

# CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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### *King v Wilmett (8/9/2010)*

#### **Economic Damages; Collateral Source Rule**

Plaintiff's vehicle was struck from behind on August 27, 2004, and he sustained neck injuries. Eventually, in January, 2008, plaintiff had neck surgery, involving a discectomy and fusion on two levels. Although successful, the surgery did not remedy the condition completely, leaving plaintiff with some residual symptoms. Plaintiff's physicians later testified future medical treatment was probable.

By way of a special verdict, the jury found the defendant negligent and a substantial factor in causing plaintiff's injuries. Plaintiff was awarded \$169,499 in [past medical expense](#), \$20,000 in past lost earnings, \$75,000 for past non-economic damages, and \$50,000 for future economic damage, for a total verdict of \$314,499. Following the jury's verdict, the trial court granted defendant's motion to reduce the medical billings to \$76,286, for an amended judgment of \$221,286. Plaintiff appealed.

The Third District Court of Appeal reviewed the statutory scheme providing for damages in a tort case, and referenced the collateral source rule. [If an injured party receives some compensation from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor.](#) (*Helpend v Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 1) The rule prohibits reduction of the damages plaintiff would otherwise receive for plaintiff's receipt of collateral source compensation. (*Arambula v Wells* (1999) 72 Cal.App.4<sup>th</sup> 1006)

In *Helpend*, the California Supreme Court rejected the notion that the rule would allow a "double recovery" stating the rule performs entirely necessary functions in the computation of damages. Since [the cost of medical care is often an important indicator of plaintiff's general damages](#), the rule prevents a defendant from upsetting the "complex, delicate, and somewhat indefinable

calculations” of the jury with evidence that the plaintiff has been recompensed by a collateral source for his medical costs. (*Helfend*, at p. 12) Application of the rule as expressed by the Supreme Court represents its **policy choice in the calculation of tort damages to permit the victim to retain a benefit where necessary**, rather than to confer a benefit on the tortfeasor.

Previously, the California Legislature has modified the collateral source rule in two instances. First, in medical negligence cases, (Civil Code section 3333.1) and second, in cases involving government entities (Government Code section 985). These two statutes represent the Legislature’s two exceptions to the normal application of the collateral source rule. The Third DCA observed that these exceptions strongly suggest that normally under the collateral source rule the trial court should not reduce a jury’s award of damages to reflect collateral source payments. A familiar rule of construction applies: *where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed*. (*Mutual Life Ins. Co. v City of Los Angeles* (1990) 50 Cal.3d 402)

The Justices in the majority opinion then analyzed the much discussed cases of *Hanif*, *Nishihama*, and *Greer*. The plaintiff in *Hanif* was covered by Medi-Cal, and the case did not address whether a plaintiff who has private health insurance may recover, under the collateral source rule, economic damages for the amount reasonably billed by their health care providers even though it exceeds the dollar amount the insurers actually paid and which the providers accepted as full payment for the rendered medical services.

The issue in *Nishihama* was the validity of the medical center’s lien. The court did not discuss the application of the collateral source rule. Additionally, the case was brought against a public entity defendant, which could have brought a post-verdict motion for reduction under section 985. Finally, in *Greer*, the court found defendant forfeited his various claims of error regarding the trial court’s failure to order a reduction of the medical services award by failing to request a verdict form containing a separate entry for plaintiff’s past medical expenses. Since the claim was forfeited, the appellate court did not consider whether the trial court’s proposed post-verdict motion procedure was appropriate or whether a reduction would have been required.

The DCA thus concluded that none of the preceding cases provided governing authority for the question directly presented in this case. Here the plaintiff and defendant stipulated that plaintiff’s medical bills totaled \$169,499.94. It was also undisputed that **plaintiff’s medical providers accepted**

**\$76,286.32 as full payment for their services.** The majority concluded, however, that the collateral source rule precludes the reduction of the amount of medical expenses plaintiff incurred for the rendered services to the cash amount accepted by plaintiff's providers.

Since the California Supreme Court has adopted the collateral source rule, the Justices in the majority reasoned that it has concluded that public policy interests favor continuation of the rule despite the possibility that it results in some cases in overcompensation of the plaintiff. The collateral source rule reflects a policy choice in the calculation of tort damages that permits a victim to retain a benefit, rather than confer a benefit on the tortfeasor. (*Helpend*, at p. 10) The Court declines to carve out any further limitations of the rule.

At least with respect to medical insurance, benefits have become so integrated within our present tort system that its precipitous judicial nullification would work hardship and any proposed changes, if desirable, would be more effectively accomplished through legislative reform. The trial court erred in reducing the award of past medical expense damages in the jury's special verdict. The jury's award is to be reinstated. The opinion was authored by Justice Cantil-Sakauye, the governor's nominee for Chief Justice of the California Supreme Court.

In **dissent**, Justice Hull returned to the *Hanif* decision, noting it has been the subject of much analysis. He observed that it rests on the "*rather common sense notion that a plaintiff in a tort action should not normally be compensated for loss or harm the plaintiff did not suffer.*" The plaintiff in this case claimed that the ability of his health carrier to secure the write-off of benefits is illusory. The dissent states, "*The plaintiff does not care whether the insurance carrier pays 100 percent, 75 percent, or 35 percent of the amount billed so long as he does not have to pay anything beyond his insurance co-pay or deductible. That is the benefit he bought and the benefit he is entitled to.*"

Justice Hull's dissent continued, "*While ultimately allowing for compensation for the reasonable value of medical services regardless of the amount actually paid has appeal, it seems to me that approach presents at least two difficulties. First, it compensates the plaintiff for detriment that the plaintiff, in fact, never suffered .... Second is the difficulty of determining the reasonable value of medical services to begin with.*" The dissent continues, "*... the jury's task of deciding the reasonable cost of medical care is one not to be envied. While I recognize that, absent a stipulation, California juries are required to do that now, one might suspect that an abandonment of the *Hanif* rule*

*may well result in a much more vigorous challenge to claimed medical costs that exceed the amounts actually paid. It seems to me we risk having lawyers litigate, and juries trying to decide, whether \$10 is the reasonable cost of a box of hospital tissues or \$3 is the reasonable cost for a bendable straw. Although I agree that a jury should hear relevant evidence of the cost of medical services, I would suggest that a determination of the reasonable cost of medical services ultimately should rest with the two parties with the most sophistication in the matter; the health care provider and the health care insurer.”* Justice Hull concludes, *“In any event, the \$93,213.62 the court awards the plaintiff today can only be characterized, in my view, as phantom damages given substance by an over-broad application of the collateral source rule. I think it is an unwarranted extension of a much criticized concept. To award this amount as ‘damages’ is to disregard the fundamental principle that tort damages are intended to compensate for loss or harm. There is none here.”*

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