

San Francisco Chronicle

CA Supreme Court tort case ruling helps insurers

Bob Egelko, Chronicle Staff Writer

Friday, August 19, 2011

In a victory for insurance companies, the California Supreme Court ruled Thursday that an accident victim who sues the wrongdoer can recover only the discounted sum that the victim's insurer negotiates with doctors and hospitals that provide care, and not the actual cost of treatment.

At stake in the 6-1 decision were payments of hundreds of millions of dollars a year statewide, according to business and consumer groups that took part in the hard-fought case.

The case involved a common practice by medical providers of giving substantial discounts to insurance companies in exchange for volume business and prompt and reliable payment.

The victim, Rebecca Howell, was injured when a truck from Hamilton Meats & Provisions made an illegal U-turn and hit her car on a street in San Diego County. She underwent spinal fusion surgery and related treatment at two hospitals. The hospitals submitted bills totaling \$190,000 but agreed to accept \$60,000 from Howell's insurer.

A state appeals court ruled that Howell was entitled to \$190,000 in damages from Hamilton Meats for her medical costs, saying the company should not benefit from a discount that resulted from Howell's decision to buy insurance and pay the premiums.

But the state's high court said a victim should recover only the amount that the hospitals were actually paid for treatment. That would limit Howell's damages to \$60,000 - an amount she would then have to forward to her insurer - although her insurance contracts may provide grounds for additional payments.

Howell is not entitled to recover the full amount of her hospital bills because she "did not suffer any economic loss in that amount," said Justice Kathryn Mickle Werdegar in the majority opinion. The higher sums that the hospitals billed don't necessarily represent the "real value of their services," Werdegar said, because they were willing to negotiate discounts with the insurers that paid the bills.

In dissent, Joan Dempsey Klein, an appeals court justice from Los Angeles temporarily assigned to the high court, said a victim's insurance coverage, and the savings that result from it, should not affect her damages.

Under the ruling, she said, the party that caused the accident "would not be paying the full cost of its negligence or wrongdoing" because it benefited unfairly from the victim's insurance coverage. She said the value of Howell's medical care should be determined by courtroom evidence, not a negotiated discount. The ruling dismayed consumer advocates and plaintiffs' lawyers.

"This is a setback for consumer rights in California," said John Montevideo, president of Consumer Attorneys of California, whose members represent plaintiffs in injury cases and usually are paid a percentage of the damages.

Howell's lawyer, Gary Simms, said the ruling would probably reduce overall damage awards, for pain and suffering as well as economic losses, because it would allow jurors to learn that a victim had insurance coverage.

But Hamilton Meats' lawyer, Robert Tyson, said the ruling would help consumers by keeping insurance rates down.

"The court realized that accident victims should not receive more in damages for medical bills than the actual cost of what was paid for medical treatment," he said. If insurers had to pay the non-discounted cost of treatment, he said, victims and their lawyers would get a windfall and insurance rates would soar.

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/08/18/BA2L1KP6P5.DTL>