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## **An Honest Mistake Over the Use of an Easement is Not an Accident and Therefore Not a Covered Loss**

By Ronald L. Richman

In *Fire Insurance Exchange v. Superior Court* (2010) ---Cal. Rptr.3d ---the California Court of Appeal once again cautioned that an intentional and deliberate act, even if it's the result of an honest and good faith mistake, is not considered an "accident" and therefore not a covered loss under an insurance policy.

In *Fire Insurance Exchange*, the Bourguignons and Leach owned adjoining parcels of land. In 1984, Leach granted the Bourguignons an easement over a five and one-half foot wide portion of her property. Years later, after their home was damaged by an earthquake, the Bourguignons asked Leach for permission to rebuild a portion of their home on the easement. Leach agreed and signed an approval for a lot-line adjustment, adjusting the boundary lines so that the Bourguignons would actually own the five and one-half foot wide portion of the property. The lot-line adjustment was approved by the city and construction was completed. Leach eventually sold her property to the Parsons. The Parsons and the Bourguignons fought over the lot-line adjustment, each suing the other to quiet title to the property. The Bourguignons claimed that they legally acquired the disputed portion of the property through the lot-line adjustment or, in the alternative, by adverse possession. The Parsons, the new owners, claimed the lot-line adjustment was invalid on the grounds that Leach owned 2/3 of the property, her sons shared a 1/3 ownership, and since her sons did not authorize the lot-line adjustment, the lot-line adjustment was invalid.

The Bourguignons tendered the defense of the Parsons' complaint to their homeowner's insurance company on the grounds that the Bourguignons had an honest, but mistaken belief that the lot-line adjustment was valid and therefore construction on the easement was an accident. The insurer declined to defend the suit on the grounds that any loss to the Parsons resulted from the intentional act of construction on the easement, not the result of an "accident" which would be covered under the policy.

The court, applying a "commonsense interpretation" to the term "accident," agreed with the insurance company, and held that "[a]n accident does not occur when the insured performs a deliberate act unless some additional, unexpected, independent, and unforeseen happening occurs that produces the damage." When an insured intends all of the acts that result in a victim's injury, the event is not an "accident" even if the insured did not intend to cause injury. In this case, the Bourguignons intended to build the house on the easement. Even though they acted under a mistaken belief they had the legal right to build on the easement, it was not an accident. Because there was no accident, there was no potential for coverage under the policy.

To avoid confusion over an easement or lot-line adjustment, prior to undertaking any construction on or next to an adjoining property, a landowner should obtain a title report to learn the identity of any person or institution that has an ownership interest in the property so that all owners of the property properly execute any agreement to convey property rights or approve a lot-line adjustment. It is further recommended that a landowner commission a survey of the property boundary lines to ensure that the new structure does not encroach on any portion of the property not subject to the conveyance or lot-line adjustment.

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