

The Morrison Law Journal
December 2009
Volume IV, Edition 12

A Clear Split Of Authority: Court Of Appeal Holds That A Plaintiff May Be Awarded As Damages The Full Amount Of The Medical Charges Billed By The Plaintiff's Medical Care Providers And Is Not Limited To The Lower Rate Negotiated By The Plaintiff's Insurer

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For nearly four decades, California has adhered to the so called "collateral source rule" which provides that medical benefits (and any other injury compensation) received by the plaintiff from sources unrelated to the defendant are not to be deducted from otherwise recoverable damages. See, Lund v. San Joaquin Valley Railroad (2003) 31 Cal.4th 1, and Helfend v. Southern California Rapid Transit District (1970) 2 Cal.3d 1.

However, an issue which courts have had to grapple with in applying the Collateral Source Rule is whether the plaintiff's medical bills - as initially charged by the provider, or the discounted rate negotiated by an insurer or governmental entity, should apply. In Hanif v. Housing Authority (1988) 200 Cal.App.3d 635 ("Hanif") and Nishihama v. City and County of San Francisco (2001) 93 Cal.App.4th 298 ("Nishihama"), the Courts held that, when a plaintiff has medical insurance or government paid for medical care, the damages are limited to the amount actually paid or incurred. The Courts in those cases ruled that "incurred" meant the lower rate negotiated by the insurer or governmental entity.¹

The Hanif/Nishihama rule has been subject to attack by the plaintiffs' bar in numerous cases.

In a decision published on November 23, 2009, the Court of Appeal, in Howell v. Hamilton Meats & Provisions, Inc. (2009) 179 Cal.App.4th 686 ("Howell") refused to apply at least a portion of the Nishihama ruling. In Howell, a motorist was seriously injured when she was struck by a large truck. At trial, the plaintiff submitted evidence of \$189,978.63 in past medical expenses which were billed by medical care providers Scripps Memorial Hospital Encinitas ("Scripps") and CORE Orthopedic Medical Center ("CORE").

¹ Those cases still permit the jury to hear evidence of the "full" amount of the bills. See, Nishihama and Greer v. Buzgheia (2006) 141 Cal.App.4th 1150.

In a post trial motion, the defendant moved under Hanif and Nishihama to reduce the plaintiff's past medical expenses by \$130,286.90 because her private health care provider, Pacificare, had negotiated reduced rates from Scripps and CORE so that the amount actually paid was \$59,691.73. The Trial Court granted the defendant's post trial Motion and reduced the award for past medical expenses to \$59,691.73 - the amount which the medical care providers actually paid.

On appeal, the Fourth District Court of Appeal ruled that the Trial Court's post trial reduction was in error as it violated the Collateral Source Rule. The Court of Appeal held that "the extinguishment of a portion of [plaintiff's] debt to Scripps and CORE in the amount of the negotiated rate differential (\$130,286.90) was a benefit to [plaintiff] because she was no longer personally liable for that portion of the debt she personally incurred in obtaining medical treatment for her injuries". Howell, supra, 179 Cal.App. 4th at 695. In its reasoning, the Court of Appeal first distinguished the Hanif decision on the basis that the plaintiff in that case was a Medi-Cal beneficiary and a minor and the Collateral Source Rule did not apply because the plaintiff never incurred any liability beyond his judicially deemed liability for the medical services he received in the amount that Medi-Cal actually paid to the medical service providers and because, as a minor, the plaintiff lacked the capacity to enter into a financial responsibility agreement with those providers.

The Court of Appeal went on to acknowledge that the Nishihama case dealt with private insurance but ruled that Nishihama was improvidently decided because the plaintiff in that case was an adult and had signed a financial responsibility agreement with the medical care providers. The Court of Appeal further stated that any further "abrogation" of the Collateral Source Rule should occur based on legislative action, and not in the Courts citing a concurring opinion in the recent decision in Olsen v. Reid (2008) 164 Cal.App.4th 200 (a case where the Collateral Source Rule was questioned but not dealt with substantively).

The Howell decision is certainly a bell weather case for personal injury litigation. It is expected that the negotiated "differential" between what is billed and what an insurer will pay will increase as time goes on and this decision will certainly impact the exposure of defendant tortfeasors. A fair disposition may be to permit the defense to introduce evidence of what was actually paid by the insurer and use the lower rates negotiated by the insurer to explain the reasonableness of the charges.

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