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# Exactly What Is An 'Accident'?

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# Commentary

## Exactly What Is An 'Accident?'

**By**
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The second appellate district recently published two opinions interpreting the meaning of the word "accident" used in the coverage grants of homeowners' policies of insurance. These decisions appear to be irreconcilable and contradictory. In Lyons v. Fire Ins. Exchange (2008) 161 Cal. App. 4th 880 ("Lyons"), Division Two concluded that the insurer provided no coverage for plaintiff's suit because the insured could not show that he was mistaken about an objective fact when carrying out his injury causing act, and, therefore, the injury was not caused by an "accident."

In State Farm Fire & Casualty Co. v. Superior Court, 2008 Cal. App. LEXIS 951 ("State Farm"), Division Three concluded that the insurer provided coverage for plaintiff's suit and plaintiff's injury was caused by an "accident," even though it was clear from the facts that the insured was not mistaken about an objective fact when carrying out his injury causing act. Division Two, in concluding that coverage was not available, found that the insured's subjective intent to cause plaintiff's injury was not relevant to its coverage analysis. Division Three, in finding that coverage was available, found that the insured did not intend to cause plaintiff's injury. Accordingly, the second appellate district seems to be at odds with itself over the meaning of the term "accident." That, however, is only an appearance, reality is something different.

Here are the facts and analysis of each decision.

In Lyons, Steve Lyons, a former major league baseball player turned sportscaster for Fox TV and the Los Angeles Dodgers, was vacationing with his family in Hawaii, where, at a hotel pool, he met Stacey Roy. They chatted for several hours, during which he claimed she made several suggestive references to her anatomy. When she left the pool to return to her room, he came along. After they got off an elevator, he asked her to show him her breasts. According to him, she demurred because she said she was afraid of being seen in the hall. He then took her by the wrist and led her to a secluded alcove near the elevator, where he again asked to see her breasts. She said "no" again, this time because she said she was afraid her husband might show up. Frustrated, he gave up and returned to the pool. Other than holding her wrist when outside the elevator, he denied any physical contact with her.

Roy reported Lyons to hotel security and the local police, claiming a sexual assault. Both investigated the matter but concluded that the entire episode was nothing more than a scam on her part to gain money. Not to be deterred, Roy then sued Lyons seeking damages for bodily injury and emotional distress on several theories, including false imprisonment. He tendered the defense of her suit to Fire Insurance Exchange ("Fire"), his homeowner's insurer, which provided him with liability coverage for damages resulting from false imprisonment caused by an "accident."

Fire denied his tender, asserting that her claimed damages were not caused by an "accident."

Lyons then sued Fire for breach of contract and "bad faith." Fire moved for summary judgment, which the trial court granted, finding that there was "no possibility of coverage for the grabbing and pulling of Roy's wrist to take her to the alcove in the hallway of the hotel" because "grabbing a person's wrist is not an accident." He appealed, and argued that his wrist grab could be construed as an "accident" if he could show that he was under the mistaken belief that she welcomed his advances. Division Two rejected this argument and concluded that Lyons misunderstood the meaning of "accident" as used in general liability policies. The Court explained that this term refers to the nature of Lyons conduct, not his state of mind, and that, negligent or not, in this case the conduct alleged to have given rise to Roy's claimed injuries was necessarily nonaccidental, not because any harm was intended, but simply because the conduct could not be engaged in by "accident." The court further explained that a mental miscalculation by Lyons of Roy's state of mind simply could not transform intentional conduct, performed with full knowledge of all the objective facts, into an accident. Regardless of his misperception of consent, Lyons intended his sexual advance and the accompanying unwanted detention that was the subject of her claim. Consequently, Fire provided no coverage for Roy's claims because Lyons could not show that he was mistaken about an objective fact. His subjective intent, in light of his intentional acts, was simply not relevant to this issue.

In State Farm, 21-year-old Jeffery Lint resided with his parents at the family home. State Farm, the Lints homeowner's insurer, insured each of them for damages because of bodily injury caused by an accident. Lint attended a party and got into an argument with Joshua Wright. After an exchange of words, Wright went outside and Lint followed. Near a swimming pool, Lint grabbed Wright, picked him up, and tossed him into the shallow end of the pool. Wright landed on the pool's concrete step and fractured his collar bone. As a result, he was hospitalized for approximately four days. Wright reported that after the incident Lint apologized and told Wright that he had not meant to hurt him. Wright characterized the incident as "horse-playing around."

