



EXPERIENCED • THOROUGH • RESPONSIVE • COST-CONSCIOUS

Legal Viewpoint

114 Pacifica, Suite 250, Irvine, CA 92618-3321
(949) 341-0400 - phone (949) 341-0444 - fax

www.rodolfflaw.com
info@rodolfflaw.com

Volume 1, Issue 1

Court Rules Plaintiff Gets “Benefit” of Hospital Discount to Insurer

It makes perfect sense that someone who injures someone else should only have to pay the actual amount of the expenses and nothing more.

It has been argued that it also makes perfect sense that a tortfeasor should pay all of the injured person’s medical expenses, without any deductions for insurance or tricky accounting.

Those two competing ideas have been butting heads in California courts for more than two decades, spurred on by the complications of modern health insurance. A decision from an appellate court in San Diego in late November seems likely to send the conflict to the California Supreme Court very soon.

The case, *Howell v. Hamilton Meats and Provisions, Inc.*, D053620, involves a woman, Rebecca Howell, seriously injured in an auto accident when a Hamilton Meats trucker made an illegal U-turn. A one-time professional surfer, she needed three spinal surgeries and other treatment at two hospitals, which the hospitals charged out at just shy of \$190,000.

But Howell had health insurance with PacificCare, and PacificCare had contracts with the hospitals. Under those contracts, the hospitals had agreed in advance to discount their various charges by a whopping two-thirds, meaning that in this case, they accepted just \$60,000 to cover all of Howell’s medical bills.

So how much should Hamilton Meats and its auto insurer have to pay the ex-surfer? Under the first rule above, they should pay only \$60,000. Under the second, the full amount of \$190,000 should be paid.

After a jury trial, a judge awarded the lower amount, but in the new decision, the appellate court reversed. It described the hospitals’ \$130,000 discount to the health insurers as a “negotiated rate differential,” and it ruled that differential was a “benefit” that belonged to Howell, the person who had paid for the health insurance in the first place.

“We hold that in a personal injury case in which the plaintiff has private health care insurance, the negotiated rate differential is a benefit within the meaning of the collateral source rule, and thus the plaintiff may recover the amount of that differential as part of her recovery of economic damages for the past medical expenses she incurred for care and treatment of her injuries.”

The collateral source rule is the formal legal statement of the second rule. Typically, it means that if an injured plaintiff happens to have some alternative way to pay for her injuries, “such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor,” the

appellate court wrote, quoting a precedent. In practice, the rule also means that a jury won't learn about an injured plaintiff's insurance coverage or other outside compensation.

But then there's that first idea. The California Civil Code states that "economic damages" include "objectively verifiable monetary losses including medical expenses." A century-old precedent says to calculate the value of medical services as "the necessary and reasonable value of such services as may have been ... necessarily expended or incurred in treating the injury."

Under the hospitals' contracts with PacificCare, the defendant company pointed out, only \$60,000 was "necessarily expended" in treating Howell. Moreover, the hospitals, by contract, were satisfied with that amount and were not going to pursue Howell for the \$130,000 differential.

But the appellate court was impressed by the fact that they might have. She had signed admission forms promising to pay any and all costs not paid by insurance, after all.

The fact that the hospitals didn't demand that extra money grew out of their contracts with PacificCare, which they had entered into in exchange for a large supply of insured patients. While the hospitals and the insurer got the benefit of business, the injured Ms. Howell got the benefit of the disappearing \$130,000 debt, the court observed.

That benefit to Howell "was a collateral source benefit within the meaning of the collateral source rule because it was conferred upon her as a direct result of her own thrift and foresight in procuring private health care insurance," the court held.

Therefore, that \$130,000 benefit cannot be counted against her total judgment. "Howell, as a person who has invested insurance premiums to assure her medical care, should receive the benefits of her thrift; and Hamilton, as the party liable for Howell's injuries, should not garner the benefits of Howell's providence," the court explained.

In its decision, the San Diego appellate court disagreed with an earlier, conflicting decision from a different California appellate panel. Given that fact, plus the difficulty of figuring out what one legal writer had already called "the collateral source conundrum," the California Supreme Court may well decide to take over the *Howell v. Hamilton Meat* decision shortly.

In the meantime, the appellate court recommended that any "changes to the collateral source rule should be made by the Legislature."

