

THARPE & HOWELL

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“GOOD SAMARITAN” STATUTE NARROWLY APPLIED

The California Supreme Court recently opined that protection under the State’s “Good Samaritan” Statute is *only* extended to those providing emergency *medical* care.

In *Alexandra Van Horn v. Anthony Glen Watson*, plaintiff Van Horn and others went to a bar. When they left the bar, defendant Watson drove his vehicle with plaintiff Van Horn sitting in the front passenger seat. Jonelle Freed was riding in the back. Defendants Torti and Ofoegbu traveled in a second vehicle driven by Ofoegbu. Before the vehicles reached their destination, defendant Watson lost control of his vehicle and crashed into a light pole.

Following the accident, the second vehicle driven by Ofoegbu pulled over. Defendant Torti got out and removed plaintiff Van Horn from defendant Watson’s car. A few minutes later, plaintiff Van Horn and Jonelle Freed were transported to the hospital by ambulance for emergency medical care. Court records contain conflicting testimony about why defendant Torti had removed plaintiff Van Horn from the crashed car. Defendant Torti claimed the vehicle was smoking and leaking fluid and could possibly explode. This testimony was contradicted by others - who recalled that this was not the case. Plaintiff testified Torti had pulled her out by grabbing her arm and yanking her “like a rag doll.” Plaintiff claimed defendant Torti’s actions caused spinal cord damage rendering her a paraplegic.

Plaintiff sued driver Watson and others, including defendant Torti. Plaintiff plead negligence against Torti, alleging she did not need her assistance when Torti pulled her (plaintiff) out of the car.

Torti filed a Motion for Summary Judgment, seeking immunity under California’s “Good Samaritan” Statute. The Trial Court granted Torti’s Motion, but the Court of Appeal Reversed. In reaching its decision, the Appellate Court found the Good Samaritan Statute **only** applies to those rendering emergency **medical** care. The Supreme Court granted review.

The Statute provides “No person who in good faith, and not for compensation, renders **emergency care** at the scene of an emergency shall be liable for any civil damages resulting from any act or omission...” [Emphasis added.] While defendant Torti argued the Statute applied to **both** non-medical and medical care - the California Supreme Court disagreed. The Supreme Court found the Statute is to be narrowly applied - protecting **only** those providing **emergency medical care**.

BALANCE BILLING BANNED IN CALIFORNIA

Can non-HMO contracted emergency care providers bill HMO patients direct for services costing more than the HMO's customary contracted amount? In the case of *Prospect Medical Group v. Northridge Emergency Medical Group*, the California Supreme Court unanimously determined the answer to be NO!

In California, emergency care providers can no longer "balance bill" patients for emergency costs which exceed those ordinarily paid by the patient's non-contracted HMO provider. Previously, if a patient received emergency medical care from a non-contracted facility, the provider could bill the patient for excess amounts not paid by the patient's HMO carrier. This "balance billing" customarily arose when the HMO carrier claimed amounts billed by the **non-contracted** provider were unreasonable or otherwise above the customary amount it paid to other, **contracted** providers for the same services. In light of the Supreme Court's decision, the doctor and HMO must now work together to resolve any overage billing - effectively eliminating the patient from the equation altogether. This case may act to reduce the medical special claims made by California personal injury plaintiffs covered by HMO plans.

BELLMAN'S PLACEMENT OF LUGGAGE INSIDE HOTEL ROOM MAY CAUSE DANGEROUS CONDITION TO EXIST

Can a bellman's placement of luggage inside a hotel room cause a dangerous condition to exist? In *Kimberly Iden v. Mondrian Hotel - Los Angeles*, the Court determined the answer to be yes.

In this case, plaintiff and others shared a hotel suite. They arrived at the hotel early, had lunch at the hotel's restaurant, and lounged by the pool. Once readied, the group went to their suite and, sometime later, a hotel bellman delivered their luggage to the room. The bellman placed the luggage in the common area along a wall near the entrance to the bedroom, leaving one-to-three bags **protruding** into the doorway connecting the common area and bedroom. Although plaintiff was aware that the bellman had delivered the luggage, she did not know where it had been placed as she was talking with a friend in the adjoining bedroom at the time.

While conversing in the bedroom, plaintiff and her friend stood near the doorway leading from the bedroom into the common area. With her back to the common area, plaintiff either stepped backwards or began turning around toward the common area, when she tripped and fell over the luggage - breaking her wrist. Plaintiff sued the hotel for negligence and premises liability.

The hotel filed a Motion for Summary Judgment arguing that the placement of luggage did not constitute a dangerous condition. The Trial Court agreed. Plaintiff then appealed, arguing that the bellman was negligent in placing luggage in the walkway area of the hotel suite.

The Appellate Court ruled in favor of plaintiff and reversed the Trial Court's Ruling. It found to the extent a dangerous condition existed, it did so only by virtue of the hotel's negligent placement of the luggage. Further, it determined the question of any danger posed by the luggage was "open and obvious" is a question of fact for the jury to resolve.

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