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Shooting Of Passenger By Cab Driver Not Covered Under Policy Issued To Cab Company Which Defined Occurrence As An Accident

On June 14, 2010, the Second Appellate District filed its opinion in *L.A. Checker Cab v. First Specialty Ins. Co.* holding the shooting of a customer by a cab driver was not an “accident” within the meaning of the cab company’s commercial general liability policy.

Factual and Procedural Background

Alexander Terminassian, an employee of L.A. Checker Cab, was operating his taxi one evening when he got into a dispute with a passenger, Marco Cifuentes. Cifuentes asserted Terminassian told him he would not accept him as a passenger because he was drunk, and that Terminassian ordered him out of the cab. Terminassian testified that in response, Cifuentes spat in his face, kicked him, struck him in the head and threatened to kill him. Terminassian further described Cifuentes as “deranged” and “out of control.” Terminassian warned Cifuentes he was armed. He removed the gun from his pocket and “racked the slide.” Cifuentes got out of the cab, opened the driver’s side door and tried to pull Terminassian out of the cab. Terminassian fired at Cifuentes who ran away. In response to the question as to whether he intended to shoot Cifuentes, Terminassian said “there was no time to intend or not to intend. I just shot him because it was on the spur of the moment.” Terminassian shot Cifuentes “because of the danger to my life.”

Cifuentes sued Checker and Terminassian for assault and battery and Checker for negligent supervision of Terminassian. Checker tendered the defense to its insurer First Specialty, which refused to defend or indemnify. The trial court granted the insurer’s motion for summary judgment and the appellate court affirmed the judgment.

Judicial Holding and Analysis

Checker’s policy covered bodily injury caused by an “occurrence.” The term “occurrence” was defined as an “accident.” An “accident” is “an unexpected, unforeseen, or undesigned happening or consequence from either a known or unknown cause.” “An injury-producing event is not an accident . . . when all the acts, the manner in which they are done, and the objective accomplished occurred as intended by the actor.”

According to the court, the “undisputed evidence” showed that Terminassian intentionally chambered a bullet in his gun and intentionally shot Cifuentes at point-blank range. Thus, Cifuentes’ injury was not accidental as a matter of law, and there was no potential for coverage and no duty to defend or indemnify by the insurer.

The court rejected Checker’s argument that there was a potential for coverage because Terminassian had an unreasonable belief in his need for self-defense and his response to



Cifuentes' provocation was negligent. The court relied on the recent Supreme Court decision in *Delgado v. Interinsurance Exchange* (2009) 47 Cal. 4th 302 which held "an insured's unreasonable belief in the need for self-defense does not turn the resulting purposeful and intentional act of assault and battery into an accident . . ."

The court also rejected the argument that Cifuentes' negligent acts provoked a response from Terminassian that was also negligent. Again, citing *Delgado*, the court stated the term "accident" refers to "the injury-producing acts of the *insured*, not those of the injured party. Checker also contended the insured had a duty to defend the cause of action for negligent supervision, but the court stated the policy unambiguously refers to an event causing damage, not the earlier event creating the potential for injury. Pursuant to *Delgado*, the court held the "focus of the analysis . . . must be on the conduct that directly produced Cifuentes' injury, not some remote act that had the potential for producing a future injury." Checker's alleged negligence in failing to supervise Terminassian was not the direct cause of Cifuentes' injury, but only a "remote antecedent" cause which did not qualify as an occurrence under the policy.

Comments and Implications

In *Delgado*, the insured allegedly struck, battered and kicked claimant without provocation or justification. In holding the injuries were not accidental, and therefore not covered, the court noted there was no allegation that the insured's acts were merely shielding or the result of a reflex action. Although this language appears to acknowledge the possibility of coverage in certain self-defense situations, the *Checker* court followed *Delgado* without discussion of the apparent differences between the two cases. In *Delgado*, the insured allegedly attacked the claimant without provocation. There were no allegations of conduct indicating the insured acted in self-defense. In *Checker*, Terminassian testified that the claimant assaulted and threatened to kill him and that he shot the claimant "on the spur of the moment" when the claimant attempted to pull him out of the cab.