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August 6, 2010

Via Hand Delivery

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

Re: REQUEST OF UNITED POLICYHOLDERS FOR DEPUBLICATION OF *L.A. Checker Cab Coop., Inc. v. First Specialty Ins. Co.*, (Second Appellate District, Division One, June 14, 2010), Case No. B213948

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

More than forty years ago, this Court explained that California imposes vicarious liability on an employer for the torts of its employee because the employer "is better able to absorb [losses caused by an employee's torts], and to distribute them, through prices, rates *or liability insurance*, to the public, and so to shift them to society, to the community at large.'" (*Hinman v. Westinghouse Elec. Co.* (1970) 2 Cal.3d 956, 960 (quoting Prosser, *Law of Torts* (3d ed. 1964), p. 471) (italics added).)

This Court subsequently addressed how liability insurance policies apply when an employer is vicariously liable, stating that liability insurance will cover an employer's vicarious liability not just for an employee's negligence but also for an employee's intentional torts: "[N]either [the statutory exclusion for willful injuries in] Insurance Code section 533 nor related policy exclusions for intentionally caused injury or damage preclude a California insurer from indemnifying an employer held vicariously liable for an employee's willful acts." (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 305 fn.9 (citing *Fireman's Fund Ins. Co. v. City of Turlock* (1985) 170 Cal.App.3d 899, 1000-1001 and *Arenson v. Nat. Automobile & Cas. Ins. Co.* (1955) 45 Cal.2d 81, 83-84).) Thus, in countless decisions over the years, California courts have allowed employers to obtain insurance to cover their vicarious liabilities under standard commercial or comprehensive general liability ("CGL") insurance policies, which typically provide coverage for bodily injury or property damage caused by an "accident."

However, in what was originally designated an unpublished opinion – and therefore omitted most of the information about the claim and nearly all of the applicable insurance policy language – the Court of Appeal held that an employer is not entitled to insurance coverage for an employee's intentional tort *even though the employer's conduct was, at most, negligent.* (*See L.A. Checker Cab Cooperative v. First Specialty Insurance Company*, No. B213948 (2d Dist., Div. 1, June 14, 2010) (ordered published July 13, 2010) ("*Checker Cab*" or "Opn.") (copy attached as Exhibit A).)

Checker Cab's legal analysis – which takes up only two pages of text in the slip opinion – never addresses, let alone attempts to distinguish, decades of California cases finding coverage for an employer's vicarious liability, including this Court's controlling opinion in *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291.

Instead, *Checker Cab* devotes its legal discussion – which is just two pages long – to the meaning of the term "accident" in the CGL policy at issue. The court correctly holds that the injuries that gave rise to the insurance claim were not "accidental" *from the perspective of the employee who committed the intentional tort.*

But *Checker Cab* misses the point. A fundamental rule of California insurance law, enunciated in many decisions including this Court's latest discussion of the issue just last year, is that an "accident" is viewed *from the perspective of the insured who is seeking coverage*. If *the insured* did not intend the injury, the injury was caused "by accident" as that term is used in standard CGL policies, even if someone else may have acted willfully. (*See Delgado v. Interinsurance Exchange of Automobile Club of Southern California* (2009) 47 Cal.4th 302, 311 ["Under California law, the word 'accident' in the coverage clause of a liability policy refers to the conduct of the insured for which liability is sought to be imposed on the insured. . . . This view is consistent with the purpose of liability insurance."] [citations omitted]; *see also Arenson, supra,* 45 Cal.2d at p. 84.) Thus, although an employee who committed an intentional tort may not be entitled to coverage under his or her *own* CGL policies for a willful assault, an innocent but vicariously liable employer would have coverage for its vicarious liability.

To eliminate the split in California authority between decades of California cases, on the one hand, and *Checker Cab*, on the other hand, to avoid any misunderstanding on the part of the lower courts and insurers regarding insurance coverage for vicarious liabilities, and to protect the interests of tens of thousands of California employers who have purchased and rely for protection on CGL policies, I write on behalf of United

Policyholders to ask this Court to depublish the *Checker Cab* opinion, pursuant to Cal.R.Ct. Rule 8.1125.

