

Coverage

Section of Litigation
American Bar Association

Laura A. Foggan and Mary Craig Calkins, Committee Cochairs
Editor in Chief: Erik A. Christiansen

Published by LexisNexis

Volume 19, Number 6, November/December 2009

Articles

3 When Co-Insurers Collide, Who Pays?

by Joseph A. Ziemianski and Claire Lakin-Koel

In 2007, the Texas Supreme Court held that no cause of action exists between co-insurers when they jointly cover a loss and each policy contains a pro rata insurance clause. Several states have adopted a similar approach. Most states, however, continue to follow the majority rule that an insurer paying more than its fair share of damages has the right to seek contribution from other insurers. The majority approach better promotes equitable sharing of defense costs and reasonable settlements.

18 *CACI Int'l, Inc. v. St. Paul Fire & Marine Insurance Company*—Courts Continue to Struggle with the Boundaries of the “Eight Corners Rule”

by John B. Mumford, Jr. Kathryn E. Kransdorf

In many states, the outcome of insurance coverage litigation over the duty to defend will hinge on the application of the Eight Corners Rule—routinely described by courts as requiring the comparison of the four corners of the insurance policy against the four corners of the underlying complaint; if any allegations may potentially be covered by the policy, the insurer has a duty to defend. But despite its seeming simplicity, application of the “Eight Corners Rule” frequently raises other issues—such as, when, if ever, can the court look to documents outside the “Eight Corners” to decide the duty to defend, and what documents, if any, outside the “Eight Corners” can the court examine? As demonstrated by recent decisions from the United States District Court for the Eastern District of Virginia and the Fourth Circuit Court of Appeals, courts continue to struggle with this issue.

22 *Insurance 101—Insights for Young Lawyers: Assessing Coverage Issues under Additional Insured Endorsements*

Additional Insured Endorsements can raise a myriad of coverage issues. This article addresses the main issues to consider when confronted with a coverage dispute regarding coverage for an additional insured.

Delgado v. Interinsurance Exchange: The California Supreme Court Restores Clarity to the Analysis of Coverage for Self-Defense

by Rina Carmel

Along the spectrum of negligent/intentional torts is a gray area of conduct that can be negligent or intentional, depending on the facts presented. Assault and battery are classic examples, as those torts range from inadvertently brushing the third-party claimant to hitting him or her on purpose. Parties to the underlying action may try to use this spectrum to characterize conduct as accidental or intentional, depending on whether they want to trigger or eviscerate coverage for the insured defendant.

In situations where self-defense is involved, the coverage analysis can become quite complex. Several reasons exist. First, self-defense is essentially assault and battery,¹ and frequently involves conduct that was, on some level, “intended” against the instigator/assaulted third-party claimant. The factual allegations against the insured may be unclear or conflicting. The underlying complaint may plead intentional conduct, negligent conduct, or both. Second, the allegations may implicate insuring clauses (such as coverage for an “occurrence”)

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Rina Carmel is a senior associate in Carlson, Calladine & Peterson LLP's Los Angeles office, where she specializes in all aspects of complex coverage litigation and analysis under commercial general liability, excess, directors and officers, errors and omissions, first-party property, media and specialty lines policies. Her published decisions include *Century Surety Co. v. United Pac. Ins. Co.*, 109 Cal. App. 4th 1246 (2003), review denied, No. S117884 (Cal. Sept. 17, 2003). She is active in the American Bar Association's Insurance Coverage Litigation Committee and the Defense Research Institute, and has authored numerous articles and speaks frequently on all aspects of insurance law.

Delgado v. Interinsurance Exchange: the California Supreme Court Restores Clarity to the Analysis of Coverage for Self-Defense

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versus exclusions (such as exclusions for “expected or intended” conduct), which are evaluated differently in most jurisdictions. Third, although courts have acknowledged that “occurrences” and “accidents” are the opposite of intentional conduct, “occurrences” and “accidents” are not necessarily synonymous with negligent conduct. Fourth, an insurer might have a duty to defend an underlying action, even if it ultimately has no duty to indemnify. Fifth, the issue of whether the act of self-defense or the motive for self-defense were intentional is analytically complex.

Over time, as courts have considered the above issues, the analysis has become increasingly confused, to the point where some courts’ reasoning compelled a conclusion that insurers must consider the insured’s affirmative defenses and the intent of the third-party claimant to evaluate coverage—even though doing so contradicts bedrock principles of policy interpretation. Such results created uncertainty for insurers and insureds alike.

