

State Supremes Rule – Amount Paid is Marker for Past Medical Expenses

By Brendan M. Ford

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In a much-anticipated decision, the state Supreme Court has resolved an issue that the California plaintiff and defense bars have been debating for more than 20 years: Can a plaintiff in a civil lawsuit recover the full amount of past medical expenses that were billed by medical providers, or is the plaintiff limited to recovering the amount actually paid on his or her behalf? In a 6-1 decision, the Supreme Court held that a plaintiff's recovery for past medical expenses is limited to the amount paid by plaintiff or his or her insurer, as opposed to the amount that may have been originally billed by the medical provider.

In *Howell v. Hamilton Meats & Provisions*, 2011 DJDAR 12533 (Cal. Aug. 18, 2011) plaintiff was injured in an automobile accident. The defendant conceded both liability and the medical necessity of plaintiff's treatment, contesting only the amount of plaintiff's economic and non-economic damages.

During trial, plaintiff provided evidence that the amount *billed* for her medical care up to the time of trial was approximately \$190,000. The jury awarded the full billed amount to plaintiff. After trial, defendant sought to reduce the award to the amount actually paid by plaintiff or her insurer — a reduction of over \$130,000. The trial court agreed with the defendant and reduced the judgment by the requested amount. The appellate court reversed the trial

court, holding that the reduction violated the collateral source rule.

The Supreme Court reversed the appellate court, concluding that "an injured plaintiff whose medical expenses are paid through private insurance may recover as economic damages no more than the amounts paid by the plaintiff or his or her insurer for the medical services received or still owing at the time of trial."

Plaintiff argued that limiting past medical expenses to the amount paid violated the collateral source rule. The Court rejected this argument, recognizing that the collateral source rule "has no bearing on amounts that were included in a provider's bill but for which the plaintiff never incurred liability because the provider, by prior agreement, accepted a lesser amount as full payment. Such sums are not damages the plaintiff would otherwise have collected from the defendant." As the Court explained, "[b]ecause they do not represent an economic loss for the plaintiff, they are not recoverable in the first instance." The difference between the amount billed and the amount paid is not a "collateral payment or benefit subject to the collateral source rule," according to the Court, because plaintiff "receives the benefits of the health insurance for which she paid premiums: her medical expenses have been paid per the policy, and those payments are not deducted from her tort recovery."

Recognizing an “element of fortuity to the compensatory damages the defendant pays” under this new rule, the Court noted that “[f]ortuity is a fact in life and litigation.” The Court noted that this is no different than the “fortuity” in any civil litigation, where “identical injuries may have different economic effects on different victims.”

The Court further held that evidence of the reduced medical expenses “is relevant to prove the plaintiff’s damages for past medical expenses and, assuming it satisfies other rules of evidence, is admissible at trial.” However, “[e]vidence that such payments were made in whole or in part by an insurer remains, however, generally inadmissible under the evidentiary aspect of the collateral source rule.” The Court

held that “evidence of the full billed amount it not itself relevant on the issue of past medical expenses,” but expressed “no opinion as to its relevance or admissibility on other issues, such as noneconomic damages or future medical expenses.”

The *Howell* decision resolves a key issue that routinely arises in product liability, medical malpractice and other personal injury lawsuits. While trial courts will still have to grapple with the circumstances in which the billed amount is appropriate to show to the jury — an issue the Supreme Court expressly declined to answer in *Howell* — civil litigation defendants should be pleased with this decision.



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