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CIVIL LITIGATION UPDATES

Issue: **Update Re: *Howell v Hamilton Meats & Provisions, Inc.***

In *Howell v Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541, 129 Cal. Rptr. 3d 325 the California Supreme Court ruled that the plaintiff was not entitled to recover the amount of the medical bill that exceeded the amount actually paid by health insurance. The Court held that the unpaid portion of the medical bill was inadmissible. The Court established a two-step analysis in determining the admissibility of these medical bills. The analysis begins with the determination of the amount actually paid or incurred and then whether that reduced amount was reasonable and necessary.

Over the last eight years there have been thirty-three (33) cases[1] which have addressed the *Howell* case and though these cases have provided some clarification of the analysis, the core principles remain largely unchanged. Nevertheless, there have been assertions that significant changes have been made to the *Howell* decision. Counsel have identified cases they believe support these arguments. This memorandum identifies the cases than have addressed the *Howell*

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[1] Sanchez v. Strickland, 200 Cal. App. 4th 758, 133 Cal. Rptr. 3d 342 (2011)
Mize-Kurzman v. Marin Community College Dist., 202 Cal. App. 4th 832, 136 Cal. Rptr. 3d 259, (2012)
Sanchez v. Brooke, 204 Cal. App. 4th 126, 138 Cal. Rptr. 3d 507, (2012)
Collins v. Union Pacific Railroad Co., 207 Cal. App. 4th 867, 143 Cal. Rptr. 3d 849, (2012)
Silas v. Arden, 213 Cal. App. 4th 75, 152 Cal. Rptr. 3d 255
Luttrell v. Island Pacific Supermarkets, Inc., 215 Cal. App. 4th 196, 155 Cal. Rptr. 3d 273, (2013)
Corenbaum v. Lampkin, 215 Cal. App. 4th 1308, 156 Cal. Rptr. 3d 347, (2013)
State Farm Mutual Automobile Ins. Co. v. Huff, 216 Cal. App. 4th 1463, 157 Cal. Rptr.
Cabrera (Ingrid) v. E. Rojas Properties, Inc., 133 Cal. Rptr. 3d 750, 264 P.3d 589 (2011)
Williams v. The Pep Boys Manny Moe & Jack of California, 27 Cal. App. 5th 225, 238 Cal. Rptr. 3d 809,
Pebley v. Santa Clara Organics, LLC, 22 Cal. App. 5th 1266, 232 Cal. Rptr. 3d 404, (2018)
Hefczyc v. Rady Children's Hospital-San Diego, 17 Cal. App. 5th 518, 225 Cal. Rptr. 3d 641, (2017)
Cuevas v. Contra Costa County, 11 Cal. App. 5th 163, 217 Cal. Rptr. 3d 519, (2017)
Moore v. Mercer, 4 Cal. App. 5th 424, 209 Cal. Rptr. 3d 101, (2016)
Markow v. Rosner, 3 Cal. App. 5th 1027, 208 Cal. Rptr. 3d 363, (2016)
Doe v. Roman Catholic Archbishop of Los Angeles, 247 Cal. App. 4th 953, 202 Cal. Rptr. 3d 414 (2016)
Uspenskaya v. Meline, 241 Cal. App. 4th 996, 194 Cal. Rptr. 3d 364, (2015)
Bermudez v. Ciolek, 237 Cal. App. 4th 1311, 188 Cal. Rptr. 3d 820, (2015)
Lee v. Silveira, 236 Cal. App. 4th 1208, 187 Cal. Rptr. 3d 327, (2015)
McMillin Cos., LLC v. American Safety Indemnity Co., 233 Cal. App. 4th 518, 183 Cal. Rptr. 3d 26 (2015)
Dameron Hospital Assn. v. AAA Northern California, Nevada & Utah Ins. Exchange, 228 Cal. App. 4th
Ochoa v. Dorado, 228 Cal. App. 4th 120, 174 Cal. Rptr. 3d 889 (2014)
In re Anthony S., 227 Cal. App. 4th 1352, 174 Cal. Rptr. 3d 522, (2014)
Children's Hospital Central California v. Blue Cross of California, 226 Cal. App. 4th 1260, 172 Cal. Rptr.
Romine v. Johnson Controls, Inc., 224 Cal. App. 4th 990, 169 Cal. Rptr. 3d 208, 2014
Dodd v. Cruz, 223 Cal. App. 4th 933, 167 Cal. Rptr. 3d 601 (2014)
Barnes v. Western Heritage Ins. Co., 217 Cal. App. 4th 249, 159 Cal. Rptr. 3d 25,
State Farm Mutual Automobile Ins. Co. v. Huff, 216 Cal. App. 4th 1463, 157 Cal. Rptr. 3d 863 (2013).
Corenbaum v. Lampkin, 215 Cal. App. 4th 1308, 156 Cal. Rptr. 3d 347 (2013)
Luttrell v. Island Pacific Supermarkets, Inc., 215 Cal. App. 4th 196, 155 Cal. Rptr. 3d 273 (2013)
Silas v. Arden, 213 Cal. App. 4th 75, 152 Cal. Rptr. 3d 255
Collins v. Union Pacific Railroad Co., 207 Cal. App. 4th 867, 143 Cal. Rptr. 3d 849 (2012)