The Delgado court rejected the confused analysis that intermediate courts of appeal had created, and in so doing, reconfirmed bedrock principles of policy interpretation to which insurers and insureds alike should look

The history of coverage for self-defense in California amply illustrates these issues. In August 2009, the California Supreme Court issued a decision, *Delgado*,² that restores clarity to the analysis by holding that an insured’s unreasonable belief in the need for self-defense does not convert an assault into an “accident.” The *Delgado* court rejected the confused analysis that intermediate courts of appeal had created, and in so doing, reconfirmed bedrock principles of policy interpretation to which insurers and insureds alike should look. This article traces the history of coverage for self-defense in California, with a focus on the five analytical issues listed above.

I. A Brief Review of Policy Language

The first step in evaluating coverage issues is usually to review the policy language. Many types of liability policies, such as commercial general liability policies, auto policies, and homeowners policies, provide coverage for “bodily injury.” A common

definition of this term is “bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.”³ Most policies require that the “bodily injury” be caused by an “occurrence,” defined to include an “accident.”⁴ Most policies, however, do not define the term “accident.” Courts have judicially defined the term to mean “an unexpected, unforeseen, or undesigned happening or consequence from either a known or an unknown cause”⁵ and “arising from extrinsic causes[;] occurring unexpectedly or by chance[; or] happening without intent or through carelessness.”⁶

California courts agree that intentional conduct is neither an “occurrence” nor an “accident.”⁷ In contrast, negligent conduct may or may not be an “occurrence” or “accident,”⁸ depending on the facts presented.

Many jurisdictions, including California, prohibit indemnity for intentional conduct as a matter of public policy.⁹ In a like vein, liability policies often exclude coverage for various types of intentional conduct. Policies issued in the mid-20th century often excluded coverage for “bodily injury . . . caused intentionally by or at the direction of the insured.”¹⁰ Modern policies often exclude coverage for “bodily injury,” but carve out an exception for self-defense.¹¹

The distinction between “occurrence”/“accident” and intentional conduct is at the crux of early judicial analyses of coverage for self-defense.

II. Historical Case Law and the Evolution of Confusion

A. Intent Encompasses the Insured’s Act and Motive

In an early case, *Walters v. American Insurance Company*,¹² the California Court of Appeal implicitly recognized that an exclusion for intentional conduct requires an intentional act. In addition, the court held that the insured’s motive of self-defense was relevant to interpreting the exclusion, because the insured’s motive bears on whether the insured’s conduct was wrongful in the first instance.

In *Walters*, the insured and the third-party claimant had an argument, during which the third-party claimant, who was drunk, became abusive, grabbed the insured, pulled him around “and called him a coarse name.” The insured then hit the third-party claimant three times, and later testified that he acted “intentionally in self-defense.”¹³

The third-party claimant threatened to file suit, and the insured sought coverage under a Comprehensive Personal Liability Endorsement to his auto policy.

The endorsement afforded coverage for “bodily injury,” and excluded coverage for “injury, sickness, disease, death or destruction caused intentionally by or at the direction of the insured.”¹⁴

At issue in the ensuing coverage action was whether intent referred to the act or the insured’s motive. The insured argued that the exclusion meant “that the specific injury must have been intended. Here [the insured] intended no injury, rather he intended only to protect himself.”¹⁵ The insurer argued that the word “intentionally” “refers merely to the act without any reference to motive.”¹⁶ In other words, the exclusion applies to bar coverage where the insured’s act was intentional, regardless of the insured’s state of mind.

The court concluded that the insured’s state of mind plays in to the analysis. Not only must the act be intentional, but the insured must have had “a preconceived design to inflict injury” for the exclusion to apply.¹⁷ In *Walters*, the insured intended to defend himself, not to inflict injury (even though he did inflict injury). Because the insured did not have the requisite motive/state of mind, the intentional conduct exclusion did not apply to bar coverage.¹⁸

Walters pre-dates more comprehensive discussions of principles of policy interpretation and careful distinctions between negligent and intentional conduct. Subsequent decisions relied on *Walters*’ analysis of intent, as discussed below, without acknowledging some of the inherent limitations of its analysis.

B. Intent Encompasses the Insured’s Motive, But If an Unintended Result Happens, the Act May Become “Nonintentional”

Six years later, the California Supreme Court addressed the issue of coverage for self-defense for the first time, in the landmark case of *Gray v. Zurich Insurance Co.*¹⁹ The court considered the distinction, still in its infancy, between the duty to defend and the duty to indemnify, and concluded that an insurer may have a duty to defend an underlying action that alleges an intentional assault.