Interest of United Policyholders

United Policyholders is a non-profit 501(c)(3) organization founded in 1991 that has nineteen years of experience helping solve insurance problems and advocating for consumer rights. Its first major project was aiding over a thousand victims of an October 1991 firestorm in the hills of Oakland and Berkeley, California.[1] United Policyholders helped the victims understand their policies and receive prompt, fair insurance settlements. United Policyholders has expanded on its tradition and mission by providing consumer-oriented insurance advocacy and education across America.[2] Donations, foundation grants and volunteer labor fuel the organization. Its Board of Directors includes the former Chief Justice of the Arizona Supreme Court and the former Washington State Insurance Commissioner.

United Policyholders' work is divided into three program areas: *Roadmap to Recovery* provides tools and resources that help individuals and businesses solve insurance problems that can arise after an accident, illness, disaster, or other adverse event. The *Roadmap to Preparedness* program promotes insurance and financial literacy as well as disaster preparedness. The *Advocacy and Action* program advances policyholders' interests in courts of law, legislative and public policy forums, and in the media. United Policyholders participates in the proceedings of the National Association

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1 See, e.g., Kenneth Reich, *Under Covered Insurance Advocacy Group Aids Victims of Oakland Fire*, LOS ANGELES TIMES 3 (March 1, 1992) ("Because of some well-placed pressure by a nonprofit organization called United Policyholders, many insurers have retroactively upgraded their customers' policies, agreeing to pay higher settlements without filing lawsuits.").

2 See, e.g., Angela Lau, *Poizner Hails Recovery from Fires, Says Most Claims Are Resolved*, SAN DIEGO UNION-TRIBUNE B-3 (Nov. 10, 2009) (Karen Reimus, disaster recovery coordinator for the nonprofit United Policyholders, which educates consumers about their insurance rights, said [California Insurance Commissioner Steve] Poizner still has not fulfilled his promise to audit 2007 wildfire insurance claims so that his department could make it easier for future victims.").

of Insurance Commissioners as an official consumer representative, and chairs a Consumer Advisory Task Force convened by California Insurance Commissioner Poizner. UP offers an extensive library of publications, legal briefs, sample policies, forms and articles on commercial and personal lines insurance products, coverage and the claims process at www.unitedpolicyholders.org.

United Policyholders has appeared as *amicus curiae* in over two hundred and eighty cases throughout the United States. Arguments from its *amicus curiae* brief were cited with approval in *TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 19, *Vandenberg v. Superior Court* (1999) 21 Cal.4th 815 (1999), *Watts Industries, Inc. v. Zurich American Insurance Co.* (2004) 121 Cal.App.4th 1029, and *Julian v. Hartford,* (2005) 35 Cal.4th 747. United Policyholders also has appeared as an *amicus curiae* in the United States Supreme Court in *Metlife v. Glenn, Campbell v. State Farm, FL Aerospace v. Aetna Casualty and Surety Co.*, and *Humana, Inc. v. Forsyth* in which United Policyholders' brief was cited in the published opinion at 525 U.S. 299.

Background to the Checker Cab Decision

The L.A. Checker Cab Company purchased a CGL policy from defendant First Specialty Insurance Company. After a Checker Cab driver shot at a drunk and disruptive passenger, the passenger brought an action against the driver for assault and battery and against Checker for negligent supervision of the driver. Checker tendered the defense of the action to First Specialty, but the insurer refused to defend or indemnify Checker on the ground that the bodily injury that resulted from the incident was not covered by Checker's policy. The trial court granted First Specialty's motion for summary judgment. (Opn., pp. 2-3.)