decision and a brief discussion of these rulings. I have identified the cases which counsel have named in support of their arguments so that if confronted with these case names you will have an understanding of the case and its effect on the *Howell decision*.

Sanchez v Strickland, (2011) 200 Cal. App. 4th 758

In *Sanchez v Strickland* the issue was whether a voluntary write-off of some or all of the medical bill is excluded under the *Howell* decision. In this case the plaintiff was covered under Medi-Cal but the doctor was not a Medi-Cal provider and therefore could not receive reimbursement of the medical bill from Medi-Cal. As a result, his office merely "wrote it off". The defendant argued that this unpaid portion of the bill should be excluded *because the plaintiff was no longer obligated to pay it*. The court held that these types of write-offs were not treated as "payments" even though the patient was not obligated to reimburse the doctor. The court ruled that these types of voluntary write-offs are not equivalent to "reduced payments" for purposes of *Howell.* The ruling stated:

> Where a medical provider has (1) rendered medical services to a plaintiff, (2) issued a bill for those services, and (3) subsequently written off a portion of the bill gratuitously, the amount written off constitutes a benefit that may be recovered by the plaintiff under the collateral source rule. *Id. at 769.*

This ruling rests upon a very weak foundation but the case does not change the *Howell* decision since these types of medical bills were never intended to fall within the *Howell* decision.

Sanchez v Brooke, (2012) 204 Cal.App.4th 126

In *Sanchez v Brooke* the issue was whether the *Howell reductions* are applicable to medical bills paid by the employee's worker's compensation carrier. The plaintiff introduced the entire medical bill but only a portion was paid by the worker's compensation insurance carrier. The court ruled that, similar to the situations in which health insurance carriers pay only a portion of the medical bills, the portions of the bill not paid by the worker's compensation carrier should be excluded. *Id. at 142.*

This ruling does not change the *Howell* decision since these types of medical bills were intended to fall within the *Howell* decision.

Luttrell v Island Pacific Supermarkets, Inc. (2013) 215 Cal.App.4th 196.

In *Luttrell v Island Pacific Supermarkets, Inc.* the issue was whether the *Howell reductions* are applicable to the plaintiff's medical bills paid by Medi-Cal and Medicare. The plaintiff introduced the entire medical bill but only a portion was paid by Medi-Cal. The court held that *Howell* applied to Medi-Cal and Medicare payments in the same way payments by private health insurance companies served to reduce the amount the plaintiff could recover for these medical services.

This ruling does not change the *Howell* decision since these types of Medi-Cal and Medicare bills were intended to fall within the *Howell* decision.