New California Laws in 2010 on Civil Litigation

With the arrival of 2010, hundreds of new laws took effect in California. Among the new laws gathering attention in the media are ones to recognize same sex marriages from other states, limit the sale of bullets, ban docking the tails of cattle, hold publishers liable when paparazzi swarm celebrities, and — a little late — makes mortgage fraud a crime.

But Gov. Arnold Schwarzenegger signed a total of 692 bills in late summer and early fall, including several from special sessions of the Legislature. He also vetoed 257 bills and trimmed three more bills with line-item vetoes.

Among all those, however, businesses and insurers concerned about lawsuits should pay attention to at least a dozen new laws. They include laws toughening ethical rules in arbitrations, giving Good Samaritans and rescue workers greater immunity from lawsuits and boosting protections for structured settlements.

LITIGATION AND PROCEDURE

Ethics in Arbitration — AB 1090 prohibits arbitrators by contract from getting out from under ethics standards imposed on them by the state Judicial Council. The new law declares parties to an arbitration cannot agree to waive the ethics rules.

Electronic Discovery — AB 5 lays out procedures to conduct pre-litigation discovery of documents and other information stored in electronic forms. It also allows discovery not just by “inspection” of documents, tangible things land and other property, but by “copying, testing or sampling” as well.

Free Civil Lawyers — California will become the first state to provide free legal assistance to poor people in select civil cases under AB 590. The new law sets up a series of three-year pilot projects in select counties that would provide free legal services to low-income people who are caught up in civil matters “involving critical issues affecting basic human needs” such as housing, custody, family law, domestic violence and conservatorships.

JUDGMENTS AND SETTLEMENTS

Structured Settlement Transfers — Injured plaintiffs often receive judgments or settlements “structured” to be paid out over time. But businesses now advertise to buy that future cash stream in exchange for paying the plaintiff a reduced lump sum. While California law requires courts to approve those settlement transfers, SB 510 further refines those restrictions and specifies factors the courts must weigh.

Judgment Liens — AB 121 allows a winning plaintiff in a lawsuit to keep an initial judgment lien running against the losing defendant without losing priority and dropping behind other creditors after five years. Under the statute, the creditor files a “continuation statement” for the initial lien every five years.

Foreign Judgment Liens — AB 1549 brings back the ability of a judgment creditor to obtain a lien against California property of a business incorporated out of state. Changes to the Commercial Code in 2001 had accidentally thwarted that ability.

Foreign Defamation Judgments — California courts will enforce money judgments from foreign countries, with certain exceptions. New this year, thanks to SB 320, is an exception blocking defamation judgments from countries that don’t protect free expression as well as California.

Homestead Exemptions — AB 1046 boosts the protection from judgments that homeowners can guarantee in their homes by \$25,000 across the board. The new law also orders the state Judicial Council to re-evaluate homestead levels every three year.

LIABILITY IMMUNITY

Good Samaritans — Undoing a California Supreme Court ruling from last year, AB 83 makes absolutely clear that anyone who, in good faith, gives medical or non-medical aid at an emergency won’t be liable for causing injuries, absent gross negligence or willful misconduct. A second law, SB 39, specifically immunizes emergency workers during disasters.

AUTO ACCIDENTS

Accident Reports for Attorneys — Insurers and insurance organizations generally must keep personal information about policyholders confidential. AB 470 creates an exception allowing attorneys for insureds to receive copies of accident, police and similar reports that the insured otherwise could receive.

Auto-Body Repair Information — AB 1179 requires auto insurers to tell policyholders they can seek a body-repair estimate directly from an independent shop. But AB 1200 allows the insurance companies to give claimants notices listing reasons to use the companies’ preferred shops.

INSURANCE AND SECURITY

Private Fire Mitigation Services — Some insurers have been sending in fire-prevention teams to protect insured homes in a fire zone. AB 1214 requires those teams to check in and work under the on-scene fire-fighting command.

In-House Private Security — SB 741 sets up licensing and authorizes regulation of private security guards who work directly for employers, much like those already on the books covering contract security services.

Copyright 2010 The Rodolff Law Firm, APC

All rights reserved. This material is proprietary and may not be reproduced, transferred or distributed in any form without prior written permission.