

August 11, 2010

Honorable Ronald M. George, Chief Justice
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: Request for depublication of the opinion in
L.A. Checker Cab Cooperative, Inc. v. First Specialty Ins. Co. (2010)
186 Cal.App.4th 767, No. B213948 (Second District, Div. One)
Ordered published: July 13, 2010

Honorable Justices:

I am writing on behalf of the Consumer Attorneys Association of California (“CAOC”) to request that this Court order the depublication of the opinion in *L.A. Checker Cab Cooperative, Inc. v. First Specialty Ins. Co.* CAOC is a voluntary membership organization comprised of attorneys who predominantly represent people who have been injured by the tortious conduct of others, including the wrongful denial by insurance companies of policyholder claims. My practice, in particular, predominantly involves litigation on behalf of insurance policyholders.

CAOC respectfully requests the depublication of the *L.A. Checker Cab* opinion because it improperly narrows the scope of liability-insurance coverage for all California policyholders. The opinion, which the court drafted with expectation that it would be unpublished, dispatches with the policyholder’s claim for negligent supervision in a single loosely-worded paragraph, which holds that coverage exists only for the conduct that “directly produces” the harm to the victim.

But the ramifications of this paragraph — which constitutes the opinion’s holding — are significant. Insurers have already begun to cite the opinion as binding authority for the proposition that there can never be actual or potential coverage in California for *any* claims based on negligent-supervision or negligent-hiring, since the negligent conduct will never be the “direct” cause of harm to the victim. The August 2, 2010 edition of the Los Angeles *Daily Journal* includes a

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column by two attorneys who argue that *L.A. Checker Cab* has categorically eliminated coverage for all negligent-hiring and negligent-supervision claims. In the authors' words, "The debate is over. Let the fat lady sing." (A copy of the article downloaded from the Daily Journal website is attached as exhibit 1.)

The vice in the *L.A. Checker Cab's* analysis is that it fails to measure the scope of coverage provided by a third-party liability policy by using tort-based concepts of causation. Tort liability can be imposed for negligent conduct that is a substantial factor in causing the harm. (*Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1052.) Even an "indirect" cause can be a substantial factor on which liability can be predicated. (*Id.* at p. 1055 [holding that defendants' negligent failure to supervise minor in their care was a substantial factor in causing his drowning death, even though the immediate cause was his inability to swim].)

But the *L.A. Checker Cab* opinion fails to recognize this; it instead adopts a novel causation-based coverage limitation that narrows potential coverage for "remote" causal acts — even if those acts would support a proximate-cause finding, and, hence, a finding of liability against the policyholder. In short, the court's approach would allow a policyholder to be held liable in tort to a third-party claimant — but nevertheless without coverage for that very liability because the court determined that the policyholder's conduct was too causally attenuated to trigger coverage.

This approach is wholly inconsistent with this Court's decision in *State v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1031, which requires courts to apply tort-based causation principles to third-party coverage issues. The decision is also at odds with this Court's recent decision in *Minkler v. Safeco Ins. Co. of America* (2010) 49 Cal.4th 315, 325, which clearly contemplates that there are some circumstances where third-party insurance policies provide coverage for negligent-supervision claims.

The docket of the *L.A. Checker Cab* opinion reveals that the Court of Appeal did not have the benefit of full briefing or argument by an appellant who had a stake in the outcome of the appeal. The appellant filed no reply brief, and there was no oral argument. Because the opinion misstates the law and because the manner in which the court resolved the case is likely to have significant consequences that the Court of Appeal did not intend when it drafted its opinion, CAOC respectfully requests that the opinion be ordered depublished.

