

How Health Insurance Affects Damages in a Personal Injury Action

FOR YEARS, COURTS IN CALIFORNIA have grappled with the question of how to assess damages for a personal injury plaintiff who pays medical bills with private health insurance. The relatively mundane task of utilizing insurance to pay medical bills raises substantive issues about quantifying damages and evidentiary issues revolving around the presentation of damages at trial. Case law has emphasized the public policy of not penalizing plaintiffs who have been responsible enough to have medical insurance, but little has been done to address the issue of medical bills that are written off.

Victims of torts who do not have health insurance (either because of cost or uninsurability) typically obtain medical care on a lien basis, and their liens are resolved after settlement or judgment. Quantifying damages based upon liened medical expenses is straightforward. One need look no further than the medical bill and determine whether or not the care was reasonable and necessary and whether the charge was reasonable.¹ All reasonable charges are included as items of damage, and the entire medical bill is presented to the fact finder at trial. The assumption is that the medical provider expects full compensation for the bill and, consequently, the entire bill is a liability incurred by the plaintiff due to the fault of the tortfeasor.

This procedure is starkly different from that of cases involving medical expenses submitted to a health insurer. A plaintiff whose medical bills are paid by an insurance carrier (a third party) is only responsible for a copayment or the deductible. In addition, as anyone who has submitted an insurance claim knows, insurance carriers almost never pay medical bills in full. In many instances, a portion (sometimes a large one) of the medical bill is written off because of rate reductions negotiated by the carrier. Another type of write-off involves bills for which the state, a hospital, or another provider does not obtain payment. In these more complicated situations, to what is a plaintiff entitled? A review of case law provides some answers.

In *Helpend v. Southern California Rapid Transit District*, the California Supreme Court considered whether medical bills paid by health insurance should be included among a plaintiff's damages.² The court concluded that a plaintiff should benefit from purchasing a health insurance policy and be compensated by the tortfeasor for damages caused by the tort even if the bills are paid by the plaintiff's health insurance.

In *Helpend*, a bus sideswiped the plaintiff's car and crushed his arm.³ At trial, the defendant argued that it should be permitted to show the jury that over 80 percent of the medical bills were paid by the plaintiff's health insurance carrier, Blue Cross. The trial court denied the request, and the California Supreme Court affirmed the judgment for the plaintiff. The court decided that the so-called collateral source rule required that the plaintiff be compensated for medical bills even if they were paid by health insurance. The collateral source rule holds that a plaintiff's damages should not be offset for any compensation the plaintiff receives from a source wholly independent from the tortfeasor. As applied in this context, the collateral source rule "embodies the

venerable concept that a person who has invested years of insurance premiums to assure his medical care should receive the benefits of his thrift. The tortfeasor should not garner the benefits of his victim's providence."⁴

In *Helpend*, the court explained that applying the collateral source rule in this fashion would encourage citizens to purchase health insurance.⁵ The court further expressed its concern that a tortfeasor should not be able to reduce its obligation to a victim based upon the foresight of the plaintiff in purchasing health insurance. Doing so would place the plaintiff in a position "inferior to that of having bought no insurance."⁶

The *Helpend* court also considered the defendant's argument that allowing the plaintiff to recover for sums paid by an insurance carrier would impart a double recovery to the plaintiff.⁷ In rejecting the argument, the court pointed out that most insurance contracts require a plaintiff to refund or reimburse the carrier out of settlement or judgment proceeds for medical bills paid by the carrier. In so doing, the collateral source rule provides a mechanism to transfer risk from the insurance carrier to the tortfeasor through a tort recovery.⁸

Hanif and Nishihama

Following *Helpend* there was no doubt that a tortfeasor must compensate a victim for medical bills even if those bills are paid by the victim's health insurance. However, another issue is whether a tortfeasor is responsible for charges on medical bills that are written off because of contracts between a health insurance company and the victim's medical providers. The courts have decided that a tortfeasor should benefit from a contractual write-off because this prevents a plaintiff from being compensated for bills that no one is obligated to pay.

