



Howell Decision: Past Medical Expense Damages Limited to Amount Paid

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Special Issue By: CAROLINE CHEN

Howell v. Hamilton Meats & Provisions, Inc.,

2011 Cal. LEXIS 8119

California Supreme Court, August 18, 2011

On August 18, 2011, the California Supreme Court handed down its long-awaited decision in *Howell v. Hamilton Meats & Provisions, Inc.* on the issue of whether a tortiously injured plaintiff may recover as economic damages for past medical expenses the undiscounted sum stated in the provider's bill but never paid by or on behalf of the injured person. The Court's holding limits the recovery of past medical expense damages to amounts paid by the plaintiff's insurer, and it excludes any amount billed yet unpaid.

Plaintiff Rebecca Howell was seriously injured when her car was struck by a truck driven by one of defendant Hamilton Meats & Provisions, Inc.'s employees. Howell had private health insurance with PacifiCare and underwent two spinal fusions and surgical procedures for harvesting grafts. Before surgery, Howell executed an agreement with Scripps Memorial Hospital and CORE Orthopedic Medical Center to be fully liable for all charges. Ultimately, PacifiCare paid a reduced amount for Howell's medical treatment and Scripps and CORE wrote-off the balance.

At trial, relying on *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635, Hamilton moved in limine to exclude evidence of portions of the medical bills that neither Howell nor PacifiCare had paid, on that ground that plaintiff could only recover what had been paid. The trial court denied the motion, ruling that plaintiff could present her full medical bills to the jury and that any reduction in the medical damages award could be handled by a "post-trial Hanif motion". The jury awarded plaintiff damages for past medical expenses in the amount of \$189,978.63-the total amount billed.

When Hamilton moved to reduce the award pursuant to *Hanif* by \$130,286.90, the amount "written off" by plaintiff's medical providers, plaintiff argued in opposition that such a reduction would violate the collateral source rule. The collateral source rule provides that any compensation an injured party may receive for her injuries from a source independent of the tortfeasor may not be deducted from damages the injured party would otherwise collect from the tortfeasor.



Plaintiff submitted copies of her executed agreements in which she agreed to pay her providers any sums unpaid by her insurance. The trial court granted Hamilton's motion. The court of appeal reversed, holding that the reduction violated the collateral source rule. The court of appeal considered the amount written off (the discounted sum) to be an extinguishment of plaintiff's debt to her providers and a collateral source benefit to plaintiff because plaintiff was no longer personally liable for those amounts and because the benefit was "conferred upon her as a direct result of her own thrift and foresight in procuring private health insurance".

In its decision, the Supreme Court examined the collateral source rule analysis and held that the collateral source rule did not apply. The Court first observed that a tortiously injured person can recover as economic damages any reasonable charges paid or incurred for medical treatment. The Court then determined that the billed amount "written off" by Howell's medical providers when Howell's insurance paid a reduced amount to the providers was not a collateral source benefit to Howell. The Court reasoned that when Howell incurred liability for her medical services, her providers and her insurance already had in place an agreement that provided for medical services in exchange for payment at a reduced amount. Thus, Howell at most, incurred liability for the reduced amount and never for the full amount billed. She could not have received a collateral source benefit when her providers accepted the reduced amount as payment in full.

Accordingly, the Court found this circumstance to fall outside the scope of the collateral source rule. The Court made a point to state that while the collateral source rule ensures that an injured party collects damages from the tortfeasor that are not reduced by compensation she may receive from an independent source, the rule does not extend to permit the injured party to recover sums that neither plaintiff nor any collateral source would ever be obligated to pay.

In arriving at its holding, the Howell court made four determinations. First, Hanif was correct in deciding that a plaintiff can 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 her actual loss was less. The Howell court noted that California decisions have focused on "reasonable value" in the context of limiting recovery to reasonable expenditures and not expanding recovery beyond plaintiff's actual loss or liability.

Second, Hanif's holding properly extends to plaintiffs covered by private health insurance. The fact that plaintiff Howell signed written agreements with her medical providers in which she agreed to be financially responsible for the charges for the medical services provided to her did not significantly distinguish her case (as one in



which liability was incurred) from Hanif (where plaintiff incurred no personal liability for medical charges billed to Medi-Cal). The Supreme Court observed that the discounted amount paid by Howell's insurers and accepted by her medical providers was pursuant to pre-existing agreements in place when she incurred liability for medical expenses. The Supreme Court reasoned that therefore, Howell's incurred liability was limited to the discounted amounts paid and accepted and Howell could not be understood to have incurred the full charges billed. (The Court further noted that the one exception to Hanif's holding-that plaintiff may recover the value of donated services under the collateral source rule-did not apply since the case did not involve one of donated services but services that were agreed upon for a discounted price between the provider and the insurer).

