

California Federal Court Holds Unintentional Conversion Not an Occurrence
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In its recent decision in *Alco Iron & Metal Co. v. American International Specialty Lines Ins. Co.*, 2012 U.S. Dist. LEXIS 166692 (N.D. Cal. Nov. 21, 2012), the United States District Court for the Northern District of California had occasion to consider whether an insured's intentional acts that result in unintentional harms can be considered an "occurrence" for the purpose of a general liability policy.

The insured, Alco Iron & Metal Company, sought coverage for an underlying conversion claim brought by Caicos Investments. The suit alleged that Alco wrongfully entered Caicos' property, removed its rail spurs, and sold the spurs to a third party as scrap metal. Alco claimed that it engaged in such conduct under the mistaken belief that it had permission to take the rail spurs, such permission having been given by Caicos' then tenant, Sparetime Supply. In fact, Alco asserted a cross-complaint against Sparetime alleging that Sparetime had represented that it had authority to negotiate the terms of Alco's use of the property. Alco's general liability insurer, Chartis, disclaimed coverage to Alco on the basis that Caicos' lawsuit did not allege an "occurrence" for the purpose of the policy's property damage coverage part, defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." Chartis also denied coverage under its policy's personal and advertising injury coverage on the basis that Caicos did not allege "personal injury" based on the offense of "wrongful entry."

In the ensuing coverage litigation, Alco argued that its otherwise intentional actions should be considered accidental in light of Sparetime's misrepresentations. In particular, Alco argued that Sparetime's false representations constituted an "independent and unforeseen happening" that guided Alco's conduct. Thus, Alco claimed that its actions in entering the property and taking the rail spurs were not intentional, but instead the result of its negligent reliance on Sparetime's representations. As such, and because it did not intend to cause harm to Caicos, Alco contended that its conduct satisfied the policy definition of "occurrence." The court disagreed, citing to a long line of California decisions, such as *Fire Ins. Exchange v. Superior Court (Bourguignon)*, 181 Cal. App. 4th 388 (Cal. App. 2010), standing for the proposition that an insured's subjective intent not to cause harm is not a relevant coverage consideration. As the court noted, an insured's lack of "intent to harm" cannot transform an otherwise volitional act into an accident.

The court also rejected Alco's contention that Sparetime's representations constituted an "unexpected, independent and unforeseen circumstance" that rendered Alco's actions accidental. The court observed a distinction between "accidental conduct and intentional acts for which the results were not intended." Where the insured's intentional actions directly result in an unanticipated harm, then there is no occurrence for the purpose of a general liability policy. By contrast, where an insured's intentional actions are followed by an unanticipated and injurious act that the insured did not intend, then the injury can be said to result from an "occurrence." Applying this reasoning, the court concluded that Sparetime's false representations could not be considered a subsequent intervening event:

Here, the allegations in the underlying complaint were that Alco entered the property, removed the rail spurs, and then sold them as scrap metal. Although it did not intend to harm Caicos and acted under the belief that it was authorized to take these actions, Alco has not offered any material dispute of fact that it was intended to carry out each of these acts in the manner in which they were done and that it accomplished its objective, in taking the metal away and selling it.

In addition to concluding that Alco was not entitled to coverage under the Chartis policy's property damage coverage, the court also concluded that the underlying complaint did not trigger the policy's personal injury coverage based on the offense of "wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor." Alco argued that "person" in this definition could refer to natural persons and businesses alike. Citing to California state appellate decisions as well as cases from California's federal courts, the *Alco* court agreed that in the context of the Chartis policy, "person" could only refer to a natural person and did not include business entities.