

Collateral Source Rule Inapplicable When Injured Person's Medical Expenses are Discounted by Health Insurer

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In a long-awaited, and nearly unanimous decision, [the California Supreme Court](#) has held that an injured plaintiff whose medical expenses are paid through private health insurance may recover as economic damages no more than the amounts paid by the plaintiff's insurer for those medical services, and that this discounted amount does not fall within the collateral source rule. The decision is [Howell v. Hamilton Meats & Provisions, Inc.](#), decided August 18, 2011.

Rebecca Howell was injured in an automobile accident caused by a driver of Hamilton Meats & Provisions, Inc. The total amount billed by her medical providers for her medical care up to the time of trial was \$189,978.63, but due to the preexisting contracts those providers had entered into with Howell's health insurer, the bills were reduced by \$130,286.90, such that the amounts paid to (and accepted by) the providers was only \$59,691.73.

At trial, Howell sought to recover the full amount of her medical bills, not the amount that her medical providers had accepted. While allowing Howell to present her the full-billed amounts to the jury, the trial court reduced those amounts in post-trial motion to the \$59,691.73 paid to and accepted by the providers.

The [Fourth District Court of Appeal](#) reversed the reduction order on the ground that it violated the collateral source rule, and the Supreme Court accepted review of the case to resolve the following issue:

"Is the negotiated rate differential – the difference between the full billed rate for medical care and the actual amount paid as negotiated between a medical provider and an insurer – a collateral source benefit under the collateral source rule, which allows a plaintiff to collect that amount as economic damages, or is the plaintiff limited in economic damages to the amount the medical provider accepts as payment?"

After providing a detailed discussion of the history of the collateral source rule, as "unequivocally reaffirmed" by the Court's in the decision [Helfend v. Southern Cal. Rapid Transit Dist.](#), 2 Cal.3d 1, 6 (1970), and how that rule has been addressed over the past 40 years in case law (mostly involving Medi-Cal benefits) or excepted by statute in limited contexts, the Supreme Court explained that none of the prior cases had "discussed the question, central to the arguments in this case, of whether restricting recovery to amounts actually paid by a plaintiff or on his or her behalf contravenes the collateral source rule."

The Court then proceeded to resolve the four issues necessary to answer this question:

First, based on certain California Civil Code sections and the provisions of the Restatement of Torts, and as guided by a prior Court of Appeal decision involving Medi-Cal benefits, [*Hanif v. Housing Authority*](#), 200 Cal. App. 3d 635 (1988), the Court held that

*“a plaintiff may recover as economic 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.” (Emphasis by Court.)*

This is based on the well-established rule that a plaintiff’s expenses, to be recoverable, must not only be incurred but reasonable, and that this rule “applies when a collateral source, such as the plaintiff’s health insurer, has obtained a discount for its payments on the plaintiff’s behalf.”

Second, the basis for the limitation on recovery as to Medi-Cal recipients, adopted in the *Hanif* case, similarly applies to plaintiffs like Howell who possess private medical insurance. Since, by the purchase of such insurance, Howell’s prospective liability was limited to the amounts her medical insurer had agreed to pay the providers for the medical services they were to render, Howell could not “meaningfully be said ever to have incurred the full charges” or ever been personally liable for the full charges.

Third, as to the argument that the tortfeasor (Hamilton in this case) would obtain a windfall “merely because the injured person’s health insurer has negotiated a favorable rate of payment with the person’s medical provider,” the Court disagreed. After addressing the “complexities of contemporary pricing and reimbursement patterns for medical providers,” the Court observed that the “negotiated prices” medical providers accept from health insurers “makes at least as much sense, and arguably more, than” the full prices that are billed by such providers where there is no negotiation between buyer and seller.

“Accordingly, a tortfeasor who pays only the discounted amount as damages does not generally receive a windfall and is not generally underdeterred from engaging in risky conduct.”

Finally, in response to the contention by Howell that the “negotiated rate differential” is a benefit provided to the insured plaintiff under her policy and should be recoverable under the collateral source rule, the Court disagreed with this assertion as well.

Since Howell did not incur liability for the full bills generated by the medical providers, due to the fact that her providers had agreed with her insurer on a different price schedule, she could not recoup those full bills as damages for economic loss under the collateral source rule. Moreover, the rule does not apply to the negotiated rate

differential since it is not primarily a benefit to the plaintiff but the “primary benefit of discounted rates for medical care goes to the payer of those rates – that is, in largest part, to the insurer.”

As noted above, the Court’s decision was not wholly unanimous, as one Justice dissented. That Justice’s position was that, while Howell should not be able to recoup “the gross amount of her potentially inflated medical bills,” neither should they “be capped at the discounted amount her medical providers agreed to accept as payment in full from her insurer.” Instead, the dissent opted for an intermediate position, claiming this is the majority rule across the country: “Howell should be entitled to recover the reasonable value or market value of such services, as determined by expert testimony at trial.”

With six Justices signing off on the Court’s opinion, however, the collateral source rule will not require defendants (or their liability insurers) in California to pay any amount greater for medical expenses than the discounted amounts paid by the insured person’s health insurer and accepted by her medical providers.