In *Gray*, the insured, Dr. Gray, was driving when another vehicle narrowly missed colliding with him. The driver of the other car got out and approached Dr. Gray’s car “in a menacing manner and jerked open the door.”²⁰ Dr. Gray, fearing physical harm to himself and his passengers, hit the other driver. The other driver filed suit against Dr. Gray, alleging that Dr. Gray “wilfully, maliciously, brutally and intentionally assaulted” him.²¹ Dr. Gray tendered the suit to his insurer, which disclaimed coverage on the basis

that the underlying complaint “alleged an intentional tort which fell outside the coverage of the policy.”²² Dr. Gray defended the underlying action on a theory of self-defense, but lost at trial.²³

The insurance policy at issue provided coverage for “bodily injury,” and excluded coverage for “bodily injury . . . caused intentionally by or at the direction of the insured.”²⁴ The California Supreme Court concluded that the insurer had a duty to defend, for two reasons: (1) the policy exclusion was unclear; and (2) the insurer might be required to indemnify the insured.²⁵

In discussing the first reason, the court began by noting that fundamental difficulties exist in evaluating the duty to defend where intentional conduct might be at issue, because the third-party claimant can characterize the conduct as intentional or negligent. As the court observed, insurers can avoid this philosophical uncertainty by clear policy language.²⁶ The exclusion at issue was held unclear because the policy, as a whole, promised coverage, to include both defense and indemnity, whereas the exclusion might result in a defense but no indemnity for the insured. Thus, under now-familiar principles of policy interpretation, the court construed the exclusion against the insurer.²⁷ As an additional reason not to enforce the exclusion, the court found that it was not “conspicuous, plain and clear” because it appeared in fine print.²⁸

[T]he analysis in Gray opens the door to analytical confusion by allowing unintended results of an act to transform intentional conduct into “nonintentional” conduct

With respect to the analysis of intentional conduct itself, metaphysical issues complicate the determination of what constitutes intentional conduct. For example, “an act of the insured may carry out his ‘intention’ and also cause unintended harm.”²⁹ In such situations, the third-party claimant could choose whether to allege intentional or negligent conduct, and could later amend the complaint to allege a different type of conduct.³⁰ Further complicating the analysis, the insured could “show that in physically defending himself, even if he exceeded the reasonable bounds of self-defense, he did not commit wilful and intended injury, but engaged only in nonintentional tortious conduct.”³¹ This analysis extends *Walters* by allowing coverage for a more clearly wilful act. At the same time, the analysis in *Gray* opens the door to analytical confusion by allowing unintended results of an act to transform intentional conduct into “nonintentional” conduct.

In discussing the second reason, the possibility that the insurer could be required to indemnify the insured

for intentional conduct, the court developed a distinction that has become key in insurance law—an insurer can be required to defend where the conduct could be classified as negligent, but if the conduct is ultimately adjudicated to have been intentional, then the insurer need not indemnify (so long as it has reserved its right to disclaim indemnity).³² These issues have subsequently been important not only in analyzing coverage for assault and self-defense cases, but in such diverse areas as sexual molestation,³³ rape³⁴ and malicious prosecution.³⁵

C. Appellate Interpretations of *Gray*

Following *Gray*, several intermediate courts of appeal concluded that self-defense is covered, or at least potentially covered, and suggested that *Gray* established a bright-line rule in favor of coverage. Over time, the appellate courts' reasoning became increasingly convoluted, resulting in holdings that contravene basic principles of insurance law. *Delgado*, decided by the California Supreme Court in August 2009, appears to supersede these cases and restore clarity to the analysis.

1. *Mullen* Suggests Insurers Must Consider the Insured's Affirmative Defenses and Unpled Facts

In *Mullen v. Glens Falls Insurance Company*,³⁶ the California Court of Appeal considered whether an insurer had a duty to defend an underlying action alleging assault and battery, under both negligent and intentional theories of conduct. Although the court held that an insurer cannot disclaim coverage without performing an appropriate investigation, it partly premised its ruling on the fact that the insured asserted an affirmative defense of self-defense.

The underlying facts in *Mullen* involved a fight between the insured's minor son and a gasoline station attendant. The station attendant's complaint alleged negligence, and intentional assault and battery.³⁷ The minor's answer asserted an affirmative defense of self-defense.³⁸ At deposition, the station attendant testified that the minor struck him twice with a tire iron without provocation and said, "I am going to kill you."³⁹ The court entered judgment against the minor for intentional assault, based in part on a crime report made the day of the attack.⁴⁰

After the station attendant's complaint was filed, but before the answer or judgment, the minor (through his insurance agent) provided notice of the underlying action.⁴¹ The agent's notice letter said that the minor had struck the station attendant with a tire iron, but that the agent "did not know all of the details of the accident." The agent advised of the

name of an attorney who could provide further information.⁴² The "comprehensive personal liability" policy at issue provided coverage for "bodily injury" caused by an "occurrence," defined to mean "an accident, including injurious exposure to conditions, which results, during the policy period, in bodily injury ... neither expected nor intended from the standpoint of the insured."⁴³ The insurer did not contact the attorney who had additional information, but disclaimed coverage because the policy afforded no coverage for "acts 'intentionally' caused by an insured."⁴⁴ Based on the underlying judgment that the minor's conduct was intentional, the trial court in the coverage action concluded that the insurer had no duty to defend or indemnify.⁴⁵

