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Not an Accident When Victim is Intentionally Dragged By the Hair

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When someone gets injured and sues, sometimes the defendant defaults and the claimant is left to pursue its remedies against the defendant's insurance policy. It's basically a coverage suit, but brought by the claimant instead of the policyholder. The same defenses to coverage also apply. Paramount, however, is that the loss complained of has to be covered by the insurance policy. A recent Ninth Circuit case denied coverage and affirmed judgment in favor of the insurance carrier in such a case.

In Kogler v. State Farm General Insurance Co., No. 18-15298 (9th Cir. Oct. 15, 2019) (Not for Publication), the claimant was forcibly grabbed and dragged by the hair by the policyholder causing personal injuries to the claimant. The policyholder had homeowner's and umbrella policies that allegedly covered him for accidents that cause personal injuries. The policyholder's carrier declined to defend or indemnify when the underlying lawsuit was brought. The policyholder defaulted and the claimant brought an action against the carrier for breaching the duty to defend and indemnify.

In affirming the judgment in favor of the carrier, the appellate court explained that the policyholder's acts did not constitute an accident under the policies because, under California law, an accident is defined as an unexpected or unforeseen happening. As the court stated, "It is entirely expected and foreseen that grabbing and dragging a person by the hair will injure her." Notably, said the court, whether the policyholder intended to harm the claimant "is irrelevant because he intended to commit the acts that caused her injuries."

The umbrella policy also excluded coverage for personal injuries when the insured acts with specific intent to cause any harm. Apparently the policyholder pleaded guilty to general intent crimes (aggravated assault) and the stipulated facts revealed that he grabbed and pulled her hair from behind with such force that she was lifted from the ground, before dragging her through the grass toward a grove of trees. As the court said, "[i]ntential and willful conduct is evidence that an insured intended to cause harm."

Turns out that the policyholder was drunk, but the court held that his state of inebriation did not negate his specific intent. Because the umbrella policy excluded coverage for these acts, summary judgment in favor of the carrier was affirmed.

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