Corenbaum v Lampkin, (2013) 215 Cal. App.4th 1308

In *Corenbaum v Lampkin* court established the procedures for implementing the *Howell* decision at trial. Before this decision, the issue was usually raised in a post-trial motion to reduce the amount of the jury's verdict for economic damages by the amounts actually paid by health insurance. This became a problem because jurors usually render their award for general damages based upon the amount of the medical specials. Thus, by introducing the inflated medical bill, the jury's award for general damages would be equally inflated. In *Corenbaum*, the court held that the unpaid portion of the medical bill was inadmissible at trial. Thus, the trial court must address these issues in a motion in limine before the trial commences.

This ruling further clarifies the *Howell* decision without modifying or changing the decision.

Ochoa v Dorado, (2014) 228 Cal.App.4th 120

In *Ochoa,* the court further clarified the standard used for the implementation of the *Howell* decision without changing or modifying the rule. The *Ochoa* court ruled that "a plaintiff may recover as damages for past medical expenses no more than the reasonable value of the services provided. **Such damages** are limited to the **lesser** of (1) the amount paid or incurred for past medical services, and (2) the reasonable value of the services," *Id. at 134.* This is significant because it clarified the two-step process established by the *Howell Court*. First, the court reduces the total amount of the medical bills to the amount paid. Second, the court determines whether that reduced amount is reasonable. As a result, the mere reduction of the medical bill to the amounts actually paid by the health insurance company is not the last step, but rather the first of this two-step process. Additionally, the court held that this ruling applies even if the health insurance company does *not* actually have a pre-arranged contract with the medical provider. The only issue is whether the reduced medical bill was paid. *Id. at 136.*

This ruling further clarifies the *Howell* decision without modifying or changing the decision.

Bermundez v Ciolek, (2014) 237 Cal.App.4th 1311.

In *Bermundez,* the issue was whether the *Howell analysis* would extend to uninsured plaintiffs. The court held that the *Howell decision* is limited to cases in which all or a portion of the medical bills were paid. As a result, the *Howell analysis* is inapplicable to medical bills incurred on a lien.

This ruling serves to clarify the scope of the *Howell* decision without modifying or changing the decision.

Uspenskaya v Meline, (2015) 241 Cal.App.4th 996.

In *Uspenskaya,* the issue was whether the *Howell analysis* would extend to uninsured plaintiffs whose medical liens were *purchased* by third parties [litigation funding companies]. The court held that *Howell* is limited to cases in which all or a portion of the medical bills were paid directly by third parties [health insurers, workers' compensation carriers, Medi-Cal, Medicare]. In *Uspenskaya,* the plaintiff's medical liens were paid by third parties but the plaintiff remained obligated to "pay" the entire amount of the medical bill. The difference was that the plaintiff was now obligated to pay these third parties and not the doctors. As a result, the *Howell analysis* was not applicable to these types of cases.

This ruling serves to clarify the scope of the *Howell* decision without modifying or changing the decision.

Pebley v Santa Clara Organics, LLC, (2017) 22 Cal. App.5th 1266

In *Pebley,* the issue was whether the *Howell analysis* would extend to plaintiffs who were covered by health insurance but voluntarily chose medical facilities not covered under the health insurance plan. The court held that it is immaterial whether the plaintiff was covered by health insurance at the time of the injury. The *Howell analysis* focuses on whether the medical bills were paid. If so, only the amount of the medical bill actually paid is admissible. As a result, even if the plaintiff was covered under a health insurance policy but sought treatment with a doctor out of the network and incurred medical expenses [on a lien] that were not paid, the entire amount of the medical bill would be admissible.

This ruling serves to clarify the scope of the *Howell* decision without modifying or changing the decision.

ANALYSIS CONCLUSION

Over the last eight years there have been thirty-three (33) cases addressing issues raised in the *Howell* case. These cases have provided clarification of the analysis, but the core principles remain largely unchanged. We will provide these types of case updates as cases address and modify or change the *Howell decision*.