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FACTUAL SUMMARY

Terminassian, an employee of L.A. Checker Cab Co-op, Inc. (“Checker”), was operating his taxi one evening and got into an altercation with a would-be passenger, Cifuentes. (Typewritten Opn. at 2, copy attached as exhibit 2.) He claimed that he would not accept Cifuentes as a passenger because he was drunk, and when he ordered him out of the cab Cifuentes attacked him. Fearing for his safety, Terminassian warned Cifuentes that he was armed, then brandished his pistol, and when the attack continued, shot Cifuentes at point-blank range. (*Id.*) Cifuentes acknowledged that he had been verbally abusive to Terminassian, but denied making any physical attack. He claimed that Terminassian shot him without provocation. (*Id.*)

When Cifuentes filed suit against Checker and Terminassian, Checker tendered the defense of the suit to its liability carrier, First Specialty. The insurer denied coverage, finding that there was no potential for coverage under the accounts offered by Terminassian or Cifuentes. Checker then filed a cross-complaint against First Specialty for breach of contract and declaratory relief, and First Specialty cross-complained against First Specialty for declaratory relief.

The trial court granted summary judgment for First Specialty and entered judgment in its favor. Checker appealed.

CHECKER FAILS TO PURSUE ITS APPEAL WITH VIGOR

The docket for the appeal shows that Checker did not pursue its appeal as though it had a substantial stake in the outcome of the appeal. The check it tendered for filing fees bounced. Its counsel submitted a hand-written request for a briefing extension, which was returned with instructions to submit as a typewritten document. No appellant’s reply brief was filed. Two days before the scheduled oral argument on April 22, 2010, appellant’s counsel sought to continue the argument on the ground that he had a conflicting court appearance. That request was denied. The same day counsel for the appellant advised the court that the case had settled for a waiver of costs, and therefore no oral argument would be necessary. On April 22, 2010, the court advised appellant’s counsel to submit a stipulation regarding costs. When no stipulation was provided, on June 14, 2010, the case was submitted without oral argument. The same day the court issued an unpublished opinion affirming the summary judgment. The insurer requested publication, and that request was granted on July 13, 2010.

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THE COURT OF APPEAL'S OPINION

Checker's policy contained an exclusion for assault-and-battery claims, but the court did not address it because it resolved the case by finding that there had been no occurrence to trigger coverage. (Typewritten Opn. at 2, n. 1.) The court relied on the recent decision in *Delgado v. Interinsurance Exchange of Automobile Club of So. Cal.* (2009) 47 Cal.4th 302, to hold that Terminassian's assault and battery on Cifuentes — even if provoked by Cifuentes, and even if Terminassian had an unreasonable belief that he needed to defend himself by shooting Cifuentes — was not an “accident” and therefore was not an occurrence that triggered coverage. (Typewritten Opn. at 3, 4.)

The court also held that Checker could not pursue coverage under a negligent-supervision theory. The entirety of its analysis of that claim is quoted below:

II. COVERAGE FOR NEGLIGENT SUPERVISION

Checker contends First Specialty owed it a defense and indemnification on Cifuentes's cause of action for negligent supervision because there is an ambiguity as to whether the policy applies to negligent supervision resulting in a battery and Checker had a reasonable expectation of coverage.

There is no ambiguity. “[T]he term “accident” unambiguously refers to the event causing damage, not the earlier event creating the potential for future injury. . . .” (*Delgado*, supra, 47 Cal.4th at p. 316, quoting *Maples v. Aetna Cas. & Surety Co.* (1978) 83 Cal.App.3d 641, 647-648.) Thus in a case of assault and battery, “it is the use of force on another that is closely connected to the resulting injury. To look for acts within the causal chain that are antecedent to and more remote from the assaultive conduct would render legal responsibility too uncertain.” (*Delgado*, supra, 47 Cal.4th at pp. 315-316.) Accordingly, the focus of the analysis here must be on the conduct that directly produced Cifuentes injury, not some remote act that had the potential for producing a future injury. Under that analysis, Checker's alleged negligence in not adequately supervising Terminassian was not the direct cause of Cifuentes's

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injury but, if anything, only a remote antecedent cause which does not qualify as an “occurrence” under the policy. (Typewritten Opn. at 4-5.)

