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Justices Cap Medical Damages at Amount Paid, Not Billed

For nearly two years, California appellate courts have been issuing contradictory, confusing rulings about how much money injured tort plaintiffs can collect for medical bills from those who caused their injuries.

Last month, the California Supreme Court finally settled the controversy: An injured plaintiff gets only what her doctors and hospitals accepted as full payment from the plaintiff's health insurers. Even though the doctors and hospitals almost certainly issued bills for much more, the plaintiff cannot demand that unpaid extra amount, the high court held in Howell v. Hamilton Meats and Provisions, Inc.

"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 ruled 6-1.

The dispute centers on a strange fact of modern medical economics. Health insurance companies wring steep discounts from doctors and hospitals, who respond by raising their stated rates.

For instance, in this case, Rebecca Howell was seriously injured in a traffic accident and ran up hospital bills of nearly $190,000. But her health insurer paid the hospitals only $60,000, as allowed by the insurer's contracts with the hospitals. Those contracts also prevented the hospitals from billing Howell for the difference.

An appellate court ruled Howell could recover the full $190,000 from the defendant because the "negotiated rate differential" of $130,000 fell under the "collateral source rule." That ancient legal doctrine declares that the damages a defendant owes should not be reduced just because the plaintiff has an alternative way, such as insurance, to pay for her injuries.

The appellate court in that case — like others in similar cases — gave several reasons to justify making the defendant pay the full bill rather than the actual, discounted amounts.

(The appellate court ruling in the *Howell* case was described in The Rodolff Law Firm, APC, newsletter in January 2010. One of the rulings in a similar case was discussed in The Rodolff Law Firm, APC, newsletter in July that year, while yet another appeared in the October 2010 newsletter.)

First, it would be unfair, the courts said, to let defendants pay less to insured plaintiffs than to uninsured plaintiffs. Also, California law requires defendants to pay "reasonable" damages, but the discounted bills aren't necessarily reasonable. Finally, the appellate courts said, people who are sensible enough to have health insurance "should receive the benefit of [their] thrift" via the extra damages, which in a sense would reimburse their premiums.

In its lengthy opinion, the Supreme Court batted down each argument.

The fact that an uninsured plaintiff might recover more than an insured one may seem fortuitous, but "fortuity is a fact of life and litigation," the court said. A defendant who injures an insured person should not have to pay for an economic loss that plaintiff didn't actually suffer "merely because a different defendant may have to compensate a different plaintiff who has suffered such a loss."

Further, the requirement to pay the "reasonable value" of medical services is designed only to limit damages. It doesn't expand them "beyond the plaintiff's actual loss or liability," the court held. "To be recoverable, a medical expense must be both incurred *and* reasonable."

Since the plaintiff never incurred the extra, undiscounted portion of the charges, the collateral source rule doesn't apply to them at all, the court declared.

In any event, trying to calculate the "reasonable value" of medical services these days is difficult and unnecessary. "[P]ricing of medical services is highly complex and depends, to a significant extent, on the identity of the payer. … Given this state of medical economics, how a market value other than that produced by negotiation between the insurer and the provider could be identified is unclear."

Additionally, it said that the plaintiff's health insurance premiums paid for the right to have medical bills covered at discounted rates, while without those discounts her "premiums presumably would have been higher, not lower."

And finally, the rate discount is a benefit for the health insurance company, not the insured plaintiff. Therefore, it "lies outside the operation of the collateral source rule."

Your Independent Contractor Is Also Your Job-Safety Delegate

The California Supreme Court has again strengthened its rule that businesses or landowners who hire independent contractors usually can't be held liable when the contractors' employees are injured on the job.

That rule applies, the Supreme Court declared last month, even if the employee was injured because the business that hired the contractor-employer had violated mandatory Cal-OSHA safety regulations.

That's because when a business hires an independent contractor, it "implicitly delegates to the contractor any tort law duty it owes to the contractor's employees to ensure the safety of the specific workplace," including any duty "to comply with applicable statutory or regulatory safety requirements," the court explained in *Seabright Insurance Co. v. US Airways Inc.*

US Airways hired an independent company, Lloyd W. Aubry Co., to maintain and repair its luggage conveyor-belt system at San Francisco International Airport. One of Aubry's employees injured his arm working on the belts, which lacked safety shielding required by state workplace safety regulations. He and Aubry's workers' compensation carrier sued the airline.

Relying on a series of Supreme Court decisions known as *Privette-Toland*, a trial judge threw out the lawsuit. Those decisions say an independent contractor employee is limited to collecting benefits from his

own employer's workers' compensation coverage. He cannot also seek damages from a business that hires his employer.

A Court of Appeal reversed, declaring that conveyor-repair company's "hirer" — US Airways — could be sued because the airline had failed in its duty to obey mandatory safety regulations, thereby contributing to the man's injuries. That duty could not be shifted away to the independent contractor, the appellate court ruled, as described in the The Rodolff Law Firm, APC, newsletter last year.

The Supreme Court reversed yet again. It rejected the notion that the duty to comply with the regulations could not be delegated to Aubry as part the two companies' contract.

The *Privette* line of cases "establishes that an independent contractor's hirer presumptively delegates to that contractor its tort law duty to provide a safe workplace for the contractor's employees," the Supreme Court noted. A duty would be nondelegable only if a statute specifically says so — not the case here — or if "the duty preexists and does not arise from the contract with the independent contractor."

