

## ***Qaadir v. Figueroa (2021) – B306011***

*In cases where an insured plaintiff receives treatment not covered by health insurance and the bill remains unpaid at trial, the full amount of the plaintiff's unpaid medical bills admissible to prove past medical damages.*

**FACTS:** In August 2015, while driving for his employer, big-rig trucker Malak Qaadir (P) was traveling 15 mph when he was rear-ended by a tractor-trailer travelling at 45 mph. The tractor-trailer, driven by Ubaldo Figueroa, was owned by his employer, Pacifica Trucks (collectively, D). The day after the accident, P sought medical care from providers within P's health insurance network (Kaiser South Bay and Health First Medical Group). The next month, P was referred to a "pain management specialist" (South Bay Pain Docs) by his personal injury attorney. Foregoing further treatment from Kaiser and Health First, P elected to receive chiropractic treatment and physical therapy from South Bay Pain Docs. P underwent multiple operations between 2016-18, "including spinal fusion surgery, [] installation of a spinal-cord stimulator and ... posterior fusion surgery." Kaiser and Health First received \$2,429.66 from P's insurer as full payment for P's treatment. The rest of P's medical care was provided on a lien basis, from providers not covered by P's health insurance. P sued in March 2017, alleging negligence. Liability was not contested, and trial was held solely on the issue of damages. At time of trial, P had not made payment to any out-of-network healthcare provider.

**PROCEDURAL POSTURE:** At trial, P was allowed to present evidence of his full medical bills (paid and unpaid), which totaled \$838,320.02. P's billing expert (who disclosed a "business relationship" with South Bay Pain Docs) opined the reasonable value of P's medical bills totaled \$632,000. D's billing expert concluded the reasonable value of P's medical care was significantly less – \$174,000 – a figure "based on an average of what private insurers, Medicare, and workers' compensation would agree to pay and medical providers would agree to receive for those services." P's vocational-rehab expert estimated P's future lost earnings at \$972,392. D's expert estimated future lost earnings at \$60,000. The jury's verdict awarded P damages totaling more than \$3.45 million.

**HOLDING:** Despite finding that the lower court improperly admitted evidence of P's full unpaid medical bills at trial, the Second District Court of Appeals held that D failed to show the errors at trial warranted reversal on appeal, affirmed the lower court's judgement, and awarded P costs on the appeal.

**DISCUSSION:** Among many claims raised on appeal, D argued that the trial court improperly admitted P's full unpaid medical bills as evidence of past and future medical damages, and that these errors, combined with other errors allegedly made by the trial court, "culminated in an excessive damages award." The Second District Court analyzed D's evidentiary contention under *Howell v. Hamilton Meats & Provisions, Inc.* (2011), in which the California Supreme Court held that "evidence of the full billed amount is not relevant, and therefore not admissible, to prove the past medical damages of an insured plaintiff if his or her insurer has pre-negotiated a lower rate as full payment." The *Qaadir* court noted a split of authority had emerged post-*Howell*, with some courts adopting defendant-favored *Ochoa v. Dorado* (2014) [unpaid medical bills inadmissible to prove medical damages regardless of any payment agreement between the insurer and medical provider], and others following plaintiff-friendly *Pebley v. Santa Clara Organics, LLC* (2018) [unpaid medical bills from medical care providers outside of an insured plaintiff's health plan are admissible, so long as the evidence is supported by expert testimony regarding the reasonable value of the services rendered].

"Based on [its] reading of *Howell* and its progeny," the court in *Qaadir* determined *Pebley* was controlling because here, P, while technically insured, is effectively "uninsured for purposes of proving past and future medical damages" with respect to medical expenses not covered by P's insurance. According to the *Qaadir* court, in such circumstances, medical bills are relevant to establishing past medical expenses under the first of *Howell*'s two-part economic damage award framework "because the plaintiff, rather than the health insurer, is the entity who is obligated to pay." The *Qaadir* court also found that the trial court abused its discretion by admitting evidence of the unpaid bills without requiring P to establish he "actually incurred" those expenses, by admitting evidence of the bills paid by P's insurer, and by excluding evidence that P's attorney "referred [P] to the lien-physicians." Remarkably, the *Qaadir* court concluded that the lower court's errors were each "harmless," and, despite D's vehement arguments to the contrary, that the jury's multi-million damages award was not a cumulative result of the errors made during trial.