

Supreme Court to Address Hanif/Nishihama Rule

Petition for Review Granted in Howell v. Hamilton Meats & Provisions, Inc.

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How much can personal injury plaintiffs recover from tortfeasors for their medical expenses? This issue is now going to be decided by the California Supreme Court when it reviews *Howell v. Hamilton Meats & Provisions, Inc.*, 179 Cal.App.4th 686, 101 Cal.Rptr.3d 805 (2009). The issue in *Howell* is whether a personal injury plaintiff can recover the full amount of his medical bills when his medical providers actually accepted less as payment in full for those bills.

Until recently, the California courts followed the rule set forth in *Hanif v. Housing Authority*, 200 Cal.App.3d 635, 641, 246 Cal.Rptr. 192 (1988) and *Nishihama v. City and County of San Francisco*, 93 Cal.App.4th 298, 112 Cal. Rptr.2d 861 (2001), which was that a plaintiff's damages for medical expenses are limited to the amount that the medical providers accepted in full satisfaction for their services, which is often substantially less than the amount billed. The *Hanif/Nishihama* rule was recently rejected by the Court of Appeal in *Howell*.

In *Howell*, the plaintiff, who was injured in an automobile accident, was allowed to recover the full amount of her medical bills as damages, even though her bills were substantially higher than the amount that her medical providers accepted in full satisfaction for their services. The Court of Appeal reasoned that the plaintiff should be allowed to recover the full amount of her medical bills because she signed a financial responsibility contract with her medical providers agreeing to pay those amounts. The fact that the plaintiff's health insurance company was able to negotiate a lower payment in full satisfaction of those bills was deemed to be a benefit under the collateral source rule to which plaintiff was entitled. That benefit, the Court explained, should not be passed off to the tortfeasor, which is what would result if *Hanif/Nishihama* reductions were applied.

The court distinguished the *Hanif* and *Nishihama* cases. The court distinguished *Hanif* on the basis that the *Hanif* plaintiff was an indigent minor who was insured under Medi-Cal, whereas *Howell* was privately insured and incurred personal liability for the medical charges billed. Because the plaintiff in *Hanif* was never personally financially responsible for the full amount of his medical bills and could not enter into a contract anyway (because he was a minor), he was never on the hook for the negotiated rate differential as was the *Howell* plaintiff and therefore could not claim the negotiated rate differential as a collateral source benefit to which he was entitled. As to the *Nishihama* case, the *Howell* court found it to be inapposite claiming that *Nishihama* incorrectly focused on medical providers' lien rights against patients in concluding that the plaintiff could not recover the negotiated rate differential, rather than focusing on the collateral source rule.

Howell created substantial confusion for trial courts and litigants alike, because it brought into question the validity of the *Hanif/Nishihama* rule. Now that the California Supreme Court has granted review in *Howell*, that decision has been depublished. Therefore, until the Supreme Court rules, trial courts will presumably follow the holdings in *Hanif* and *Nishihama*.

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