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Quick Links:

Volume 6, Issue 3

About Us

Services

Newsletter archives

Contact Us

Are Medical Bills 'Reasonable?' For Uninsured, Maybe Yes

In 2011, when the state Supreme Court decided *Howell v. Hamilton Meats & Provisions Inc.*, it resolved a persistent issue in California law dealing with damages in personal injury cases — or mostly resolved it.

In that landmark decision, the justices ruled that an injured plaintiff can collect damages equal only to the "reasonable value" of medical the medical services and capped by the amount his health insurer paid for his care. He cannot collect the much higher amount his doctors and hospitals billed.

Left largely unexplored was how to calculate damages if the injured person has no medical insurance and the providers haven't yet been paid anything.

Recently, a state Court of Appeal tackled that question in *Bermudez v. Ciolek*. It concluded that for a plaintiff who has no insurance or has received treatment on a lien, the proper measure of damages "will usually turn on a wide-ranging inquiry into the reasonable value of medical services provided."

The decision arose from a 2012 two-car accident at an intersection in Fountain Valley. In the collision, one car ricocheted onto the sidewalk and severely injured a man standing at the corner astride his bicycle. He needed several surgeries and months of treatments, and he had no insurance.

In a trial, the jury found one driver liable and awarded the injured plaintiff more than $3.7 million in damages, including the full $445,430 he had been billed for past treatment. The driver appealed, arguing in part that the medical charges were unreasonable.

The appellate court agreed that the key question is reasonableness and that "uninsured plaintiffs will typically incur standard, nondiscounted charges that will be challenged as unreasonable by defendants." But it also held that those "nondiscounted charges" can be considered as evidence in the hunt for the reasonable value of the services.

A previous Court of Appeal opinion involving a plaintiff with insurance had held that billed amounts were irrelevant to prove medical expenses. But this court, with an uninsured plaintiff, held the bills were relevant and admissible in determining the amount incurred for medical services and as a starting point in

determining the reasonable value of the services. However, the billed amount was "not sufficient evidence on its own to prove the reasonable amount of medical damages."

In this case, the plaintiff had testimony from two experts, including one of his treating surgeons. Both said most of the charges were reasonable but that a few were not. In total, the plaintiffs experts said the plaintiff had been charged about $46,000 too much. Based on that, the appellate court simply reduced the jury's award by that that excess amount and otherwise affirmed.

The court noted that the defendant's "real complaint" was that the plaintiff's experts did not sufficiently link their opinions "to a market or exchange value of medical services." But, it cautioned, the defendant was wrong to suggest that an uninsured plaintiff "is necessarily in the same market as insured healthcare recipients or wealthy healthcare recipients who can pay cash."

Go Faster: Risky Advice for a Passenger to Give to a Driver

Back in the days of James Dean and Arthur Fonzarelli, when hot-rods ruled the roads, California appellate courts held that one drag racer could be liable for an accident caused by his racing opponent. The analysis was that the first racer encouraged the other to drive recklessly.

Earlier this summer, another appellate court extended the analysis to cover a passenger. The court in *Navarrete v. Meyer* ruled that a passenger who urged a young driver to speed down a long residential road could be found liable in the death of a man struck by the car she was riding in.

"Indeed, the fact [the defendant] was a passenger in [the driver's] vehicle rather than driving a separate car strengthens the inference that she encouraged and incited him, and that they jointly engaged in a series of acts that led directly to the collision with [the victim's] vehicle," the court said.

The accident in the case happened the evening of Thanksgiving 2009. A newly licensed 18-year-old was heading to the store with his girlfriend and another friend, according to news accounts. The girlfriend told him to take a shortcut down Skyview Drive and to speed over the speed control dips there so that the car would "catch air." She had done it many times before, she said. It would be fun. "Go faster," she said as he raced down the 25-mile-per-hour road.

According to the computer in his mother's Saturn, he hit 81 miles per hour at one point. "He accelerated to such a degree that he caught air from the dips and lost control of the car," the court wrote. He veered into a parked SUV, killing and severing the legs of a man placing his toddler in a child seat. The man's wife and children, also injured in the accident, sued the young driver and his girlfriend.

Reversing a summary judgment, the court ruled that a jury could find the girlfriend liable on several grounds: for acting in concert with him, for conspiracy or for unreasonably interfering with the safe operation of his car in violation of a Vehicle Code section.

Her encouragement to speed on "a street with unique dangers was clearly wrong" and the injuries that occurred were clearly foreseeable. Under a conspiracy analysis, a jury reasonably could conclude that the driver and girlfriend "expressly or tacitly agreed that [he] would engage in an unlawful exhibition of speed."

The court noted that in drag-racing and similar cases, other courts had held that "inciting and encouraging one another to drive at a fast and reckless rate of speed furnished the necessary proximate cause" to find both racers liable. In this case, a jury reasonably could infer that the young driver accelerated at his girlfriend's request so they "could observe and experience the car 'gain air,' as she had experienced in past trips along that road," the court held.

Her past experience with Skyview Drive was "a critical fact," according to the court. When she urged him to go faster, "she did so with special knowledge of the likelihood that his speeding vehicle would leave the roadway," the court held. "Indeed, a reasonable trier of fact could conclude … that [she] specifically intended that result."

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.

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