Third, limiting plaintiff's recovery to the amounts paid and owed on her behalf did not confer a windfall on the tortfeasor and defeat the goals of the collateral source rule. The Supreme Court noted "[t]he complexities of contemporary pricing and reimbursement patterns for medical providers" do not support the generalization that limiting plaintiff's recovery to amounts paid translates into a windfall for the tortfeasor.

Fourth, and as explained, the difference between the full billing and the discounted amount accepted as payment in full is not a benefit received by the injured plaintiff from her health insurance policy that is subject to the collateral source rule. The Supreme Court pointed out that the discounted sum (referred to by the court of appeal as the negotiated rate differential) is not primarily a benefit to plaintiff, but rather, a benefit to the insurer, and is not provided as compensation for plaintiff's injuries. Therefore, the Court concluded, the discounted sum does not come within the collateral source rule.

Procedure

Under the Supreme Court's decision in Howell, the defense will be allowed to introduce at trial evidence of the medical expenses actually paid on the ground that it is relevant to determining plaintiff's reasonable medical costs. Evidence that such payments were made in part or whole by an insurer remains inadmissible pursuant to the evidentiary aspect of the collateral source rule. Presumably, admissible records may take the form of payment records (rather than billing records) that have the insurer's information redacted.

The Supreme Court also expressly stated that the full amount billed is not itself relevant to the issue of reasonable medical expenses and then stated that it "express[es] no opinion as to its relevance or admissibility on other issues, such as non-economic damages or future medical expenses." (The relevance of the full amount billed to these other issues was not analyzed since it was not an issue presented on appeal.



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Defendant Hamilton had conceded to allowing the jury to hear evidence of plaintiff's full medical bills).

Should the jury return an award for past medical expenses that exceeds the amount paid, Howell directs the defense to file a motion for new trial on the ground of excessive damages - the general procedure for challenging a verdict that awards excessive damages. The Court found no need for a "Hanif motion" but did provide that if the trial court granted a motion for new trial, it could permit the plaintiff to choose between accepting reduced damages or proceeding with a new trial.

Issues Not Presented

On appeal, plaintiff raised several procedural claims that were not considered by the Supreme Court because they were not addressed by the court of appeal. First, plaintiff argued that the issue of what was paid to her medical providers to satisfy the charges she incurred was a question of fact that she had a right to have determined by the jury, a right she did not waive, and that the court erred in invading this province of the jury by determining what was paid. Considering the Supreme Court's holding that evidence regarding amounts paid is admissible to prove damages for past medical expenses, the determination it appears is one for the jury. Second, plaintiff argued that Hamilton failed to submit evidence to support what was paid to the providers and thus, to support a reduction in the verdict. Plaintiff argued in particular that Hamilton failed to prove what her insurer paid to her providers in the form of in-kind benefits. The question of what constitutes sufficient evidence to prove the amount paid may be addressed by the court of appeal on remand. In the future, plaintiffs may seek to "pad" the amount paid and thereby increase their recoverable medical damages by seeking to introduce evidence of in-kind benefits. If that occurs, the courts may be faced with the question of whether such evidence is relevant and admissible.

COMMENT

Overall, the Howell decision is a tremendous victory for defendants in personal injury actions. The decision, however, does leave some questions unanswered. In stating that the full amount billed is not itself relevant to the issue of reasonable medical expenses and that it "express[es] no opinion as to its relevance or admissibility on other issues, such as non-economic damages or future medical expenses", the Supreme Court did not specify whether it was envisioning the admission of evidence of the full amount billed along with evidence of the amount paid to prove reasonable medical expenses, or if it was contemplating evidence of the full amount billed being admitted to prove non-economic damages or future medical expenses. Regarding non-economic damages or future medical expenses, it may be a difficult argument for plaintiffs to make that though



the full amount billed has been determined irrelevant in itself to the issue of reasonable past medical expenses, it is probative for determining non-economic damages of pain and suffering or future medical expenses.

Regarding introducing to the jury the full amount billed in combination with the amount paid, the Court may be leaving it up to plaintiffs to decide whether to introduce evidence of the amount billed and risk the jury considering the prejudicial fact that plaintiff's medical expenses were ultimately paid by insurance. Plaintiffs may be interested in pursuing that route despite the risks to ensure that the jury returns an award for past medical expenses for the full amount paid and not any less, which is possible.

For the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/S179115.PDF](http://www.courtinfo.ca.gov/opinions/documents/S179115.pdf)

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