THE COURT’S ANALYSIS IS BADLY FLAWED

The portion of the *Delgado* opinion the court quotes in the second sentence of the second paragraph is drawn from this Court’s rejection of the argument that the acts of the victim, which preceded the insured’s wrongdoing, could form the predicate for the “accident” that triggers coverage. This Court held, instead, that it must be the acts of the insured that trigger coverage, and that the victim’s acts of provoking the assault by the insured, which are antecedent to the insured’s wrongful acts, cannot constitute the accident that forms the insured “occurrence.” (*Delgado*, 47 Cal.4th at p. 315, 316.) This Court was not considering or discussing the argument that the wrongful acts on which liability was predicated could be negligent hiring or supervision that allowed another insured to commit an assault.

This misunderstanding of the point being made in the portion of the *Delgado* opinion cited by the court appears to have led the court astray. The last two sentences of the second paragraph of the negligent-supervision analysis are simply incorrect. In determining whether a third-party liability policy provides coverage, “the focus of the court’s analysis” must be whether, using traditional tort principles, the insured’s conduct would support a finding of liability. If so, then there is potential coverage and the duty to defend is triggered. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 19 [“It has long been a fundamental rule of law that an insurer has a duty to defend an insured if it becomes aware of, or if the third party lawsuit pleads, facts giving rise to the potential for coverage under the insuring agreement.”].)

If the facts proven at trial result in liability against the insured for a claim that is within the scope of the policy’s coverage, then there is coverage, and the insurer must indemnify. (*Buss v. Superior Court* (1997) 16 Cal.4th 35, 46.)

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The Court of Appeal's analysis, which holds that there can be no coverage unless the policyholder's conduct was a "direct" cause of liability, fails to apply tort causation principles to define the scope of coverage in the third-party context. This Court addressed that mistake directly in *State v. Allstate Ins. Co.*, 45 Cal.4th at p. 1031, making it clear that courts must apply tort causation principles to determine the scope of coverage in third-party cases:

"[T]he right to coverage in the third party liability insurance context draws on traditional tort concepts of fault, proximate cause and duty. This liability analysis differs substantially from the coverage analysis in the [first party] property insurance context, which draws on the relationship between perils that are either covered or excluded in the contract. In liability insurance, by insuring for personal liability, and agreeing to cover the insured for his own negligence, the insurer agrees to cover the insured for a broader spectrum of risks." (Accord, *Montrose Chemical Corp. v. Admiral Ins. Co.*, *supra*, 10 Cal.4th at p. 664.) While coverage under both first and third party insurance is a matter of contract, the contractual scope of third party liability insurance coverage, as reflected in the policy language, depends on the tort law source of the insured's liability. (*Id.*, 45 Cal.4th at p. 1031, brackets in text.)

The import of this rule is that the policyholder's coverage for tort liability is coterminous with the scope of liability that may be imposed under tort-causation principles. Stated in the context of the case, if principles of tort causation would allow Checker to be held liable for the assault on Cifuentes because of its negligent failure to supervise Terminassian, then coverage cannot be withdrawn based on the court's finding that the negligent supervision was too attenuated a part of the causal chain.

This is not to say that Checker's policy necessarily covered all torts for which Checker could be held liable. But coverage for a tort that was otherwise covered, like negligence, cannot be withheld on the theory that the negligent act is too "remote" under a causation principle that differs from the one that Checker would face in the lawsuit. The Court of Appeal's approach fails to apply tort causation principles to its coverage analysis, and is therefore contrary to *State v. Allstate*.

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The Court of Appeal's approach is also difficult to reconcile with this Court's recent decision in *Minkler*. There, this Court rejected the insurer's argument that policyholders could not reasonably expect coverage for what the insurer referred to as "parasitic" tort claims arising from the negligent failure to supervise the wrongful intentional conduct of a co-insured:

Safeco suggests Betty could not reasonably expect coverage for "parasitic" claims against her arising from David's intentional acts. But this is not a situation where the only tort was the intentional act of one insured, and where the liability of a second insured, who claims coverage, is merely *vicarious* or *derivative*. On the contrary, Scott's claim against Betty clearly depends upon allegations that she herself committed an *independent tort* in failing to prevent acts of molestation she had reason to believe were taking place in her home. Under such circumstances, she had objective grounds to assume she would be covered, so long as she herself had not acted in a manner for which the intentional acts exclusion barred coverage. (*Id.*, 49 Cal.4th at p. 325.)

