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## **Another appellate decision holds plaintiff entitled to full amount of billed medical expenses without reduction for discount given to plaintiff's insurer**

On June 24<sup>th</sup>, 2010, the First Appellate District filed its opinion in *Ana Silva Yanez v. SOMA Environmental Engineering, Inc.*, 185 Cal. App. 4<sup>th</sup> 1313, holding that the collateral source rule entitled plaintiff to recover the entire amount of billed medical expenses without reduction for the amount not incurred because of the discount given to plaintiff's insurer by her health providers.

The plaintiff sued SOMA for injuries suffered in an automobile accident. The jury awarded her \$150,000 in damages, including \$44,519.01 for past medical expenses. SOMA moved to reduce the award to \$18,368.24, the amount accepted by plaintiff's medical providers as payment in full under their contracts with Aetna and Healthnet, her private insurers. The trial court granted the motion and reduced the damages award.

On appeal, plaintiff argued the trial court violated the collateral source rule by limiting her recoverable damages to the amounts she and her insurers paid for her medical care. She claimed the portions of the bills written off by the providers were collateral source benefits that could not be deducted from her recoverable damages. The appellate court agreed with plaintiff and directed the trial court to enter a new judgment restoring the original amount of damages awarded by the jury.

Under the collateral source rule benefits received by the plaintiff from a source independent of and collateral to the wrongdoer will not diminish the damages otherwise recoverable from the wrongdoer. Courts apply the rule even when it confers a windfall on the plaintiff, because "not applying the rule allows the wrongdoer to profit from the victim's investment in purchasing insurance or from the generosity of those who come to the victim's aid." The court cited *Helfend v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal. 3d 1, for the proposition that a defendant should not be able to avoid full compensation for the injury inflicted merely because the victim had the foresight to provide himself with insurance. Rate discounts negotiated between health insurers and providers are collateral benefits which, under the collateral source rule, should accrue to the insured plaintiff, not the defendant.

*Howell v. Hamilton* (2009) 179 Cal. App. 4<sup>th</sup> 686, also held that amounts written off by a health provider pursuant to its contract with a private health insurer may be recovered as damages under the collateral source rule. However, that decision has been accepted for review by the Supreme Court. The court distinguished *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635. *Hanif* was a personal injury action brought on behalf of a minor struck by an automobile on the defendant public housing authority's property. The court concluded the plaintiff was entitled to recover up to, and no more than, the actual amount expended or incurred for past medical services so long as



that amount is reasonable, and thus held his entitlement to damages for past medical services was limited to the actual amount paid by Medi-Cal, rather than the total amount billed. *Hanif* did not address the situation in which patients covered by private health insurance are charged reduced rates by the provider for their care as an insurance benefit negotiated between the insurer and the health care provider. In *Nishihama v. City and County of San Francisco* (2001) 93 Cal. App. 4<sup>th</sup> 298, the plaintiff was injured when she tripped and fell on a crosswalk maintained by the city. The jury awarded plaintiff the sum of \$17,168 for past medical expenses even though the hospital accepted from plaintiff's private health insurer the amount of \$3,600 as payment in full. The court of appeal held the trial court erred in permitting the jury to award the plaintiff an amount in excess of \$3,600 for the services provided by the hospital. The court refused to follow *Nishihama*, because it was based on the decision in *Hanif* which the court believed should not be extended beyond the Medi-Cal context.