# Weekly Law Resume

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WEEKLY LAW RESUME™

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## Insurance Coverage - Duty to Defend - Intentional Act

*State Farm General Insurance Company v. Patrick Frake, et al.*
Court of Appeal, Second District (July 13, 2011)

The Supreme Court has previously ruled that the nature of an insured's acts, rather than the nature of the consequences of such acts, would determine whether an event was an "accident" covered under a general liability policy. In this case, the insured argued that the unintended consequences of his intentional acts constituted an "accident" for which he was entitled to a defense under an insurance policy.

Patrick Frake and John King were friends who got together to visit Chicago and take in a baseball game. While at the game, Frake allegedly became intoxicated. At the end of the game, King attempted to strike Frake in the groin, but missed. Shortly thereafter, Frake struck King, "around" the groin area. There did not seem to be any particular problem, and the two men attended a football game the next day with some other friends. Frake left Chicago the following day. Shortly thereafter, he learned from a friend that King claimed that he had been hurt by the incident, and King wanted him to pay his $70,000 in medical bills.

King subsequently filed suit against Frake, alleging negligence, assault and battery and intentional infliction of emotional distress. In the complaint, he alleged that Frake had "repeatedly" engaged in "obnoxious" behavior that day, over King's objections, and that he hit King in the groin, causing him to double up in pain. He alleged that as Frake hit him, he "laughed triumphantly." Frake tendered the defense of the action to State Farm, which insured him under a renter's policy. The policy defined the term "occurrence" as an "accident . . . which results in bodily injury . . . during the policy period."

State Farm reviewed King's complaint and initiated an investigation of the claim. Frake's mother indicated that her son, King and their friends had a "tradition" of trying to hit each other in the groin area. Frake himself indicated that they had

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engaged in a "cycle of horseplay" since high school, including trying to hit each other in the groin. Frake also stated that although he intended to hit King, he did not necessarily intend to hit him exactly in the groin on that occasion, and he did not intend to hurt King. State Farm initially accepted the defense under a reservation of rights, claiming that it had no duty to defend. The case proceeded to trial on a negligence theory only, and the jury found Frake negligent and awarded King $450,000. King and Frake entered into a covenant not to execute and an assignment of Frake's rights against State Farm.

State Farm filed a declaratory relief action against both Frake and King, who both cross-complained. State Farm brought a motion for summary judgment, which was denied. The trial court denied the motion, finding that there was a triable issue of fact as to whether Frake had intended to cause injury to King. In 2009, the Supreme Court decided *Delgado v. Interinsurance Exchange of the Automobile Club of Southern California* (WLR, FEBRUARY 4, 2010), in which it held that the insured's unreasonable belief in the need for self-defense did not make the insured's actions an "accident," and there was no duty to defend. Thereafter, State Farm sought leave to re-file its motion for summary judgment, based on the *Delgado* decision. The trial court denied the motion, holding that the ruling in *Delgado* was "narrow," and did not alter past decisions that had held that an insurer has a duty to defend where the insured acted deliberately, but did not intend the consequences of his actions. A judgment was entered to facilitate appeal, and State Farm appealed the judgment.

The Court of Appeal reversed. The Court noted that the policy provided coverage for "bodily injury . . . caused by an occurrence." The term "occurrence" was defined as "an accident." Therefore, under the policy, an "occurrence" could only be the actions or "causal event" of the insured, not the result (intended or not). Hence, the focal determination is not the results of the insured's actions, and whether they were intended or not, but whether the insured's actions were intended or not. This was confirmed in *Delgado*, and followed a long line of prior cases which made clear that "an accident does not occur when the insured performs a deliberate act unless some additional, unexpected, independent, and unforeseen happening occurs that produces the damage." Here, Frake intended to strike King. This was an intentional act, and could not be an accident. There was thus no coverage for Frake's actions. The trial court's judgment was ordered reversed, with judgment to be entered in favor of State Farm.

**COMMENT**

Following up on *Delgado*, this case confirms that when an insured's acts are intentional, the harm directly caused by that action cannot be deemed an "accident," and there is thus no duty to defend in such situations.

For a copy of the complete decision see:

HTTP://WWW.LOWBALL.COM/WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B223865.PDF

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