The court of appeal parsed the agent's notice to the insurer, which showed coverage might exist (as the minor had struck the station attendant with a tire iron, *i.e.*, "bodily injury"), but that further investigation was necessary (as the agent "did not know all of the details of the accident"). Thus, the court of appeal concluded that the insurer had insufficient facts on which to disclaim, and should have investigated further.⁴⁶

Mullen asks insurers to speculate about unpled facts and to consider an insured's defenses in evaluating coverage. Mullen also glosses over Gray's more nuanced analysis, and reads Gray to stand for the unequivocal proposition that self-defense is "not 'intended' or 'expected' within the meaning of those terms as customarily used in an exclusionary clause"

The court of appeal's reasoning is otherwise problematic in several respects. First, it states that at the time of disclaimer, "for all the insurance company could have known at that time, [the station attendant] started the fight and was struck by [the minor] in self-defense."⁴⁷ *Mullen* essentially asks insurers to speculate about unpled facts, which subsequent case law has confirmed insurers are not to do.⁴⁸ Second, the court suggests that the insured's defenses can determine whether coverage exists, and creative insureds might read the decision to require insurers to consider the insured's affirmative defenses. Again, insurers are not required to investigate by reviewing the insured's answer.⁴⁹ Third, the court reads *Gray* to stand for the unequivocal proposition that self-defense is "not 'intended' or 'expected' within the meaning of those terms as customarily used in an exclusionary clause ..."⁵⁰ This part of the decision glosses over *Gray*'s more nuanced theoretical discussion, which leaves room for the possibility that self-defense might not be

covered. The California Supreme Court's recent ruling in *Delgado* confirms that this third point, like the first two, is no longer the law in California.

2. *Marino* Holds That Motive Requires a "Preconceived Design to Inflict Injury," Regardless of the Result of the Act

Eleven years later, in *Grain Dealers Mutual Insurance Co. v. Marino*,⁵¹ a different court of appeal ruled that intentional conduct depends on the insured's motive, specifically a "preconceived design to inflict injury," regardless of the result of the act. *Marino* exemplifies the truism that bad facts make bad law, because the insured's acts were allegedly criminal.

In *Marino*, the insured allegedly shot two men, killing one and wounding the other. The insured put both bodies in the trunk of a car, drove the car to San Francisco, and then abandoned it.⁵² The insured was convicted of murder and attempted murder in a criminal trial, but those convictions were later reversed.⁵³

The injured victim filed a civil suit against the insured, alleging assault, battery, negligence, and other causes of action.⁵⁴ The insured tendered the civil suit to his homeowners insurer. The policy included coverage for bodily injury caused by an occurrence, but excluded coverage for "bodily injury . . . which is either expected or intended from the standpoint of the insured."⁵⁵ The insurer agreed to defend, but reserved the right to seek an independent determination of its duty to defend and indemnify the insured.⁵⁶ The insurer subsequently filed a declaratory relief action.

At issue in the declaration relief action was whether the "expected or intended" exclusion barred coverage. The insurer argued, in its motion for summary judgment, that testimony in the criminal trial—namely that the shootings were intentional and that both victims were shot in the back of the head at point-blank range—should bar the insured from relitigating the issue of intentional conduct in the coverage action.⁵⁷ The third-party claimant/victim, also a party to the declaration relief action, opposed the insurer's motion by pointing to excerpts from the criminal trial record which would have supported a finding that the shootings were either accidental or done in self-defense.⁵⁸ The trial court in the coverage action granted summary judgment in favor of the insurer, ruling that the insured's conduct "was willful and intentional and excluded by the insurance policy."⁵⁹

The court of appeal reversed for the technical reason that since the criminal convictions were overturned, there could be no collateral estoppel, as that doctrine requires a final judgment on the merits.⁶⁰ Thus, for purposes of the coverage action, the issue

of the insured's conduct remained to be adjudicated.⁶¹ Since a factual dispute existed, namely whether the insured had acted intentionally or in self-defense, the court reversed summary judgment. The court explained the relevant standards of conduct as follows:

"[E]ven an act which is 'intentional' or 'willful' within the meaning of traditional tort principles will not exonerate the insurer from liability . . . unless it is done with a 'preconceived design to inflict injury. . . ." If an insured acted in self-defense, although he intended the act, he acted "by chance and without a preconceived design to inflict injury just as though he were acting intentionally, although negligently, and injured someone." . . . In other words, if [the insured] acted in self-defense [the insurer's] policy would provide coverage for his conduct.⁶²

This discussion conflates negligent and intentional conduct. Further, it goes beyond the statutory definition of "wilful" conduct to require a motive of "preconceived design to inflict injury." It also erroneously suggests that an intentional conduct exclusion can apply only if a bad result matches a bad motive.

