

Practical Implications Of Howell v. Hamilton Meat

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The collateral source rule in a personal injury action or tort claim generally prevents the admission of evidence that the plaintiff will be compensated from a source other than the defendant for his/her injuries. This rule prevents the admission of evidence, for example, that medical insurance or Workers Compensation will pay a plaintiff's medical bills.

The idea behind the collateral source rule is that the defendant should be at fault for its actions and not avoid liability because the injured party happens to have insurance or some other payment source. Since many insurance and third party payments are subject to a lien or subrogation, the plaintiff is likely responsible for reimbursing the insurer from any damages award anyway.

But in many situations an insured plaintiff who incurs medical expense as a result of personal injury still benefits from insurance because they are only required to pay the negotiated rate that the insurance company has agreed to with the medical provider. Negotiated rates between insurance companies and medical providers are typically less than the standard or customary rate the medical provider charges.

The question then becomes, should the defendant benefit from these lower negotiated rates? Or should the court award of tort damages to an injured plaintiff for medical expense equal the medical provider's standard or customary charge?

If the collateral source rule prevents admission into evidence of the difference between the negotiated rate actually paid and the full amount originally charged by the medical provider, regardless of the fact that the medical provider may not reasonably expect the full rate to be paid, the amount of damages awarded for medical expenses will be greater than the amount the plaintiff actually incurred under the lower negotiated rate.

In most cases, the full rate charged by a medical provider is then discounted or adjusted before it is actually paid. There continues to be an argument between the actual value of what defines the reasonable value for health care services that are provided to a plaintiff, and therefore what the maximum value that should be awarded as damages.

In [*Howell v. Hamilton Meats*](#) (2011) 52 C.4th 541, 129 C.R.3d 325, 257 P.3d 1130, the Supreme Court of California settled the argument by determining that the lower contracted rates are the reasonable and customary medical fees for the purpose of determining damages. According to an [article](#) by a retired Associate Justice of the California Court of Appeal, "the negotiated rate differential (the difference between the medical provider's customary charges and the charge it agrees to receive as payment-in-full from plaintiff's insurance) is not a collateral benefit recoverable by plaintiff under the collateral source."

This holding was once again confirmed in a by a recent unreported Court of Appeal decision, *Shimabukuro v. Ibarra* (October 23, 2012).

What sometimes remains unclear is how this decision impacts cases in which no medical insurance or third party payment source exists. What happens, for example, if a medical provider writes off a medical bill due to cash payment by the injured party, or thereafter provides care on a lien basis subject to an agreement to be paid some undisclosed lesser amount after a lawsuit is settled. Does this mean that the injured party is then entitled to

recover the full billed value of such medical services as damages, even when the medical provider does not reasonably expect to receive that amount for the care that was provided?

While the legal issues addressed in Howell continue to evolve, defendants in tort actions should carefully evaluate the medical special damages being sought to ensure compliance with Howell wherever possible. It's worth noting that there is no fixed fee schedule for medical procedures in the State of California, and most of the costs that are paid for medical care under a Howell analysis are based on an insurance company's proprietary medical fee schedules. In these cases, parties often look to expert testimony for a determination of the reasonable medical costs for damage purposes when there is no insurance.

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