



Photo by Hugh Williams

When William Shernoff, left, founded his own Claremont firm 27 years ago, he was one of the few insurance bad faith litigators around. His success in the field brought big verdicts for his clients and created law in the area, all the while propelling him to mythical status. Now, he and name partners Michael Bidart, center, and Frank Darras comprise a potent triumvirate — feared by insurance companies and revered by consumers.

WE THREE KINGS

From the outside, their palace is a non-descript office building near the desert. But, the name partners at Claremont's Shernoff, Bidart & Darras have catapulted to royalty status in the world of insurance bad faith, where their victories have earned millions upon millions for plaintiffs who have unpaid insurance claims.

By John Ryan

To visit the three kings of insurance bad-faith law, you need to get in your car and jump on the freeway heading east out of Los Angeles. Thirty-five miles later, after the congestion, smog and urban sprawl have dulled your senses, take the exit at South Indian Hill Boulevard, which, after half a mile or so, leads you to Claremont's Shernoff, Bidart & Darras.

That one of the nation's most influential plaintiffs' firms is based in an out-of-the-way town remains puzzling to even the firm's most ardent admirers.

"On the way there, you almost run out of gas," Tom Girardi of Los Angeles plaintiffs' firm Girardi & Keese says with a laugh. "If you stop at a grocery store, and if they have Velveeta cheese in the gourmet section, then you know you're in Claremont."

But Shernoff's crew has proved that location is overrated. Though the firm does not track such data, members of the legal community expect that the firm has recovered claims and punitive damages from insurance companies in the \$1 billion range.

Their success becomes evident once you step inside the firm, where the freeway traffic becomes a distant memory.

In the style of an upscale vacation lodge, the interiors are lined with wood from California redwood trees and stone cutouts from Mt. Baldy.

Shernoff Bidart's 12 attorneys can relax on the private balconies outside their offices. Or they can stroll the grounds of their own park, complete with bright green grass, trees and benches, located behind the building.

The heart of the headquarters is William Shernoff's office and the adjacent conference room. Here, the lodge theme is carried to an elegant extreme by world-renowned artist and craftsman Sam Maloof, who made the rooms' hardwood furniture. The rooms are featured in a book about Maloof's work.

Reading about Shernoff's palace must be immensely frustrating for insurance industry

executives. After all, their companies paid for this place.

Shernoff built his firm's home in 1978, several years after he began scoring high-dollar victories for policyholders against their insurance companies.

Bidart and Darras joined him in the 1980s and since have established their own historical importance with a string of high-profile verdicts and settlements.

The trio isn't content with its accomplishments. Instead, the current caseload suggests Shernoff Bidart's leaders are behaving less like complacent icons than young guns eager to take new legal ground. That's good news for consumers and bad news for the insurance industry.

If anything, the partners seem to be gathering steam.

Shernoff is busy representing heirs of Holocaust victims in their attempts to recover life insurance benefits from Italian-based insurance giant Assicurazioni Generali.

Down the hall, fellow name partner Frank Darras is on the phone helping "60 Minutes" producers with their investigation of UnumProvident Corp.'s alleged schemes to avoid paying claims to disabled policyholders.

Name partner Michael Bidart is in Los Angeles Superior Court battling Aetna U.S. Healthcare. The case is being watched closely by the health care industry because it will help determine whether health maintenance organizations can be held accountable for the conduct of hospitals and physicians' groups to which they delegate work.

With such cases, Claremont is as good a base as any. And no one seems to mind.

"If a potential client goes to see Bill and then comes to see me, he always chooses to go with Bill's firm," Girardi says. "Honestly, I'd make the same choice."

With a practice heavily geared toward helping average people take on giant corporations, the firm's laid-back atmosphere is a plus.

"It's just different here, and we tell clients that," Darras says. "People love to be here."

Attorneys appreciate it, as well, and are content to leave the downtown Los Angeles' skyscrapers to the defense firms. All three name partners have modest roots, and they take their connection to everyday consumers seriously. Doing so has become a courtroom advantage.

"They have the capability of turning cases into very emotional vehicles," says Gibson, Dunn & Crutcher's John Swenson, who has been litigating cases against Shernoff for 25 years. "That is the thing you have to cope with on the defense."

Shernoff, 64, moved to Claremont in 1967 to join Herb Hafif, a prominent plaintiffs' attorney. Before that, Shernoff worked as a U.S. Army lawyer and then as an attorney with the National Labor Relations Board.

