Case No. S S236765

THE SUPREME COURT OF THE STATE OF CALIFORNIA

LIBERTY SURPLUS INSURANCE CORPORATION, et al.

Plaintiffs and Respondents,

v.

LEDESMA AND MEYER CONSTRUCTION COMPANY, INC., et al.

Defendants and Appellants.

After Order Certifying Question by the
U.S. Court of Appeals for the Ninth Circuit

RESPONDENTS' CONSOLIDATED ANSWERING BRIEF TO AMICI CURIAE BRIEFS

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INTRODUCTION

Several amici curiae submitted briefs in this action in support of Appellants Ledesma & Meyer Construction Company, Inc., Kris Meyer, and Joseph Ledesma (collectively, "L&M") and in opposition to Respondents Liberty Surplus Insurance Corporation ("LSIC") and Liberty Insurance Underwriters Inc. ("LIUI") (collectively, "Liberty"). The amici curiae that have filed briefs in support of L&M are United Policyholders ("UP"); Los Angeles Unified School District ("LAUSD"); California Catholic Conference and Association of Christian Schools International (together, "CCC"); Franciscan Friars of California, Inc. and Province of Holy Name, Inc. (together "FFC"); and Steven W. Murray ("Murray") (collectively "amici"). Amici present several overlapping, but ultimately misguided arguments in support of their varied interests in seeing the most expansive coverage possible under the Liberty policies, and presumably other policies. However, amici misconstrue California law.

The insurance policies issued by Liberty to L&M apply to covered "'bodily injury' caused by an 'occurrence.'" The Liberty policies define "occurrence" as an "accident, including continuous or repeated exposure to substantially the same general harmful conditions."

The plaintiff ("Doe") in the underlying action, *Jane JS Doe, et al. v. Ledesma & Meyer Constr. Co., Inc., et al.*, San Bernardino County Superior Court, Case No. CIVDS 1007001 ("*Doe* action"), alleged she was sexually

abused and raped by Darold Hecht ("Hecht"), an employee of L&M, in 2006 as a student at Cesar Chavez Middle School. The trial court in the *Doe* action ruled, in response to L&M's motion for summary judgment, that plaintiffs had produced evidence "that Hecht was convicted twice related to sexual misconduct with minors with one prior to his employment and one while still employed with L&M." (2AER 45.) Further, according to the *Doe* court, evidence indicated that L&M "knew of the 1998 incident soon after they hired Hecht" and L&M "were further informed in February 2004 of the second conviction." (2AER 45.) Thus, evidence indicated that "with this knowledge [of Hecht's sex offender status] L&M allowed Hecht to work on the Cesar Chavez project while school children were present...." (2AER 45-46.) Further, the trial court found that "L&M's principals were aware ... that [Hecht] was a registered sex offender," and thus L&M could not establish that L&M "lacked knowledge of Hecht's unfitness to work at a school." (2AER 48.)

Certain of amici's briefs adopt as an initial premise that the Court must find coverage for L&M in relation to the *Doe* action, because to find otherwise would render a significant number of potential liabilities uninsurable. This is mistaken. The question before the Court involves the interpretation of the specific language of the Liberty policies in relation to the facts of the *Doe* action, and does not require a pronouncement as to all potential liability insurance coverage. Indeed, there are disparate forms of insurance policies

that include distinct language, thus rendering nonsensical the mistaken "one size fits all" premise.

Amici mistakenly argue that California law requires that insurers look to the alleged source of liability as to its insured, such as alleged negligent hiring or supervision, and not to the injury-causing act itself (here, the molestation and rape) in order to determine whether there has been an "occurrence" triggering coverage. The argument ignores that California courts, including this Court, have consistently focused on the actual cause of the "bodily injury" and whether that cause is accidental. If the cause of the "bodily injury" is not accidental, the "insuring agreement" is not satisfied and coverage is not implicated. This is true even if there are remote, antecedent events that are alleged to have invited the actual cause of the "bodily injury." This is also true if another actor besides the insured seeking coverage engaged in the intentional act that caused the injury.

Amici largely ignore this Court's holding in *Hogan v. Midland National Ins. Co.* (1970) 3 Cal. 3d 553 that addressed the issue and turn to inapposite "concurrent cause" principles and cases in a misguided attempt to invent coverage. Amici are also incorrect in their contention that an "accident" must be determined from the insured's point of view. This Court has rejected such an approach.