The Court of Appeal, in affirming, found that Checker Cab was not entitled to coverage because the CGL policy covered only bodily injuries caused by an "occurrence," which the policy defined as an "accident." Because the employee intended to shoot at the drunk passenger, the court concluded that no "accident" had occurred and that First Specialty thus had no duty to defend or indemnify Checker Cab for its vicarious liability for the tort of the Checker Cab driver. (Opn., pp. 3-5.)

This Court has repeatedly defined "accident" as an "an unexpected, unforeseen, or undesigned happening or consequence from either a known or unknown cause." (*See, e.g., Geddes & Smith, Inc. v. St. Paul Mercury Indem. Co.* (1959) 51 Cal.2d 558, 563-564.)[3] *Checker Cab* properly started with that definition. But *Checker Cab* then added a new component to the "accident" definition, stating that an intentional act cannot be considered an accident "when all of the acts, the manner in which they were done, and the objective accomplished occurred *as intended by the actor*." (Opn., p.3 [italics added].) Applying this definition, *Checker Cab* held the employer, Checker Cab, had no coverage for the intentional misdeeds of its employee, the cab driver, because the employee's conduct was intentional in all respects.

Critically, however, *Checker Cab* forgot about an important component of the "accident" requirement: With the exception of *Checker Cab*, every California decision to address the issue, as far as we are aware, has determined whether the conduct at issue was an "accident" *from the perspective of the insured* and not from the perspective of anyone else.[4] Thus, if *the insured* acts with the intent to injure and the intended injury results, no "accident" has occurred and a standard CGL policy will not provide coverage. But if the insured did not intend the acts or injury – as occurs when an innocent employer is vicariously liable for the tort of an employee or agent – the insured is entitled to insurance coverage notwithstanding the "occurrence" requirements of standard CGL

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[3] See also *Delgado v. Interinsurance Exch. of Auto. Club of S. Cal.* (2009) 47 Cal.4th 302, 308; *Hogan v. Midland National Ins. Co.* (1970) 3 Cal.3d 553, 559.

[4] See, e.g., *Minkler v. Safeco Ins. Co.* (2010) 49 Cal.4th 315, citing *Merced Mut. Ins. Co. v. Mendez (1989)* 213 Cal.App.3d 41, 50 ("an 'accident' exists when any aspect in the causal series of events leading to the injury or damage was unintended by the insured"); *Delgado v. Interinsurance Exch. of Auto. Club of S. Cal., supra*, 47 Cal.4th at p. 304 ("Under California law, the word 'accident' in the coverage clause of liability policy refers to the conduct of the insured for which liability is sought to be imposed on the insured"); *Quan v. Truck Ins. Exchange* (1998) 67 Cal.App.4th 583, 596, citing *Collin v. American Empire Ins. Co.* (1994) 21 Cal.App.4th 787, 804 ("Under California law, the term [accident] refers to the nature of the insured's conduct"); *Armstrong World Industries, Inc. v. Aetna Cas. & Sur. Co.* (1996) 45 Cal.App.4th 1, 70 ("the purpose of third party liability insurance is to protect the insured against injuries to third parties neither expected nor intended by the insured").

policies and the statutory exclusion in California Insurance Code Section 533 for willful injuries.[5] We address these points in more detail below.

