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How Howell V. Hamilton Meats Shaped Calif. Economic Damages

By **Robert Tyson Jr.**

Law360, New York (June 16, 2017, 4:54 PM EDT) -- Over five years have passed since the multibillion-dollar, landmark California Supreme Court ruling in the Howell v. Hamilton Meats. The impact of this decision continues to be felt across the country.

The Supreme Court decision sent shock waves through the insurance industry by holding an injured plaintiff is only allowed to recover the lower amount paid by health insurance to satisfy medical bills as past economic damages — not the inflated figure billed to insurance companies by physicians and hospitals. (Howell v. Hamilton Meats & Provisions Inc. (2011) 52 Cal.4th 541.)



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In a 6-1 decision in the case I tried and argued through appeal, the California Supreme Court explained plaintiffs may recover as economic damages the lesser of what is paid or incurred for medical services or the reasonable value of the treatment. Since that time, Howell has become one of the most closely watched tort cases among insurance companies and plaintiffs lawyers in decades.

Milestones and Jury Verdicts Related to Howell

Since the Supreme Court ruling, the case has significantly shaped the litigation landscape, including many high-profile opinions and jury verdicts in its aftermath — as well as its implications in relation to the Affordable Care Act and plaintiffs' litigation strategy.

Appellate courts first extended Howell's reasoning to limit a plaintiff's recovery to payments made by Medicare (Sanchez v. Strickland (2011) 200 Cal.App.4th 758; Luttrell v. Island Pacific Supermarkets, Inc. (2013) 215 Cal.App.4th 196), Medi-Cal (Sanchez, supra, 200 Cal.App.4th 758), and workers' compensation (Sanchez v. Brooke (2012) 204 Cal.App.4th 126). The amounts paid by any of these entities in satisfaction of the plaintiff's medical bills is the maximum the plaintiff is allowed to recover for past medical damages.

Courts also extended the Howell ruling to apply to future medical expenses. "Evidence of the full amount billed for past medical services provided to plaintiffs ... cannot support an expert opinion on the reasonable value of future medical services." (Corenbaum v. Lampkin (2013) 215 Cal.App.4th 1308, 1331).

California Courts also determined the Howell paid rule applies to noneconomic damages. Specifically, full billed amounts are not relevant to a jury when determining the value of plaintiff's pain and suffering. "[E]vidence of the full amount billed is not admissible for the purpose of providing plaintiffs counsel an argumentative construct to assist a jury in its difficult task of determining the amount of noneconomic damages and is inadmissible for the purpose of proving noneconomic damages. (Corenbaum, supra, 215 Cal.App.4th at 1333). In this way, the Howell economic damages rule has also reduced jury awards for noneconomic damages.

Howell Sparked Rise in Medical Liens

The Howell ruling has triggered a new trend: an increasing number of physicians and other medical care providers are now willing to provide their services on a lien basis when the patient is involved in a personal injury lawsuit. In this scenario, the plaintiff signs a lien agreement with the doctor and agrees to become personally liable for their medical treatment. Doctors agree to receive payment out of any recovery plaintiff may have in their personal injury suit. Additionally, third-party medical financing companies (i.e., "factoring companies") now often purchase these liens from doctors for pennies on the dollar and agree to hold the risk of collection through trial.

Howell held that the "plaintiff may recover the lesser of (a) the amount paid or incurred for medical services, and (b) the reasonable value of the services." (Howell, *supra*, 52 Cal.4th at 556). When the plaintiff has received treatment on a lien basis and there are no payments, the jury's analysis shifts to determining the reasonable value of medical service rendered. (See *Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311, 1330-31 ("Conversely, the measure of damages for uninsured plaintiffs who have not paid their medical bills will usually turn on a wide-ranging inquiry into the reasonable value of medical services provided, because uninsured plaintiffs will typically incur standard, nondiscounted charges that will be challenged as unreasonable by defendants.")). Howell explains the reasonable value of medical services is "ordinarily its 'exchange value,' that is, its market value or the amount for which it could usually be exchanged[.]" which varies across payors. (Howell, *supra*, 52 Cal.4th at 556, 562).