3. *Jafari* Holds That an "Accident" Depends on the Third-Party Claimant's Acts

Two years ago, in *Jafari v. EMC Insurance Cos.*,⁶³ another court of appeal held that self-defense can be an "accident" when provoked by the unexpected, unintended, unplanned and unforeseen acts of a third party. More broadly, the court ruled that insurers should consider the entire causal chain of events in evaluating coverage for self-defense.⁶⁴

The insured in *Jafari* ran a repair garage. A customer came to pick up his car, and the insured's manager told the customer the car was not ready. The customer became verbally abusive, and the two began arguing. After the customer threatened to kill the manager, the manager punched the insured in the face at least twice. The customer needed three stitches above his eye. The customer sued, alleging assault, battery, negligence and other causes of action.⁶⁵

The insured had a garage liability policy which provided coverage for "'bodily injury' . . . caused by an 'accident' and resulting from 'garage operations' other than the ownership, maintenance or use of covered 'autos.'" ⁶⁶ The policy excluded coverage for "'bodily injury' . . . expected or intended from the standpoint of the 'insured.'" But for 'garage operations' other than covered 'autos' this exclusion does not apply to 'bodily injury' resulting from the use of reasonable force to protect persons or property."⁶⁷

The insurer disclaimed coverage for the underlying action, on the grounds that the manager had acted intentionally, and intentional acts are not “accidents” and as such are not covered.⁶⁸ In the subsequent coverage action, the insurer argued that whether or not the manager acted in self-defense, his conduct was intentional and could not be an “accident,” and was thus not covered.⁶⁹

The court of appeal held that the third party’s conduct within the entire causal chain is determinative of coverage.

... acts in self-defense can be an “accident” where the third party’s actions provoking the self-defense response were the unforeseen and unexpected element in the causal chain of events making the insured’s acts in self-defense unplanned and involuntary. Under these courts’ definitions, it is the unexpectedness of the third party’s actions which creates the “accident” within the meaning of the coverage clause.

In other words, in assault and battery cases the third party’s actions prompting an insured to act in self-defense are part of the causal chain of events leading to potential injury. In the usual case the third party’s actions which prompt the need to protect self or others will be the unintended, unexpected, unplanned and unforeseen event constituting the “accident.”⁷⁰

Jafari’s reasoning is problematic in that it requires insurers to consider the conduct of the third-party claimant, in contravention of the established principle that the third-party claimant cannot be the arbiter of coverage.⁷¹ Creative insureds might argue that the case does not require consideration of the nature of the insured’s conduct.

The California Supreme Court granted review of *Jafari*, meaning that the court of appeal’s decision is depublished and cannot be cited to California courts. The California Supreme Court’s recent ruling in *Delgado* suggests the court may reverse *Jafari*.

III. *Delgado* Restores Clarity to the Analysis

In *Delgado*, the California Supreme Court held that an insured’s unreasonable belief that he was acting in self-defense when he assaulted a third party was not an “accident,” and hence the insurer had no duty to defend. In doing so, the court reconfirmed that intentional conduct remains intentional, regardless of the insured’s motive.

In that case, the insured kicked the third-party claimant and struck him in the nose while the two were standing across the street from the insured’s residence. The third-party claimant sued. The first cause of action alleged that the insured “in an unprovoked fashion and without any justification

physically struck, battered and kicked ... [third-party claimant] repeatedly causing serious and permanent injuries,” and the second cause of action alleged that the insured “negligently and unreasonably believed” he was engaging in self defense “and unreasonably acted in self defense when [he] negligently and unreasonably physically and violently struck and kicked ... [the third-party claimant] repeatedly causing serious and permanent injuries.”

The insured tendered the underlying action to his homeowners insurer. The insurer disclaimed coverage, because the assault was not an “occurrence,” defined in the policy to mean an “accident,” and because the policy’s intentional acts exclusion barred coverage.

