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Borton Petrini LLP
5060 California Ave., Suite 700
Bakersfield, CA 93309
bpcbak@bortonpetrini.com

Inside

JURISDICTION IN CALIFORNIA

Page 2

SUMMARY OF SELECTED INSURANCE-RELATED CASES

Page 3

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Editor:

Matthew J. Trostler, Partner
(213) 624-2869

The End of HANIF

By Matthew J. Trostler, Esq.

For the past 23 years, the case of *Hanif v. Housing Authority* (1988) has been the authority which allowed defense counsel to apply for post trial reductions of medical bills when a portion of those medical bills has been paid by an insurer prior to trial in a personal injury case. Three recent cases, however, have carved an exception to the *Hanif* post trial reduction and the ultimate continued viability of this procedure now rests with the California Supreme Court.

Two years ago, in *Howell v. Hamilton Meats & Provisions*, a southern California case, the



continued on page 3

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.

JURISDICTION IN CALIFORNIA

By Matthew J. Trostler, Esq.

A non-resident corporation claiming that it cannot be sued in California for lack of personal jurisdiction may make a special appearance for the limited purpose of moving to quash the summons on the complaint. By filing a motion to quash service of the summons, the effect is to place the burden upon the plaintiff to show facts that give the court constitutionally authorized jurisdiction over the party; that is, facts requisite to an effective service. A successful jurisdictional attack serves two purposes: avoiding costly litigation for the non-resident defendant and removing cases from clogged California courts that the state has no interest in resolving.

Personal jurisdiction in California may be either general or specific. A non-resident defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are substantial, continuous and systematic. For example, a plaintiff must show that even though a corporation may be domiciled out of state, the corporation maintains offices in California, employs agents in the state, or even has bank accounts in California. In such a case, it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship with the state. The rationale behind this rule is such; a defendant's contacts with the state are so wide ranging that they take the place of physical presence in the forum as the basis for jurisdiction.

However, if the non-resident defendant does not have substantial, continuous or systematic contacts with the state sufficient to establish general jurisdiction. He or she may still be subject to "specific" jurisdiction of the state if the defendant has purposely availed himself or herself of forum benefits in a controversy related or "arises out of" a defendant's contacts with the forum. It has also been said that specific jurisdiction exists if the corporation "purposefully avails itself" of the privilege of conducting activities within the state. A typical case is when a non-resident manufacturer



distributes products in the stream of commerce. However, a simple "awareness" that the stream of commerce may sweep the product into California does not necessarily convert the mere act of placing the product into the stream into an act purposely directed towards California. Were foreseeability the criterium, "[e]very seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel."

More recently, courts have been reluctant to establish jurisdiction over a non-resident corporation even if the corporation has a website which is accessible by any consumer in California. At least one federal court has stated:

"The nature of the Internet is such that it is accessible anywhere a laptop or computer can be hooked up to a telephone or modem line. A finding of jurisdiction based on the fact that the web page is accessible in the forum means that there would be nationwide jurisdiction over anyone who posts a web page. Consequently, this court finds these decisions wholly unpersuasive. To hold otherwise would be to subject defendants 'to jurisdiction on a worldwide basis and would eviscerate personal jurisdiction requirements as they currently exist.'"

Certainly, whether specific jurisdiction exists over a non-resident corporation will depend on a number of factors. One California court held that Las Vegas Hotels, domiciled in Nevada, purposefully availed themselves to suit in California because the hotels specifically marketed and advertised to California consumers. Under those circumstances, none of the Nevada corporations could reasonably claim that they could not have been expected to have been sued in California.

Jurisdiction is the first issue to be raised when defending out of state corporations and/or individuals. In fact, unless a special appearance is made for the limited purpose of quashing the summons due to lack of jurisdiction, California courts hold that a jurisdictional challenge by a non-resident corporation is waived. By raising this issue first, the non-resident defendant can avoid expensive California litigation on constitutional grounds.

JURISDICTION IN CALIFORNIA*continued from Page 1*

trial judge reduced plaintiff's jury award for medical expenses from \$189,978.00 to \$59,691.00 on the grounds that the plaintiff could only recover the amount her insurer paid to settle her bills, not the initial amount her medical providers charged, even if that initial amount were admitted into evidence, consistent with similar decisions in *Hanif, Nishihama v. City and County of San Francisco* (2001) and *Greer v. Buzgheia* (2006). On appeal the Court reversed the trial court's findings, distinguishing the plaintiff in *Hanif* with the plaintiff in *Howell*. The critical distinction was that *Howell* had private insurance, not government provided insurance like the plaintiff in *Hanif*. *Howell*, who was privately insured, incurred personal liability for her medical provider's usual and customary charges. The plaintiff in *Hanif* incurred no personal liability for the medical charges billed to MediCal and thus suffered no compensable pecuniary detriment or loss beyond the judicially "deemed" liability for the medical services received in the amount that MediCal actually paid to the medical providers.

