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COVER STORY

Insurance bad faith lawyer to be honored for 40-year career

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BEVERLY HILLS — Insurance companies will fight anything, William Shernoff says. He's seen that time and time again.

The pioneering bad faith insurance lawyer with Shernoff Bidart & Echeverria LLP has been litigating for consumers for more than 40 years, representing everyone from the little guy to companies and even governments who felt wronged by insurance companies.

Before Shernoff, there was no strong defense against insurance companies who disadvantaged policyholders besides through breach of contract or fraud causes, attorneys who know him said. When he started, Shernoff said, case law at the time strongly favored insurance companies.

"He developed the area of bad faith law at a high level of accountability," said longtime consumer rights advocate Ralph Nader, whose relationship with Shernoff dates back to their formation of the first national insurance consumer organization with Bob Hunter in the late 1970s. "You could always get an insurance company to change its mind on a denial of claim and pay \$500, but he took it to a high level with punitive damages," said Nader, who will be a speaker during an awards ceremony honoring Shernoff hosted by the Beverly Hills Bar Association on Wednesday. Shernoff will be presented with the Excellence in Advocacy Award, while Justice Laurie D. Zelon of the California Court of Appeal, 2nd District, will receive the Ronald M. George Award for Judicial Excellence.

[Shernoff] is an icon in the legal field. ... I don't think he's ever rested on his laurels. It's hard to go up against an insurance company. You need to have tremendous commitment," said Marc R. Staenberg, chief executive officer of the bar association.

Shernoff remembers the first case that really got him interested in insurance law. It was a man who was denied disability benefits because there was a clause in his policy that said he had to be confined to his house in order to collect benefits. The insurance company caught the man walking out to get his



Juliane Backmann / Special to the Daily Journal

William Martin Shernoff of Shernoff Bidart Echeverria LLP at his office in Beverly Hills. He will be feted by the Beverly Hills Bar Association on Wednesday.

mail and argued that was proof that he wasn't disabled, Shernoff recalled. "You couldn't even go see your doctor to collect your benefits. Or get your mail." The jury found that clause unconscionable, he said.

Then came *Egan*, the 1979 California Supreme Court decision that allowed for policyholders to sue underwriters on the grounds of implied good faith of covenant and fair dealing. Shernoff created a new cause of action, enabling the plaintiffs' legal community to better hold insurance companies accountable in the courts. *Egan v. Mutual of Omaha Insurance Co.*, 63 Cal.App.3d 659, 133 Cal. Rptr. 899 (1976).

From *Egan*, Shernoff won more verdicts. He lectured all around the country, traveling to 21 cities in a month and a half for a book tour, and fighting cases in other states. "I was really starting to make it a mission. I was kind of obsessed I think in those early years," said Shernoff.

"His track record of representing victims of insurance claims malfeasance is unparalleled among lawyers in the United States," said Harvey Rosenfield, founder of Santa Monica-based Consumer Watchdog.

Shernoff stills talks about his cases with conviction, as if the insurance companies personally wronged him.

There have been setbacks. A 2003 U.S. Supreme Court decision put a constitutional limit on punitive damages for cases that went over a 10:1 ratio on actual damages. "It just pains me to talk about this," said Shernoff. "That took a lot of our leverage away. Before then you could get much larger punitive damages. *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

In a 1987 U.S. Supreme Court decision, the court ruled that federal law pre-empted California's insurance bad faith laws for people who were insured through their employer, taking away punitive and general damages. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987).

Shernoff grew up in a Wisconsin town of 500, an upbringing that very much informed his work and led him to represent regular working people. "My dad was the only lawyer for 50 miles. He helped the farmers. If they didn't have money he took a cow or a chicken," said Shernoff.

He still files cases that on the surface look pretty minor, like a busted pipe that floods a house and causes \$30,000 worth of damages. "A lot of lawyers would say that's too small," said Shernoff. He's more interested in the overall conduct of an insurance provider. If it's covered, they should pay it, he said.

For example, one of Shernoff's

more well-known cases started off as a denial of a \$48 medical bill and ended up becoming a \$4.5 million verdict. Elmer Norman, a deaf senior citizen who required wearing headphones connected to a microphone in order to hear, kept asking Shernoff to take his case, but Shernoff didn't think he had one. However, subsequent investigation led Shernoff to discover the insurance company, Colonial Penn Franklin, issued a so-called "new and improved" benefits plan, but in reality it took out \$5 million in benefits for holders in order to save money, Shernoff said. The jury found the practice to be deceptive and ruled the company guilty of fraud.

After adding up all the damages and attorney fees, what seems like a minor case could become a huge verdict, said Shernoff. "I don't think a lot of lawyers realize that," he said.

Aside from his 13-lawyer firm, Shernoff feels alone in his fight against insurance companies. "Today you don't find a law firm out there that exclusively does insurance bad faith. They'll take personal injury cases, they'll take a bad faith case here and there," said Shernoff.

He seems bothered for what that means in a Donald Trump presidency. There still is no real deterrent for insurance companies denying people left and right, he said. "There is going to be a lot less regulation. My prediction is there is going to be a lot more disputes. People are going to think they are covered for things," he said.

"It means that the judiciary and the jury system is going to have to step up and protect consumers, not only insurance consumers but all kinds of consumers," said Shernoff.

If there is one thing Shernoff said he has learned during his years practicing insurance law, it's how far companies will go to fight their case. He had one client who won money for getting a hole-in-one during a golf tournament. Those prizes are insured with a premium paid by the sponsor. "The insurance company wouldn't pay it. They wanted her to take a lie detector test. ... She was in a foursome. They all saw it," said Shernoff.