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Swimming pool injury claim sends California Court off the coverage deep end

By Samuel H. Ruby

Like chlorine, a new opinion by a California appellate court will sting and redden your eyes.

Modern liability policies usually define "occurrence" as "an accident" (including repeated exposure to substantially similar conditions). California law has been trending toward the view that where an insured intentionally commits all of the acts that caused the bodily injury or property damage, there is no "accident" and thus no "occurrence," regardless of whether the insured intended that injury or damage. In other words, most California courts caught on that the "occurrence" requirement is separate and independent from the standard policy exclusion for harm "expected or intended from the standpoint of an insured."

Unfortunately, along comes *State Farm & Casualty Company v. Superior Court (Wright)*. In Wright, the insured— a young man claiming to just be "horse-playing around"— threw another young man into a swimming pool. Unfortunately, the insured underestimated his strength, or the prank victim's weight, or maybe just the distance— because instead of landing in the water, the victim landed on a concrete step and broke his clavicle.

Under his parents' homeowners policy with State Farm, the insured tendered the ensuing liability claim. State Farm denied coverage, asserting that the insured's acts were not accidental and that the injury was expected or intended. A trial court found the evidence "pretty clear" that the insured had not intended to harm the victim. On that basis, the trial court apparently rejected State Farm's arguments both on the "expected or intended injury" exclusion and on the "accident" requirement.

State Farm appealed, but the Court of Appeal made the same mistake as the trial court. Conflating the "accident" requirement with the "expected or intended injury" exclusion, the court held that because the insured had not intended to cause injury, the injury was caused by an accident.

Sadly, the Court of Appeal could have found coverage on sounder principles. The insured had intended to throw the victim *into the water*, not onto the concrete step. On that simple basis, the court might have found that there had been an accident. By relying on the fact that the insured had not intended harm, the court unnecessarily muddied the legal waters for future swimmers.

Like the insured, the court should have thrown its weight around more carefully. Here's hoping that a petition for modification (or an appeal to the Supreme Court) will restore order.

Update: As modified, the opinion is now published as 164 Cal. App. 4th 317, 78 Cal. Rptr. 828. As published, the opinion properly focuses on what conduct the insured intended (throwing the plaintiff into the pool), not on whether he intended to cause harm.