



# Weekly Law Resume

A Newsletter published by Low, Ball & Lynch  
Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

Issue By: Caroline Chen and Gregory Schaffer

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## Damages - Reduction Of Medical Specials To Amounts Paid

*Ingrid Cabrera v. E. Rojas Properties, Inc.*

Court of Appeal, Second District (February 24, 2011)

This case follows a recent string of cases addressing the application of the collateral source rule to plaintiff's recovery for past medical expenses. The issue addressed is whether plaintiff is entitled to recover the amount *billed* by plaintiff's medical providers or the amount actually paid by the insurer.

Plaintiff Ingrid Cabrera was injured when she fell down a staircase owned by defendant E. Rojas Properties, Inc. Prior to trial, the parties stipulated that Cabrera's medical providers *billed* her \$57,534.45 for services rendered and that her health insurance *paid* \$8,914.26 for those services. The parties further stipulated that amounts paid by the insurer were accepted by the medical providers as payment in full and that no additional amount was owed to Cabrera's medical providers. Procedurally, the parties stipulated that the evidence submitted to the jury would include the billed amounts, not the paid amounts, and that the jury would be instructed that the billed amounts were "reasonable and necessary." The stipulation provided that Rojas Properties would file a post-verdict motion to reduce the recoverable amount of plaintiff's medical expenses to the amount paid by the insurer.

The jury found Rojas Properties negligent and awarded Cabrera \$135,556.45, which included \$57,534.45 in past medical expenses represented by the billed amounts from her medical providers. In turn, Rojas Properties filed the post-verdict motion to reduce the award. The court granted Rojas Properties' motion, reduced the plaintiff's award for past medical expenses from \$57,534.45 to

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\$8,914.26, and entered judgment for \$78,242.63. Cabrera appealed, challenging the trial court's reduction.

On appeal, Cabrera argued that the collateral source rule barred any reduction in damages. Generally, the collateral source rule allows an injured party to recover the full extent of their incurred medical expenses, even if those expenses have been paid by an independent third party, such as an insurer. The appellate court held that the collateral source rule did not bar the reduction of plaintiff's recovery for medical expenses down to the actual amount paid. Thus, while the collateral source rule entitled Cabrera to recover the amount paid by the insurer, it did not extend to allow recovery of amounts exceeding the amount paid.

The *Cabrera* court reasoned that the reductions negotiated by the insurer were not from a collateral source since they were not compensation received by Cabrera from an independent source, Cabrera was not liable for the amounts written-off, and the reductions did not deprive Cabrera of the benefit of her insurance. The court noted that Cabrera identified "no current Supreme Court authority that extends the collateral source rule to include the benefit of a negotiated contract between a medical provider and a medical insurer." The court followed the *Hanif/Nishihama* line of cases, which hold that it is error for a plaintiff to recover medical expenses in "an amount exceeding the actual amount paid." Thus, the court affirmed the trial court's reduction of damages.

Plaintiff also challenged the post-trial motion procedure by which Rojas Properties sought the reduction in the medical expenses award. The court first noted that Cabrera forfeited this challenge when she stipulated to Rojas Properties filing a post-trial motion. The court noted further that even had Cabrera preserved her objection, she had not demonstrated how the post-trial motion procedure was invalid. The *Cabrera* court referred to *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, where the court of appeal found no abuse of discretion by the trial court that allowed evidence at trial regarding reasonable costs and defense argument after verdict on the reduction of damages. The *Cabrera* court considered the trial court to have properly postponed ruling on Rojas Properties' motion in limine until after the verdict "to protect Cabrera's rights under the collateral source rule."

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## COMMENT

The issue of the application of the collateral source rule to plaintiff's recovery of medical expenses billed, but not paid, is under review by the California Supreme Court in *Howell v. Hamilton Meats & Provisions, Inc.* (2009) 179 Cal.App.4th 686, *Yanez v. SOMA Environmental Engineering, Inc.* (2010) 185 Cal.App.4th 1313, and *King v. Willmet* (2010) 187 Cal.App.4th 313. In these three cases, the appellate courts determined that the collateral source rule entitled plaintiff to recover the full amount billed by her medical providers. Pending review, *Howell*, *Yanez*, and *King* have been rendered unpublished and are not citable by the plaintiff's bar. Until the Supreme Court's decision on this issue, which is not expected until 2012, *Hanif/Nishihama* and now *Cabrera* remain the law on this issue.

This case endorsed the procedure in *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, which approved a post-verdict motion to reduce the medical expenses award to the amount paid. Optimally, as in *Cabrera*, the defense should seek to obtain pre-trial stipulations as to the amounts billed, the amounts paid, and that amounts paid were accepted as payment in full with no further debt being owed by plaintiff. If the defense is unable to obtain such stipulations, the issue should be preserved through a motion in liming and the defense should be prepared to present evidence establishing these three facts.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B216445.PDF](http://www.courtinfo.ca.gov/opinions/documents/B216445.pdf)

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