His first bad-faith case came by way of referral four years later. In 1971, a local plaintiffs' attorney passed client Otis Drake to Shernoff because Drake couldn't afford the attorney's hourly rate. Shernoff agreed to accept the matter on contingency.

Drake, a Chino farmworker disabled from emphysema, was denied policy payments from Pennsylvania Life. The company argued that Drake was ineligible for disability benefits because he could walk and was not completely house-confined.

Shernoff says he invented a bad-faith argument because he couldn't help his client any other way.

"There didn't seem to be any law that fit the situation, that molded to the case," he says. "So I did what I thought the law ought to be to help these sorts of people."

A San Bernardino County jury later awarded Drake not only his disability benefits but also \$325,000 in punitive damages.

"That was a big splash back then," Shernoff says of the Drake case. "It brought some publicity."

Even today, Shernoff's firm is one of the few in the country that focus heavily on insurance bad faith. In the early 1970s, few attorneys had any

experience at all in taking on insurance companies. Most plaintiffs' work on behalf of individuals revolved around personal injury cases. As an area of law, insurance bad faith was undeveloped.

In the best scenarios for consumers, Shernoff says, insurance companies would settle policyholder claims and pay the amount of benefits due. That's often a hollow victory, however, given that the loss of benefits for even a few months can be financially disastrous for anyone of modest means with bills to pay.

The *Drake* case caused a stir in the consumer and insurance communities. It also set Shernoff on his career path, and he hasn't stopped running.

"He was really the inventor of bad-faith causes of action," California Attorney General Bill Lockyer says. "He's also an extraordinary guy and a great lawyer."

Harvey Rosenfield, president of the Foundation for Taxpayer and Consumer Rights, says that, at the time, state regulators charged with preventing insurance company abuse were "in the pocket" of the insurance industry.

"What Bill did in pioneering this area of law was give consumers the most important tool for seeking justice with insurance companies that they would ever have," Rosenfield says.

Hafif says he always urged Shernoff to look beyond Claremont and see himself as a friend of consumers on a national scale.

"Once Bill bought into that concept, he progressed rapidly, and he hasn't looked back," Hafif says.

Even Shernoff's longtime enemies attest to his historical importance.

"He's certainly done more to develop that facet of law practice than anyone," says Allstate Corp. Executive Vice President Robert Pike, who has been with the insurance company for 30 years. "He has a pretty impressive track record."

Shernoff puts a modest twist on the praise, explaining that, after *Drake*, he became an expert almost by default.

"Lawyers who had a case in the early days of insurance bad faith didn't know what it was," Shernoff says. "So they said, 'Let's send it to that guy in Claremont.'"

As the referrals came in, Shernoff realized that bad-faith behavior on the part of insurance companies was widespread. He was hooked, and his next big case made history.

In 1973, Shernoff took the case of Michael Egan, a roofer who became disabled after falling off a ladder in Pomona and was denied disability payments from his insurance carrier, Mutual of Omaha.

Shernoff convinced a jury that Mutual unfairly cut off disability payments once it determined that it would have to pay Egan \$45,000 over the course of his life. Egan was 55 and due \$200 per month in benefits.

The jury awarded Egan the \$45,000 plus \$78,000 for emotional distress and a record-shattering \$5 million in punitive damages, the largest award of its kind against an insurance company.

The verdict made headlines, and the appeal, which went to the state Supreme Court, made new law. In 1979, the state high court ruled in Egan's favor and used the opportunity to define the scope of insurance bad-faith law.

"[T]he relationship of insurer and insured is inherently unbalanced," Justice Stanley Mosk wrote in *Egan v. Mutual Insurance Co. of Omaha*. "The availability of punitive damages is thus compatible with the recognition of insurers' underlying public obligations and reflects an attempt to restore balance in the contractual relationship."

The court wrote that an insurance company "cannot reasonably and in good faith deny

'He was really the inventor of bad-faith causes of action,' California Attorney General Bill Lockyer says of William Shernoff. 'He's also an extraordinary guy and a great lawyer.'

payments to its insured without thoroughly investigating the foundation of its denial."

The state Supreme Court ruled that the \$5 million in punitive damages was excessive, however, and ordered a retrial on the issue. The two sides reached a confidential agreement out of court.

Today, more than half of all states have adopted bad-faith doctrines based on the legal principles of Egan. As a result, Shernoff is widely credited with establishing one of the few new torts of the past century.