The Court of Appeal's analysis, which holds that coverage exists only for the conduct that "directly produced" the victim's injury, would appear to dictate that even if Betty Schwartz might be held liable to Scott Minkler for her negligent failure to stop her son from molesting him, there would be no coverage because her conduct was not the "direct" cause of harm — the molestation was. Indeed, in the *Daily Journal* article mentioned above, the authors suggest that in light of *L.A. Checker Cab*, insurers no longer need to rely on intentional-acts exclusions to avoid coverage in situations like those presented in *Minkler* — they can merely rely on *L.A. Checker Cab* to show that there is no coverage.

CONCLUSION

Insurance coverage for negligent-hiring and negligent-supervision claims should not be categorically eliminated based on a one-paragraph analysis in an opinion that was not drafted with publication in mind, issued in a case that was not fully litigated on appeal. The appellate court's truncated analysis of the negligent-supervision claims cannot be reconciled with this Court's decision in *State v. Allstate* and is in plain tension with *Minkler v. Safeco*. While the Court of Appeal may not have erred in affirming the summary judgment, the rationale on which it

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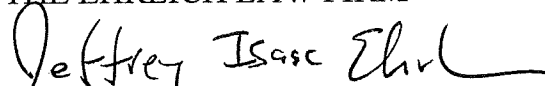
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relied to resolve the negligent-supervision issue will cause untold mischief if given precedential value. The decision should accordingly be depublished.

Respectfully submitted,

THE EHRLICH LAW FIRM

A handwritten signature in black ink that reads "Jeffrey Isaac Ehrlich". The signature is written in a cursive style with a long horizontal flourish at the end.

By Jeffrey Isaac Ehrlich

On behalf of the Consumer Attorneys of
California

EXHIBIT 1

Daily Journal Newswire Articles

www.dailyjournal.com

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PERSPECTIVE • Aug. 02, 2010

Is Liability Coverage for Negligent Hiring And Supervision No More?

By Philip H. Thompson and Timothy M. Thornton

Counsel for policyholders and insurers have long debated whether negligent hiring and supervision constitutes an accident covered under liability insurance when the "negligently" hired or supervised person intentionally injures another. The "fat lady" just might be "singing" because that debate appears to be over.

In *L.A. Checker Cab Cooperative Inc. v. First Specialty*, 2010 Cal. App. LEXIS 1131 a Checker Cab driver ordered a drunken passenger out of his cab. The passenger spat in the driver's face, kicked him, punched him on the back of his head, and threatened to kill him. The driver, who described the passenger as "deranged" and "out of control," warned that he was armed. When words failed, he reached into his pocket for his gun and "racked the slide, chambering the round to make sure that *the passenger understood it was not a toy gun.*" The passenger leaped from the cab, jerked open the driver's door and attempted to drag him onto the pavement. With the passenger only inches away, the driver fired one shot and the passenger ran away.

The passenger sued the driver for assault and battery and Checker Cab for negligent supervision. Asked in deposition whether he intended to shoot the passenger, the driver answered: "There was no time to intend or not to intend. I just shot him because it was [i]n the spur of the moment," and "[b]ecause of the danger to my life."

Checker Cab tendered its defense to its liability insurer, which declined coverage based on its conclusion that the passenger's alleged injuries were not caused by an "occurrence," defined as an "accident." Checker Cab sued its insurer for coverage. The trial court granted the insurer's motion for summary judgment, and the Court of Appeal affirmed.

