Court of Appeal, Second Appellate District
Daniel P. Potter
Electronically RECEIVED on 1/21/2020 on 6:14:14 PM

Court of Appeal, Second Appellate District
Daniel P. Potter
Electronically FILED on 1/21/2020 by Karla Dominguez, Deputy Clerk

ASCDC
Association of Southern California Defense Counsel

2520 Venture Oaks Way, Suite 150 • Sacramento, CA 95833
(800) 564-6791 • (916) 239-4082 • (916) 924-7323 – Fax
ascdc@camgmt.com • www.ascdc.org

January 21, 2020

Presiding Justice Lawrence D. Rubin
Associate Justice Carl H. Moor
Associate Justice Dorothy C. Kim
Second Appellate District, Division Five
California Court of Appeal
Ronald Reagan State Building
300 South Spring Street
2nd Floor, North Tower
Los Angeles, California 90013

OFFICERS

PRESIDENT
Peter S. Doody

PRESIDENT-ELECT
Lawrence R. Ramsey

VICE PRESIDENT
Diana Lytel

SECRETARY-TREASURER
Marta A. Alcumbrac

PAST PRESIDENT
Christopher E. Faenza

EXECUTIVE DIRECTOR
Jennifer Blevins, CMP

BOARD OF DIRECTORS

KERN COUNTY
Thomas P. Feher

LOS ANGELES COUNTY
Alice Chen Smith
Lisa Collinson
Julianne DeMarco
Steven S. Fleischman
R. Bryan Martin
David A. Napper
Lisa Perrochet
Ninos P. Saroukhanioff
Eric Schwettmann
Wendy Wilcox

ORANGE COUNTY
David J. Byasse
Lisa J. McMains

RIVERSIDE COUNTY
Gary T. Montgomery

SAN DIEGO COUNTY
Colin Harrison
Benjamin J. Howard
Patrick J. Kearns

SANTA BARBARA COUNTY
Michael A. Colton

VENTURA COUNTY
Natalia Greene
Michael LeBow

Re: *Maryza Alexandra Hanson v. John Thomas Murrah*
Court of Appeal No. B292327
Request for Publication of January 16, 2020 Opinion

Honorable Justices:

The Association of Southern California Defense Counsel (the Association) respectfully requests that the court publish its recent opinion in this case ("Opinion"). The Opinion's analysis that certain expert testimony did not violate the collateral source rule and was relevant to prove the actual value of the services rendered under *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541 (*Howell*) addresses important, recurring issues that readily meet the publication standard.

The Association's interest

The Association is the nation's largest and most preeminent regional organization of lawyers who specialize in defending civil actions, comprised of approximately 1,100 attorneys in Southern and Central California. Its members routinely represent clients in defending actions where medical expenses are being sought as economic damages.

The Association has appeared as amicus curiae in numerous cases involving the proper standard for measuring past and future medical damages, including *Howell, supra,* 52 Cal.4th 541, *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, *Cuevas v. Contra Costa County*

(2017) 11 Cal.App.5th 163, and *Moore v. Mercer* (2016) 4 Cal.App.5th 424. The Association also seeks publication of important cases that involve *Howell* issues. (See, e.g., *Stokes v. Muschinske* (2019) 34 Cal.App.5th 45.)

The Association's members frequently encounter the type of arguments that the plaintiff raised here—contentions or objections that the collateral source rule bars defense evidence regarding the value of medical services or that the trial court should prohibit testimony regarding the amounts that insurers or government entities would pay for the same medical services. The Association's members have a direct interest that the law in this area be certain. *Published* precedent furthers that goal.

Why publication is warranted

The Opinion's discussion regarding "Insurance and Medical Bills" at pages 13-15 meets the standard for publication because it "[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions," "explains . . . an existing rule of law," and "[i]nvolves a legal issue of continuing public interest." (Cal. Rules of Court, rule 8.1105(c)(2), (3), (6).)

Publication will provide needed guidance on the lines between what evidence falls outside the collateral source rule and what evidence does not. The case law on this issue is sparse.

Under the collateral source rule, "'[i]f an injured party receives some compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor.'" (*Howell*, *supra*, 52 Cal.4th at p. 551.) The rule "has an evidentiary as well as a substantive aspect. Because a collateral payment may not be used to reduce recoverable damages, evidence of such a payment is inadmissible for that purpose." (*Id.* at p. 552.)

