largely due to misunderstanding of recent cases.

The injured party, John King, invited three former high school friends, including Patrick Frake, to visit him in Chicago to catch a Cubs game and to spend the weekend partying and drinking at various bars around the city. Both King and Frake admitted that since high school, they often engage in horseplay that, among other things, involved hitting each other in the groin, so much so that they would often greet each other using a "one-armed hug" while keeping the other arm low for protection.

After the Cubs game, and while admittedly intoxicated, Frake blocked an attempted strike by King, and then retaliated by throwing his arm out to the side where King was standing, striking him in the groin and causing extensive injuries.

King filed suit against Frake for negligence, assault, battery, and intentional infliction of emotional distress. Frake tendered the suit to State Farm, which initially denied coverage for a defense and indemnity on the basis that the injury-producing conduct was intentional and not a covered accident. Shortly before trial, State Farm agreed to defend under a reservation of rights to file a declaratory relief action to determine the defense and indemnity obligations, and to seek reimbursement of defense costs. At trial, the jury found Frake acted negligently and awarded King more than $450,000 in damages. Frake assigned to King any rights that Frake may have against State Farm arising from its refusal to defend and indemnify him.

State Farm then filed its declaratory relief action, and moved for summary judgment on the basis that Frake intentionally struck King, and that intentional conduct resulting in an unintended injury is not an "accident." The trial court denied State Farm's motion, largely, apparently, by relying upon the following wording in *State Farm Fire and Cas. Co. v. Sup. Ct.* (2008) 164 Cal.App.4th 317 ("*Wright*"): "the term

'accident' may include instances in which an injury is an unexpected or unintended **consequence** of an insured's conduct [emphasis added]." Thereafter, Frake and King filed successful summary judgment motions resulting in an order that State Farm was obligated to defend Frake in the action. All parties stipulated to a judgment amount of $670,000, and this appeal followed.

In reversing the trial court, and finding that State Farm had no duty to defend or indemnify Frake, the Court of Appeal cited a long series of California decisions over the past three decades that consistently found that the term "accident" in liability policies does not apply to an act's consequences, but instead, applied to the act itself. These cases accordingly hold that an "accident" does not occur when unintended harm results from an insured's deliberate act, unless some additional, unexpected, independent and unforeseen happening occurs that produces the damage.

For example, citing to an example in *Merced Mutual Ins. Co. v. Mendez* (1989) 213 Cal.App.3d 41, 50, the court explained, when a driver drives too fast and as a result, *negligently* hits another car, the occurrence resulting in injury is an "accident." But, if a speeding driver *deliberately* hits another car, that act would be intentional, and not an "accident."

Here, it was undisputed that Frake intended to hit King in the groin and that injury resulted. The mere fact that Frake did not intend to injure King did not transform his intentional conduct into an "accident." In reaching its decision that coverage would not apply, the court clarified that the recent, and apparently often-misunderstood, decision in *Delgado v. Interinsurance Exchange of the Automobile Club of Southern California* (2009) 47 Cal. 4th 302, did not alter the well-established definition of the term "accident." The court in *Frake* explained that the California Supreme Court's decision in *Delgado* approved earlier cases holding that intended harm caused by an intended act is not caused by "accident."

The *Frake* court further explained that *Delgado* has been misunderstood due to a single passage in the opinion, in which the *Delgado* court stated that "in the context of liability insurance, an accident is an unexpected, unforeseen, or undesigned happening or consequence from either a known or an unknown cause." *Delgado*, at 308. The *Frake* opinion observes, however, that *Delgado* went on to hold that "it is the 'unexpected, undesigned and unforeseen' nature of the *injury-causing event* that determines whether there is an 'accident' within the policy's coverage." (*State Farm*, citing *Delgado*, at 309.) *Frake* held that these statements in *Delgado* appear to reaffirm prior case law holding that the causal event must be unintentional to comprise an accident.

The *Frake* court also explained that the 2008 decision in *Wright* does not support a claim that unintended harm resulting from a deliberate act is caused by accident. In *Wright*, two party-goers got into an argument at a pool party, leading one to attempt to throw the other into the pool. Instead of landing in the water, the victim landed on the concrete pool step and was injured. Under these facts, the *Wright* court

found that the injury did arise from an "accident." The *State Farm* court distinguished *Wright* by explaining that the injury in *Wright* was not solely caused by an intentional throw into the pool. Rather, in *Wright* the causal event was an accident because there had been an intervening fortuitous act: The tortfeasor had intended to throw the victim into the water, but miscalculated and threw him into a cement step. In contrast, Frake deliberately struck King in the groin, as intended. Even though the injury was unintended, the deliberate act was not an "accident," and was not covered.

Finally, the *Frake* decision provides helpful clarifying language that limits the extent to which *Wright* should be applied, stating:

to the extent *Wright* ruled that the term "accident" applies to deliberate acts that directly cause unintended harm, such a holding is contradictory to well-established California law. We are not aware of any California decision that has cited *Wright* approvingly or adopted its analysis. Indeed, the only published California case that has discussed *Wright* questioned its holding, (*Fire Ins. Exchange v. Superior Court* (2010) 181 Cal.App.4th 388, 393 & fn. 1) stating that the decision "seems to stand in variance" to the "well-established [rule] . . . that the term 'accident' refers to the nature of the act giving rise to liability; not to the insured's intent to cause harm."

This decision in *Frake*, with its explanation of *Delgado* and its clarification of *Wright*, reiterates that under long-standing California law the analysis regarding whether there has been an "accident" should focus on the injury-producing acts, and not whether there were unintended consequences. In short, *Frake* joins the dozens of prior California decisions holding that unexpected harm caused by an intended act is not an "accident."

For Further Information

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