While US Airways always had a duty to protect its own employees, that duty didn't extend to the employees of an independent contractor, as 1971 changes to California's Labor Code made clear.

Therefore, any possible duty to protect Aubry's employees "did not predate defendant's contract with Aubry; rather, it arose out of the contract," the Supreme Court held.

"Any tort law duty US Airways owed to Aubry's employees only existed because of the work … that Aubry was performing for the airline, and therefore it did not fall within the nondelegable duties doctrine."

Supreme Court Rejects Double Trouble for Driver's Employer

If a business puts an employee with a bad driving record out on the road for work and the employee then causes an accident, the business could be sued for negligence. Alternatively, the business could be sued simply because it is the bad driver's employer under a legal doctrine, known as vicarious liability or respondeat superior, that generally holds employers' responsible for their employees' work-related actions.

Thanks to a recent California Supreme Court decision, however, the business can't be sued for both. "[A]n employer's admission of vicarious liability for its employee's negligence makes claims of negligent entrustment, hiring, or retention irrelevant," the unanimous high court held in *Diaz v. Carcamo*.

The Supreme Court had come to the same conclusion back in 1954, but a Court of Appeal ruling in the current case said California law had changed during the intervening years.

The alleged bad driver in this case, Jose Carcamo, was a trucker for a company called Sugar Transport, who was involved in an accident with plaintiff Dawn Renae Diaz and a third driver. In her lawsuit, Diaz alleged Sugar Transport was negligent for hiring Carcamo because he had been in two previous accidents, lied on his job application and been fired from a few earlier jobs.

Sugar Transport conceded that it was vicariously liable for its driver's part of the accident, but the trial court and the Court of Appeal ruled the company also could be held individually liable for negligence in allowing Carcamo to drive at all.

The reason, according to the appellate court, was California's switch in 1975 to a "comparative negligence" system, which apportions liability for an injury among all "those whose negligence caused it in direct proportion to their respective fault." Under that system, the company's own negligence had to be tallied separately from the driver's, the lower courts said.

The Supreme Court seemed to consider that argument illogical. "No matter how negligent an employer was in entrusting a vehicle to an employee, however, it is only if the employee then drove negligently that the employer can be liable for negligent entrustment, hiring, or retention," the court said.

"If the employee did not drive negligently, and thus is zero percent at fault, then the employer's share of fault is zero percent. That is true even if the employer entrusted its vehicle to an employee whom it knew, or should have known, to be a habitually careless driver with a history of accidents."

(In a footnote, the court said there could be situations in which an employer might be found independently negligent, such as if it has the driver use a defective vehicle.)

Limiting the employer's liability to respondeat superior can make a big difference, the Supreme Court noted. In this case, the jury assigned 35 percent of the fault to Sugar Transport, 20 percent to Carcamo and the remaining 45 percent to the third driver. That meant the company owed a total 55 percent of the noneconomic damages.

But if the jury's only choices had been the trucker and other driver, it might not have saddled Carmaco — and, vicariously, Sugar Transport — with that large a share of the fault.

"In other words, being responsible for only one out of two shares of fault (rather than two out of three shares of fault) would probably have worked in Sugar Transport's favor."

Recent Matters:

A key aspect to the legal representation offered by **The Rodolff Law Firm, APC** is our ability to pinpoint the key issues that can turn the case in our client's favor, such as exploiting discrepancies between deposition testimony and medical records, or disputing the causal relationship between the accident and the alleged injury. Here are a few examples from recent cases:

- **Hospital:** Slip and fall incident resulting in the plaintiff having a multi-level lumbar fusion surgery. The workers' compensation lien was $270,000 and the demand was $700,000. In this case, there were voluminous medical records, which The Rodolff Law Firm, APC reviewed and painstakingly compared to the plaintiff's deposition testimony. The inconsistencies discovered led to the plaintiff's counsel doubting his own client, resulting in a settlement of only $35,000.
- **Automobile accident:** In a case of clear liability for a rear-end collision caused by our client's driver, the economic damages were $90,000 and the demand was $300,000. We were able to settle for only $115,000, a significant result that was less than one-third of the potential claim value.
- **Quick service restaurant:** The plaintiff suffered a slip and fall injury that purportedly caused the need for two knee replacement surgeries. The demand at the Mandatory Settlement Conference was $300,000, yet we settled for only $25,000. A key aspect of winning this case was the decision to use sub rosa methods to catch the plaintiff in acts which compromised his case.

Personal injury matters, whether involving premises liability, automobiles or product liability, can be multifaceted and complex. These cases can turn on seemingly minor facts. The lawyers at **The Rodolff Law Firm, APC** have decades of experience in defending businesses, restaurants, store owners, construction and maintenance companies, and others against such litigation. **The Rodolff Law Firm, APC** is prepared to assist your business. Contact us today regarding your matter.

Barry L. Rodolff

The founder and president of The Rodolff Law Firm, APC, Barry L. Rodolff, is a highly experienced lawyer who has been assisting clients faced with civil litigation for more than two decades. Mr. Rodolff developed his skills with two well-respected defense firms, Schell & Delamer, and Haight, Brown & Bonesteel. He also worked in-house at Travelers Insurance Company, representing a variety of insured companies in many types of litigation. His clients have ranged from small businesses to multinational corporations. Mr. Rodolff brings extensive experience and knowledge in the defense of litigation involving premises liability, business, product liability, personal injury, employment, construction defect, and intentional torts.