The court noted that in the context of liability insurance, an "accident" is an unexpected, unforeseen, or undesigned happening or consequence from either a known or unknown cause. Relying on *Delgado v. Interinsurance Exchange of Automobile Club of Southern California* (2009) 47 Cal.4th 302, the court held that because the driver admitted that he intentionally chambered a bullet in his gun and shot the passenger at point blank range in self-defense, any bodily injury was not caused by an "accident" as a matter of law. The court reasoned that under *Delgado*, the driver's claim of self-defense could not convert his intentional act into an "accident," and although the passenger's acts of spitting at, assaulting and threatening the driver were unforeseen and unexpected from the driver's perspective, the term "accident" refers to the injury-producing acts of an insured, not of an injured party. Accordingly, the driver's intentional firing of the gun was the cause of the passenger's injury, and intentionally firing a gun is not an "accident."

Furthermore, the court held that only a direct cause of damage can qualify as an "accident." A remote cause cannot. *Delgado* required the court to focus on conduct that directly produced the passenger's injury and not on remote acts that only had the potential for producing future injury. The driver's intentional firing of the gun was the direct cause of the passenger's injury. Checker Cab's alleged negligence in supervising the driver was at most a remote cause of the injury. Therefore, Checker Cab's alleged negligent supervision of the driver was not an "accident."

Thus, under *Checker Cab's* rule, the "accident" term of a liability policy is satisfied only if the conduct of an insured directly causes an unexpected, unforeseen, or undesigned happening or consequence. Negligent supervision, and presumably negligent entrustment, negligent hiring and any other tort that requires an

additional act to be tortious, cannot be a direct cause of injury for the purposes of this "accident" analysis. Thus, if this analysis is liberally applied, "accident" based liability coverage for these types of torts will be eliminated in many, if not most cases.

To understand the significance of *Checker Cab*, one needs only to review the most recent Supreme Court insurance coverage decision. In *Minkler v. Safeco Ins. Co. of America* (2010), 49 Cal. 4th 315, a mother was the named insured under a series of homeowners policies. Her son qualified as an additional insured. The policies' liability coverage promised to defend and indemnify "an" insured for personal injury arising from a covered occurrence, but specifically excluded coverage for injury that was expected or intended by "an" insured, or was the foreseeable result of "an" insured's intentional act. The policies' "Conditions" provisions provided: "This insurance applies separately to each insured."

The victim sued the mother, alleging that her son sexually molested him while at the mother's home as a result of her negligent supervision. Safeco declined coverage for the mother based on the exclusion asserting that the son was "an" insured, and litigation followed. The state Supreme Court held that the exclusion applied separately to each insured and that the mother's coverage turned on whether her (as opposed to his) acts fell within the exclusion.

The court, however, noted: "Safeco does not contend that *the victim's* claims against *the mother* fell outside the scope of this basic coverage provision.... The policies defined an 'occurrence' as 'an accident, which results, during the policy period, in bodily injury or property damage.' Safeco does not assert that *the victim's* claims related to his alleged molestations by *the son* are beyond the scope of this basic coverage because the molestations were not 'accident[s],' and we have not been asked to address that issue. We therefore do not do so. (But see *Delgado v. Interinsurance Exchange of Automobile Club of Southern California* (2009) 47 Cal.4th 302, 308-317.")

Under these new cases, an insurer in Safeco's position need not rely exclusively on the intentional acts exclusion but can also argue that there was no "accident" with respect to the son, and, therefore, no "accident" with respect to the mother.

The debate is over. Let the fat lady sing.

Philip H. Thompson is a partner in the Los Angeles-based insurance coverage firm Nelsen, Thompson, Pegue & Thornton. He may be contacted at pthompson@ntptlaw.com.

Timothy M. Thornton is a partner in the Los Angeles-based insurance coverage firm Nelsen, Thompson, Pegue & Thornton. He may be contacted at tthornton@ntptlaw.com.

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EXHIBIT 2

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

L.A. CHECKER CAB COOPERATIVE,
INC.,

Cross-Complainant and Appellant,

v.

FIRST SPECIALTY INSURANCE
COMPANY,

Cross-Defendant and Respondent.

B213948

(Los Angeles County
Super. Ct. No. BC359867)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Rex Heeseman, Judge. Affirmed.