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[5] Section 533 of the California Insurance Code provides: "An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of the insured's agents or others." Many California cases have confirmed that Section 533 does not preclude indemnification for vicarious liability. See, *e.g., Downey Venture v. LMI Ins. Co.* (1998) 66 Cal.App.4th 478, 513 ("Where a principal is held vicariously liable for an agent's act of malicious prosecution, section 533 poses no obstacle to indemnifying the principal"); *Lisa M. v. Henry Mayo Newhall Mem. Hosp.,* 12 Cal.4th at p. 305, fn.9 ("Neither Insurance Code section 533 nor related policy exclusions for intentionally caused injury or damage preclude a California insurer from indemnifying an employer held vicariously liable for an employee's willful acts."); *Arenson v. Nat'l Auto. & Cas. Ins. Co.,* 45 Cal.2d at p. 84 ("Section 533 of the Insurance Code...has no application to a situation where the plaintiff is not personally at fault."); *Melugin v. Zurich Canada* (1996) 50 Cal.App.4th 658, 666 ("section 533 would not necessarily bar coverage to Canada Life for its own strict liability as a result of [its employee] Melugin's wrongful acts"); *Keating v. National Union Fire Ins. Co.* (C.D.Cal. 1990) 754 F.Supp. 1431, 1440, rev'd on other grounds, 995 F.2d 154 (9th Cir. 1993) (finding negligent supervision of employees who made false statements to investors can be a covered "occurrence" and not barred by section 533) (applying California law); *Fireman's Fund Ins. Co. v. City of Turlock,* 170 Cal.App.3d at p.1001 ("indemnification for City's liability for the verdict and judgment on the fraud cause of action [against City's agent] is not precluded by Insurance Code Section 533"); *American States Ins. Co. v. Borbor by Borbor* (9th Cir. 1987) 826 F.2d 888, 894 (section 533 bars insurer from indemnifying first partner who committed willful acts, but not second partner, who was vicariously liable for those acts); *Dart Indus., Inc. v. Liberty Mut. Ins. Co.* (9th Cir. 1973) 484 F.2d 1295, 1297 ("There is also a public policy and established business practice to permit persons including corporation to purchase insurance to indemnify them against damages which might be imposed for not only tortious acts of agents or employees, but also willful acts of the agents or employees, for which vicarious liability may be imposed....[Absent a] showing that the corporation by some form of informal action had indicated prior approval or later acquiescence, section 533 did not constitute a legal defense.") (applying California law); *Nuffer v. Insurance Co. of N. Am* (1965) 236 Cal.App.2d. 349, 356 ("The general rule codified in Insurance Code section 533 (continued...)

Coverage for an Employer's Vicarious Liability

It is well established, under the doctrine of *respondeat superior*, that employers can be vicariously liable for the torts of their employees, when those torts are committed within the scope of employment. (See *Lisa M. v. Henry Mayo Newhall Memorial Hospital*, *supra*, 12 Cal.4th 291.) An employee's intentional tort can fall within the scope of employment even if the action that caused injury was unauthorized by the employer. (*Id.*) California courts have applied *respondeat superior* liability to employers when an employee's misconduct was foreseeable, or "not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (*Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 618.)

As noted, however, California's legal system anticipates that employers will be able to distribute the risks of vicarious liability among the public at large by means of CGL insurance. That is the case even when the employer is vicariously liable for the intentional torts or willful misconduct of an employee, as this Court's decision in *Lisa M.*, *supra*, indicates.

Whether an insured may obtain insurance coverage for its vicarious liability for an intentional tort has been addressed most often in the context of section 533 of the California Insurance Code. This Court has held that section 533 does not bar coverage when the insured is not personally at fault. (See *Arenson v. National Automobile & Casualty Insurance Co.*, 45 Cal. 2d at 84; *see also* cases cited in footnote 5 *supra*.) That is because, as Justice J. Walter Croskey put it:

> The public policy underlying section 533 – to deny coverage for and thereby discourage commission of willful wrongs – is not implicated when an insurer indemnifies an "innocent" insured held liable for the willful wrong of another person: "The public policy against insurance for losses resulting from such [willful] acts is usually justified by the assumption that such acts would be encouraged, or at least not dissuaded, if insurance were available to shift the financial burden of the loss from the wrongdoer to the insurer. This policy,

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specifically does not foreclose recovery by an insured upon a fire insurance policy for a loss caused by arson of the insured's agent, and the courts of many jurisdictions...have asserted as a general rule the right of such an insured to recover for such a loss.").

> however, does not apply when the wrongdoer is not benefited, and an insured who is innocent of the wrongdoing receives the protection afforded by the contract of insurance."

