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TOP BOUTIQUES IN CALIFORNIA 2016

INSURANCE BAD FAITH

Shernoff Bidart Echeverria LLP

In late September, founding partner William M. Shernoff was in Washington, D.C. to speak on insurance bad faith issues at consumer advocate Ralph Nader's conference on "Breaking Through Power." Shernoff and Nader have a long history. Thanks to Shernoff's 1979 win at the California Supreme Court on behalf of a disabled roofer in *Egan v. Mutual of Omaha*, policyholders have been able to sue underwriters for violations of the implied covenant of good faith and fair dealing. Nader took notice and gave credit. "Decades ago, a young, casual William Shernoff became a one-man regulatory agency over bad faith denials by insurance companies against their policyholders," Nader wrote recently. "He virtually invented this sector of the law."

"Ralph has been a friend for 30 years," Shernoff said. "It's nice to have him recognize what we did. Before the 1970s, if you got stiffed, there was no real remedy except under contract law, and that got you only what you were promised in the first place. I'm proud of founding a law firm that not only gets good settlements and verdicts for clients — and we do — but also advances the law."

What Shernoff began in 1979, he and the seven partners at his 13-lawyer firm have continued. In 2016, he prevailed in the latest long line of cases flowing from *Egan*.

The question in *Nickerson v. Stonebridge Life Insurance*, S213873 (Cal. Sup. Ct., filed Oct. 9, 2013), involved the proper ratio between punitive and compensatory damages with the added twist that the jury in Shernoff's case awarded attorney fees as part of its judgment but a trial judge did not when she drastically reduced the award.

CLAREMONT AND BEVERLY HILLS

Nickerson arose when an insurer partly denied coverage for a disabled man's hospitalization benefits. Los Angeles County Superior Court Judge Mary Ann Murphy ruled the man was entitled to \$31,500 in additional benefits. A jury then found the insurer had breached the implied covenant of good faith and fair dealing and awarded the man \$35,000 in compensatory damages for emotional distress and \$19 million in punitive damages for fraud. "He was in the hospital 109 days, and the carrier paid for 19 days and said the rest was not medically necessary," Shernoff said. "It was an egregious fact situation. He had severe broken bones and was incapacitated."

Murphy reduced the \$19 million to \$350,000, without factoring in fees. A 2nd District Court of Appeal panel affirmed. The state high court granted review, in part on the attorney fee issue. On June 9, the justices reversed the appellate panel, holding unanimously that attorney fees can properly be included in the calculation of punitive damages, allowing Shernoff and his client Thomas Nickerson to return to lower courts to seek tens of thousands of dollars more in punitives.

"To exclude the fees from consideration would mean overlooking a substantial and mutually acknowledged component of the insured's harm," Justice Leandra R. Kruger wrote for the court.

Shernoff said his firm's influence outweighs its size. "Our mantra: give a remedy to policyholders who feel they haven't gotten a fair shake," he said. "This is a relatively new tort. And it affects not only individuals but also businesses that don't get fair



Courtesy of Shernoff Bidart Echeverria LLP

From left, Ricardo Echeverria, Michael J. Bidart and William M. Shernoff.

treatment from their insurers. They actually are the biggest consumers of insurance, and they get stiffed too. Our attorneys have represented city governments and large corporations. While their firm has recovered billions for clients taken advantage of by some of the largest insurance companies in the world, the impact the firm has had on the area of insurance law is what distinguishes it from its peer firms."

Last year, name partner Michael J. Bidart won a \$28.2 million medical negligence jury verdict against Southern California Permanente Medical Group for Anna Rahm, a woman who lost her leg after doctors rejected multiple requests for an MRI. "They paid it, and they did not appeal, which is rare," Bidart said. *Rahm v. Kaiser Foundation Health*

Plan Inc., BC441742 (L.A. Super. Ct. March 25, 2015). He's just filed a new case against Kaiser, a potential class action that alleges the health care giant charged patients pharmacy copays greater than the cost of the drugs involved. *Gallimore v. Kaiser Foundation Health Plan Inc.*, BC612259 (L.A. Super. Ct., filed March 1, 2016). Rahm is a named plaintiff in that complaint, too.

"We're doing our best to maintain our focus on insurance bad faith," Bidart said.

Shernoff said that lawyers can't do it alone. "The judiciary too deserves credit for developing this new area of the law. *Egan* was written by Justice Stanley Mosk, whose name is on the courthouse I work in a lot. Every time I go by his picture, I say thank you."

—John Roemer