His place in history was set, but Shernoff was just getting started.

Shortly after the jury verdict in *Egan*, Shernoff left what was then Hafif & Shernoff to focus exclusively on insurance bad-faith cases. In the 27 years since, hardly a year has gone by without Shernoff making news for some verdict or settlement loved by consumers and detested by the insurance industry.

He has represented policyholders with every type of insurance claim imaginable, including disability, medical, life, liability, automobile, business interruption, homeowners' and property.

Though Shernoff, like many consumer attorneys, often is viewed as an enemy of corporate America, he also represents his share of businesses. In fact, his representation of the MGM Grand Hotel in the mid-1980s is one of the most publicized cases of his career.

MGM sued a number of insurance carriers that refused to honor a retroactive insurance policy purchased after the 1980 Las Vegas fire. Eighty-four people died and hundreds of others were injured in the disaster. MGM wanted reimbursement for \$69 million it paid to settle claims.

MGM hired Shernoff as lead trial attorney. His client and the insurance carriers agreed on an \$87.5 million settlement in 1985, shortly before the trial was scheduled to begin.

Shernoff's lead role in the matter nationalized his status as the king of insurance bad faith. The New York Times published a lengthy profile on Shernoff and the area of law he was pioneering.

The firm's representation of businesses since has jumped from 5 percent of the firm's practice to 25 percent.

Nevertheless, Shernoff remains most passionate about helping average people who have minimal resources and are in desperate need of benefits.

"We often represent the little people who face powerful companies, ones that hire the best lawyers in the world," Shernoff says.

The firm's courtroom opponents include the likes of New York's Skadden, Arps, Slate, Meagher & Flom and Los Angeles' Gibson Dunn.

"We present their side of the story and bring some balance to the equation," Shernoff says. "It's something that I started that I want to be carried on after I quit."

Shernoff says he will never stop practicing law completely, but he plans to decrease his caseload at some point. He can do so in peace, he says, because his partners are more than capable of carrying on the cause.

The firm's partnership involves an element of fate because a bizarre fluke brought Bidart and Darras to Shernoff's door. In 1982, Bidart, a general-practice attorney in his home community of Chino, approached Shernoff with a very strange request.

He wanted me to sue him," Shernoff recalls, shaking his head with a residual sense of disbelief.

During a handball game at his home, Bidart accidentally hit a close friend in the head with the ball. The man went into a coma for more than 20 days.

"The health insurance he had was not sufficient to cover the horrendous costs," Bidart says. "I was the one who hit the ball that struck him. I felt responsible."

Realizing how distraught Bidart was, Shernoff reluctantly agreed to file "a friendly suit" against his future partner. It worked. Bidart's homeowners' insurance carrier agreed to settle the claim and pay the hospital bills of his friend, who later recovered.

Shernoff and Bidart became friends, and Bidart joined the firm in 1986.

Darras, meanwhile, was good friends with Bidart. Both Bidart's father and Darras' father-in-law were dairy farmers in the Chino area.

Darras opened his own law office in Chino months after passing the bar in 1987. But he knew that he wanted to follow his friend's path and join Shernoff's renowned practice.

"I learned that a paralegal was going on maternity leave, and so I called and begged to see if I could fill the space," Darras says. "I thought maybe they would later hire me as a lawyer."

Darras joined the firm as a paralegal in late 1987. Early on, he didn't even have a desk. His only piece of furniture was a chair with his name posted on it. Mail was delivered under the seat.

Shernoff didn't even know who Darras was until he asked Bidart a few months after Darras joined.

"One day, I finally asked, 'Who is that kid walking down the hall?'" Shernoff recalls with a smile. "He really wormed his way in here."

Darras became an attorney at the firm in early 1988.

Oddly, all three name partners share a common bond in dairy farms. In addition to Bidart and Darras sharing family ties to Chino dairy farmers, Shernoff spent a few years of his childhood on a dairy farm in Wisconsin. His father later left the farm behind to open a small-town drugstore and law office.

To Darras, the strange link makes perfect sense.

"We have a very Midwest mentality in terms of humbleness, work ethic and camaraderie," Darras says. "That's been the bedrock of our partnership."

Shernoff readily admits that the firm lacks the elitist culture of many prestigious defense firms.

"When Mike joined me, and later when Frank did, I never asked what law school they went to," he says. "I still don't know."