The collateral source rule has engendered much confusion, confusion evidenced by *Howell*'s procedural history. In *Howell*, after a jury awarded the amounts billed by medical providers as medical damages, the defendant moved to reduce the award to the amount the providers accepted from plaintiff's insurer as full payment; plaintiff argued that the "reduction of the medical damages would violate the collateral source rule." (52 Cal.4th at p. 550.) The trial court reduced

the award, but the Court of Appeal "reversed the reduction order, holding it violated the collateral source rule." (*Ibid.*) The Supreme Court then reversed the Court of Appeal, finding there was no violation of the collateral source rule. (*Id.* at p. 568.)

Howell held that "an injured plaintiff whose medical expenses are paid through private insurance may recover as economic damages no more than the amounts paid by the plaintiff or his or her insurer for the medical services received or still owing at the time of trial" and that this holding does *not* "abrogate or modify the collateral source rule." (*Id.* at p. 566.) *Howell* explained that evidence of the amount accepted as full payment is admissible and relevant to "prove the plaintiff's damages for past medical expenses" without violating the collateral source rule, but "[e]vidence that such payments were made in whole or in part by an insurer remains . . . generally inadmissible under the evidentiary aspect of the collateral source rule." (*Id.* at p. 567.)

Because the line between these two concepts is not always clear, the confusion over the collateral source rule has continued after *Howell*. Even though evidence of amounts typically paid by insurers or government entities is plainly relevant to determining the reasonable value of medical services, some plaintiffs continue to contend—as the plaintiff here did—that that *any* mention of insurance or government (Medicare, etc.) reimbursement payments violates the collateral source rule, even if the evidence is being used to establish the reasonable value of services. Attorneys representing plaintiffs in personal-injury actions frequently try to twist *Pebley v. Santa Clara Organics, LLC* (2018) 22 Cal.App.5th 1266 (*Pebley*) into standing for this erroneous proposition, exactly as the plaintiff did here. (See Opinion, p. 14.)

The Opinion, in discussing Dr. Samimi's testimony, explains that a doctor's testimony about whether Medicare would reimburse certain injections does not violate the collateral source rule where, as here, the doctor testified that there was no reimbursement. (Opinion, p. 14.) The Opinion similarly explains, in discussing Dr. Bliss's testimony, that "testimony that insurance companies would *not* pay for a health provider's charges does not violate the collateral source rule's prohibition on reducing a plaintiff's damages by payments received by insurance." (Opinion, p. 15, emphasis in original.)

And in discussing *both* experts' testimony, the Opinion adds: "Further, the experts' testimony on reimbursement rates was relevant to the actual value of the services rendered." (Opinion, p. 15, citing *Howell*, *supra*, 52 Cal.4th at pp. 561-562.)

These "collateral source" and *Howell*-related holdings are crucially important because defense attorneys are repeatedly facing the exact same arguments about the collateral source rule, *Pebley* and *Howell* that the plaintiff made in this case. Absent publication, the type of confusion that occurred in this case is destined to recur again and again, triggering more appeals and a waste of judicial resources.

For each of these reasons, the Association respectfully urges the Court to publish its January 16, 2020 opinion.

Respectfully submitted,

ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL

By: /s/ Edward L. Xanders
Edward L. Xanders

EDWARD L. XANDERS (SBN 145779)
Greines, Martin, Stein & Richland LLP
5900 Wilshire Boulevard, 12th Floor
Los Angeles, California 90036
(310) 859-7811

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On January 21, 2020, I served the foregoing document described as: **CORRESPONDENCE TO THE COURT** on the parties in this action by serving:

SEE ATTACHED SERVICE LIST

(X) I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

Executed on January 21, 2020, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Francene Wilson

Francene Wilson

SERVICE LIST

Via Truefilng:

Jonathan Corey Teller
Wilshire Law Firm,
3055 Wilshire Blvd. 12th Floor
Los Angeles, CA 90010
T: (213) 381-9988
E: jon@wilshirelawfirm.com
Attorneys for Plaintiff and Appellant Maryza Alexandra Hanson

CALIFORNIA SUPREME COURT
[Electronic Service under Rule 8.212(c)(2)]

Emily Kordyban
Clasen, Raffalow & Rhoads,
14724 Ventura Blvd. Ste 905
Sherman Oaks, CA 91403
T: (866) 436-7287
Attorneys for Defendant and Respondent John Thomas Murrah

Honorable Charles F. Palmer
c/o Court Counsel, Frederick Raymond Bennett III
Los Angeles Superior Court
111 North Hill Street, Rm. 546
Los Angeles, California 90012
T: (213) 633-8597
E: pnguyen1@lacourt.org
[Case No. BC600290]

Cleidin Z. Atanous
Law Office of Cleidin Z. Atanous
500 South South Kraemer Blvd.
Suite 205
Brea, CA 92821
T: (714) 528-8226
E: czatanous@yahoo.com
Attorneys for Defendant and Respondent John Thomas Murrah