



# Insurance Defense Tips Newsletter



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Borton Petrini, LLP  
5060 California Avenue  
Suite 700  
Bakersfield, CA 93309  
(661) 322-3051

## NEW APPELLATE CASE CONSIDERS IMPACT AND IMPLICATIONS OF HOWELL DECISION

By: Matthew Trostler, Esq.



In 2011, the California Supreme Court held in *Howell v Hamilton Meats and Provisions* that if a plaintiff's medical providers accept less than the full amount billed as full payment, the recoverable damages for past medical expenses cannot exceed the amount actually paid or incurred on the plaintiff's behalf.

Notwithstanding this limitation for the amount of recovery for past medical bills, courts have routinely admitted evidence of the full amounts billed (rather than the amounts actually paid) before a jury. The *Corenbaum v Lmpkin* (2013) case has closed this loophole.

Consistent with the *Howell* decision, the Court of Appeal in *Corenbaum* held that evidence of the full amount billed is not relevant to the amount of damages for past medical expenses if the plaintiff never incurred liability for that amount. Whereas in the *Howell* case the defendant conceded that it was proper for the jury to hear evidence of the plaintiff's full medical bills, the defendant in the *Corenbaum* case disputed whether evidence of the full amount billed was relevant to issues such as the amount of non-economic damages or future medical expenses. The Court of Appeal, after considering the reasoning in the *Howell* case, held that evidence of the full amount billed for past medical services is not relevant to the determination of damages for future medical expenses or non-economic, pain and suffering type damages.

This is a significant decision in terms of evaluating the "value of a case" prior to trial. Plaintiff attorneys typically use the amount of fully billed medical amounts as a point of reference, not only in trial, but in settlement discussions as a means to determine the amount of the non-economic damages. Now, expert opinion testimony as to the value of medical services to be provided in the future based on the full amount billed for past medical services would no longer seem appropriate. Moreover, it would

Editor

Matthew J. Trostler  
Partner  
Los Angeles



[mtrostler@bortonpetrini.com](mailto:mtrostler@bortonpetrini.com)

(213) 624-2869

Offices  
&  
Managing Partners

**Bakersfield**  
Diana L. Christian  
661-322-3051

**Los Angeles**  
Rosemarie S. Lewis  
213-624-2869

**Modesto**  
Bradley A. Post  
209-576-1701

**Fresno**  
John R. Waterman  
559-268-0117

**Orange County**  
Rosemarie S. Lewis



also appear that evidence of the full amount billed is no longer relevant to the amount of non-economic damages to be determined by a jury. Non-economic damages are subjective, and the determination of the amount of damages by a jury is equally subjective, but with a lesser amount of economic damages presented to a jury, it can be presumed that the evidentiary restrictions announced in this decision may result in lower verdicts.

Expect further appeals on this important issue.

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562-596-2300

**Sacramento**  
Mark S. Newman  
916-858-1212

**San Bernardino**  
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**San Diego**  
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Renae Tipton  
Borton Petrini, LLP  
5060 California Avenue  
Suite 700  
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661-322-3051

