From Either the Standpoint of the Insured or From the Standpoint of the Injured Party, an Assault Perpetrated by a Non-Insured Party is an "Occurrence"

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In *Schinner v. Gundrum*, the Wisconsin Court of Appeals held that an assault perpetrated by a non-insured individual is an "occurrence" covered under a homeowner's policy, because the assault was an accident from the standpoint of either the insured or the injured party. Gundrum, who was insured under his parents' homeowner's policy, hosted a party in a shed on his family's business property. Gundrum provided alcohol to Cecil, who intentionally assaulted another party-goer, Schinner. Schinner sued Gundrum for negligence, alleging that Gundrum's conduct in plying Cecil with alcohol was a cause of the assault and Schinner's injuries.

In holding that the assault constituted an "occurrence" within the meaning of Gundrum's policy, the court reviewed two lines of apparently inconsistent cases. The court observed that, on the one hand, there is a line of cases that holds that an assault and resulting injuries must be viewed from the standpoint of the injured person. This line of cases concludes that an assault is accidental because the injured party does not expect, intend, or anticipate the assault or resulting injury. On the other hand, there is another line of cases that views an assault from the standpoint of the insured and holds that, from the insured's standpoint, an assault is volitional conduct that does not constitute an "occurrence." In both lines of cases, invariably the perpetrator was the insured; however, in the *Schinner* case, the perpetrator was not the insured. Due to the conflicting lines of cases, the court expressed that it did not know whether Wisconsin courts should view an assault from the standpoint of the injured party or from the standpoint of the insured. Nonetheless, the court concluded that in the present case it ultimately did not matter from which standpoint it viewed the assault, because it deemed the assault an accident from the standpoint of either Schinner or Gundrum. The court held that neither Schinner, as the injured party, nor Gundrum, as the insured who provided alcohol but who did not commit the assault, could have intended the assault on Schinner.

The court further held that the policy's non-insured location exclusion was inapplicable. The court reasoned that, for such an exclusion to apply, there must be a correlation between the alleged negligence and a condition of the premises. There was no evidence that a condition of the shed in which the party was held was a cause of either Cecil's assault or Schinner's injuries.