APPELLATE LAW UPDATE
March 19, 2010
Submitted by H. Thomas Watson
Horvitz & Levy LLP

SUPREME COURT: The California Supreme Court granted review in the following two matters that may be of interest to attorneys practicing insurance law.

1. Supreme Court to decide whether plaintiffs may recover damages for the full amount of billed medical services or only the lower amounts actually paid by health insurers. (Howell v. Hamilton Meats & Provisions, Inc. (2009) 179 Cal.App.4th 686, review granted Mar. 10, 2010, S179115.) In Howell v. Hamilton Meats & Provisions, Inc., the Court of Appeal held that, under the collateral source rule, a plaintiff with private health insurance may recover economic damages in a personal injury lawsuit the full amount of past medical expenses that her health care providers billed, but which neither the plaintiff nor her health care insurer is obligated to pay (because the providers had agreed in the health care contracts to accept—as payment in full—payments in an amount that is less than the amount the providers have billed.)

The Court of Appeal reasoned that limiting the plaintiff’s recovery to the amount the healthcare providers agreed to accept as payment in full would violate the collateral source rule. The Supreme Court previously approved the collateral source rule, which provides that “if an injured party receives some compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor.” (Helfend v. Southern Cal. Rapid Transit Dist. (1970) 2 Cal.3d 1, 6.)

The defendant filed a petition for review, raising the following three issues:

Issue 1: May a personal injury plaintiff recover as economic damages an amount exceeding what his or her private health insurance has paid and the relevant healthcare provider has accepted as payment in full for medical services?
Issue 2: Is a trial court authorized to hear a post-verdict motion to reduce a plaintiff’s past medical expenses award by the amount which it exceeds what a plaintiff’s health care insurer has paid, and medical providers have accepted, as payment in full?

Issue 3: Should the collateral source rule be abolished in California?

On March 10, 2010, the California Supreme court granted the petition for review, without limiting the issues to be decided. The Supreme Court’s web site states that the issues presented are:

“(1) Is the ‘negotiated rate differential’ (the difference between the full billed rate for medical care and the actual amount paid as negotiated between a medical provider and an insurer) a collateral source benefit under the collateral source rule, which allows plaintiff to collect that amount as economic damages, or is the plaintiff limited in economic damages to the amount the medical provider accepts as payment?

“(2) Did the trial court err in this case when it permitted plaintiff to present the full billed amount of medical charges to the jury but then reduced the jury’s award of damages by the negotiated rate differential?”

2. Supreme Court to decide whether an insurer may enforce a provision in a fire policy stating that the intentional misconduct by “any insured” bars coverage for innocent co-insureds. (Century National Insurance Co. v. Garcia (Dec. 2, 2009, B209616) 2009 WL 4285796 [nonpub. opn.], review granted Mar. 10, 2010, S179252.)

Century’s fire insurance policy excluded coverage for losses caused intentionally by “any insured.” The Garcias’ son, an insured under the policy, intentionally burned their home. Century relied on the exclusion to deny the Garcias’ fire loss claim. The Garcias sued Century for breach of contract and bad faith. The Garcias contended that California’s standard form fire insurance policy (Ins. Code, §§ 2070, 2071) covers innocent co-insureds for fire losses but that Century’s exclusion for losses caused intentionally by “any insured” unlawfully reduced that standard coverage. The trial court granted Century’s demurrer without leave to amend, and the Court of Appeal affirmed.
The California Supreme Court granted review. The court’s web site states: “This case presents the following issue: May an insurer enforce an exclusion clause in a fire insurance policy that denies coverage to innocent insureds for damages from a fire intentionally caused by a coinsured, or does such a clause impermissibly reduce coverage that is statutorily mandated?”

COURT OF APPEAL: The California Court of Appeal recently published the following decisions that may be of interest to attorneys practicing insurance law:

1. In an equitable contribution action against an insurer that breached its duty to defend and indemnify, brought by one of several insurers that defended and indemnified the common insured, the insurer seeking contribution must prove that it paid more than its “fair share” of defense and indemnity costs and may not recover any amount that would result in it paying less than its fair share even if that means the breaching insurer will pay nothing. (Scottsdale Ins. Co. v. Century Surety Co. (Mar. 10, 2010, B204521) __ Cal. App.4th __ [2010 WL 797189] [Second Dist., Div. Three].)

2. An insurer may require its insured to produce personal financial information where the insurer reasonably suspects a loss was caused by arson, and the insured’s failure to provide this financial information—even though based on advice of counsel—supports the insurer’s denial of claim based on the insured’s failure to cooperate. (Abdelhamid v. Fire Ins. Exchange (Feb. 22, 2010, C059098) __ Cal. App.4th __ [2010 WL 599329] [Third Dist.].)

3. Insurer who defended and indemnified a general contractor named as an additional insured in a subcontractor’s liability policy is subrogated to the general contractor’s right to seek express contractual indemnity from another subcontractor who negligently caused the loss and also breached its obligation to defend and indemnify the general contractor. (Interstate Fire & Cas. Ins. Co. v. Cleveland Wrecking Co. (2010) 182 Cal. App.4th 23 [First Dist., Div. Five].)

NINTH CIRCUIT: The Ninth Circuit Court of Appeals recently published the following decision that may be of interest to attorneys practicing insurance law:
1. An insurer may bring a subrogation claim against a third-party tortfeasor to recover policy benefits paid to its insured without first making the insured whole for the full value of an underinsured loss. An insured lacks standing to sue his insurer under the made-whole rule where the insured cannot prove the insurer’s subrogation recovery impaired the insured’s right to recover his uninsured loss from the third-party tortfeasor. *(Chandler v. State Farm Mutual Automobile Ins. Co. (9th Cir. Mar. 17, 2010, No. 09-55123) __ F.3d __ [2010 WL 938113]).*