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

www.rodolfflaw.com
info@rodolfflaw.com

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Satisfied Liens Don't Satisfy Court As Value of Treatment

Ever since the California Supreme Court declared in a landmark 2011 opinion that a tort victim cannot collect more in medical damages than his doctors and hospitals agreed to accept from his health insurance, attorneys for tort plaintiffs have sought ways around the ruling. One popular approach involves bypassing insurance and instead arranging for medical providers to be paid from liens against the injured plaintiff's future awards or settlements.

Those attempts have not always succeeded, but a new ruling from the state Court of Appeal in Sacramento gives some of them a boost.

Under longstanding California law, a personal injury plaintiff may collect only the "reasonable value" of medical services. But according to the Supreme Court in *Howell v. Hamilton Meats & Provisions, Inc.*, the plaintiff can never recover more than the amount his providers accepted from insurers as payment in full— even if the reasonable value is greater — "for the simple reason that the injured plaintiff did not suffer any economic loss" beyond that amount.

In the new case, the auto accident plaintiff case had no insurance. Instead, her doctor and hospital took liens from her to cover her back surgery bills and then sold off the liens at a discount to a medicals receivables company, or "factor," to collect. She remained responsible to the factor for the full amount of the providers' bills.

The trial judge not only did not cap the plaintiff's damages at the amount the providers accepted from the factor, it did not even allow that discounted amount to come into evidence.

It did allow the jury to learn how much the doctors and hospital had billed the plaintiff. The jury awarded her that full amount: $261,773, for her past medical expenses.

There were two unusual aspects to the case. First, the parties had stipulated that "the billed amounts were "reasonable in amount and were incurred by plaintiff." Second, the defense offered no expert evidence that the amount of the providers' bills were not reasonable.

The Court of Appeal held the judge properly excluded evidence about the factor's payments. "The fact that a hospital or doctor, for administrative or economic convenience, decides to sell a debt to a third party at a discount does not reduce the value of the services provided in the first place," the court ruled in *Uspenskaya v. Meline*, quoting an earlier opinion.

Although the amount the providers accepted from the factor was relevant to determining the reasonable value of the plaintiff's treatment, it also likely would have confused the jury. In this situation, the factor's "purchase price represents a reasonable approximation of the collectability of the debt rather than a reasonable approximation of the value of the plaintiff's medical services," the court held.

As a different appellate court held in June, when a plaintiff has no medical insurance, "the measure of damages … will usually turn on a wide-ranging inquiry into the reasonable value of medical services provided."

The *Uspenskaya* case makes it clear that defense counsel should be careful about their stipulations regarding medical expenses and should have an expert lined up to testify about the reasonable value of those expenses.

Court Warns Defendants: If You Can't Win, Admit It

If the evidence is against you, you might as well admit it.

That's the message from a California Court of Appeal in an opinion on the uncommon but powerful issue of costs-of-proof awards related to requests for admission.

"To justify denial of a request [for admission], a party must have a 'reasonable ground' to believe he would prevail on the issue" during a trial. "That means more than a hope or a roll of the dice," the court held in *Grace v. Mansourian*.

The case grew out of an ordinary traffic accident in which one car crashed into another in an intersection controlled by traffic signals. The driver of the second car suffered ankle, back and neck injuries, and he sued the other driver, as well as the owner of that driver's car.

The defendant driver insisted the light was yellow when he entered the intersection, but the plaintiff claimed otherwise. A witness reported the light was red. The investigating officer and an accident reconstructionist concluded the defendant was at fault.

During pretrial discovery, the plaintiff sent the driver formal requests for admission asking him to admit that he had failed to stop at a red light, that he was negligent and that the negligence caused the accident and injuries, among other requests. The defendant denied them all.

A jury awarded the plaintiff just over $410,000. Then, the plaintiff's attorney asked the trial judge to award another $199,000 in attorneys' fees and costs "to recover expenses incurred in proving the facts defendants denied."

The judge declined, but the Court of Appeal reversed. The Code of Civil Procedure allows a party whose requests for admission were rejected to collect reasonable fees and costs for proving the same facts at trial — unless the other side "had reasonable ground to believe [he or she] would prevail on the matter" or "[t]here was other good reason for the failure to admit," according to the statute.

In this case, the appellate court suggested, the errant driver might have felt sure he didn't run a red light, but he had no "reasonable ground" to believe he could persuade the jury of that.

"The question is not whether defendant reasonably believed he did not run the red light but whether he reasonably believed he would prevail on that issue at trial," the court said.

During the trial over this accident, the plaintiff had evidence from the witness, the investigator and the expert indicating the light was red. The defendant only had his own testimony.

That wasn't enough, the court held. "[T]he mere fact defendants presented evidence at trial is not an automatic justification for denial of the requests. Rather, the issue is whether, in light of that evidence, defendants could reasonably believe they would prevail."

On appeal, the defense argued that simply refusing to concede a key issue shouldn't lead to a costs award.

"The statute states otherwise," the appellate court noted. While a party can't be forced to admit any fact, "the failure to do so comes with consequences, exposure to a costs of proof award."

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.