

# The Daily Transcript<sup>®</sup>

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## INDUSTRY INSIDER Q&A WITH ROBERT TYSON

# Defense attorney reflects on landmark insurance case

BY DAN LAWTON

Robert Tyson is a founding partner of the law firm Tyson & Mendes. In 2011, he successfully argued before the California Supreme Court in *Howell v. Hamilton Meats* that an injured plaintiff may only recover the medical costs paid by his or her health insurance and not the higher amount billed to insurance companies by physicians and hospitals. In this interview, he reflects on a variety of topics, including the effect the case has had.

**Daily Transcript: What TV shows are you watching?**

**Robert Tyson:** Lots of them. I know I should talk about all of the books I love to read, but hey, I am a trial lawyer from Staten Island, and I love TV. Some of my favorites include "Million Dollar Listing," "Stranger Things," "Billions," "Better Call Saul," "Silicon Valley," "House of Cards," "Curb Your Enthusiasm," "SportsCenter"... I better stop there!

**DT: What podcasts are you listening to?**

**RT:** I have never listened to a podcast. Now if you put them on TV – that would be a different story...

**DT: If I wasn't a lawyer, I'd be...**

**RT:** Walt "Clyde" Frazier. I wanted to be a New York Knick, specifically Clyde Frazier, since I was about 6 years old. I am sure it is just a coincidence, but my 11-year-old son wants to be an NBA star too. My second choice would be a rock star, probably Bruce Springsteen. Third choice, Jay Wright, head basketball coach for the Villanova Wildcats. Go Nova!

**DT: My favorite San Diego restaurant is...**

**RT:** La Jolla Country Club, by far. The food is always out of this world – Chefs Matt and Paul and their team are the best. And the service is over the top!

**DT: Coffee or tea?**

**RT:** Starbucks' iced tea lemonade with no sweetener, two sweet 'n'



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low, light ice, heavy lemonade. I swear they don't write "The Diva" on my drink!

**DT: What is the first place you'd show a visitor to San Diego?**

**RT:** The beach, of course. Either to look at the ocean or go in it. It's a sight you cannot beat.

**DT: Who is your business role model?**

**RT:** My dad. Although we took very different paths – he was a stockbroker on Wall Street – he has made my path possible and has guided me my whole career. I have taken a lot more chances in my career than my dad – going out on my own, buying our office buildings in La Jolla, and recently expanding throughout the West, but he has supported me every step of the way.

My dad always stressed the importance of honesty, hard work, setting goals and then setting even bigger goals when you achieve them, being direct with people, being fair, caring, understanding your finances, and ultimately, winning. Nothing I have accomplished would be possible without the pushing, guidance and support of my dad, and mom, of course. And, my clients and friends love my dad – probably more than they like me – so that helps.

**DT: What is your favorite part of the job?**

**RT:** The variety. Every day is very different from the day before, sometimes drastically. I love being a small business owner with more than 130 employees in five states. I was a finance major at Villanova, so I enjoy the numbers and running the business.

But then also I love being a trial lawyer and the competition of trying to achieve justice for all, including businesses and individuals who have been unjustly sued and dragged through the legal system. Helping others grow professionally through training and mentoring is an extremely rewarding part of my job, too. I do feel blessed every day to be a trial lawyer and to have my own firm.

**DT: In 2011, you successfully argued in court that an injured plaintiff is only allowed to recover the lower amount paid by health insurance to satisfy medical bills – not the figure billed to insurance companies by physicians and hospitals. How has this changed how those cases are tried?**

**RT:** The impact on every single tort jury trial in California cannot be understated. When we defeated the Consumer Attorneys of California for billions of dollars before the California Supreme Court, the win reverberated throughout the country. The Plaintiff's Bar stood to make 40 percent of more than \$10 billion dollars, every year – so the loss was exponential. Plaintiffs' attorneys are constantly trying to find new ways to circumvent the ruling. Fortunately, the California appellate courts have consistently upheld the *Howell* decision, which has ultimately benefited the consumers of California.

**DT: What affect has the ruling had on health care and insurance costs?**

**RT:** The impact on all types of businesses, insurance companies, and most importantly, the citizens of California has been substantial. Insurance companies and businesses throughout California were at risk

of losing more than \$10 billion each year. What many fail to realize is that if we had lost, consumers in California would have been the ones to cover the cost. Billions of dollars in plaintiffs' attorneys' fees and medical expenses would have ultimately been passed onto consumers by way of more expensive products and services, and higher premiums for all types of insurance.

**DT: How might changes in the Affordable Care Act (ACA) affect the *Howell* paid rule?**

**RT:** A recent California Appellate Court held that the *Howell* paid rule applies to medical treatment covered under the ACA in medical malpractice lawsuits. Specifically, a jury may now hear evidence of ACA benefits and coverage when awarding medical costs. Thankfully, changes to the ACA will have minimal impact on *Howell's* paid rule.

Certain services that are currently covered may become uncovered or covered for a different fee in the future, but any health insurance coverage is good for consumers in the post-*Howell* era.

If the ACA were entirely abolished and not replaced, a jury's analysis would continue to focus on the reasonable value health care costs. *Howell* is here to stay.

**DT: What does the future hold for health care billing?**

**RT:** One California court described its ruling as "descend[ing] down a rabbit hole into the upside-down world of health care billing[.]" Consumers probably agree with this notion. Fortunately, the *Howell* rule allows juries to focus on the reasonable value of the medical care – what is paid for services – and away from the labyrinth of medical billing.

*Howell* allows the state to discover the truth behind medical billing, health insurance, medical liens and third party medical finance companies. The future is bright and trending toward more transparent medical costs in the California legal system.