The parties to the underlying action agreed to settle in exchange for an assignment of the insured’s rights against the insurer. The parties stipulated that the insured’s “use of force constituted a negligent use of excessive force in the exercise of his right of self-defense,” and agreed to request dismissal of the intentional tort claim. In the coverage action, following *Gray*, *Walters*, *Mullen* and *Marino*, the court of appeal ruled that harmful acts committed with an unreasonable belief in self-defense are “properly characterized as nonintentional tortious conduct.” Thus, the second cause of action alleged an “accident,” giving rise to a duty to defend.⁷²

The California Supreme Court reversed. First, the court clarified that the term “accident,” as judicially defined in *Geddes*,⁷³ “lacks any mention of the need to consider the perspective of the injured party.”⁷⁴ Rather, the correct inquiry is whether the *event* was unforeseen.⁷⁵ The court explained that basing the coverage analysis on the perspective of the injured party means that any intentional conduct could be considered an “accident.” For example, child molestation and premeditated murder could be “accidents,” because the victims neither expected nor intended the conduct to occur.⁷⁶ The court rejected the insured’s argument that if the insurer had wanted to limit coverage, it should have defined the term “accident” to mean “neither expected nor intended from the standpoint of the insured,” explaining that since the term “accident” is judicially defined, it cannot be ambiguous.⁷⁷

The court distinguished *Gray* on two grounds. First, *Gray* involved a policy exclusion, whereas the issue in *Delgado* was whether “unreasonable self-defense” falls within coverage for “an accident.”⁷⁸ Second, *Gray* did not say that “an unreasonable belief in self-defense” converts intentional acts into unintentional acts. Rather, “a purposeful and intentional act remains purposeful and intentional regardless of the reason or motivation for the act.”⁷⁹ Under *Gray*, at most, “an unreasonable belief in self-defense” takes

the resulting act outside the policy's intentional acts exclusion, rendering the act "nonintentional."⁸⁰

Finally, the court rejected the argument that an insured's unreasonable belief in the need for self-defense converts the assault into an "accident." In so doing, the court implicitly overruled *Jafari*. The court explained that such a view is based on the notion that a provocation by the third-party claimant can somehow convert the insured's physical act into an "accident."⁸¹ Insurers should not consider the third-party claimant's perspective. Instead, the insured's acts "must be considered the starting point of the causal series of events, not the injured party's acts that purportedly provoked the insured into committing assault and battery" in self-defense.⁸² Looking to the entire causal chain, and in particular acts or events that happened before the insured's self-defense, "would be illogical and contrary to California case law."⁸³ To do otherwise injects uncertainty into the analysis.

Delgado restores clarity by rejecting the argument that an insured's unreasonable belief in the need for self-defense converts the assault into an "accident," and holds that insurers should not consider the third-party claimant's perspective in evaluating coverage.

IV. Conclusion

Delgado reconfirms that to construe policy provisions regarding intentional acts, insurers must consider acts over motive. It restores the basic principles that insurers must look to the insured's conduct, and not to impermissible factors such as the third-party claimant's perspective. The analytical issues will remain complex, but insurers and insureds will now benefit from *Delgado*'s reaffirmation of established, common-sense principles of policy construction.

¹ *Delgado v. Interinsurance Exch. of the Auto. Club of So. Cal.*, — Cal.4th —, slip op. at 9 (Aug. 3, 2009).

² *Delgado*, — Cal.4th —.

³ See, e.g., Insurance Services Office ("ISO") Form No. CG 00 01 10 01.

⁴ See, e.g., ISO Form No. CG 00 01 10 01.

⁵ *Geddes & Smith, Inc. v. St. Paul Mercury Indem. Co.*, 51 Cal.2d 558, 563–564 (1959) (property damage case).

⁶ *St. Paul Fire & Marine Ins. Co. v. Superior Court*, 161 Cal. App. 3d 1199, 1202 (1984).

⁷ See, e.g., *Dalrymple v. United Svcs. Auto. Ass'n*, 40 Cal. App. 4th 497, 522 n.9 (1995) ("the harmful act of pointing and shooting at a person is not accidental even if sometimes it may be non-criminal."); *Dyer v. Northbrook Prop. & Cas. Ins. Co.*, 210 Cal. App. 3d 1540, 1547 (1989) ("An intentional act is not an 'accident.' . . . More to the point, '[a]n intentional termination is not an 'occurrence' under the policy because it is not an accident.'").

⁸ See, e.g., *Quan v. Truck Ins. Exch.*, 67 Cal. App. 4th 583, 595 (1998) (where insured allegedly raped third-party claimant, and allegedly believed claimant had consented, inquiry was not whether conduct was "negligent," because alleged conduct "is necessarily nonaccidental, not because any 'harm' was intended, but simply because the conduct could not be engaged in by 'accident.'").