The three partners place a greater emphasis on courtroom results.

Like Shernoff, Bidart has handled all types of bad-faith cases. Among his many successes, Bidart has won \$300 million for State Farm Fire and Casualty Co. policyholders with claims related to the 1994 Northridge earthquake.

In doing so, Bidart helped establish the widespread use of California's Business and Professions Code Section 17200 in bad-faith causes of action. That code prohibits businesses from engaging in unfair, unlawful and fraudulent conduct.

Bidart's greatest contribution, however, has been expanding the firm's bad-faith practice to health insurance matters.

Fighting insurance carriers and managed care

organizations that deny or delay necessary treatment has made Bidart, 52, one of the most well-known health care litigators in the country. It's work Bidart loves.

"It's incredibly satisfying," Bidart says outside Los Angeles Superior Court, on a brief break from his trial against Aetna. "Most of the clients don't have money or power to take on the companies doing this to them. Virtually all of them are underprivileged."

Throughout much of the early and mid-1990s, Bidart successfully represented many clients with breast cancer who were denied expensive chemotherapy and bone marrow transplant procedures. In those years, he became perhaps the most feared litigator in the country among managed care organizations.

In 1999, Bidart earned the largest-ever verdict against an HMO — \$120.5 million — against Aetna U.S. Healthcare. He represented the family of David Goodrich, a San Bernardino County prosecutor who died from stomach cancer. Aetna had refused to pay for Goodrich's physician-recommended treatment.

Aetna's appeal of the verdict later led to a confidential settlement.

Bidart is taking on Aetna again this year in a suit brought by the family of Murray Rosenberg, who died of cancer. Bidart says the suit is a challenge to a corrupt system, the delegation model of care with the health maintenance organization. In Rosenberg's case, Aetna delegated responsibility for care to physicians' groups, which then passed responsibility to a hospital. All parties involved, Bidart says, have financial incentives to keep costs low.

"The system of managed care has built into it cost-containment tensions which govern the process," he says. "There are a multitude of contractual provisions which push physicians, hospitals, and really everybody coming anywhere near the patient toward not giving care."

Unlike Bidart and Shernoff, Darras focuses almost exclusively on one area of insurance bad faith: denial of disability benefits. At 48, Darras is nothing less than a litigation machine, handling 60 disability cases at any given time and keeping 22 firm employees busy.

The reliance of "60 Minutes" on Darras for its UnumProvident investigation is understandable. He has litigated more than 2,000 disability cases — many against UnumProvident — and long has been the expert of choice in his field for most major news organizations, from the Wall Street Journal to NBC.

Darras has handled disability claims ranging from \$50 per month for average consumers to those worth more than \$100,000 per month for professional athletes, actors and corporate executives.

He's been an upstart his whole life. Darras was the youngest paramedic in the state of Illinois in the early 1970s. He worked as a physician's assistant in college and sold medical equipment to get himself through law school.

The medical training has come in handy. For his cases, Darras has to understand not only a client's occupation but also the nature of his or her disability, its causes and the availability of effective treatment.

"Working here has been an opportunity to take the 'David vs. Goliath' type cases and marry my legal training with my affinity for the medicine," Darras says.

Darras also uses his medical training to work outside disability law and help patients with multiple sclerosis and young victims of spinal muscular atrophy receive health benefits.

In addition to the three name partners, the firm has a secret weapon in Jeffrey Ehrlich, the firm's fourth partner, who handles all of the appellate work. Ehrlich joined the firm from his solo practice in Washington, D.C., in 1999.

In Shernoff Bidart tradition, Ehrlich has notched a couple of landmark cases. In 1999, he successfully briefed and argued a case before the U.S. Supreme Court, which held that consumer protection laws apply to employees who receive health and life benefits through employers. *UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999).

Thanks to its seemingly endless string of big verdicts and settlements, sources familiar with Shernoff Bidart say it's probably one of the richest firms in the state in terms of revenue per lawyer. The firm does not release financial data, and sources say revenue estimates are difficult because the size and timing of confidential settlements are hard to pin down.

"Bill has more money than God," says one insurance executive who has waged battles with the firm and who requested anonymity.

Though the firm is tiny compared to most of its courtroom opponents, defense firms say that size doesn't matter when it comes to Shernoff Bidart.

"They have ample resources," Swenson says. "I think any of them could buy and sell me a hundred times over."

Shernoff Bidart gives generous attorney bonuses twice a year from its profits.

