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# California Tort Damages Alert

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## Injured Plaintiffs May Not Recover Medical Expenses Billed To But Not Paid By Health Insurer

The California Supreme Court issued a significant decision today, August 18, 2011, regarding the extent of the Collateral Source Rule. In *Howell v. Hamilton Meats & Provision, Inc.*, \_\_ Cal.4th \_\_ (S179115) (2011) the court held the subject rule ... "DOES NOT EXPAND THE SCOPE OF ECONOMIC DAMAGES TO INCLUDE EXPENSES THE PLAINTIFF NEVER INCURRED."

The specific issue addressed is whether recovery of medical damages is limited to amounts providers are actually paid or extends to the amounts of their undiscounted bills. In summary, the Court stated:

"When a tortiously injured person receives medical care for his or her injuries, the provider of that care often accepts as full payment, pursuant to a preexisting contract with the injured person's health insurer, an amount less than that stated in the provider's bill. In that circumstance, may the injured person recover from the tortfeasor, as economic damages for past medical expenses, the undiscounted sum stated in the provider's bill but never paid by or on behalf of the injured person? We hold no such recovery is allowed, for the simple reason that the injured plaintiff did not suffer any economic loss in that amount. (See Civ. Code, §§ 3281 [damages are awarded to compensate for detriment suffered], 3282 [detriment is a loss or harm to person or property].)

The collateral source rule, which precludes deduction of compensation the plaintiff has received from sources independent of the tortfeasor from damages the plaintiff "would otherwise collect from the tortfeasor" (*Helfend v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 1, 6 (*Helfend*)), ensures that plaintiff here may recover in damages the amounts her insurer paid for her medical care. 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. They are neither paid to the providers on the plaintiff's behalf nor paid to the plaintiff in indemnity of his or her expenses. Because they do not represent an economic loss for the plaintiff, they are not recoverable in the first instance. The collateral source rule precludes certain deductions against otherwise recoverable damages, but does not expand the scope of economic damages to include expenses the plaintiff never incurred."

Accordingly, the 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 trial." Furthermore, evidence of the amount of payment made by the private health insurer is admissible at trial. HOWEVER, evidence that such payments were made whole or in part by an insurer remains generally inadmissible under the evidentiary aspect of the collateral source rule.

NOTE: In the case in chief, the defense presented evidence in a post trial motion of what was described as the NEGOTIATED RATE DIFFERENTIAL, that is, documentary proof of what was actually paid by the health insurer for the medical services rendered and declarations that the providers waived any claims to pursue the difference between the total amount charged to the patient and the payments made.

In evaluating exposure and negotiating settlements, defendants and their insurers are well advised to secure proof of actual payments made by the plaintiff's health and other insurers, rather than relying upon bills that are routinely heavily discounted.

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