⁹ See, e.g., Cal. Ins. Code § 533 (barring indemnity for "wilful" conduct); *Beaver v. Country Mut. Ins. Co.*, 95 Ill. App. 3d 1122, 420 N.E.2d 1058 (1981) (barring indemnity for punitive damages); but see *State Farm Mut. Auto. Ins. Co. v. Lawrence*, 26 P.3d 1074, 1080 (Alaska 2001) (unless insurance policy expressly excludes coverage for punitive damages, insurer may be required to indemnify for punitive damages); *Fluke Corp. v. Hartford Accid. & Indem. Co.*, 34 P.3d 809, 814–815 (Wash. 2001) (same).

¹⁰ See, e.g., *Gray v. Zurich Ins. Co.*, 65 Cal.2d 263, 267 (1966).

¹¹ See, e.g., ISO Form No. CG 00 01 10 01 (excluding coverage for "bodily injury" . . . expected or intended from the standpoint of the insured. This exclusion does not apply to 'bodily injury' resulting from the use of reasonable force to protect persons or property.").

¹² *Walters v. American Insurance Company*, 185 Cal. App. 2d 776 (1960).

¹³ *Walters*, 185 Cal. App. 2d at 779–780.

¹⁴ *Walters*, 185 Cal. App. 2d at 779.

¹⁵ *Walters*, 185 Cal. App. 2d at 781.

¹⁶ *Walters*, 185 Cal. App. 2d at 781.

¹⁷ *Walters*, 185 Cal. App. 2d at 783 (citing *Russ-Field Corp. v. Underwriters at Lloyd's*, 164 Cal. App. 2d 83 (1958)).

¹⁸ *Walters*, 185 Cal. App. 2d at 783.

¹⁹ *Gray v. Zurich Insurance Co.*, 55 Cal.2d 263 (1966).

²⁰ *Gray*, 55 Cal.2d at 267 n.1.

²¹ *Gray*, 55 Cal.2d at 267.

²² *Gray*, 55 Cal.2d at 267.

²³ *Gray*, 55 Cal.2d at 267.

²⁴ *Gray*, 55 Cal.2d at 267.

²⁵ *Gray*, 55 Cal.2d at 268.

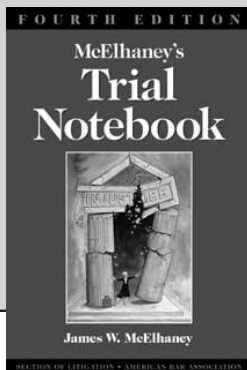
²⁶ *Gray*, 55 Cal.2d at 272.

²⁷ *Gray*, 55 Cal.2d at 269–272.