Wright notified State Farm of his claim for damages as the result of the incident. State Farm interviewed Lint, who admitted that he intended to throw Wright in the pool, but denied that he intended to hurt Wright. State Farm asserted Wright's injuries were not caused by an "accident" and declined coverage. As a consequence, Wright sued Lint on several theories, including negligence. During Lint's deposition, he stated that he intended to throw Wright over the pool steps and into the shallow end to get Wright wet, not to hurt him. Following the deposition, Lint tendered his defense to State Farm with a copy of his deposition transcript. State Farm declined coverage again. Lint sued State Farm for declaratory relief. He then stipulated to judgment in Wright's action and assigned all of his rights to Wright, including his rights in the declaratory relief action. The underlying action and declaratory relief action were consolidated and the two actions went to trial. After phase one of the trial, the court found that Wright's injuries were caused by an "accident," and accordingly, State Farm owed Lint a defense and indemnity. State Farm appealed and relied on numerous reported decisions that hold that for the purposes of insurance law, where conduct is deliberate or volitional, an injury caused by that conduct is not caused by an "accident." It argued that because Lint's act of throwing Wright into the pool was indisputably deliberate and volitional, Wright's injuries caused by that act were not caused by an "accident," and, therefore, State Farm was correct in declining coverage.

Division Three rejected this argument and affirmed the trial court's ruling. It discussed the legal history of this issue at some length and found that although Lint deliberately picked Wright up and tossed him at the pool, Lint did not intend or expect the consequence, namely, that Wright would land on a step. Lint miscalculated one aspect in the causal series of events leading to Wright's injury, namely, the force necessary to throw Wright far enough out into the pool so that he would land in the water. It was undisputed that Lint did not intend to hurt Wright; he merely intended that Wright land farther out into the water and get wet. Accordingly, the court found that the event was an "accident" because not all of the acts, the manner in which they were done, and the objective accomplished, transpired exactly as Lint intended.

Can these two apparently conflicting decisions be reconciled? Yes they can.

In Lyons, the court found that an "accident"required a mistake about an objective fact, and such a mistake was absent. But that finding was in the context of the facts before the court and the finding that each of Lyons' acts occurred as he intended. In other words, when Lyons grabbed Roy's wrist and pulled her into the alcove, he accomplished his acts as intended. In that circumstance, a mental miscalculation about a subjective fact, such as Roy's state of mind, will not transform a deliberate act into an "accident."

In State Farm, the court found that an "accident" occurred because of a process mistake: Lint intended to throw Wright over the steps and into the shallow end of the pool to get him wet, but used too little force to do so. In other words, when Lint threw Wright into the pool, he did not accomplish his acts as intended. He mistakenly tossed Wright on the pool steps. Accordingly, an "accident" can occur if the insured makes a mistake about an objective fact and that mistake results in injury or damage, or the insured makes a process mistake in carrying out an act and that mistake results in injury or damage. But why did the State Farm court repeatedly reference that Lint did not intend to hurt Wright in its recitation of the facts and its holding? That is because the "intent to do harm" is the third part of the three part "accident" puzzle. Such intent would always eliminate coverage despite a mistake of fact or process resulting in injury or damage. For example, if Lint admitted that he intended to kill Wright by throwing him in the pool because Wright could not swim, Lint's process mistake of tossing him on the pool steps would not have transformed his act into an "accident." Accordingly, if an insured intends to cause harm, his or her act would not be considered an "accident," even if he or she made a mistake of fact or process. Put differently, for liability insurance purposes an insured's intent to cause harm means that his or her act is never an "accident." But the obverse of this rule is not true. An insured's absence of intent to cause harm does not transform his or her act into an "accident." More is required for an "accident" to occur, namely a mistake of objective fact or process.

Accordingly, these cases provide a three-part analysis for determining whether an "accident" caused the claimed injury or damage under California law. First: Did the insured, with his or her act, intend to cause harm? If "Yes," then the act was not an "accident." If "No," was the insured mistaken about an objective fact, and did that mistake result in injury or damage? If "Yes," then the act was an "accident." If "No," did the insured commit a process mistake, and did that mistake result in injury or damage? If "Yes," then the act was an "accident." If "No," then the act was not an "accident." So, what is an "accident?" An "accident" occurs when the insured did not intend to cause harm, but was mistaken about an objective fact or made a process mistake, and that mistake caused injury or damage. ■