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State Supreme Court takes case on damage awards

By DOUG SHERWIN
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The California Supreme Court has agreed to hear a case involving damage awards for accident victims that could shake up the insurance industry.

The case, *Rebecca Howell v. Hamilton Meats & Provisions Inc.*, centers on whether a plaintiff can be reimbursed for the total cost of medical expenses or just the amount the hospital collected from the insurance company.

Howell was seriously injured after a truck driven by a Hamilton Meats employee made an illegal U-turn and struck her car in Encinitas. Her medical bills totaled nearly \$190,000, however her insurance company settled with the hospital for a payment of \$59,691.

The trial court granted a post-trial motion to reduce Howell's special verdict jury award for medical expenses to the amount the insurance company actually paid. The motion was appealed and, in November, the Fourth District Court of Appeal in San Diego reversed the trial court and awarded Howell nearly \$190,000.

According to San Diego attorney Robert Tyson, who represents Hamilton Meats, it's the first time such an appeal has been granted.

"We all know what hospitals charge and what they end up

taking is significantly different," said Tyson, a partner with **Tyson & Mendes**. "Businesses already are being asked to shoulder increased medical insurance premiums. Now they're being asked to pay on top of that; to pay damages on injury cases that are phantom, that don't exist. It's money no one else wants. The hospitals have been paid. The insurance companies have settled."

In its decision reversing the award, the appellate panel attributed the lower payment to Howell's "own thrift and foresight in procuring private health insurance," and Hamilton Meats "should not garner the benefits of Howell's providence."

The case has drawn extreme interest in the legal and insurance industries. At least 17 companies have filed amicus briefs, including the Association of California Insurance Companies, the American Association of Insurance Companies and the Association of Southern California Defense Counsel.

"I don't think there's been an issue with so many amicus briefs," Tyson said. "Maybe Prop. 8 (the case involving the ban on gay marriage)."

He said the case is significant because, if the high court upholds

the appellate decision, there will be a dramatic increase in settlements and jury verdicts. And the increased costs to insurance companies will be passed onto consumers in the form of higher premiums.

"A lot of businesses here in San Diego are self-insured," Tyson said. "It's going to directly (affect them)."

Tyson said it is common practice for hospitals to discount medical bills owed by insurance companies in exchange for prompt payment and/or a guaranteed volume of business.

"In California, the injured party is entitled to be made whole," he added. "You pay their medical expenses, lost wages and some pain and suffering. This is whole new category of damages, where the plaintiff is getting a super windfall and is being made much more than whole."

San Diego attorney John Rice, who is one of Howell's attorneys, told the *San Francisco Chronicle* that the only windfall was the money "insurance companies have saved by shorting injured people."

Oral arguments have not yet been scheduled, but the parties likely will file the initial round of briefing in the next two weeks.