(*Downey Venture v. LMI Ins. Co.,* 66 Cal.App.4th at p. 513, citing *American States Ins. Co. v. Borbor by Borbor* (9th Cir. 1987) 826 F.2d 888, 895; *see also Dart Industries, Inc. v. Liberty Mut. Ins. Co.,* 484 F.2d at p. 1298, citing *Hendrix v. Employers Mut. Liab. Ins. Co.* (E.D.S.C. 1951) 98 F.Supp. 84, 87 (indemnity for the intentional torts of an employee or agent "is not contrary to public policy because the insured in such a case is guilty of no wrong-doing, but simply has the misfortune to be legally responsible for the wrong-doing of another"), *rev'd on other grounds,* 199 F.2d 53 (4th Cir. 1952).)

Not surprisingly – since the opinion is only five pages long and the legal discussion takes up just two pages – *Checker Cab* fails to address any of these considerations and ignores the longstanding California public policy permitting CGL insurance to indemnify the torts of an employer (such as the cab company) for the intentional torts of its employees (such as the cab driver). By ignoring these considerations, *Checker Cab* threatens to confuse the current state of California law governing an employer's ability to insure against damages caused by employees to third persons. If not depublished, insurers will cite to *Checker Cab* to attempt to deprive innocent California employers of protection against their vicarious liability for the intentional misdeeds of their low-level employees.

Coverage for Accidents Is Determined from the Perspective of the Insured Employer

As noted, the Court of Appeal based its rejection of coverage on the ground that the employee's conduct was not "accidental." The court cited to the well-established principle that if an insured intends to commit an act and intends that act to result in injury, the intended injury cannot be deemed an accident under California law. Coverage for the employer's vicarious liability in *Checker Cab* should not have turned on this rule, however. The issue in *Checker Cab* was whether an employer could access CGL coverage for the intended injuries committed by its employees, *not* by the company itself, which was innocent and was accused only of negligent supervision.

Failing to recognize this distinction, the Court of Appeal conflated insurance coverage for damages arising from intentional actions of an employee with insurance coverage for the vicarious liability of an employer as though they were one and the same.

An injury-producing event may be intended by a low-level employee of an insured without being intended by the insured. As also noted, whether an act and its resulting consequences are intentional is viewed from the perspective of *the insured* who seeks coverage, not from the perspective of a third party, such as a low-level employee of the insured. (See cases cited in footnote 4 *supra*.) A rule that coverage is unavailable to an employer for its low-level employee's willful acts does not dissuade the commission of such acts; it simply leaves an innocent insured liable for the intentional but unforeseeable wrongdoing of others. (See *Downey Venture v. LMI Ins. Co.*, 66 Cal.App.4th at 513.)

In sum, any employer who hires employees risks vicarious liability for the willful, malicious, and even criminal torts that low-level employees may commit in the course of their employment. But as this Court has recognized many times in the past, an employer can shift those risks to society at large by purchasing CGL insurance. *Checker Cab* threatens to undermine the purpose of liability insurance in this context and, if left published, would jeopardize the ability of tens of thousands of California businesses to purchase insurance to absorb the costs of losses resulting from the torts of their employees.

For all these reasons, United Policyholders asks this Court to depublish the *Checker Cab* decision.

Respectfully submitted,

David B. Goodwin (Bar No. 104469)

Enclosure

CASE NAME: L.A. CHECKER CAB COOPERATIVE, INC., v. FIRST SPECIALTY INSURANCE COMPANY,

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am a resident of the United States. My business address is One Front Street, 35th Floor, San Francisco, California 94111. I am employed in the City and County of San Francisco where this service takes place. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service. On August 6, 2010 I served the foregoing document(s) described as:

Request of United Policyholders for Depublication of *L.A. Checker Cab Coop., Inc. v. First Specialty Ins. Co.*, (Second Appellate District, Division One, June 14, 2010), Case No. B213948

on the following person(s) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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[X] (**BY MAIL**) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at San Francisco, California

[X] (**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 6, 2010, at San Francisco, California.

Mary Ochoa

MARY OCHOA

Filed 6/14/10; pub. order 7/13/10 (see end of opn.)

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."

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[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.