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HOWELL V. HAMILTON MEATS & PROVISIONS, INC.: PAST MEDICAL EXPENSES ARE LIMITED TO THOSE ACTUALLY PAID OR INCURRED

The California Supreme Court ruled yesterday that injured plaintiffs are entitled to recover economic damages for past medical services only in the amount actually paid to medical providers, even if the amount billed was much higher. *Howell v. Hamilton Meats & Provisions Inc.*, S179115 (S. Ct. Cal., August 18, 2011).

The Supreme Court in *Howell* considered whether injured plaintiffs may recover from tortfeasors the full amount *billed* for medical services or the lesser amount actually *paid* for those services. The Supreme Court held plaintiffs are not entitled to recover the higher sum: "We hold no such recovery is allowed, for the simple reason that the injured plaintiff did not suffer any economic loss in that amount."

BACKGROUND

Before this decision, the California Court of Appeal was split on the proper measure of recoverable economic damages for medical expenses.

California plaintiffs often argue that the proper measure of the value of medical services is the amount billed by medical providers and the reduced amount paid by insurers, including workers' compensation and public assistance programs such as Medi-Cal, should not be considered. Reducing the amount to the measure negotiated by the insurer, plaintiffs argue, would violate the collateral source rule set forth in *Helfend v. Southern Cal. Rapid Transit* (1970) 2 Cal.3d 1: "[I]f 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."

In 1988, California's Third Appellate District decided *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635, holding, "[W]hen the evidence shows a sum certain to have been paid or incurred for past medical care and services, whether by the plaintiff or by an independent source, that sum certain is the most the plaintiff may recover for that care despite the fact it may have been less than the prevailing market rate." Several decisions followed *Hanif*'s rule that the proper measure of medical expenses is the amount paid rather than the amount billed, including *Nishihama v. City and County of San Francisco* (2001) 93 Cal.App.4th 298, *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, and *Cabrera v. E. Rojas Properties, Inc.* (2011) 192 Cal.App.4th 1319.

Other Court of Appeal opinions reached the opposite conclusion. In *Yanez v. SOMA Environmental Engineering, Inc.* (2010) 185 Cal.App.4th 1313, for example, the First Appellate District held that "amounts written off by [the plaintiff's] health care providers constitute collateral benefits of her insurance," and therefore should not serve to reduce an economic damages award. The *Yanez* court also reasoned that "[r]ate discounts negotiated between health insurers and providers must be deemed collateral benefits which, under the collateral source rule, should accrue to the insured plaintiff, not the defendant." Decisions with similar holdings include *King v. Willmett* (2010) 113 Cal.App.4th 313 and *Howell v. Hamilton Meats & Provisions, Inc.* (2009) 179 Cal.App.4th 686, which was appealed to the Supreme Court.

The Supreme Court put the issue to rest yesterday in *Howell v. Hamilton Meats.*

THE SUPREME COURT'S DECISION IN *HOWELL V. HAMILTON MEATS*

In a 6-1 decision, the Supreme Court in *Howell* held that plaintiffs may only recover the amount paid for their medical care, even if that amount is less than what was initially billed. The Court agreed with the *Hanif* court that "a plaintiff may recover as noneconomic damages *no more* than the reasonable value of the medical services received and is not entitled to recover the

reasonable value if his or her actual loss was less." The Court reasoned that medical providers agree with insurers to accept a certain amount for their services. The higher amounts charged to some patients without insurance are not actually "incurred" by patients whose insurance pays a lower negotiated rate. As the insured patient never incurs liability for the higher amount, the Court found that the negotiated rate differential does not constitute collateral compensation implicating the collateral source rule: "[T]he collateral source rule should not extend so far as to permit recovery for sums neither the plaintiff nor any collateral source will ever be obligated to pay."

The Court rejected the argument that allowing recovery for the reduced rates insurers pay for medical services results in a windfall for tortfeasors who will not always be required to pay the reasonable cost of their wrongdoing. Due to the complexities of pricing and reimbursement for medical services in various markets, the Court determined it would be "perilous" to make any broad generalization about the relationship between the value of medical services and the amounts billed for them.

SCOPE OF THE *HOWELL* DECISION

The *Howell* decision applies whether the plaintiff's insurance is publicly funded, as it was for the Medi-Cal recipient in *Hanif*, or private, as it was for the plaintiff in *Howell*. The Court acknowledged that charges for medical services to uninsured patients may be higher because those charges will not reflect rates negotiated by insurers, but noted, "The rule that medical expenses, to be recoverable, must be incurred and reasonable…applies equally to those with and without insurance."

PRACTICAL IMPLICATIONS

Howell will have an immediate impact not only on damages calculations but also on litigation strategy, including settlement postures. Where before, many trial courts precluded defendants from showing juries evidence that a medical provider has agreed to accept as full payment less than the billed amount for past medical expenses, *Howell* instructs that evidence of the reduced amount is admissible at trial, and under those circumstances, the plaintiff's evidence of the full billed amount is irrelevant. The Court also suggested that if the jury awards more than the amount accepted as full payment, the defendant may move for a new trial. If such a motion is granted, the plaintiff may then choose between accepting the reduced damages or a new trial. The Court suggested that the post-trial "*Hanif* motion" commonly used in the past to reduce damages would be unnecessary if this procedure were followed. These evidentiary and procedural rulings in *Howell* will influence pre-trial settlement posture, as many defendants and insurers will disregard the full billed amount in valuing a case.

The full Supreme Court opinion is available at http://www.courtinfo.ca.gov/opinions/documents/S179115.PDF.

ADDITIONAL INFORMATION

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