The firm also leases a limousine that is kept on-site.

Shernoff says he uses it to "add hours to the workday," working in comfort on the way to the courthouse or meetings.

The firm leases a small plane that is used for quick trips to Fresno, Bakersfield and San Francisco.

Shernoff Bidart's boosters say the firm's riches are well-earned.

To consumer activists, Shernoff is approaching godlike status. His pioneering victories and settlements, they argue, have created the most powerful deterrent against insurance companies that refuse to pay valid claims.

Insurance companies have a strong financial incentive to hold onto money as long as possible because they turn profits by investing the premiums paid by policyholders.

"But Bill showed that they could be hit by massive damages," Rosenfield says. "He changed the economic calculus, altered the mathematical equation in a way that could force recalcitrant companies to pay claims."

Because of his far-reaching impact, the foundation recently awarded Shernoff its Lifetime Legal Achievement Award.

"Case by case, Shernoff and other attorneys who battle the 'bad faith' of the insurance industry are building the legal shield to protect you from mistreatment," consumer legend Ralph Nader writes in the foreword to *Payment Refused*, one of the four books Shernoff has written on insurance bad faith.

That the firm has lined its pockets with insurance industry money doesn't make everybody happy. The industry blames higher premiums on the courtroom successes of Shernoff and his colleagues.

Longtime insurance defense counsel Robert Lewis, name partner of Lewis, Brisbois, Bisgaard & Smith, only laughs when asked whether Shernoff's firm has had a positive impact on the insurance industry.

"Only time will tell," he says, declining to elaborate.

Pike scorns the notion that Shernoff and other plaintiffs' attorneys help to regulate an unscrupulous industry.

"Sure, Bill and his colleagues would like to think so," Pike says. "They like to say, 'But for us, corporate America would not be nearly as responsible as it is.' But most people in corporate America try to do the right thing every day."

Insurance companies pay valid claims in virtually all cases, Pike argues, and plaintiffs' attorneys ruin the claims process by making the process adversarial.

"The number of situations that require lawyers is not nearly as great as some would like to suggest," he says.

Shernoff nevertheless gets high marks from Lewis and Pike for his skill and professionalism. Pike says that Shernoff's integrity and honesty set him apart from most plaintiffs' attorneys.

"He's tougher than hell, but if I had my choice of people, I'd rather deal with a consummate professional like him," Pike says. "Some of the largest settlements Allstate has paid have been to Bill, but I can trust him. He's a man of his word."

Pike is particularly impressed by Shernoff's leading role in the Holocaust-era life insurance matters, one of the most high-profile international legal battles of the past decade.

"He believes very passionately in that, and he's to be commended," Pike says.

To Shernoff, helping the relatives of Holocaust victims brings together his life's work.

Shernoff and Los Angeles plaintiffs' attorney Lisa Stern have settled five cases for confidential amounts against Generali in recent years. The first Holocaust-era insurance claims in California were filed on behalf of Stern's relatives.

They also had 50 cases that shared in a \$5 billion settlement with a group of German insurance carriers in 2000.

Shernoff and Stern's 15 remaining cases against Generali are tied up in multidistrict litigation in a New York federal court.

Last month, Judge Michael Mukasey of the U.S. District Court for the Southern District of New York rejected the insurance companies' claims that the cases should be heard by European courts or by the International Commission on Holocaust Era Life Insurance Claims.

The companies established the commission, which distributes money from a beneficiary fund to resolve claims, as an alternative to litigation.

Though counsel for the companies have stated their intent to file new motions to have the claims dismissed, the plaintiffs are hopeful that Mukasey's decision will jump-start the litigation and allow discovery to begin.

Because their clients are elderly, time is of the essence. Shernoff is eager to make the insurance companies pay.

"These companies should have been out there trying to find these people, to pay them and help them get their lives together," he says. "Instead, they hid the existence of these policies for 30, 40 or 50 years."

Once the cases are ready for trial, they will be sent back to the state courts in which they originated. Shernoff expects that his and Stern's cases will be consolidated into one trial in Los Angeles County. It would be the trial of a lifetime.

After 30 years of litigating insurance bad-faith cases and pioneering the field, Shernoff has perhaps the most important bad-faith cases of his career. He believes his whole career has trained him and his firm for these cases.

"If I could prove their bad faith in a trial, it would be the culmination of my career," he says. "It's one case I'd like to have under my belt before I hang it up."