Amici's focus on the contention that an "accident" may be found when either conduct or the consequences of that conduct are unintentional is

misplaced. The question is not relevant to the issue before the Court and only reflects amici's own particular policy interests. In any case, amici are incorrect in their suggestion that such a determination would result in coverage for the *Doe* action under the Liberty policies because the conduct and consequence of the sexual assault—the determinative cause of the injury—were both intentional.

Amici are also mistaken in their focus on cases relating to vicarious liability. The fact that liability coverage is not foreclosed in relation to vicarious liability either for an employee's intentional act, or for a public employee's negligent acts, does not inform the present analysis, as the determination turns on California law in light of the allegations and undisputed facts of the *Doe* action and the terms of the Liberty policies. Here, the policy language provides that there is no coverage unless the injury is caused by an "occurrence," which the law indicates is the injury-causing act. Because there was no "occurrence" here, the Liberty policies do not provide coverage.

ARGUMENT

I. The Issue Before the Court Turns on the Specific Language in the Liberty Policies, And Does Not Dictate All Potential Liability Coverage

Much of amici's arguments are premised on the mistaken assumption that, if the Court were to find no "occurrence" as defined under the Liberty policies in the *Doe* action, then employers and other entities would be categorically unable to obtain insurance coverage applicable to similar

scenarios. Within this argument are two incorrect assumptions. First is the assumption that the Liberty policies, governed by the specific language therein, should necessarily extend to the bounds of the insured's potential liability. This concept is plainly not supported by California law. "The insurer does not ... insure the entire range of an insured's well-being, outside the scope of and unrelated to the insurance policy, with respect to paying third party claims." (*Camelot by the Bay Condo. Owners' Assn. v. Scottsdale Ins. Co.* (1994) 27 Cal.App.4th 33, 52.) A "general liability" policy does not connote "unlimited coverage. ... It is invariably necessary to consult the language of any particular general liability policy to determine what coverages it affords." (*FMC Corp. v. Plaisted & Companies* (1998) 61 Cal.App.4th 1132, 1146-47, disapproved of on other grounds by *State v. Cont'l Ins. Co.* (2012) 55 Cal.4th 186.) Liability policies generally provide coverage for certain types of risk and do not provide coverage that extends to the boundaries of all of the insured's potential tort liability. (See, e.g., *Miller v. W. Gen. Agency, Inc.* (1996) 41 Cal. App. 4th 1144, 1150 [whether misrepresentations were "intentional or simply negligent, they did not constitute an 'accident' in its plain, ordinary sense"]; *Napa Cmty. Redevelopment Agency v. Cont'l Ins. Companies* (9th Cir. 1998) 156 F.3d 1238 ["'Accident' or 'occurrence'-based liability policies ... do not cover intentional or fraudulent behavior, only accidental or negligent [acts]"].)

Second, amici appear to assume that other liability insurance coverage under a different coverage formulation than found in the Liberty policies could not exist to potentially provide coverage. That is simply not the case. In this regard, *United Pac. Ins. Co. v. McGuire Co.* (1991) 229 Cal.App.3d 1560 is instructive.

In *United Pac.*, the insured sought coverage for a wrongful termination action under an insurance policy that provided coverage for "bodily injury ... caused by an occurrence ...." (*United Pac., supra,* 229 Cal.App.3d at p. 1563.)[1] The insuring agreement defined the term "occurrence" as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured...." (*Id.*) However, the policy also had a "Special Form Comprehensive General Liability Endorsement," "which the insureds purchased for an increased premium." (*Id.*) The endorsement contained an "Extended Definition of Occurrence" which defined "occurrence" to mean "*an accident, an event or a continuous or repeated exposure* to conditions which results, during the policy period, in bodily injury or property damage neither expected nor intended by the insured." (*Id.*, emphasis added.)

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[1] The *United Pac.* court put aside the issue of whether "'bodily injury' embrace[d] emotional distress" caused by wrongful termination under California law. (See *United Pac.*, *supra*, 229 Cal.App.3d at p. 1563.)

