



## Medical Provider Full Billed Charges Irrelevant on Claim for Past Medical Expenses

By: Karen R. Palmersheim

May an injured person recover from a tortfeasor as past medical expenses the medical provider's undiscounted full billed charges, even if the undiscounted amount in the bill was never paid by or on behalf of the injured person? The California Supreme Court addressed this question in the *Howell v. Hamilton Meats & Provisions, Inc.* opinion issued on August 18, 2011.<sup>1</sup>

The answer? No.

In *Howell*, the plaintiff was seriously injured in an automobile accident, and liability was not disputed. The case went to trial to determine the amount of the plaintiff's damages. Defendant Hamilton filed a motion in limine to exclude evidence of medical bills that neither plaintiff nor her health insurer, PacifiCare, paid. Defendant argued that plaintiff's health care providers had agreed to a discounted rate pursuant to her providers' contracts with PacifiCare. Under the terms of plaintiff's preferred provider organization ("PPO") policy with PacifiCare, the providers could not "balance bill" the plaintiff for amounts in excess of the negotiated rate.<sup>2</sup> The motion in limine was denied, but the trial court invited post-trial briefing on this issue of reduction of any award.

Adding up the total amount of the providers' "billed" charges (which did not take into account the negotiated discounts), Plaintiff presented evidence at trial that her past medical damages were \$189,978.63. Hamilton brought a post-trial motion to reduce the past medical damages by \$130,286.90, the amount "written off" by plaintiffs' medical providers. The motion was denied.

The trial court did not reduce the award for past medical expenses to account for the discounted rates due to the collateral source rule. The collateral source rule states that "if an injured party receives some compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor."<sup>3</sup> Because a collateral payment may not be used to reduce recoverable damages, evidence of collateral payments are inadmissible for that purpose. Therefore, the trial court held the actual discounted amount PacifiCare paid was inadmissible and irrelevant.

In contrast, prior to the *Howell* case a Medi-Cal recipient could only recover the actual amount Medi-Cal paid under the Medi-Cal fee schedule, and not the provider's "billed charges"



(*Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635.) With *Howell*, the California Supreme Court has made clear that even outside the Medi-Cal context, a plaintiff may recover as economic damages no more than the reasonable value of the medical services obtained, and is not entitled to recover the “reasonable value” if the actual loss was less. The Supreme Court reasoned that since plaintiff’s medical providers negotiated discounted rates with PacifiCare in advance, the plaintiff could not have meaningfully incurred the debt of the providers’ full billed charges — similar to the *Hanif* plaintiff who bore no personal liability for the providers’ charges.<sup>4</sup>

The Supreme Court’s opinion contained a lengthy discussion about how providers’ charging practices have changed following the advent of managed care. Decades ago, there were no discounts; insurers paid the same as the uninsured. Now, managed care organizations demand steep discounts from the providers’ billed charges. As a consequence, providers have increased their billed charges, which, given the standard of discounting in the industry, are nowhere near the amounts they actually receive as payment.

The Supreme Court rejected the plaintiff’s claim that evidence of the negotiated rate was inadmissible under the collateral source rule. The Supreme Court held instead that the negotiated rate differential was outside of the operation of the collateral source rule because it was not a benefit extended to the plaintiff and was not provided as “compensation for [the plaintiff’s] injuries.”<sup>5</sup> The Supreme Court held that “an injured plaintiff whose medical expenses are paid through private insurance may recover as economic damages no more than the amount paid by the plaintiff or his or her insurer for the medical services received or still owing at the time of trial.”<sup>6</sup>

Evidence of a medical providers’ full “billed charges” is not relevant on the issue of past medical expenses if that is not the amount actually paid. Evidence of the amount a provider has agreed to be paid is admissible at trial. This ruling will prevent plaintiffs from obtaining a windfall recovery of full “billed charges” that bear no relation to the plaintiffs’ actual damages.

#### Endnotes

1 *Supreme Court of California No. S179115 (San Diego Superior Court Case No. GIN053925) (“Slip Opn.”)*.

2 *Id.* at pp. 2-3.

3 *Id.* at p. 5.

4 *Id.* at pp. 13-14.

5 *Id.* at p. 24.

6 *Id.* at p. 28.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author:

**Karen R. Palmersheim** | T: 213-687-6742 | [kpalmersheim@lockelord.com](mailto:kpalmersheim@lockelord.com)