CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Yanez v SOMA Environmental Engineering, Inc. (06/24/2010)

Collateral Source Rule; Post-verdict "Hanif" Hearing

Plaintiff's suit for personal injury went to trial against defendant. She moved for an order to admit evidence of the amounts billed by her health care providers for her medical treatment, without regard to the amounts actually paid by her health insurance. Over Defendant SOMA's objections, the order was granted. The trial court also said it would conduct a post-trial hearing to determine if the medical expenses should be reduced to the amount of the expenses actually paid to her providers by her health insurance carriers, and accepted by the providers as payment in full for their services.

At trial, the plaintiff put on evidence of the bills, and that the amounts were reasonable. The jury was instructed to award damages in an amount that would compensate for, *"the reasonable cost of reasonably necessary medical care that she has received."* The jury returned a special verdict of $150,000, which included an award of $44,519.01 in damages for past medical expenses, and the court entered judgment on the verdict. SOMA then moved to reduce the medical expenses to $18,368.24, the amount actually accepted by her medical providers as payment in full for the services she received.

At the post-trial hearing, the defendant presented evidence that each of the providers had written off a substantial amount of what had been billed, and that plaintiff did not owe the amounts written off. Plaintiff objected to the admission of health provider business records on the grounds their admission violated the **collateral source rule** and the records were irrelevant. The objections were overruled and the medical expense damages were reduced by $21,355.66, with the court entering an amended judgment reducing the damages accordingly. Before trial, plaintiff had served a Code of Civil Procedure section 998 offer to settle for $150,000, which defendant did not accept. Post trial, plaintiff sought to recover her expert witness fees and prejudgment interest. Defendant moved to

tax the prejudgment interest and expert fees, and after the trial court reduced the verdict, it struck the fees and interest claims. Yanez then bought an appeal to the First Appellate District, Division One.

Plaintiff Yanez contended the trial court violated the collateral source rule by limiting her recoverable damages to the amount of medical bills actually paid by the health carriers. The Justices turned to **the collateral source rule, which provides that the compensatory damages recoverable from a tortfeasor in a personal injury case should not be reduced merely because the tort victim also receives compensatory benefits from independent or collateral sources, such as insurance.** The wrongdoer cannot take advantage of the contracts or other relation that may exist between the injured person and third persons. Thus, while a plaintiff's recovery under the ordinary negligence rule is limited to damages which will make him whole, the collateral source rule allows a plaintiff further recovery under certain circumstances even though he has suffered no loss. (22 Am.Jur.2d Damages, section 566, (1988)) California has adopted the collateral source rule. (Lund v San Joaquin Valley Railroad (2003) 31 Cal.4th 1) The rationale for the collateral source rule has been explained as follows: "Courts consider insurance a form of investment, the benefits of which become payable without respect to any other possible source of funds. If we were to permit a tortfeasor to mitigate damages with payments from plaintiff's insurance, plaintiff would be in a position inferior to that of having bought no insurance, because his payment of premiums would have earned no benefit. Defendant should not be able to avoid payment of full compensation for the injury inflicted merely because the victim has had the foresight to provide himself with insurance." (*Helfend v Sourthern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 1)

The *Helfend* court rejected arguments that the rule provides plaintiffs with a double recovery, pointing out plaintiffs rarely receive full compensation for injuries due to the fact a significant portion of the recovery goes to compensate the plaintiff's attorney under standard contingent fee agreements. The rule partially serves to compensate for the attorney's share and does not actually render a double recovery for the plaintiff. (*Helfend*, at p. 12) Nonetheless, the courts apply the collateral source rule even when it unquestionably does confer a windfall benefit on the tort plaintiff. The rule reflects a policy preference favoring the tort victim over the wrongdoer since not applying the rule allows the wrongdoer to profit from the victim's investment in purchasing insurance or

from the generosity of those who come to the victim's aid. (See, *Smock v State of California* (2006) 138 Cal.App.4th 883)

California also applies a closely related evidentiary principle that absent special circumstances, the jury should not hear evidence concerning collateral source benefits received by the plaintiff: "The potentially prejudicial impact of evidence that a personal injury plaintiff received collateral insurance payments varies little from case to case. There is substantial danger that the jurors will take the evidence into account in assessing the damages to be awarded to an injured plaintiff, thereby circumventing the policies underlying the collateral source rule." (*Hrnjak v Graymar, Inc* (1971) 4 Cal.3d 725) The Legislature has limited the application of the collateral source rule in certain contexts, such as judgments against governmental entities, and medical malpractice actions.