The *United Pac.* court found that, while the wrongful termination may not have been an "accident" under California law, the policy's definition of "occurrence" as modified by the "Extended Definition" was not so limited: "The context does not suggest that the term 'event' is synonymous with 'accident'—and therefore simply redundant—since it appears in a definition purporting to provide additional coverage. ... The word ['event'] has no connotation of fortuity; under any accepted usage, it obviously embraces intentional conduct." (*Id.* at 1565.) As a result, the *United Pac.* court found the insurer had a duty to defend. (See *id.* at 1567.) The significance of the extended definition of "occurrence" in *United Pac.* was affirmed in *Dykstra v. Foremost Ins. Co.* (1993) 14 Cal.App.4th 361, 367 (noting that the policies at issue did "not extend coverage to both 'accidents' and 'events'"); and *Ins. Co. of Penn. v. City Of Long Beach* (9th Cir. 2009) 342 F.App'x 274, 276 ("[T]he policies, by including the term 'events' within an occurrence, cover intentional acts which cause harm unintended by the insured.").

The existence of alternative formulations of liability coverage, such as that in *United Pac.*, moots several of amici's arguments. In particular, LAUSD's brief rests on the assumption that the Court's ruling in relation to the language of the Liberty policies at issue here will control broader issues of whether such allegations can be covered, divorced from any analysis of the actual policy language at issue in a given case. (See LAUSD Br., p. 8.) According to LAUSD, California courts have imposed vicarious liability on

public entities like school districts under Gov. Code § 815.2, for the negligent—but not intentional—acts of employees. (See LAUSD Br., p. 6-7.) In doing so, LAUSD notes the Court has examined a number of factors that include the potential availability of liability insurance in determining whether the law should impose vicarious liability upon a party. (See *id.*, citing *C.A. v. William S. Hart Union High Sch. Dist.* (2012) 53 Cal.4th 861, 877.)[2] But LAUSD fails to bridge the gap between an understanding that negligence may be "more readily insurable" than sexual assault, (see LAUSD Br., p. 8.), to the conclusion that LAUSD implicitly seeks: a determination that all liability policies provide such coverage in relation to sexual assault, regardless of policy language. Such a finding is unnecessary to preserve the Court's

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[2] In actuality the Court's exercise in relation to this issue has been somewhat different than LAUSD suggests. As the Court in *Rowland v. Christian* (1968) 69 Cal.2d 108, 112, noted, the general rule in California is that "[a]ll persons are required to use ordinary care to prevent others being injured as the result of their conduct" and that "a person is liable for injuries caused by his failure to exercise reasonable care ...." It is the potential *departure* from that general rule that requires an examination of the "*Rowland* factors," which LAUSD selectively quotes, and are:

> ... the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

(*Rowland, supra*, 69 Cal.2d at pp. 112-13.)

rationale in declining to impose vicarious liability in *C.A.*, and *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438.[3]

Unsurprisingly, amici would prefer the benefit of the more expansive coverage afforded by the *United Pac.* policy, or other similar policies, without being required to actually obtain and pay for policies that incorporate such language (and thus with insurers that contemplated such risk and imposed commensurate premiums). However, the unambiguous language of the Liberty policies control here, and as discussed below, the precedent of this Court reflects that language does not encompass the allegations of the *Doe* action.

In his vindicated dissent[4] to the intermediate appellate court's opinion in *C.A. v. William S. Hart Union High Sch. Dist.* (2010) 189 Cal.App.4th 1166 [117 Cal.Rptr.3d 283], rev'd, (2012) 53 Cal.4th 861 , Judge Mallano observed that "[e]rrors and omissions policies are common in the field of education," noting that they "insure a member of a designated calling against liability arising out of the mistakes inherent in the practice of that particular profession

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[3] It is important to note that insurance policies issued to the San Bernardino County Unified School District ("SBCUSD") are *not* at issue in this case. The language of any policies issued to SBUSD are not before the Court, and thus forcing a ruling, as LAUSD suggest, based on theoretical insurance coverage acquired by public entities would be inappropriate.

