

Crash victim's suit may cut insurance payment

Written by [Greg Moran](#)

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ENCINITAS — Six years ago, a meat truck driving down an [Encinitas](#) road made an illegal U-turn and slammed into a car driven by Rebecca Howell, a former professional surfer and ex-teacher.

The fallout from that crash left Howell with numerous injuries — and also led to a lawsuit that became one of the most closely watched cases among [insurance companies](#) and [plaintiffs](#) lawyers in years.

At stake in the litigation: Can an accident victim recover the full amount of medical costs that a hospital billed or only the smaller amount that the victim's insurance carrier actually paid to the hospital to satisfy the bill?

While the issue might sound obscure, the stakes were huge — an estimated \$3 billion a year in the amount of money insurance companies pay out to injured plaintiffs. In a 6-1 decision, the [state Supreme Court](#) ruled this month that plaintiffs can't get that higher amount.

The ruling was a victory for insurance carriers but a blow to victims and their attorneys, who stand to recover far less money in such cases. Plaintiffs attorneys also contend it will lead to a windfall for corporations, which will benefit by paying out far less for defective products or other negligent acts.

“Some people are calling this tort reform” said **Robert Tyson**, the [San Diego](#) lawyer who represented the Hamilton Meats & Provisions and won the case at the Supreme Court. “What this decision does is it puts the plaintiffs bar in a much worse position.”

Both sides agree that the ruling will have a broad impact and reduce money awards in thousands of personal injury lawsuits each year.

“The insurance industry loves this because they are saving \$3 billion per year,” said John Rice, one of Howell’s lawyer.

Howell, 50, suffered numerous injuries and required several operations, including two spinal fusion surgeries and a procedure to take bone from her hip to repair an injury to her neck. Scripps Memorial Hospital in Encinitas, where she was treated, billed about \$190,000 for her medical care.

Howell was insured. Under a contract between her insurance company, PacificCare, and Scripps, the hospital was paid about \$60,000 to settle the bill. Such agreements between hospitals and insurers are common.

Typically, the hospital agrees to discount the total amount of medical costs it bills in return for prompt cash payments from insurers and an agreement by the insurance company to send its customers to the hospital.

A San Diego Superior Court jury awarded Howell the full \$190,000 the hospital billed. The jury also awarded an additional \$500,000 for pain and suffering and economic loss in the future.

But **Tyson** argued in a motion filed after the verdict that the \$190,000 awarded for past medical bills should be reduced to the \$60,000 that was actually paid to the hospital. San Diego Superior Court Judge Adrienne Orfield agreed.

The state 4th District Court of Appeal in San Diego in November 2009 reversed that decision. The court cited a legal rule that says the amount of money a victim gets from another source — such as insurance — should not be used to reduce the money that a defendant who caused the injury should pay.

The state Supreme Court did not see it that way. The court ruled that Howell was not entitled to the \$130,000 difference between the amount billed and the amount paid because she did not “suffer any economic loss in that amount.”

Shaun Martin, a law professor at the University of San Diego School of Law who writes about appellate court decisions, said the ruling shows how courts are increasingly concerned about the amount of money plaintiffs can get for their injuries.

“They are saying we don’t want people making money off an injury,” Martin said. “It’s the windfall argument: If you are not really out of pocket, why should you get any money?”

While the opinion deals with medical bills, **Tyson** said it may also affect the overall amount of money plaintiffs receive in such cases. Under the court’s ruling, he said, juries will be entitled to see only the total amount paid for medical expenses — not the higher amount that was billed.

That could influence juries to award less money for pain and suffering, he said.

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