Law Offices of Neil C. Evans and Neil C. Evan for Cross-complainant and
Appellant.

Cresswell, Echeguren, Rodgers & Noble, Ronald D. Echeguren, Elsa S. Baldwin
and Matthew S. Harvey for Cross-defendant and Respondent.

We hold that the employer in this case is not covered for an assault and battery by
its employee under the “bodily injury” provision of its commercial general liability policy

regardless of whether the employee acted in unreasonable self-defense or the employer was negligent in training or supervising the employee. Accordingly, we affirm the judgment for the insurer in the employer's action for breach of contract and declaratory relief.¹

FACTS AND PROCEEDINGS BELOW

Alexander Terminassian, an employee of the L.A. Checker Cab Cooperative (Checker), was operating his taxi one evening when he got into a dispute with a would-be passenger, Marco Cifuentes.

In his deposition, Cifuentes stated that Terminassian told him that he would not accept him as a passenger because he was drunk. Terminassian ordered Cifuentes out of the cab. Terminassian testified that when he told Cifuentes to get out of the cab, Cifuentes spat on his face, kicked him, struck him on the back of his head, and threatened to kill him. He described Cifuentes as "deranged" and "out of control." Terminassian warned Cifuentes that he was armed. When Cifuentes continued his aggression, Terminassian reached into his pocket for his gun and "racked the slide, chambering the round to make sure that [Cifuentes] understands it's not a toy gun." At that point, Cifuentes got out of the cab, opened the driver's side door and attempted to pull Terminassian out of the car. Terminassian fired one shot at Cifuentes when Cifuentes was "inches away" and holding Terminassian's left hand. Cifuentes let go of Terminassian and ran away. Asked whether he intended to shoot Cifuentes, Terminassian answered: "There was no time to intend or not to intend. I just shot him because it was on the spur of the moment." Terminassian testified he shot Cifuentes "[b]ecause of the danger to my life."

¹ Given our holding that the bodily injury provision of the policy does not cover assault or battery, we need not address the policy's "assault and battery" exclusion.

In his deposition, Cifuentes admitted that he spat on the window divider in the cab and yelled curse words but denied striking or threatening Terminassian. According to Cifuentes, Terminassian shot him without provocation.

Cifuentes brought an action against Checker and Terminassian for assault and battery and against Checker for negligent supervision of Terminassian. Checker tendered defense of the action to its insurer, First Specialty Insurance Corporation (First Specialty). The insurer refused to defend or indemnify Checker on the ground that under either Terminassian's or Cifuentes's version of events the incident was not covered by Checker's policy. Checker then filed a cross-complaint against First Specialty for breach of contract and declaratory relief and First Specialty cross-complained against Checker for declaratory relief.

The trial court granted First Specialty's motion for summary judgment and entered judgment in its favor. Checker filed a timely appeal.

DISCUSSION

I. COVERAGE FOR CAUSING "BODILY INJURY"

"Bodily injury" to third persons is covered under Checker's policy if it "is caused by an 'occurrence.'" The term "occurrence" is defined as an "accident." Thus, the policy only covers bodily injury caused by an accident.

"In the context of liability insurance, an accident is "an unexpected, unforeseen, or undesigned happening or consequence from either a known or unknown cause." (Delgado v. Interinsurance Exchange of Automobile Club of Southern California (2009) 47 Cal.4th 302, 308 (hereafter *Delgado*)). "An injury-producing event is not an 'accident' within the policy's coverage language when all of the acts, the manner in which they were done, and the objective accomplished occurred as intended by the actor." (*Id.* at pp. 311-312.)

Checker does not contend that Terminassian shot Cifuentes as the result of some mishap while handling the gun. Indeed, the undisputed evidence shows that Terminassian intentionally chambered a bullet in his gun and intentionally shot Cifuentes

at point-blank range. Furthermore, Terminassian testified that he shot Cifuentes in self-defense because Cifuentes was “deranged” and “out of control” and Terminassian feared for his life. Given this evidence, Cifuentes’s injury was not accidental as a matter of law and, consequently, there is no potential for coverage under the policy and no duty on the part of First Specialty to defend or indemnify. (*Cf. Delgado, supra*, 47 Cal.4th at p. 312.)

