

The Morrison Law Journal
August 2011
Volume VI, Edition 8

California Supreme Court Rules That Only The Amount Actually Paid To A Medical Care Provider To Treat A Personal Injury Plaintiff May Be Recovered As Economic Damages-Even Though The Actual Amount Paid Resulted From Discounts Negotiated Through The Plaintiff's Own Medical Insurance

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For over 40 years, the California Courts have grappled with the question of how to calculate medical expense damages for a personal injury plaintiff which has medical insurance, and whose insurance has paid for some or all of the plaintiff's medical care. The Plaintiff Personal Injury Bar has long argued that evidence of the discounted rates negotiated by a personal injury plaintiff's medical insurer are not admissible under what is known as the Collateral Source Rule, as embraced in Helfend v. Southern California Rapid Transit District (1970) 2 Cal.3d 1 ("Helfend"). The Personal Injury Defense Bar, on the other hand, has argued that the actual charges paid to the medical care provider for a personal injury plaintiff should be the only charges actually considered as economic damages and to do otherwise would result in a windfall to the personal injury plaintiff.

This past month, in Howell v. Hamilton Meats & Provisions, Inc. (2011) DJDAR 12,533 ("Howell"), a divided California Supreme Court ruled in favor of the Personal Injury Defense Bar.

In order to best understand the issue before the California Supreme Court in Howell, a brief review of the Collateral Source Rule and case law dealing with plaintiff personal injury medical bills is in order. In 1970, the California Supreme Court ruled in Helfend that, under the Collateral Source Rule, when calculating medical expense damages there could be no deduction for benefits which a personal injury plaintiff received from sources independent of the tortfeasor. An issue that was raised thereafter, however, is what amount of medical bills should be presented to the trier of fact, i.e., the gross amount charged by a hospital or the lower, negotiated amount paid to either Medicare or a private insurer.

In Hanif v. Housing Authority (1988) 200 Cal.App.3d 635 ("Hanif"), the California Court of Appeal, Third District, ruled that, where the plaintiff was a Medi-Cal recipient (which was not responsible for the medical care bills in the first place), the amount actually paid by Medi-Cal, which was substantially lower than the argued "reasonable value" of the treatment, was the proper measure of damages. The Court of Appeal ruled that the Collateral Source Rule was not implicated because the plaintiff in Hanif, a Medi-Cal recipient, was never responsible for the charges in the first place.

In Nishihama v. City and County of San Francisco (2001) 93 Cal.App.4th 298 ("Nishihama"), the California Court of Appeal, First District, applied the Hanif rationale to payments made by a private health insurer. In that case, the jury awarded the plaintiff \$17,168.00 for her medical expenses, an amount based on the medical care provider's "normal rates". The record, however, showed the plaintiff participated in a health plan administered by Blue Cross which had an agreement with the medical care provider pursuant to which the medical care provider had accepted only \$3,600.00 in full payment for the services to the plaintiff. Relying on Hanif's holding that only the amount actually paid or incurred is recoverable as compensation for medical expenses, the Nishihama Court ordered the judgment reduced to reflect only the amount the hospital had actually received from Blue Cross.

Thereafter, in Parnell v. Adventist Health System/West (2005) 35 Cal.4th 595 ("Parnell"), California Supreme Court held that a hospital could not assert a lien against a patient's tort recovery for the full amount of its bill when it agreed to accept an insurer's lesser reimbursement as full payment. At the same time, however, the California Supreme Court reserved judgment as to whether the Hanif holding applied outside the Medi-Cal context and could serve to limit a patient's tort recovery for medical expenses to the amount actually paid. Thereafter, Hanif and Nishihama were further distinguished in Katiuzhinsky v. Perry (2007) 152 Cal.App.4th, 1288 ("Katiuzhinsky"). In Katiuzhinsky, the injured plaintiff's medical care providers had sold some of their bills at a discount to a medical finance company, however, the plaintiffs remained liable to the finance company for the original amount of the bills. The California Court of Appeal, Third District, concluded in that case that the Trial Court, in limiting the recovery to the discounted amounts, did not correctly apply the Hanif and Nishihama holdings.

However, the question as to whether the actual amount accepted by the medical care provider, in the context of a personal injury plaintiff who has private medical insurance, had not directly been answered. With the Howell decision, that question has now been resolved, albeit by a divided California Supreme Court.

In Howell, a case involving a motorist who was seriously injured when the vehicle she was driving was struck by a truck, the defendant conceded liability and the necessity of medical treatment the plaintiff had received, and only contested the amounts of plaintiff's economic and noneconomic damages. The defendant in that case moved in limine at trial to exclude evidence of medical bills that neither the plaintiff nor her health insurer, Pacific Care, had paid. The plaintiff's surgeon and her husband each testified that the total amount billed for the plaintiff's medical care, up to the time of trial, was \$189,978.63. The jury returned a verdict awarding exactly that amount as damages for plaintiff's past medical expenses. The defendant then made a post-trial motion to reduce past medical expenses pursuant to the Hanif case, seeking a reduction of \$130,286.90, which is the amount assertedly written off by the plaintiff's medical care providers, pursuant to contracts with Pacific Care. The Trial Court granted the defendant's motion, reducing the past medical damages awarded by \$130,286.90. On appeal, the Court of Appeal reversed the Trial Court's order, holding that it violated the Collateral Source Rule. The defendant then petitioned the California Supreme Court, which granted review. In a lengthy decision by Justice Werdegar, for which Justice Klein filed a dissent, the California Supreme Court ruled that awarding an amount as damages which the plaintiff had no responsibility to pay, even though as a result of a negotiated rate by the personal injury plaintiff's medical insurer, would result in an unfounded windfall which is inconsistent with the Collateral Source Rule.

The Howell decision is certainly significant. While it may not make an enormous difference in a particular case, it will have an across the board impact on personal injury cases in general in California.

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