[4] This Court reversed the intermediate appellate court in *C.A.* In doing so, the Court adopted much of the same reasoning that animated Judge Mallano's dissent. (See *C.A.*, *supra*, 53 Cal.4th 861, passim.)

or business .... An errors and omissions policy effectively provides malpractice insurance coverage to members of professions other than those in the legal and medical fields." (*C.A.*, *supra*, 189 Cal. App. 4th 1166 [117 Cal. Rptr. 3d 283, 306], Mallano, J., dissenting, quoting *Watkins Glen Cent. v. Nat. Union* (N.Y. App. 2001) 286 A.D.2d 48, 72.) Judge Mallano discussed several cases involving errors and omissions policies issued to educational institutions that reflect that such policies do not rest on the same "occurrence" formulation as is typical in general liability policies. (See *C.A.*, *supra*, 189 Cal. App. 4th 1166 [117 Cal. Rptr. 3d at pp. 305-07], citing *Board of Educ. v. Nat. Union* (Pa.Super.Ct.1988) 709 A.2d 910; *Durham Bd. of Educ. v. Nat. Union* (1993) 109 N.C.App. 152; *Watkins Glen,* 286 A.D.2d 48.) For example, the policy in *Durham* provided coverage for "Wrongful Act[s]," which were defined as "any actual or alleged breach of duty, neglect, error, misstatement, misleading statement or omission committed solely in the performance of duties for the School District...." *Durham*, *supra*, 109 N.C. App. at p. 157. The relevant policy provision in Board of Education was identical. (See *Board of Educ.*, *supra*, 709 A.2d at p. 913.) Citing *Board of Educ.*, 709 A.2d 910, the *Watkins Glen* court found that the policy before it contained a "nearly identical definition of coverage." (*Watkins Glen*, *supra*, 286 A.D.2d at p. 52, citing *Board of Educ.*, *supra*, 709 A.2d at p. 913.)

The type of liability policy that provides coverage for "Wrongful Acts" commonly procured by educational entities, public institutions and other

entities and organizations, is not at issue here. The relatively narrow determination of whether sexual molestation can be considered an "occurrence," defined as an "accident" would not bear on such errors and omissions coverage. LAUSD cites a concern that insurers would "almost certainly use" a determination in Liberty's favor here in an attempt to resist coverage, (LAUSD Br., at 8), but also acknowledges that "the insurance policies at issue in those cases differ from the policy at issue here ..." (LAUSD Br., at 3) and provides no context indicating how or why the Court's decision here would impact distinct insurance policies that reflect different language.

II. This Court's Decisions Do Not Support Amici's Suggestion that Coverage is Coextensive with Potential Liability

A. Amici Misconstrue *Delgado*

Amici present as a major theme of their briefing that the tort concept of causation and the potential for negligence liability should be determinative of whether or not there has been an "occurrence." But this is essentially the reasoning of the intermediate appellate court in *Delgado v. Interinsurance Exch. of Auto. Club of S. California* (2007) 152 Cal.App.4th 671 [61 Cal.Rptr.3d 826], rev'd (2009) 47 Cal. 4th 302 ("*Delgado I*"), which this Court rejected in *Delgado v. Interinsurance Exch. of Auto. Club of S. California* (2009) 47 Cal.4th 302 ("*Delgado II*"). Adopting amici's argument would ask the Court to ignore the reasoning that led it to reverse the lower

court in *Delgado II* and institute a sweeping new rule that is not supported by existing California law.

A review of the cases is instructive, beginning with a case upon which the intermediate appellate court in *Delgado I* relied heavily, *Gray v. Zurich Ins. Co.* (1966) 65 Cal.2d 263. In *Gray*, the insured was sued for assault and battery while the insured contended he had acted in self-defense. (*Gray, supra,* 65 Cal.2d at p. 267.) The insurer rejected the insured's tender of the defense of the suit based on the contention that the policy excluded coverage for damage "caused intentionally by or at the direction of the insured." (See *id.* at pp. 267, 273.) In *Gray*, this Court found that the insurer had a duty to defend based on two independent reasons. First, and not germane here, the Court reasoned that the exclusionary language was not clear and conspicuous and so should be resolved in the insured's favor. (See *id.* at pp. 272-73.) Second, and more relevant, the Court found that the underlying action "presented the potentiality of a judgment based upon nonintentional conduct, and since liability for such conduct would fall within the indemnification coverage, the duty to defend became manifest at the outset." (*Id.* at p. 276.) The Court noted that the insurer had an obligation to defend the insured against even "groundless, false or fraudulent claims" for "damages because of

bodily injury,"[5] and reasoned that "the basic promise would support the insured's reasonable expectation that he had bought the rendition of legal services to defend against a suit for bodily injury which alleged he had caused it, negligently, nonintentionally, *intentionally or in any other manner*." (*Id.* at pp. 273-74, emphasis added.) The Court noted that the insured "might have been able to show that in physically defending himself, even if he exceeded the reasonable bounds of self-defense, he did not commit willful and intended injury, but engaged only in nonintentional tortious conduct." (*Id.* at p. 277.) As a result, because of the Court's broad interpretation of the insuring agreement, and the supposed potential for a judgment resulting from nonintentional conduct, the insurer had a duty to defend its insured. (*Id.*)

