

September 8, 2011

*Practice Group(s):**Product Liability**Toxic Tort*

Howell v. Hamilton Meat & Provisions, Inc.; **California Supreme Court Limits Damages for Past Medical Expenses**

In a decision that promises to impact significantly the amount of medical expenses in personal injury actions, on August 18, 2011, the California Supreme Court held that, since the expenses were never actually incurred, a plaintiff may not recover the gross amount billed for past medical expenses and is only entitled to receive the amount accepted for payment by medical providers.

The Court 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”.¹ The Court removed any uncertainty about the gravity of its decision, by specifically holding that any reference to the full amounts billed to the jury would be grounds for a new trial and that a post-verdict motion to reduce the damage award would not comply with the Court’s decision.

The holding clarifies an unsettled area of California law. Previously, appellate courts have been split on whether a plaintiff may be awarded the gross amount of his medical bills. The *Hanif*² line of cases held that a plaintiff who was covered by insurance could only recover the amount accepted for payment, while a second line of case exemplified by the lower court in *Howell* held any limit on past medical expenses below the gross billed amount violated California law. The split in appellate decisions has led to inconsistent rulings by the trial courts.

The *Howell* decision should be welcomed by any defendant facing personal injury and/or wrongful death claims. As there is usually a stark difference between the amount billed and what is accepted for payment, the holding may reduce damage awards for past medical expenses by as much as 25% to 50%, which in some cases could be into the six figures.

Authors:

Michele Barnes

Michele.Barnes@klgates.com

+1.415.249.1011

Brendan Tuohy

Brendan.Tuohy@klgates.com

+1.415.249.1077

¹ *Howell*, 2011 WL 3611940 at *14, No. S179115 slip opinion at 28.

² *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635.

**Howell v. Hamilton Meat & Provisions, Inc.; California
Supreme Court Limits Damages for Past Medical Expenses**

K&L GATES

Anchorage Austin Beijing Berlin Boston Brussels Charlotte Chicago Dallas Dubai Fort Worth Frankfurt Harrisburg Hong Kong London
Los Angeles Miami Moscow Newark New York Orange County Palo Alto Paris Pittsburgh Portland Raleigh Research Triangle Park
San Diego San Francisco Seattle Shanghai Singapore Spokane/Coeur d'Alene Taipei Tokyo Warsaw Washington, D.C.

K&L Gates includes lawyers practicing out of 37 offices located in North America, Europe, Asia and the Middle East, and represents numerous GLOBAL 500, FORTUNE 100, and FTSE 100 corporations, in addition to growth and middle market companies, entrepreneurs, capital market participants and public sector entities. For more information about K&L Gates or its locations and registrations, visit www.klgates.com.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

©2011 K&L Gates LLP. All Rights Reserved.