The seminal decision on this topic is *Hanif v. Housing Authority of Yolo County*.⁹ In that case, the plaintiff, a seven-year-old boy who was cutting flowers from bushes at the defendant's housing project, dropped his scissors and stepped into the street to retrieve them. He was hit and dragged underneath an oncoming vehicle. The plaintiff filed suit against the Housing Authority, claiming the defendant's overhanging and untrimmed bushes created a dangerous condition that obstructed the view of vehicles. The plaintiff's medical care was paid by Medi-Cal, and the amounts not paid by Medi-Cal were written off by the medical providers. Over the defendant's objection, the plaintiff presented evidence of all his medical bills and argued that they were reasonable even though Medi-Cal only paid for part of those bills and the remaining balance was written off. In a bench trial, the court awarded the reasonable value of the medical services even though it exceeded the actual amount paid.¹⁰

On appeal, the defense argued that the trial court erred in awarding damages in excess of the amount paid. Before addressing the write-

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offs, the court began by noting that there was “no question” that the plaintiff’s special damages would include the charges paid by Medi-Cal.¹¹ Next, the court determined that a personal injury plaintiff should not recover anything more than the amount paid or the actual amount of the liability incurred for past medical treatment. Consequently, the court reduced the judgment to prevent the plaintiff from recovering the amount of the medical bills that had been written off.¹²

The court in *Hanif* explained that its decision was consistent with the policy behind compensatory damages. As the court explained, a tort victim should receive just compensation, but “no more.”¹³ It concluded that if it were to permit a personal injury plaintiff to recover more than was actually paid or owed, the plaintiff would be over-compensated.¹⁴

The same result is found in the later decision of *Nishihama v. City and County of San Francisco*.¹⁵ Where *Hanif* involved write-offs of charges on medical bills based upon Medi-Cal, *Nishihama* involved medical bills that were discounted based upon contracted rates between a health insurer and medical providers. In *Nishihama*, the plaintiff stepped from a bus platform into a pothole in a crosswalk maintained by the city of San Francisco.¹⁶ The plaintiff incurred medical expenses that were paid by her Blue Cross health plan, which paid approximately 20 percent of the bill. This payment was deemed payment in full because Blue Cross had a contract with the medical center that provided for reduced rates for services from the medical center. For the same reasons underlying the decision in *Hanif*, the *Nishihama* court determined that the plaintiff’s special damages would need to be calculated based upon the reduced rates rather than the medical center’s normal rates.¹⁷

Evidentiary Issues

Following the rulings in *Hanif* and *Nishihama*, defense lawyers in personal injury lawsuits routinely filed motions in limine to preclude plaintiffs from introducing into evidence medical bills that had been reduced or written off due to the plaintiff’s health insurance or Medi-Care or Medi-Cal.¹⁸ They argued that the holdings in *Hanif* and *Nishihama* rendered only the amounts actually paid relevant. For years, there was no legal authority guiding trial courts as to whether to permit evidence of the full medical bills at trial if some of those charges had been reduced or written off.

The problem with precluding evidence of the full medical bills at trial is that negotiated rates fail to provide the jury with a reasonable value of a plaintiff’s medical care. The reduced rates do not accurately reflect the

severity of a plaintiff’s injuries or the extent of treatment. This poses a significant problem because the amount of a plaintiff’s medical bills affects not only the special damages (i.e., economic damages such as medical bills and out-of-pocket expenses) but also the general damages (i.e., noneconomic damages such as pain and suffering).