Last year, two northern California cases involved situations where the Court of Appeal considered whether the trial judge correctly reduced a plaintiff's verdict for past medical expenses to a lower amount which was paid by plaintiff's medical providers. In the case of *Yanez v. Soma Environmental Engineering* (2010), the jury returned a special verdict awarding plaintiff \$150,000.00 in damages, including \$44,519.01 in damages for past medical expenses. The trial judge reduced the verdict for past medical expenses to \$18,368.24. In the second case, *King v Carol Willmet* (2010), the jury returned a special verdict awarding plaintiff \$169,499.94 for medical expenses. The trial judge reduced the verdict for past medical expenses to \$76,286.32.

In both cases, the Court of Appeal reversed the trial judge's ruling and restored the original amount of damages awarded by the jury. In both the *King* and *Yanez* cases, the Court of Appeal concluded that in the absence of either statutory authority or further instruction from the California Supreme Court, the collateral source rule precluded the reduction of the amount of medical expenses the plaintiff incurred for the rendered services to the cash amount accepted by plaintiff's private medical providers prior to trial.

The California Supreme Court has accepted review of the *Howell* case to decide the issue of whether amounts written off by health care providers pursuant to contract with a private insurer may be recovered as damages under the collateral source rule. A decision from the Supreme Court is expected this year, at which point there may no longer be a post trial reduction of paid medical bills where the plaintiff is privately insured. If so, personal injury lawyers will claim victory now that they would have a clear Supreme Court opinion that the collateral source rule allows privately insured plaintiffs full recovery for past medical expenses. On the other hand, businesses will contend that liability policy rates will skyrocket if they would now have to factor full medical bill costs into projections for privately insured plaintiff lawsuits. Whatever one's position, the California Supreme Court will settle the issue this term.

SUMMARY OF SELECTED INSURANCE-RELATED CASES

By **Matthew J. Trostler, Esq.**

-Torts-

Collateral source rule does not bar reduction of a plaintiff's recovery of past medical expenses from the amount billed by her medical provider to the amount paid by her private medical insurer.

Cabrera v. E. Rojas Properties, Inc. - filed February 8, 2011, publication ordered February 24, 2011, Second District, Div. Eight

-Insurance-

An insurer satisfies its contractual obligation when it elects to pay for repairs to an insured vehicle even if insured refuses to authorize the repairs. Insurer may be liable in bad faith, however, if it pays for repairs not authorized by its insured and then recovers from the tortfeasor in subrogation because the subrogation action may be prejudicial to insured's direct action against tortfeasor. By submitting a claim, insured did not impliedly authorize repairs.

Hibbs v. Allstate Insurance Company - filed February 24, 2011, Second District, Div. Six



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LAW OFFICES OF
**BORTON
PETRINI**
LLP

www.bortonpetrini.com

Bakersfield

5060 California Avenue, Ste. 700
Bakersfield, CA 93309
(661) 322-3051
bpcbak@bortonpetrini.com
Managing Attorney: John K. Peltier

Fresno

2444 Main Street, Ste. 125
Fresno, CA 93721
(559) 268-0117
bpcfrs@bortonpetrini.com
Managing Partner: John R. Waterman

Los Angeles

777 So. Figueroa Street, Ste. 4250
Los Angeles, CA 90017
(213) 624-2869
bpcla@bortonpetrini.com
Managing Partner: Rosemarie S. Lewis

Modesto

1104 12th Street
Modesto, CA 95354
(209) 576-1701
bpcmod@bortonpetrini.com
Managing Partner: Bradley A. Post

Orange County

3020 Old Ranch Parkway, Ste. 300
Seal Beach, CA 90740
(562) 596-2300
bpcoc@bortonpetrini.com
Managing Partner: Rosemarie S. Lewis

Sacramento

P. O. Box 277790
Sacramento, CA 95827
(916) 858-1212
bpcsac@bortonpetrini.com
Managing Partner: Mark S. Newman

San Bernardino

P. O. Box 11207
San Bernardino, CA 92423
(909) 381-0527
bpcsbdo@bortonpetrini.com
Managing Partner: Daniel L. Ferguson

San Diego

1320 Columbia Street, Ste. 210
San Diego, CA 92101
(619) 232-2424
bpcsd@bortonpetrini.com
Managing Partner: Paul Kissel

San Francisco

465 California Street, Ste. 1020
San Francisco, CA 94104
(415) 677-0730
bpcsf@bortonpetrini.com
Managing Partner: Robert J. Gundert

San Jose

95 So. Market Street, Ste. 400
San Jose, CA 95113
(408) 535-0870
bpcsj@bortonpetrini.com
Managing Partner: Samuel L. Phillips

Tehachapi

112 East F Street, Ste. E
Tehachapi, CA 93561
(661) 822-7300
bpteh@bortonpetrini.com
Senior Counsel: Phillip H. Darling

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5060 California Avenue, Suite 700
Bakersfield, California 93309