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## “HANIF” REVISITED

By Matthew J. Trostler, Esq.

*Hanif v. Housing Authority* (1988) is the seminal case holding that when a plaintiff has medical insurance, damages are limited to the amount actually paid or incurred, not any greater amount a medical provider billed, even if that amount was reasonable. Subsequent cases, including *Nishihama v. City and County of San Francisco* (2001) and *Greer v. Buzgheia* (2006) followed *Hanif's* reasoning. Most recently, *Olsen v. Reid* (2008) had a similar fact



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## Matthew J. Trostler



Matthew J. Trostler is a Partner in the Los Angeles office of Borton Petrini, LLP. He received his undergraduate degree from the University of Southern California earning a major in psychology and a minor in English, with an emphasis in expository writing. He earned his Juris Doctorate from California Western School of Law in 1991 where he was a contributing editor for the law school newspaper.

Matthew's primary area of emphasis at Borton Petrini, LLP is insurance defense. His wide-ranging experience in the field of insurance has provided additional insight to insurance carriers through seminars defining and discussing insurer regulations in California.

Matthew has significant experience in arbitrations, mediations and jury trials. Some of his verdicts have been published statewide and nationally. His aggressive applicational style is tempered by his sense of fairness and compassion.

## 2008: A YEAR IN REVIEW OF INSURANCE-RELATED CASES

By Matthew J. Trostler

# Insurance Coverage

In 2007, we saw a large number of California appellate cases concerning insurance-related issues. In the year 2008, we have seen a similar trend. What follows is a summary of insurance-related cases decided in this calendar year:

*Bruyn v. Farmers* (January 2008): Mold damage not covered even when it results from a covered, sudden and accidental discharge of water. The policy was written on an “all-risk” basis for the dwelling and on a “specified-peril” basis for personal property, covering losses to the dwelling and personal property caused by a sudden and accidental discharge of water from any plumbing or household appliance. The policy also included an exclusion for mold. The court upheld the exclusion and also held that the denial of coverage did not violate Insurance Code section 530 or the efficient proximate cause doctrine.

*Wedemeyer v. Safeco* (March 2008): Judgment on the pleadings in favor of Safeco reversed. The plaintiff stated a claim for relief for breach of contract as Safeco was required to pay the balance of his under-insured motorist coverage.

*Lyons v. Fire Insurance Exchange* (March 2008): Fire Insurance Exchange owed no duty to defend its insured, Stephen Lyons, following Lyons’ intentional conduct to Roy (plaintiff in underlying litigation) in underlying matter.

*Qualcom v. Certain Underwriters at Lloyds* (March 2008): Language in excess policy compels court to conclude that underwriters’ coverage obligation did not arise because Qualcom’s pleadings did not establish that primary insurer neither paid the “full amount” of its liability limit nor had it become legally obligated to pay the full amount of the primary liability limit in the parties’ settlement agreement in the underlying action.

*Great Western Drywall v. Interstate Fire and Casualty* (April 2008): Summary judgment granted for insurer affirmed on appeal, as cross-suits exclusion in CGL policy upheld.

*State Farm v. Wright* (June 2008): Insured throws someone into swimming pool, intending to get other

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**“HANIF” REVISITED**

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pattern, but the appellate justices were troubled by taking the *Hanif* doctrine too far.

In August 2003, plaintiff Olsen was injured when defendant Reid struck her from behind with a motorized wheelchair. Olsen suffered significant personal injuries and filed a lawsuit for negligence. Prior to trial, Olsen attempted to admit into evidence the full amount of her medical providers' bills for treatment. Defendant Reid moved to admit evidence of the amount Olsen actually paid for her treatment. Olsen was actually billed \$62,475.81 for her medical care, yet her insurance paid \$57,394.24 of her bills. The jury awarded plaintiff the full amount of her medical bills, including general damages. Both parties appealed, plaintiff arguing that the court improperly reduced the judgment by \$57,394.24, whereas the defendant argued that the jury should have been precluded from hearing evidence as to the actual amounts billed by plaintiff's providers. The appellate court agreed with plaintiff's arguments, as it was not clear to the appellate court as to what amounts were actually "written off" and what amounts were actually paid by plaintiff's insurer. The court also rejected defendant's arguments and held that the trial court was correct in allowing the jury to hear evidence of the full measure of plaintiff's medical damages.

What is significant about the *Olsen* case is not necessarily the holding, but rather the concurring opinion written by four appellate justices who essentially agreed with the result, but disagreed with the reasoning. The appellate justices were concerned with the continued erosion of the "collateral source doctrine" and issues of judicial restraint. It is expected that courts looking at this issue in the future will look

more closely at the evidence as to what was paid or "written off" and perhaps pause before automatically reducing jury verdicts for fear of judicially eroding the collateral source doctrine. ❖



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**2008: A YEAR IN REVIEW**

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people wet, but, by mistake, does not throw hard enough and so the latter lands on the pool cement step and suffers injuries; incident termed an "accident;" court concludes a potentially covered occurrence under State Farm's insurance policy, thus a duty to defend.

*Explorer Insurance Company v. Gonzales* (July 2008): When insured suffers bodily injury caused by a person who also has insurance, but "for an amount that is less than the uninsured motorist limits carried on the motor vehicle of the injured person," the insurance policy of the injured person will cover the difference. Under-insurance coverage had limits of \$100,000; tortfeasor's limits totaled \$100,000; in this scenario, UIM coverage of injured person's policy is not triggered.

*Hecht v. Paul Revere Life Insurance* (October 2008): Insured not "totally disabled" under definition of policy, as he continued to work every day; income was substantially the same as it was before accident; he was able to perform "substantial and material acts necessary to the prosecution of a business;" and he was physically and mentally capable of working.

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