Recent cases have held under certain circumstances an uninsured plaintiff is allowed to introduce evidence of full lien amounts and may recover full lien amounts at trial. See *Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311; *Uspenskaya v. Meline* (2015) 241 Cal.App.4th 996; *Moore v. Mercer* (2016) 4 Cal.App.5th 424).

When the jury is charged with determining the reasonable value of the medical lien treatment, the defense must have a medical billing expert to provide the reasonable value to the jury and fight the plaintiff's inflated medical liens.

The Howell Case, the ACA and Defense Strategy

Since Howell, the federal government has reformed the American health care system through the ACA. As of now, the nation has moved toward a formula where consumers are ensured coverage and health care costs that are more predictable. Americans understand what a hospital or doctor charges is a lot more than what providers accept as payment in full. As we discuss health care costs with jurors in voir dire, they regularly acknowledge the fair and reasonable value of a health care service is not the full amount they see on their medical bill.

While some predicted Howell would ultimately keep victims and their attorneys from fair payments for their injuries, the case has actually had the opposite effect. Howell has evolved into an effective method of evaluating the reasonable value of medical expenses and paying that fair value to injured plaintiffs. The case stands as a tool to determine the reasonable value of medical care in today's "upside-down world of health care billing, where different payers pay different prices for the same services[.]" (*Moore v. Mercer* (2016) 209 Cal.Rptr.3d 101, 103-04).

In April of this year, the California Court of Appeal extended the reach of Howell to include future medical benefits under the ACA. Now, in the medical malpractice case of *Cuevas v. Contra Costa County*, the Court of Appeal for the First Appellate District held evidence of plaintiffs' future care benefits available through the ACA is admissible at trial. ((2017) 11 Cal.App.5th 163.) Based on the state's Medical Injury Compensation Reform Act (MICRA) rule altering collateral source admissibility at trial (Cal. Civ. Code § 3333.1), the court found "the trial court erred in excluding evidence that health insurance benefits under the ACA would be available to mitigate Plaintiff's future medical costs." (*Id.* at *1.)

The Cuevas case reinforces a defense strategy critical for both medical malpractice and broader personal injury litigation. First, defense life care planners must be qualified to render opinions on the ACA and its application to the plaintiff's alleged future care. Second, the defense life care planner should prepare multiple cost scenarios to defense medical expert future care recommendations, including the reasonable value for each alleged future medical service contained in the plaintiff's life care plan. Third, consider retaining an ACA expert to support

defense arguments on the applicability of such benefits in the face of the plaintiff's collateral source arguments. Finally, defense counsel must be prepared to argue applicability of the ACA and other available future benefits and to object to the plaintiff's introduction of inflated medical expenses that do not consider amounts providers accept as payment in full at trial.

Most significantly, Cuevas affirms the state's commitment to limiting economic damages to the reasonable value of the services received. In California, the reasonable value of medical care is determined by the market value for such services, including payments for services covered by private health insurance, government benefits and now the ACA.

In the Aftermath of Howell

Not only did Howell alter the way California interprets the collateral source rule, it also reshaped personal injury litigation statewide. While Howell generated an outcry amongst plaintiffs attorneys — who reasoned that the ruling would ultimately keep victims from fair payments for their injuries — the case has actually had the opposite effect.

As predicted, Howell has saved insurers and defendants billions of dollars across litigated and prelitigation claims — with much broader implications than originally anticipated. The case has served to protect not just insurance companies and defendants, but consumers as a whole.

Under Howell, plaintiffs and plaintiffs attorneys no longer recover a "windfall" for full medical bills they are not required to repay. Ultimately, when insurance companies pay only the reasonable value of a plaintiff's treatment in indemnity payments, California consumers benefit from lower premiums.

In the wake of several cases permitting plaintiffs to introduce full lien amounts at trial, the Cuevas case reassures the Howell paid rule is here to stay to the advantage of all consumers.

DISCLOSURE: Tyson represented the defendant in Rebecca Howell v. Hamilton Meats & Provisions Inc.

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