The California Supreme Court has recognized this dual function of medical bills as evidence, stating in *Helfend*: “[T]he cost of medical care often provides both attorneys and juries in tort cases with an important measure for assessing the plaintiff’s general damages.”¹⁹ Even though the appellate court in *Nishihama* decided to limit a plaintiff’s damages to the amount of the bills actually paid or incurred, it still recognized that “there is no reason to assume that the usual rates provided a less accurate indicator of the extent of plaintiff’s injuries than did the specially negotiated rates obtained by Blue Cross. Indeed, the opposite is more likely to be true.”²⁰

More recently, the appellate courts have attempted to harmonize the notion that a plaintiff should not recover for unpaid medical expenses with the reality that the full medical bills assist a trier of fact in determining the severity of the plaintiff’s injuries and the full extent of pain and suffering. The solution adopted by the California Court of Appeal is a two-step approach. The full extent of the damages should be presented to the trier of fact at trial for a determination of special and general damages. If a verdict is rendered in favor of the plaintiff, the court may consider reducing the special damages based upon medical bills that have been reduced or written off.²¹

In *Greer v. Buzgbeia*, the plaintiff, an SBC employee, sustained injuries in an automobile accident, and SBC paid his medical bills, including the cost of spinal fusion surgery.²² Before trial, the defense filed a motion in limine to prevent the jury from hearing evidence of medical expenses in excess of the amount actually paid to the providers.²³ SBC compromised the medical expenses with the medical providers and satisfied the bills for a sum significantly less than the total amount billed. The trial court denied the motion in limine and permitted the introduction of the full amounts of the bills at trial. The court advised counsel that it would entertain a posttrial motion for a reduction if necessary.²⁴

Following a verdict in favor of the plaintiff, to address the issue of the reduced medical expenses, the defendant filed a motion for a new trial rather than a motion for a reduction. The trial court expressed its confusion at the defendant’s selection of posttrial motions given the court’s earlier invitation for the motion for a reduction.²⁵ Nevertheless, the court held that even if the proper motion

had been filed, the court could not have reduced the amount of the verdict because the verdict form combined medical specials and lost earnings into a single line item.²⁶

The defendant appealed the rulings on the motion in limine and the posttrial motion. The court of appeal affirmed the rulings. First, the appellate court held that the reasonable cost of the plaintiff’s medical care is admissible at trial even if it exceeds the amount actually paid.²⁷ The court explained that this holding does not conflict with the holdings in *Hanif* and *Nishihama* that only prohibit a plaintiff from recovering medical expenses in excess of the amount paid or incurred.²⁸ Second, the court agreed with the trial court that it could reduce an award of medical special damages in a posttrial motion only if the verdict form contained a separate line item for medical expenses.²⁹ Otherwise, there would be no way to determine if the amount awarded for medical specials exceeded the amount actually paid or incurred.³⁰

Although the decision in *Greer* established a framework for handling medical bills that had been written off or reduced based upon health insurance agreements with medical providers, defense attorneys argued that *Greer* only provided one approach for handling the issue. Recently, the court of appeal held that it would be error for a trial court to exclude evidence of the full extent of the medical bills at trial even if some of the bills had been written off.³¹ In *Katiuzhinsky v. Perry*, the plaintiff’s medical providers sold the plaintiff’s unpaid account to a financial services company for a discount.³² The defendant in the action filed a motion in limine to preclude the plaintiff from introducing evidence at trial of the full amount of the medical bills.³³ The motion was granted and the plaintiff appealed. The appellate court concluded that it was error for the trial court to exclude the medical bills from evidence, stating that “there was no basis in law to prevent the jurors from receiving evidence of the amounts billed.”³⁴ The California Supreme Court denied review in September 2007.

It has taken decades for the courts to resolve the issue of how to treat, as an item of damage, medical bills that have been paid by a plaintiff’s health insurance. A plaintiff in a personal injury case can put forth evidence of medical bills regardless of how those bills were paid. Those bills provide the jury with proof of the plaintiff’s medical specials, as well as some guidance as to the severity of the plaintiff’s injuries. In that way, the bills assist a trier of fact in determining how much to award for a plaintiff’s pain and suffering. Following trial, the defense may request a hearing to reduce the amount of the medical specials awarded by the jury to reflect the contractual write-offs or reductions due to health

insurance contracts with medical providers. However, a court may not grant such a motion to reduce a verdict in this way unless the verdict form specifically sets forth the amount awarded for the medical specials. If the verdict form does not itemize the damages in that way, there is no way to determine the amount awarded for the medical bills. Consequently, the court would be put in the position of speculating as to whether the jury awarded more to the plaintiff than the amount actually incurred or paid.

