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California Supreme Court Accepts Review of *Howell*: Will the Collateral Source Rule Be Extended to Cover Non-Discounted Medical Expenses?

The collateral source rule is familiar to every attorney in California. Every attorney recalls spending time studying the rule in law school. The collateral source rule is critical to people injured by the wrongful conduct of tortfeasors, whether they be an individual involved in an auto accident or multinational corporations committing mass torts. The collateral source rule says is that if an injured plaintiff had the prudence to obtain insurance (whether it is life, health or disability insurance), the defendant who injures the plaintiff cannot get the benefit of that prudence by obtaining an offset from the plaintiff's damages.

The California Supreme Court has long held this doctrine sacred. *Helfend v. Southern California Rapid Transit District*, 2 Cal. 3d. 1 (1970). In the 1980s, the California Legislature authorized and encouraged doctors, hospitals and health plans to negotiate and enter into contracts for their mutual benefit. Thus was born managed care which encouraged health providers to lower costs in exchange for a ready source of patients covered by insurance. Thus, if a patient is a health plan member, and chooses doctors and hospitals that have a contract with their health plan, despite the fact that the patient incurs a certain regular, non-discounted charge to their medical providers, those providers will receive a lesser negotiated by their insurance companies. This model has worked somewhat successfully in holding down health care costs.

Very often, plaintiffs will incur detriment in the form of personal financial liability when they execute written agreements in which they agree to be financially responsible for all charges for the medical services provided to them. For example, written contracts with healthcare providers state that they agree that, in consideration for all services received, they are obligated to pay the provider's "usual and customary charges for such services." These written contracts often provide that it is "[plaintiff's] responsibility to pay any balance not paid for by [plaintiff's] insurance."

The collateral source issue arises when a tort defendant, despite Insurance Code Section 10133(b) that expressly says those negotiated rates are benefits to health plan members, want reduce a plaintiff's damages by discounting their liability.

Recently, the California court of appeals handed down *Howell v. Hamilton Meats & Provisions, Inc.*, 179 Cal. App. 4th 686 (2009), the first case to analyze these negotiated rate differentials under California's collateral source rule. The Court held that the amount of damages to which a plaintiff is entitled is the non-discounted

value of the health provider's services, not merely the discounted amount the insurer actually paid. The court explained it reasoning as follows:

> *We conclude that the extinguishment of a portion of Howell's debt to Scripps and CORE in the amount of the negotiated rate differential ($130,286.90) was a benefit to Howell because she was no longer personally liable for that portion of the debt she personally incurred in obtaining medical treatment for her injuries.*
>
> *We also conclude that this 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 through PacifiCare, a source wholly independent of Hamilton as the defendant in this case. Under California's collateral source rule (paraphrasing Helfend, supra, 2 Cal.3d at pp. 9-10, 84 Cal.Rptr. 173, 465 P.2d 61), 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 law allows Howell to keep this collateral source benefit for herself because (paraphrasing the Restatement Second of Torts) she was responsible for the benefit by maintaining her own insurance. (Rest.2d Torts, § 920A, com. (b).)*

The California Supreme Court granted review in *Howell* on March 11. Given the Supreme Court's decision in *Parnell v. Adventist Health System/West*, 35 Cal. 4th 595 (2005) (Hospital could not assert lien under Hospital Lien Act against any judgment or settlement accruing to patient in underlying action to recover the difference between provider's discounted payment and the hospital's "usual and customary" charges; under the agreement with provider hospital that agreed to accept discounted amount as "payment in full") and its decisions in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 117 (1995), and *Mercy Hospital and Medical Center v. Farmers Insurance Group of Companies*, 15 Cal. 4th 213 (1997)(where the Supreme Court confirmed that a medical provider and patient have a creditor-debtor relationship for the provider's usual rates), the Supreme Court will have ample related precedent to affirm.

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