

**A PLAINTIFF IN A TORT ACTION MAY RECOVER AS DAMAGES FOR PAST MEDICAL EXPENSES ONLY THOSE AMOUNTS PAID ON HIS/HER BEHALF, OR STILL OWING AT THE TIME OF TRIAL**

On August 18, 2011, the California Supreme Court limited defendants' liability for "medical special" damages, when it published its opinion in the matter of *Howell v. Hamilton Meats*. 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 amounts paid by the plaintiff or his or her insurer for the medical services received or still owing at the time of trial." The court rejected plaintiff arguments that defendants are liable for the full "billed" amount, regardless of any discount the insurer may negotiate. "We hold no such recovery is allowed, for the simple reason that the injured plaintiff did not suffer any economic loss in that amount." The court's ruling prevents plaintiffs from recovering in damages more than the actual harm incurred.

The court also ruled that "when a medical care provider has, by agreement with the plaintiff's private health insurer, accepted as full payment for the plaintiff's care an amount less than the provider's full bill, evidence of that amount is relevant to prove the plaintiff's damages for past medical expenses and, assuming it satisfies other rules of evidence, is admissible at trial." The court further held that evidence of the higher billed amount was irrelevant "on the issue of past medical expenses." Also, where a jury has heard evidence of the amount accepted as full payment by the medical provider but has awarded a greater sum as damages for past medical expenses, the defendant may move for a new trial on grounds of excessive damages. A nonstatutory "*Hanif* motion" is unnecessary. The trial court may permit the plaintiff to choose between either reduced

damages or undertaking a new trial.

The court rejected plaintiffs' argument that evidence of the amounts actually paid violated the "collateral source" rule. Under the collateral source rule, a plaintiff's recoverable damages are not reduced simply because somebody else (e.g., insurance) paid those expenses. "The rule, however, 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." Although the rule is "implicated" where someone else pays a plaintiff's bills, it is also satisfied: "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."

#### **OUTLINE OF ISSUES ADDRESSED BY THE SUPREME COURT:**

**A. Was *Hanif* correct that a tort plaintiff can recover only what has been paid or incurred for medical care, even if that is less than the reasonable value of the services rendered?**

YES. The Supreme Court, today, reaffirmed *Hanif*, saying that it agreed that a plaintiff may recover as economic damages *no more* than the reasonable value of the medical service received and is not entitled to recover the reasonable value if his or her actual loss was less. (*Hanif*, 200 Cal.App.3d 635, 641.) If a plaintiff negotiates a discount and thereby receives services for less than might reasonably be charged, the plaintiff has not suffered a pecuniary loss or other detriment in the greater amount and therefore cannot recover damages for that amount. To be recoverable as expenses, monies must generally have been expended, or at least incurred. That the charges must

also be reasonable does not alter this general rule.

**B. Even if *Hanif* (Medi-Cal payments) reached the right result on its facts, does its logic extend to plaintiffs covered by private insurance?**

Yes. The court found unpersuasive the argument that plaintiff *incurred* the expenses when she signed patient agreements with the care providers. The court reasoned that since the contracts between plaintiff's insurer and the providers, with the reduced charges agreed-to, were already in place at the time plaintiff signed the agreements, plaintiff never incurred the full amounts charged on the bills.

**C. Does limiting the plaintiff's recovery to the amounts paid and owed on his or her behalf confer a windfall on the tortfeasor, defeating the policy goals of the collateral source rule?**

No. The court does not consider payment of the lesser actual amount accepted by payments, as opposed to the amount charged on the bills, to constitute a windfall for the tortfeasor. Because of the complexities of contemporary pricing and reimbursement patterns for medical providers, it cannot be generalized that the lesser payment is not the reasonable value of the services. In reality, it is not possible to say generally that providers' full bills represent the real value of their services, nor that the discounted payments they accept from private insurers are mere arbitrary reductions. Thus, a tortfeasor who pays only the discounted amount as damages does not generally receive a windfall and is not generally underdeterred from engaging in risky conduct.

**D. Is the negotiated rate differential (the difference between what is billed and what is accepted as payment in full) a benefit the patient receives from his or her health insurance policy subject to the collateral source rule?**

No. Plaintiff did not incur liability for her providers' full bills because at the time the charges were incurred, the providers had already agreed on a different price schedule

for her insurer. Having never incurred the full bill, plaintiff could not recover the billed amount in damages for economic loss. The negotiated rate differential lies outside the operation of the collateral source rule also because it is not primarily a benefit to the plaintiff and, to the extent it does benefit the plaintiff, it is not provided as compensation for the plaintiff's injuries. Because the plaintiff does not incur liability in the amount of the negotiated rate differential, which also is not paid to or on behalf of the plaintiff to cover the expenses of the plaintiff's injuries, it simply does not come within the rule.

### **CURRENT STATUS**

Plaintiff/Respondent in the appeal timely filed a petition for rehearing with the court. On September 8, the court extended its deadline for granting or denying the rehearing to November 16, 2001. Until the decision becomes final, it cannot technically be cited as precedential authority. However, there is likely not a judge or attorney who is not at least familiar with the decision, and cognizant of the impact on plaintiff's recovery of past economic damages.