Holiday Cheer for California Insurance Consumers

CASD Salutes John Rice and Colleagues

by Kerry Hoxie, ***Trial Bar News*** Editor-in-Chief

CASD proudly salutes **John Rice** and his colleagues for achieving a landmark victory for California consumers. As a result of relentless efforts by **John Rice**, assisted by **Scott Sumner**, who filed an *Amicus curiae* brief for Consumer Attorneys of California on behalf of plaintiff, and trial attorneys **J. Jude Basile** and **J. Michael Vallee**, the Fourth Appellate District issued a ruling that rights a pervasive wrong and brings justice to consumers. In short, it was a "Never Stand Alone" effort led by our members!

What seems like a simple and straightforward ruling by the Fourth Appellate District will affect many thousands of consumers with medical insurance. And the results will reach beyond California's borders, influencing courts in other states. A deceptive shell game in which the consumer who purchased insurance was deprived of his or her investment was ended by the appellate court. By merely enforcing a long-settled rule of law dating back to the 19th century in California – the collateral source rule – the Fourth Appellate District restored justice to the consumer.

It has seemed like "greedy pigs feeding at the trough" of the insurance consumer lately. Defendants who were fortunate enough to tortiously injure a medically-insured person argued that they should not have to pay the amount the insured was saved by having insurance. They argued the collateral source rule should not apply.

The California Supreme Court has described the rationale for this rule as follows:

> **The collateral source rule . . . embodies the venerable concept that a person who has invested years of insurance premiums to assure his medical care should receive the benefits of his thrift. The tortfeasor should not garner the benefits of his victim's providence.** [*Helfend v. So. Calif. Rapid Transit Dist.* (1970) 2 Cal. 3d 1, 9-10.]

Despite this clear statement, tortfeasors had been able to convince courts for more than a decade that the collateral source rule should not apply – that they should receive the victim's insurance benefits. It made no sense and seemed so unfair. As Scott Sumner, who with Jeremy Lateiner filed an amicus brief for Consumer Attorneys of California, argued: "If a drunken driver kills your spouse, should that driver get a break because you invested in life insurance?" Similarly, he reasoned, "Should the person who sent you to the emergency room gain a financial advantage simply because you invested in health insurance?"

And so **John Rice** and **Don de Camara** urged CASD members to fight this unfair situation – in discovery, in motions *in limine* and at post-trial motions. And **John** and **Don** taught seminars, provided sample pleadings and arguments and constantly cheered us on. Case after case, in court after court, they carried the message that allowing

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Attorneys Required to Provide Email Address To State Bar by February 1

California attorneys are required to provide an email address to the State Bar by February 1, 2010, under a new Rule of Court (Rule 9.7) approved by the Supreme Court. The attorneys must create an online profile through the State Bar's secure membership system on its website at http://calbar.ca/gov/state/calbar/calbar_extend.jsp. The private email addresses will be recorded in the Bar's database and used for official communications. There will be an option to provide a public email address as well. Attorneys who do not have an email address may apply for an exemption by completing a form provided by the Bar.

Member Feature Continued

the tortfeasors and their insurance carriers to profit from the benefits the injured victims had paid and bargained for was a gross miscarriage of justice and a perversion of long-standing California law. They devoted endless hours to making the same arguments and filing the same motions in case after case. It was selfless dedication and their enthusiasm never flagged – but without their support and leadership on this issue, we could have so easily given up.

The decision, *Howell v. Hamilton Meats & Provisions, Inc.*, Court of Appeal, 4th Dist. Div 1 (B053620), involved injuries Rebecca Howell suffered in an auto collision when her car was struck by an employee driving for Hamilton Meats who made an illegal U-turn. Howell's injuries were serious and involved two spinal surgeries and other procedures and treatments, totaling nearly $190,000 which she was legally obligated to pay. However, because she had medical insurance which had contracted with her providers for specified payments, her bills were paid by her medical carrier in an amount of approximately $60,000 as provided under the contracts. Hamilton Meats wanted the benefit of the contracts even though it had not paid for them. It wanted to pay far less for Ms. Howell's injuries than she was obligated to pay. The trial court agreed and reduced Ms. Howell's damages award. She was denied the benefits of her investment.

But **John Rice** did not give up. He, together with the trial attorneys, **Jude Basile** and **J. Michael Vallee**, filed an appeal. And this time the court listened.

John Rice and **Scott Sumner**, who submitted the *Amicus* brief on behalf of CAOC, argued the case before the Fourth Appellate District. They argued that the collateral source rule was intended to benefit those who had invested over the years for protection by insurance coverage and that such benefits should not operate as a windfall to the tortfeasor. And the appellate court agreed, adhering to the collateral source rule, reasoning that to hold otherwise would penalize Howell for having paid for medical insurance.

Justice Gilbert Nares, writing for a unanimous court, noted that Howell had invested years of insurance premiums to ensure medical care and should receive the full benefit of that thrift. He reiterated the rule that if an injured person receives compensation for injuries from an independent source (such as an insurance company), then that money should not be deducted from the damages she would otherwise collect from the defendant. Recent decisions permitting otherwise, he noted, have "divorced the collateral source rule from the complicated area of medical insurance…and this line of cases simply goes too far."

CASD salutes **John Rice** for never giving up on this issue of well-settled law and ultimate fairness to the consumer. John and his colleagues, Scott Sumner, Jude Basile and Mike Vallee, as well as CAOC and Scott Sumner deserve a huge "Thank You" from all of us on behalf of insurance consumers. They have demonstrated once again that with CASD you truly Never Stand Alone!

ConsumerAttorneys™
OF SAN DIEGO
Never stand alone.™

35 Revisions to Professional Conduct Rules

The State Bar Board of Governors has approved 35 revisions of the California Rules of Professional Conduct on issues ranging from lawyers as third-party neutrals and fees to communication with a represented person and competence.

For easier reference, the numbering of all the new rules are being changed to conform to the numbering system and subject area of the ABA Model Rules of Professional Conduct.

Malpractice Insurance Disclosure Required

California State Bar members who do not carry professional liability insurance must tell their clients that they are not insured under Rule of Professional Conduct (Rule 3-410) which takes effect Jan. 1, 2010. Notification must be made at the time a client hires the lawyer if it is "reasonably foreseeable" that the representation will exceed four hours. If the insurance coverage later lapses, the attorney must tell the client within 30 days of the time he or she is no longer insured.