The primary question raised on appeal is whether plaintiff should recover the full amount billed by her medical providers or only the discounted amount actually paid and accepted by her providers as payment in full.

In prior cases, the panel in *Nishihama v City and County of San Francisco* (2001) 93 Cal.App.4th 298, took the rationale of *Hanif v Housing Authority* (1988) 200 Cal.App.3rd 365) as applied to public medical assistance and applied it to private health insurance. *Nishihama* assumed without discussion that discounted provider reimbursement rates negotiated by private insurance companies were indistinguishable from reduced rates established by publicly funded medical insurance programs like Medi-Cal for purposes of establishing economic damages under the collateral source rule. Later, the court in *Olsen v Reid* (2008) 164 Cal.App.4th 200, in the concurring opinion of Justice Moore, reasoned that under *Hanif/Nishihama*, an uninsured tort victim would receive a greater recovery from the tortfeasor than a victim with private insurance, a result she viewed as drastically undermining a key policy rationale behind the collateral source rule. (*Olsen*, at p. 215) Justice Moore contended a change of this sort to the collateral source rule could only be adopted by legislative action or by endorsement from the California Supreme Court.

The First DCA finds that the trial court erred in reducing the plaintiff's damages to the amounts actually paid by her health insurers. It finds that *Hanif* used overly broad language and the extension of its holding to private insurance by *Nishihama* and other cases is inconsistent with the collateral source rule. Therefore, the amounts written off by plaintiff's health care providers constitute collateral benefits of her insurance. Whether the full amounts billed reflect the

reasonable value of their services is a separate issue that was for the jury, not the court, to decide.

Since the *Hanif* case did not appear to consider cases involving private health insurance, the Justices stated there is no need to consider whether it was wrongly decided on its own facts. Dealing with Medi-Cal, it is materially different than the present case. To the extent *Hanif* has been assumed to extend beyond the Medi-Cal context, its analysis is not reliable. Because *Nishihama* relied on *Hanif*, the DCA stated it must now reject its reasoning.

The Panel noted that in the current health care financing model, cash paid or liability incurred to medical service providers is often not the entire consideration the providers receive in exchange for their services. Providers receive noncash, pecuniary consideration from their transactions with the patient's private insurers, which allows and induces them to accept a reduced rate for their services. Making the amount paid or incurred for medical care an absolute ceiling on a plaintiff's recovery for past medical care ignores this reality. At the post-trial "*Hanif*" hearing, defendant's witnesses all testified that the amounts the providers wrote off of plaintiff's bills were established pursuant to contracts between the providers and plaintiff's health care insurers. The Justices stated that the write-offs are an integral part of the consideration plaintiff received for her premium payments. If the central purpose of investing in healthcare insurance is to be protected from having to pay large medical bills, discounted provider charges deliver part of that protection. The contractual benefits confer significant benefits upon medical service providers well beyond the cash received. It is widely recognized that by agreeing to reduced rates, providers gain important administrative and marketing advantages, including a volume of business, rapid payment and ease of collection.

As such, *Hanif's* holding that, as a matter of law, the reasonable value of medical services can never be greater than the cash paid or liability incurred for them **cannot sensibly be extended to the private insurance context.** Rate discounts negotiated between health insurers and providers must be deemed collateral benefits which, under the collateral source rule, should accrue to the insured plaintiff, not the defendant. Therefore, the trial court erred by reducing plaintiff's economic damages for past medical expenses based on *Hanif*. Plaintiff was entitled to the entire amount of the medical billings as damages.

The Justices commented that they did not mean to suggest that the discounted rates negotiated between health insurers and providers are always or even

usually below the reasonable value of the services they cover. Here, the jury heard evidence concerning the full amounts billed, and determined those amounts were reasonable.

The Court suggested that it could be argued the jury should have heard both the billed and discounted amounts since both are relevant to determining the reasonable value of the services. No such request was made in the trial court, but more importantly, evidence the providers had agreed to accept lesser amounts for their services would run afoul of the collateral source rule since jurors would have to be given some explanation for how the discounts came about. Although it might be unfair to prevent the jury from hearing this evidence, only the Legislature or the Supreme Court can provide redress. In the meantime, the Justices suggest that holding post-verdict *Hanif* hearings in which the trial court hears evidence of the discounted amounts paid by private insurers and reduces the jury verdict lacks a sound foundation as a matter of law or policy.

Because plaintiff's original damages award must now be restored, the case is remanded to the trial court to exercise its discretion under CCP section 998 and to award prejudgment interest under Civil Code section 3291. The judgment is reversed and the case is remanded, accordingly.

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