California Supreme Court Finds No Duty to Defend Insured for Assault and Battery Claim Where Injured Party Alleged Insured Acted Under an Unreasonable Belief in the Need for Self-Defense

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In a long-anticipated decision, the California Supreme Court issued its August 3, 2009 decision in *Delgado v. Interinsurance Exchange of the Automobile Club of Southern California*, finding that the contention (by the injured party) that the insured acted in self-defense when sued for assault and battery did not constitute an "accident" within the meaning of a liability policy and thus the insurer had no duty to defend the action. The decision is also noteworthy as it distinguished a number of prior cases, including Supreme Court cases, that had touched on similar issues.

Delgado arose out of altercation where the insured under a homeowner's policy issued by Interinsurance Exchange of the Automobile Club of Southern California "hit and kicked 17-year old Jonathan Delgado." Delgado sued the insured, setting forth two causes of action, one for intentional tort and one alleging that the insured "'negligently and unreasonably believed' he was engaging in self-defense 'and unreasonably acted in self-defense . . . .'"

The insured tendered the suit to his insurer, which denied coverage, including any duty to defend, on the basis that the claim did not constitute an "occurrence" under the policy, which term was defined as "an accident." Delgado then dismissed the intentional tort claim and settled the remaining "negligent belief in self-defense" claim with the insured, who stipulated to judgment and assigned his rights to Delgado. Delgado then sued the insurer as a judgment creditor and for bad faith. While the trial court dismissed the action on demurrer, the Court of Appeal reversed, finding that the allegations potentially were an "accident" under the policy.

On review the Supreme Court first addressed the issue as to what constitutes "an accident" under a liability policy, which substantial case law had found to be "an unexpected, unforeseen, or undersigned happening or consequence from either a known or unknown case." The Court rejected Delgado's reliance on prior decisions of the Court that Delgado had contended held that the term "accident" was to be determined from the perspective of the injured party. The Court observed that, under such reasoning, plainly intentional acts like child molestation, arson and premeditated murder, if contended to be based on an unreasonable belief in the need for self-defense, could be considered an "accident" within the policy coverage.

The Court also took the occasion to dismiss Delgado's attempt to claim that prior decisions of the Court, such as *Gray v. Zurich Insurance Co.*, 65 Cal. 2d 263 (1966), supported a duty to defend. The Court explained that *Gray* and cases like it involved situations whether the claim fell within the broad insuring provisions of the policy and the insurer sought to avoid a duty to defend based on the policy's exclusion for injury "caused intentionally by or at the direction of the insured." This is in contrast to the present case, where there was no exclusion at issue and the insured had the burden to demonstrate "an accident" and thereby fall within the policy's insuring provision.

In conclusion, the Court stated that "an insured unreasonable belief in the need for self-defense does not turn the resulting purposeful and intentional act of assault and battery into 'an accident' within the policy's coverage clause . . .[and thus the insurer] had no duty to defend its insured in the lawsuit brought against him by the injured party."