Checker advances two arguments to support its claim that the shooting was an “accident” within the policy’s coverage. Neither has merit.

Checker first argues that there is a potential for coverage because the evidence would support a finding that Terminassian had an unreasonable belief in his need for self-defense and therefore his response to Cifuentes’s provocation was negligent, i.e. accidental. This same self-defense argument was raised and rejected in *Delgado* which held that “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’ within the policy’s coverage clause.” (*Delgado, supra*, 47 Cal.4th at p. 317.) Thus, a determination whether Terminassian correctly or incorrectly assessed the need for self-defense is immaterial because it would not convert his intentional act into an “accident.”

Alternatively, Checker contends that the evidence supports a finding that Cifuentes’s unforeseen and unexpected acts of spitting at, assaulting and threatening Terminassian were negligent acts on Cifuentes’s part and provoked a response that was also negligent on Terminassian’s part. This argument fails because, as the court held in *Delgado*, “[t]he term ‘accident’ in the policy’s coverage clause refers to the injury-producing acts of the insured, not those of the injured party.” (*Delgado, supra*, 47 Cal.4th at p. 315.)

II. COVERAGE FOR NEGLIGENT SUPERVISION

Checker contends First Specialty owed it a defense and indemnification on Cifuentes’s cause of action for negligent supervision because there is an ambiguity as to whether the policy applies to negligent supervision resulting in a battery and Checker had a reasonable expectation of coverage.

There is no ambiguity. “[T]he term “accident” unambiguously refers to the event causing damage, not the earlier event creating the potential for future injury” (*Delgado, supra*, 47 Cal.4th at p. 316, quoting *Maples v. Aetna Cas. & Surety Co.* (1978) 83 Cal.App.3d 641, 647-648.) Thus in a case of assault and battery, “it is the use of force on another that is closely connected to the resulting injury. To look for acts within the causal chain that are antecedent to and more remote from the assaultive conduct would render legal responsibility too uncertain.” (*Delgado, supra*, 47 Cal.4th at pp. 315-316.) Accordingly, the focus of the analysis here must be on the conduct that directly produced Cifuentes injury, not some remote act that had the potential for producing a future injury. Under that analysis, Checker’s alleged negligence in not adequately supervising Terminassian was not the direct cause of Cifuentes’s injury but, if anything, only a remote antecedent cause which does not qualify as an “occurrence” under the policy.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.

Filed 7/13/10

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

L.A. CHECKER CAB COOPERATIVE,
INC.,

Cross-Complainant and Appellant,

v.

FIRST SPECIALTY INSURANCE
COMPANY,

Cross-Defendant and Respondent.

B213948

(Los Angeles County
Super. Ct. No. BC359867)
(Rex Heeseman, Judge)

ORDER CERTIFYING OPINION
FOR PUBLICATION

THE COURT:

The nonpublished opinion in the above entitled matter having been filed on June 14, 2010, and request for publication having been made, and

Good Cause Now Appearing the opinion meets the standards for publication under California Rules of Court, rule 8.1120,

IT IS ORDERED that the opinion be published in the Official Reports.

MALLANO, P. J.

ROTHSCHILD, J.

CHANEY, J.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is: 411 Harvard Avenue, Claremont, California 91711.

On **August 11, 2010**, I served the foregoing documents described as **REQUEST FOR DEPUBLICATION OF COURT OF APPEAL OPINION** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

BY MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Ontario, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY FACSIMILE ("FAX") In addition to the manner of service indicated above, a copy was sent by FAX to the parties indicated on the service List.

BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

BY PERSONAL SERVICE I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **August 11, 2010**, at Ontario, California.



Isabel Cisneros-Drake, Paralegal

L.A. Checker Cab Cooperative, Inc. v. First Specialty Ins. Co.
Court of Appeal No. B213948
Superior Court Case No. BC359867

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