Although there is now more certainty as to how to deal with medical bills that have been written off or reduced, there is some inconsistency between that solution (eliminating from damages the medical bills that have been written off) and the rationale for the collateral source rule. The rule was designed to prevent a tortfeasor from benefitting from a plaintiff's decision to purchase health insurance. The law, as expressed in *Helfend*, sought to encourage individuals to purchase health insurance. By reducing a plaintiff's recovery because his or her bill was reduced based upon an agreement between the medical providers and the plaintiff's health insurance company, is it not the tortfeasor who is benefitting from the plaintiff's decision to purchase health insurance? In light of the fact that the plaintiff paid the premiums for the health insurance policy, the plaintiff (not the tortfeasor) should receive the benefit of the write-off.

As it stands, the law in this area, which was shaped by a concern of overcompensating tort victims, shifts the loss away from the tortfeasor and onto physicians and hospitals. Tortfeasors pay less than the full amount of the damage they create, and the medical providers typically take the loss in the form of the write-offs. Time will tell whether shifting these losses to an already overstressed healthcare system is the proper approach. ■

¹ See *Gimbel v. Laramie*, 181 Cal. App. 2d 77, 81 (1960); and *Hanif v. Housing Auth. of Yolo County*, 200 Cal. App. 3d 635, 640 (1988).

² See *Helfend v. Southern Cal. Rapid Transit Dist.*, 2 Cal. 3d 1 (1970).

³ *Id.* at 10-12.

⁴ *Id.* at 9-10.

⁵ *Id.* at 10 ("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.")

⁶ *Id.* at 10-12.

⁷ *Id.*

⁸ *Id.*

⁹ See *Hanif v. Housing Auth. of Yolo County*, 200 Cal. App. 3d 635 (1988).

¹⁰ *Id.* at 637-39.

¹¹ *Id.*

¹² *Id.* at 640.

¹³ *Id.* at 643.

¹⁴ *Id.* at 641.

¹⁵ See *Nishihama v. City & County of S.F.*, 93 Cal. App. 4th 298 (2001).

¹⁶ *Id.* at 301.

¹⁷ *Id.* at 306-09.

¹⁸ See, e.g., *Greer v. Buzgheia*, 141 Cal. App. 4th 1150 (2006); *Katiuzhinsky v. Perry*, 152 Cal. App. 4th 1288 (2007).

¹⁹ See *Helfend v. Southern Cal. Rapid Transit Dist.*, 2 Cal. 3d 1, 11 (1970).

²⁰ See *Nishihama v. City & County of S.F.*, 93 Cal. App. 4th 298, 309 (2001).

²¹ See *Greer*, 141 Cal. App. 4th 1150; *Katiuzhinsky*, 152 Cal. App. 4th 1288.

²² *Greer*, 141 Cal. App. 4th at 1155-56.

²³ See *id.* at 1154.

²⁴ *Id.*

²⁵ *Id.* at 1154-55.

²⁶ *Id.* at 1155.

²⁷ *Id.* at 1157.

²⁸ *Id.*

²⁹ *Id.* at 1158.

³⁰ *Id.* at 1157-59.

³¹ See *Katiuzhinsky v. Perry*, 152 Cal. App. 4th 1288 (2007).

³² *Id.* at 1291.

³³ *Id.*

³⁴ *Id.* at 1294-95. In *Katiuzhinsky*, the appellate court also held that it was error to limit the recovery based upon the discount at which the financial services company purchased the medical bills. The payment for the acquisition of the lien for the medical bills did not extinguish the plaintiff's obligation to pay the bills. *Id.* at 1297-98.

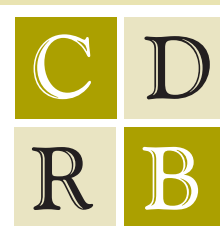
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