

Collateral Source Rule Does Not Preclude Introducing "Negotiated Rates" of Past Medical Costs in Workers' Compensation Benefits Action

Toxic Tort and Environmental Law Update

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In *Lydia Sanchez v. Darrell G. Brooke, et. al.*, (March 8, 2012, B224835), California's Court of Appeal, Second District, acknowledged and extended the recent California Supreme Court decision in *Howell v. Hamilton Meats & Provisions, Inc.*, 52 Cal.4th 541 (2011), finding that the collateral source rule does not preclude a defendant from introducing evidence of the "negotiated rate differential" paid as part of a plaintiff's workers' compensation benefits, thereby reducing recoverable damages.

In *Sanchez*, the plaintiff, an in-home health care provider, sued the estate of her patient for injuries stemming from a fire caused by the patient. The defendants asserted the affirmative defense of comparative negligence of the plaintiff and her employer, Western Health Resources. Western was not a plaintiff to the action but did have a lien against the plaintiff's award to recover for workers' compensation benefits paid to the plaintiff. The jury found that both defendants and Western were liable for the plaintiff's injuries, apportioning 50 percent of the fault to the defendants and 50 percent to Western. The jury awarded \$603,000 in economic damages, consisting of \$575,000 in past medical expenses and \$28,000 in lost earnings. Both the plaintiff and defendants appealed. The plaintiff appealed the trial court's order denying her motion for judgment notwithstanding the verdict challenging the jury's finding of Western's comparative fault. The plaintiff alleged there was not sufficient evidence to support the finding against Western. Writing on behalf of the Second District, Justice Suzukawa affirmed the trial court's order. The defendants' appeal challenged the economic damages award, contending that it must be reduced to reflect the actual amount paid by Western to the plaintiff's medical providers.

At trial, the defendants attempted to introduce evidence that Western negotiated rates with the plaintiff's medical provider, and that the total amount paid by Western for the plaintiff's past medical expenses was only \$241,818.38 (versus the billed rate of \$575,000). The defendants argued that

the difference between the negotiated rate and the billed rate entitled the defendants to a *Hanif-Nishihama* reduction of the plaintiff's economic damages. The *Hanif-Nishihama* reduction stands for the principle that an injured plaintiff's recovery of past medical expenses as economic damages is capped by the amount that her medical providers actually accepted as payment in full from the plaintiff's health insurance carrier. *Hanif v. Housing Authority*, 200 Cal.App.3d 635, 640 (1988); *Nishihama v. City and County of San Francisco*, 93 Cal.App.4th 298, 306-307 (2001). The defendants also argued that the discounted amount must be used in calculating the *Witt v. Jackson* reduction. The *Witt v. Jackson* reduction is intended to prevent double recovery by a plaintiff employee, by reducing any economic damages awarded by the amount of workers' compensation benefits received from a concurrently negligent employer that are attributable to economic damages. *Witt v. Jackson*, 57 Cal.2d 57, 73 (1961); see also *Scalice v. Performance Cleaning Systems*, 50 Cal.App.4th 221, 225-228 (1996). The trial court ruled that evidence of the discounted amount was precluded from introduction by the collateral source rule, and that the plaintiff was entitled to a calculation of damages based on the amount originally billed by her medical provider. While the defendants' appeal was pending, the California Supreme Court issued its opinion in *Howell*.

In *Howell*, California's Supreme Court found that the collateral source rule does **not** preclude a defendant from introducing evidence of the actual amount paid to a plaintiff's medical provider by the health care insurer (also referred to as the "negotiated rate differential"). (*Howell, supra*, 52 Cal.4th 541.) Thus, under *Howell*, a defendant can introduce evidence establishing that the amount paid and accepted in full by the plaintiff's medical provider from the plaintiff's insurer was less than what was originally billed by the provider. In *Sanchez*, the plaintiff argued that *Howell* was not controlling because the plaintiff's past medical expenses were paid for by Western as workers' compensation benefits, not a private insurer. However, Justice Suzukawa found that "the situations are sufficiently similar and the language of *Howell* sufficiently broad to compel the conclusion that this case is governed by *Howell*."

Justice Suzukawa supported his conclusion based on the fact that the plaintiff was entitled to workers' compensation benefits, and under California's workers' compensation laws: (1) an employer must pay all of an injured employee's medical expenses; (2) a medical provider is precluded from

seeking payment for unpaid medical bills from an employee; and (3) absent an express agreement with the employer or employer's insurer, the medical fees are limited by law to the fee schedule expressly set forth in the Labor Code. Cal Lab. Code §§ 4603.2, 5307.1 and 4600. Justice Suzukawa further concluded that the introduction of evidence of a negotiated rate differential would entitle the defendants to an application of a *Hanif-Nishihama* reduction, and would require the recalculation of the *Witt v. Jackson* reduction for Western's contributory negligence. While this matter was ultimately remanded to the trial court for the recalculation of the economic damages, the evidence presented by the defendants suggests that the plaintiff's original award could be reduced **by more than half**.

Legislative efforts are already under way to reverse the impact of these decisions. On February 24, 2012, state Sen. Darrell Steinberg (D-Sacramento) introduced Senate Bill No. 1528, which, if approved, would enact California Civil Code § 3284, with the following language: "an injured person shall be entitled to recover the reasonable value of medical services **provided without regard to the amount actually paid.**" Unless and until section 3284 is enacted, *Sanchez* provides strong support for the broad interpretation and application of *Howell's* limitation of the plaintiff's recovery of economic damages.

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