The Court's decision in *Gray* heavily influenced the intermediate appellate court's decision in *Delgado I*. In *Delgado I*, the underlying complaint alleged two causes of action against the insured: "[t]he first alleged an intentional tort in that [the insured] ... physically struck, battered and kicked [the claimant] Delgado. The second cause of action alleged that [the insured] negligently and unreasonably believed he was engaging in self-

[5] Significantly, and discussed further below, the insuring agreement at issue in *Gray* did not contain an "occurrence" requirement, but obligated the insurer to "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury ..., and ... defend any suit against the insured alleging such bodily injury ... and seeking damages that are payable under the terms of this endorsement, even if any of the allegations are groundless, false or fraudulent." (*Gray, supra,* 65 Cal.2d at p. 267.)

defense and unreasonably acted in self defense ...." (*Delgado II, supra,* 47 Cal.4th at p. 306.) In addition to an exclusion pertaining to intentional acts, as in *Gray*, the policy in *Delgado I* provided coverage for "[b]odily injury ... caused by an occurrence to which this coverage applies," with "occurrence" defined as "an accident, including continuous or repeated injurious exposure to essentially the same conditions." (*Delgado I, supra*, 152 Cal.App.4th 671 [61 Cal.Rptr.3d at p. 835].)

The *Delgado I* court reasoned that the case before it was "similar to [*Gray*][6]" and reasoned that "it is clear that the underlying complaint pled facts showing that a potential for coverage existed under the ... policy. [The claimant,] Delgado's second cause of action against [the insured] alleged that [the insured] acted in self-defense; that is, Delgado's injuries were caused by unintentional conduct." (*Delgado I, supra*, 152 Cal.App.4th 671 [61 Cal.Rptr.3d 826 at p. 836].) Similar to the amici in this action, the *Delgado I* court reasoned that, because the insured could be held liable for nonintentional tortious conduct, coverage should apply: "[S]uch conduct is properly

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[6] In addition to *Gray*, the *Delgado I* court found the case to be similar to an intermediate appellate case, *Mullen v. Glens Falls Ins. Co.* (1977) 73 Cal. App. 3d 163, which essentially mirrored *Gray*. In *Mullen*, the court found that the alleged injuries "were the result of a fight; for all the insurance company could have known at that time, plaintiff started the fight and was struck by [the insured] in self-defense," which would have rendered the injuries "not 'intended' or 'expected'" and thus implicated a duty to defend. (*Mullen, supra*, 73 Cal.App.3d at p. 170.)

characterized as *nonintentional* tortious conduct. It is an act of negligence and necessarily presents an example of an unintended and fortuitous act." (*Delgado I, supra*, 152 Cal.App.4th 671 [61 Cal.Rptr.3d at p. 837], emphasis in original.)

This Court, in *Delgado II* considered the *Delgado I* court's reasoning—which mirrors amici's arguments—but rejected it. Because the *Delgado I* court found *Gray* controlling, this Court in *Delgado II* explained at some length its reasoning in finding that *Gray* did not dictate the same outcome. (See *Delgado II, supra*, 47 Cal.4th at p. 313.) Distinguishing *Gray*, this Court noted:

> Unlike the case now before us, the policy's coverage clause in *Gray* did not define coverage in terms of injuries resulting from 'an accident.' ... *Gray* and the cases that have cited it pertained to the question of unreasonable use of force or unreasonable self-defense in the context of an insurance policy's *exclusionary* clauses, not as here in the context of a policy's *coverage* clause. At issue here is whether unreasonable self-defense comes within the policy's coverage for 'an accident,' not whether it falls within a particular policy exclusion.

(*Delgado II, supra*, 47 Cal.4th at p. 313, emphasis in original, citations omitted.)

