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PERSPECTIVE

Defense industry must protect 2011's *Howell v. Hamilton Meats*

By Robert F. Tyson, Jr

Eleven years ago, my team and I achieved a major victory over the Consumer Attorneys of California when the California Supreme Court ruled 6-1 in our favor in the landmark decision *Howell v. Hamilton Meats & Provisions, Inc.* Not only did we save the insurance and defense industries over $10 billion every year, but the Court's ruling radically changed the state's litigation landscape and the way the Collateral Source Rule is interpreted.

The decision sent shockwaves through the plaintiff's bar, and the insurance industry celebrated the holding that an injured plaintiff is only allowed to recover the lower amount paid to satisfy medical bills, rather than the much higher inflated figure billed by physicians and hospitals. It was arguably the most significant tort case in more than 40 years.

In the years since, California courts have expanded the paid rule to apply to Medicare payments (*Sanchez v. Strickland*; *Luttrell v. Island Pacific Supermarkets, Inc.*), Medi-Cal payments (*Sanchez v. Strickland*), workers' compensation payments (*Sanchez v. Brooke*), future medical damages (*Corenbaum v. Lampkin*), and noneconomic damages (*Corenbaum v. Lampkin*). California also extended the Howell rule to allow evidence of the Affordable Care Act when determining the cost of future care in medical malpractice cases (*Cuevas v. Contra Costa County*).

This expansion has saved insurers and defendants over $100 billion dollars in the last decade. It has also been a win for California consumers. Awarding plaintiffs actual damages in tort cases, as opposed to unreasonable medical bills that no citizen ever pays, translates as a win for all of us. And all of these court decisions have had a far-reaching impact on other jurisdictions across the country as well.

Not Everyone is Happy

While the Howell ruling has been an unequivocable win for the defense, it has not been well-received by the plaintiff's bar. Why? Just do the math: 40% of $10 billion is a pretty big number. And the Consumer Attorneys of California did not just lose $4 billion in contingency fees in 2011, they are losing it every year. This of course is ironic as it was the Consumer Attorneys of California who created Howell in the first place! It was their statewide efforts to overturn the longstanding *Hanif v. Housing Authority* decision of 1998 that resulted in our billion-dollar victory.

Howell did provide a bright line rule that injured plaintiffs are only entitled to recover the lesser of what is paid or is reasonable, and not the medical bills. While we had hoped the Consumer Attorneys of California would move onto other issues or reforms, there is just too much money at stake. Fortunately, almost all legal challenges to the paid vs. billed rule have been unsuccessful. But the battle is not over.

The Defense Must Not Let Up

Howell has shown resiliency over the last 11 years, but that does not mean the defense bar should remain confident it is here to stay. We must fight just as hard as plaintiffs' attorneys to ensure its longevity.

The best way we can do this is to stay vigilant and communicate with each other! At Tyson & Mendes, all our attorneys are trained to combat the tactics being used to circumvent Howell, and we frequently travel the country to share this knowledge with insurers and their defense counsel. But we cannot do it alone.

While there are plenty of defense organizations that do a great job disseminating information and bringing defense lawyers together, it is nowhere near what the plaintiff's bar does. It is time for that to change.

But sharing takes time and effort. To what end, one might wonder? Justice, of course. *Howell v. Hamilton Meats* was a just and righteous decision 11 years ago, and it remains so today. While it may be under constant attack judicially and circumvented daily by the plaintiff's bar's creative use of medical lien doctors and factoring companies to pay for it all, justice must prevail. If the defense industry has any hope of achieving justice for all – not just injured plaintiffs and their attorneys – we must share with each other and advocate for the protection of the principles set forth in Howell 11 years ago.

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