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- ²⁸ *Gray*, 55 Cal.2d at 273.
- ²⁹ *Gray*, 55 Cal.2d at 273 & n.12 (collecting cases from California and other jurisdictions). Decades later, permutations of this issue continue to arise. *See, e.g.*, *State Farm Fire & Casualty Co. v. Superior Court (Wright)*, 164 Cal. App. 4th 317 (2008) (insured threw someone into swimming pool intending to get him wet, but by mistake did not throw hard enough, so that latter landed on cement step and sustained injuries).
- ³⁰ *See Gray*, 65 Cal.2d at 277.
- ³¹ *Gray*, 65 Cal.2d at 277.
- ³² *Gray*, 65 Cal.2d at 277–278 (citing *Tomerlin v. Canadian Indem. Co.*, 61 Cal.2d 638, 648 (1964)).
- ³³ *See, e.g.*, *J.C. Penney Cas. Ins. Co. v. M.K.*, 52 Cal. 3d 1009, 1028 n.17 (1991) (“[T]he very notion of ‘accidental’ child molestation is implausible.”).
- ³⁴ *See Quan v. Truck Ins. Exch.*, 67 Cal. App. 4th 583 (1998).
- ³⁵ *See Downey Venture v. LMI Ins. Co.*, 66 Cal. App. 4th 478 (1998).
- ³⁶ *Mullen v. Glens Falls Insurance Company*, 73 Cal. App. 3d 163 (1977).
- ³⁷ *Mullen*, 73 Cal. App. 3d at 166.
- ³⁸ *Mullen*, 73 Cal. App. 3d at 168.
- ³⁹ *Mullen*, 73 Cal. App. 3d at 168, 169.
- ⁴⁰ *Mullen*, 73 Cal. App. 3d at 168.
- ⁴¹ *Mullen*, 73 Cal. App. 3d at 167–168.
- ⁴² *Mullen*, 73 Cal. App. 3d at 167–168.
- ⁴³ *Mullen*, 73 Cal. App. 3d at 166. The policy also contained an exclusion for use of an automobile arising out of a “business pursuit.”
- ⁴⁴ *Mullen*, 73 Cal. App. 3d at 167.
- ⁴⁵ *Mullen*, 73 Cal. App. 3d at 168.
- ⁴⁶ *Mullen*, 73 Cal. App. 3d at 169–170.
- ⁴⁷ *Mullen*, 73 Cal. App. 3d at 170.
- ⁴⁸ *See, e.g.*, *Gunderson v. Fire Ins. Exch.*, 37 Cal. App. 4th 1106, 1114 (1995).
- ⁴⁹ California is an “extrinsic evidence” state, meaning insurers must consider extrinsic evidence if it would create coverage. However, where it is clear that the underlying complaint cannot conceivably raise any issue that would trigger coverage, the insurer has no duty to investigate further. *Gray*, 65 Cal.2d at 276 n.15; *see American Int’l Bank v. Fidelity & Deposit Co. of Maryland*, 49 Cal. App. 4th 1558, 1571 (1996) (reviewing complaint and policy may fully satisfy insurer’s duty to investigate). In “four-corner” states, such as New York, insurers may not look beyond the complaint. *See, e.g.*, *Fitzpatrick v. American Honda*, 78 N.Y.2d 61, 575 N.E.2d 90, 571 N.Y.S.2d 672 (1991). In “eight-corner” states such as Texas, insurers may not look beyond the complaint and policy. *See, e.g.*, *St. Paul Ins. Co. v. Texas Dept. of Transportation*, 999 S.W.2d 881, 884 (Tex. App. - 3d Dist. 1999).
- ⁵⁰ *Mullen*, 73 Cal. App. 3d at 170–171.
- ⁵¹ *Grain Dealers Mutual Insurance Co. v. Marino*, 200 Cal. App. 3d 1083 (1988).
- ⁵² *Marino*, 200 Cal. App. 3d at 1085.
- ⁵³ *Marino*, 200 Cal. App. 3d at 1085–1086.
- ⁵⁴ *Marino*, 200 Cal. App. 3d at 1086. One of the causes of action, not relevant to the issue of self-defense, was false imprisonment.
- ⁵⁵ *Marino*, 200 Cal. App. 3d at 1086.
- ⁵⁶ *Marino*, 200 Cal. App. 3d at 1086.
- ⁵⁷ *Marino*, 200 Cal. App. 3d at 1087.
- ⁵⁸ *Marino*, 200 Cal. App. 3d at 1087.
- ⁵⁹ *Marino*, 200 Cal. App. 3d at 1087.
- ⁶⁰ *Marino*, 200 Cal. App. 3d at 1088–1089.
- ⁶¹ *Marino*, 200 Cal. App. 3d at 1089.
- ⁶² *Marino*, 200 Cal. App. 3d at 1089 (citing *Walters*, 185 Cal. App. 2d at 783 and other cases).
- ⁶³ *Jafari v. EMC Insurance Cos.*, 155 Cal. App. 4th 885 (2007). The California Supreme Court has granted review of *Jafari*. Therefore, the appellate decision is depublished and cannot be cited.
- ⁶⁴ *Jafari*, 155 Cal. App. 4th at 899–900.
- ⁶⁵ *Jafari*, 155 Cal. App. 4th at 889.
- ⁶⁶ *Jafari*, 155 Cal. App. 4th at 889.
- ⁶⁷ *Jafari*, 155 Cal. App. 4th at 889.
- ⁶⁸ *Jafari*, 155 Cal. App. 4th at 889.
- ⁶⁹ *Jafari*, 155 Cal. App. 4th at 890–891.
- ⁷⁰ *Jafari*, 155 Cal. App. 4th at 899–900 (footnotes omitted).
- ⁷¹ *See, e.g.*, *Gray*, 65 Cal.2d at 276 (applying this principle to allegations in third-party claimant’s complaint).
- ⁷² *Delgado*, 152 Cal. App. 4th 671 (2007), *rev’d*, — Cal.4th — (Aug. 3, 2009).
- ⁷³ *Geddes*, 51 Cal.2d at 563–564.
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- 74 *Delgado*, — Cal.4th —, slip op. at 5–6.
75 *Delgado*, — Cal.4th —, slip op. at 5–6.
76 *Delgado*, — Cal.4th —, slip op. at 7 (citing *J.C. Penney v. M.K.*, 52 Cal. 3d at 1028 n.17).
77 *Delgado*, — Cal.4th —, slip op. at 5, 7–8.
78 *Delgado*, — Cal.4th —, slip op. at 11.
79 *Delgado*, — Cal.4th —, slip op. at 12.
80 *Delgado*, — Cal.4th —, slip op. at 11–12.
81 *Delgado*, — Cal.4th —, slip op. at 13–14.
82 *Delgado*, — Cal.4th —, slip op. at 14.
83 *Delgado*, — Cal.4th —, slip op. at 14–15.

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