Thus, this Court correctly recognized that the determination of whether there has been an "accident" under a coverage grant is fundamentally different than determining whether an exclusion applies to preclude coverage. *Gray* and *Delgado II* both presented very similar facts; and in fact the cases are nearly identical. In both cases the insured allegedly assaulted the claimant, but a mistaken or unreasonable belief for the need for self-defense created the potential for negligence liability. And it was on this basis that the insureds in both cases sought coverage. Both policies contained an exclusion that precluded coverage for intentional acts. The only relevant, substantive difference between the two cases is that the policy in *Delgado II* applied to provide coverage for bodily injury caused by an "occurrence," defined as an "accident." However, this difference was determinative.[7]

The Court in *Delgado II* explained that "the law looks for purposes of causation analysis to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability." (*Id.* at p. 315, citations omitted.) Noting that "the term 'accident' *unambiguously* refers to the event causing damage, not the earlier event

[7] This key difference that the Court found dictated the outcome explains why amici miss the mark in citing to various cases that examined "expected or intended injury" or similar exclusions, rather than the meaning of the term "occurrence." This Court, in *Minkler v. Safeco Insurance Co. of America* (2010) 49 Cal.4th 315, 324-25 , discussed at length in Liberty's principle brief, (see Liberty Br., at pp. 30-32), affirmed that the issues required separate and distinct analyses.

creating the potential for future injury," (*id.* at p. 316 (emphasis added), quoting *Maples v. Aetna Casualty & Surety Co.* (1978) 83 Cal.App.3d 641, 647-648), the Court explained, to "look to acts within the causal chain that are antecedent to and more remote from the assaultive conduct would render legal responsibilities too uncertain." (*Delgado II*, *supra*, 47 Cal.4th at 316.)[8] The Court made clear that the law requires an examination of the injury-causing act—which in the *Doe* action is sexual molestation and rape—and then a determination of whether the act is an "accident." (*Id.* at pp. 315-16.) Such act does not satisfy the "occurrence" definition, which in turn means there is no duty to defend or indemnify under the Liberty policies in relation to the *Doe* action.

B. *Delgado* Does Not Allow the "Occurrence" Analysis to Turn on Remote Acts in the Causal Chain

Amici incorrectly suggest that Liberty argues for an invented "immediate cause" standard that is unsupported. In fact, Liberty has simply applied this Court's reasoning in *Delgado II* to the question: Does the *Doe* action allege injury caused by an "occurrence," which is defined under the

[8] Thus, this Court has determined the "occurrence" term "unambiguous." As a result, the plain language of the policy controls. (See, e.g., *Rosen v. State Farm Gen. Ins. Co.* (2003) 30 Cal. 4th 1070, 1073, citing Cal. Civ. Code § 1644). As a result, FFC's argument—that the term "occurrence" must be read in favor of the insured because it is ambiguous—fails at the first hurdle. (See FFC Br., p. 8-10.) This Court "do[es] not rewrite any provision of any contract, including [an insurance policy], for any purpose." *Certain Underwriters at Lloyd's of London v. Superior Court* (2001) 24 Cal. 4th 945, 960.

Liberty policies as an "accident"? *Delgado II* clearly—and correctly—indicates the answer is "no."

In *Delgado II*, the Court considered whether the insured's mistaken understanding as to the need for self defense was "unforeseen and unexpected from the perspective of the insured, making the insured's responsive acts unplanned and therefore accidental." (*Delgado II, supra,* 47 Cal.4th at p. 314.) The Court rejected this argument as well, explaining that "the law looks for purposes of causation analysis to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability." (*Id.* at p. 315.) "In a case of assault and battery, it is the use of force on another that is closely connected to the resulting injury." (*Id.* at pp. 315-16.) To "look to acts within the causal chain that are antecedent to and more remote from the assaultive conduct would render legal responsibilities too uncertain." (*Id.*) To that end, the Court noted that "the term 'accident' unambiguously refers to the event causing damage, not the earlier event creating the potential for future injury." (*Id.*, quoting *Maples*, 83 Cal.App.3d at pp. 647-48.)[9] The Court provided an illustrative example of its reasoning:

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[9] Amici suggest that cases related to "timing" of an "occurrence," such as *Maples* cannot inform the analysis here. Clearly, as reflected in *Delgado II*, this Court has not chosen to so limit the influence of *Maples*, but rather relied on it and its reasoning to formulate its holding. (See *Delgado II, supra*, 47 Cal.4th at p. 316.)