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## WHITE PAPER ALERT

**Damages - Evidence**

**Total Amount of Medical Bills**

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Greer v. Buzgheia

**Court of Appeal, Third District – August 1, 2006**

In California the cases of Hanif v. Housing Authority (1988) 200 Cal App. 3d 635 and Nishihama v. City and County of San Francisco (2001) 93 Cal App. 4th 298, stand for the proposition that a plaintiff, in a tort action, cannot recover more than the amount of medical expenses actually paid or incurred. This is true even if the billable or market value of the medical expenses is a greater amount. Defendants rely on these cases to exclude evidence, in limine, of the amount of plaintiff's medical bills exceeding the amount paid.

In this case, the question was whether a jury should receive evidence of the total amount of medical bills charged to plaintiff, not just the amount of medical bills actually paid. Greer was injured when Buzgheia's vehicle collided with Greer's. Greer claimed a low back injury with resultant spinal fusion surgery. Greer incurred medical bills of \$216,000. Prior to trial, Greer's employer reached a compromise agreement with Greer's medical providers to satisfy all of his medical bills for \$132,984.92.

The defendant brought a motion in limine to exclude Greer from submitting evidence of any amount beyond that which the medical providers accepted as payment in full. Defendant argued that the jury should not be permitted to hear evidence that the reasonable value of the medical services exceeded the amount paid, because no one was obligated to pay the difference. The trial court denied the motion.

At trial, the jury heard evidence of the amount of medical expenses billed and that the amount was reasonable. The special verdict form lumped medical expenses together with wage loss and other economic damage. Plaintiff prevailed and was awarded the total sum of \$321,500.

On appeal, the Third District Court of Appeal affirmed the judgment. The Third District held that the trial court correctly denied Defendant's motion in limine and that a jury should receive evidence of the total amount of medical expenses charged to a plaintiff in addition to evidence of the amount actually paid. The Court of Appeal further held that a trial court may reduce the amount of medical expenses awarded to a plaintiff as economic damages in a post-trial motion pursuant to Hanif and Nishihama.

Buzgheia did file a post trial motion to reduce the amount of Greer's economic damages. However, the motion was denied by the trial court because the verdict form did not separate medical expenses from lost earnings when awarding past economic loss. The Court of Appeal found it impossible to determine the amount of past medical expenses awarded Greer.

#### COMMENT

Under this decision a plaintiff may introduce evidence of the billed or market value of medical bills at trial. Defendants must now file a post-trial motion to reduce awards of medical specials to amounts actually paid. There remains an issue unaddressed in this case, namely whether the result would be different if the amount was accepted/paid per a pre-existing HMO or other capitation agreement. In this case the amounts billed were due and payable and they were reduced only upon the affirmative negotiation of the employer. We anticipate this issue will be addressed by the California Supreme Court.

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