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For the protection of accident victims the law says that the at-fault person's insurance company must act in good faith to effectuate a prompt, fair, and equitable settlement. Makes sense, doesn't it? Then why did the Supreme Court take away the right of an accident victim to enforce this law?

Once upon a time, in the land of fairness, there was law. It was a good law. This law protected accident victims who were treated unfairly by insurance companies. This law said that if the insurance company for the person who caused the accident did not act in good faith with you by attempting to promptly, fairly, and equitably settle your claim, you could sue the insurance company for their bad faith actions. Imagine that! In this land of fairness an accident victim had some leverage over a big, powerful insurance company. What a world! It sounds too good to be true.

But it was true. Insurance Code §790.03(h)(5) declares it to be an unfair claims practice when an insurance company fails to act "in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear...." In 1979 the California Supreme Court in *Royal Globe v. Superior Court*, 23 C. 3rd 880 recognized the right of an accident victim to sue the insurance company for the person who caused the accident if that insurance company violated Insurance Code §790.03(h)(5). Isn't America great (well, at least California)! An ordinary person had an enforceable right to be treated fairly when negotiating with a powerful insurance company. And 'if you don't act in good faith and treat me fairly you can be sued.' Don't you feel good just saying it?

Now let's stop and think about this. All I'm talking about here is the principle that an insurance company must act in good faith. Treat the injured party fairly; provide fair compensation for injuries, lost wages, and medical expenses. I don't know about you but I just don't think that being treated fairly is a radical idea that must be contained. Is it too much to ask for to be treated fairly in the first place?

Well, apparently the right of an accident victim to be treated fairly by a powerful insurance company is too much to ask. In 1988, the California Supreme Court, by then packed with appointees of conservative Republican governor George "the Duke" Deukmejian, told us in *Moradi-Shalal v. Fireman's Fund*, 46 C.3d 287 to forget about what it said in 1979. And get this: citing "undesirable social and economic effects" on the insurance industry (pp. 299, 301), Justice Malcolm Lucas, who wrote the opinion said the court in *Royal Globe*, supra, got it wrong.

I don't get it. It's socially and economically undesirable for an insurance company to treat an accident victim fairly? Justice Mosk who wrote the decision in *Royal Globe*, supra, put it best in his dissenting opinion in *Moradi-Shalal*:

- *"Royal Globe (1979-1988) may it Rest in Peace. During its life it served the people of California well, particularly the victims of unfair and deceptive practices. The majority have now replaced Royal Globe with a 'Royal Bonanza' for insurance carriers, i.e., total immunity for unfair and deceptive practices committed on innocent claimants."* (pp. 313-314)

I must admit however, that the issues in *Royal Globe* and *Moradi-Shalal* are more detailed than what I

present here. But that does not take away from the fact that it was the insurance industry that Justice Lucas simply bent over backwards to protect. But against who? People who were injured because of the negligence of others.

As a plaintiff's personal injury lawyer my job is to look out for the injured party. In doing so what I ask for, what I demand, is simply that my clients be treated fairly. After all, they are the ones who have been harmed. They are the victims of someone else's negligence. That's how our civil justice system is supposed to function: assure fair and equitable compensation to the victim. But apparently according to Justice Lucas, affording an accident victim the right to hold an insurance company accountable for its failure to act in good faith and be fair is both socially and economically "undesirable". Scary. That's our civil justice system for you. But that's why I do what I do as a lawyer. We must stand up and fight powerful interests so that the less powerful can be treated fairly. Once again, Justice Mosk put it best in the final statement of his dissent:

- *"The question, unanswered by the majority because it is unanswerable, is why this one industry is entitled to be above the law that applies to every other segment of society. I do not believe it should be, Therefore, I dissent." (p.321)*

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**Quote of the Month: " You're a lawyer? You're awfully shy for a lawyer."
"Sure I'm shy: I'm a shyster lawyer!"
Groucho Marx**

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