Case No.

D064315

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT
DIVISION ONE

GABRIEL VARELA, et al.,
Plaintiffs and Respondents,

vs.

MONINDER BIRDI, et al.,
Defendants and Appellants.

ON APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY,
HON. JOAN LEWIS, CASE NO. 37-2012-00090344-CU-PA-CTL.

AMICUS CURIAE BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA IN SUPPORT OF DEFENDANT AND APPELLANT

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INTRODUCTION: IMPORTANCE OF ISSUE AND INTEREST OF AMICUS

The Civil Justice Association of California ("CJAC" or "amicus")[1] welcomes the opportunity to address an important issue this case presents:

> **Is it reversible error for the trial court to (1) bar defendant from presenting any evidence or asking any questions of witnesses about the amount of money reasonably likely to be *paid* for the plaintiff's future medical expenses; and (2) instead permitting, over defendant's objections, plaintiff's experts to testify about the amounts to be *billed* for those expenses when laying the foundation for the jury's calculation of future special and general damages?**

As a result of these rulings, the only evidence the jury was allowed to hear regarding plaintiff's *future* damages was restricted to amounts that plaintiff's experts estimated would be *billed*, not *paid*, for those costs and that the defense expert gave in

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[1] By separate application accompanying the lodging of this brief, CJAC asks the Court to accept and file it.

opposition without any opportunity to explain why his estimate was so much less than those of the plaintiff's experts. California courts uniformly recognize that evidence of "billed" amounts for medical damages are out-of-whack with reality and properly precluded from jury consideration because they are irrelevant and produce unreasonably inflated judgments.

CJAC contends the trial court's ruling requires reversal because it conflicts with recent on point opinions by the Supreme Court and intermediate appellate courts, defies common sense and, if left undisturbed, will have an escalating and deleterious effect on the cost of litigation and health care. Amicus, whose members include businesses, professional associations and local government organizations, is vitally interested in this issue because it directly implicates our principal purpose: to educate the public about ways to make the substance and application of our liability and damage laws more "fair, efficient and economical." Toward these ends, CJAC regularly petitions the judiciary,[2] the legislature and the people themselves for redress when it comes to determining who owes how much, and to whom, when the conduct of some occasions harm to others. This is just such a case.

[2] See, *e.g., Verdugo v. Target Corp.* (2014) 59 Cal.4th 312; *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1; *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308; *O'Neil v. Crane Co.* (2012) 53 Cal.4th 335; and *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541.

SUMMARY OF SALIENT FACTS[3]

Plaintiff Varela was seriously injured when, on February 8, 2010, the bike he was riding in southern California collided at an intersection with a car driven negligently by defendant Birdi. Plaintiff sued for damages based on defendant's negligence; and defendant answered asserting the defenses of comparative fault and mitigation of damages.

Defendant filed a pretrial motion in limine under the authority of *Howell v. Hamilton Meats & Provisions, Inc.*, *supra*, 52 Cal.4th 541 (*Howell*) to exclude evidence of "billed" amounts for medical damages in calculating *past* special and general damages. Plaintiff opposed the motion but did not dispute that his medical providers had thus far "billed" slightly more than $275,000 for his medical services, but accepted from his longtime government-sponsored health insurance program[4] about $88,000 as payment in full for those expenses; and the insurer filed a lien for that amount on any judgment plaintiff may obtain. The trial court granted defendant's motion, but plaintiff later waived his claim for *past* medical expenses.

One day after trial began, *Corenbaum v. Lampkin*, *supra*, 215 Cal.App.4th 1308 (*Corenbaum*) was decided, holding consistent with *Howell* that "billed" amounts for medical expenses are not *relevant* in determining damages for *future* medical expenses,

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[3] These facts, excerpted from the briefs of the parties, are confined solely to the issue addressed herein. They are included in lieu of stating that amicus agrees with and accepts the facts as stated in defendant's brief, so CJAC's brief is self-contained and doesn't require cross-referencing to the party briefs when it comes to the facts.

[4] At the time of trial plaintiff was entitled to lifetime health insurance coverage for his 26 years of Naval service.

only the amounts that would be likely "paid" for future medical expenses. Defendant promptly raised *Corenbaum* outside the presence of the jury, asking the trial judge to require plaintiff's experts to establish that their figures for his future medical expenses were based on amounts to be *paid* as opposed to *billed*. The court denied defendant's motion, stating that though plaintiff was entitled to insurance coverage for the rest of his life from his employer's carrier, it was unclear whether he would stay "within" that plan or go "outside" it in the future; and that it would therefore be "highly speculative" as to what plaintiff's costs "would be in the future." The judge also cited the "collateral source" rule as a reason to preclude any reference by counsel or witnesses to amounts "paid" as opposed to "billed" for medical procedures as this would suggest the presence of insurance.

During trial, plaintiff called Dr. Brad Cohen, an orthopedic surgeon, as an expert. Dr. Cohen testified that plaintiff's future medical expenses for certain injuries would be about $183,000. He did not, however, testify that these amounts were what would likely be *paid* for the procedures. On cross-examination, Dr. Cohen was asked what these procedures would cost if performed at Balboa Naval Medical Center Hospital where plaintiff received some post-accident treatment. Plaintiff objected, citing the collateral source rule. At a sidebar conference the court stated that defendant's question about the cost of treatment at Balboa Hospital was asking "for insurance information" contrary to the collateral source rule. At the conclusion of that day of trial, the court (outside the presence of the jury) again admonished defense counsel that the question about the cost of treatment at Balboa Hospital was "not acceptable" because "*Corenbaum* . . . does not apply to this situation."

Later in the trial, plainitff called his retained pain specialist, Dr. Douglas Dobecki, and asked him questions about the cost of Varela's future medical treatments. Defendant objected for lack of foundation based on *Howell* and *Corenbaum*. The court overruled the objection and Dobecki testified that plaintiff's future medical expenses would amount to about $1.4 million, but did not testify, because he could not be asked under the court's rulings, whether this amount would be what would likely be *paid* for these treatments as opposed to what would be *billed* for them. In a related sidebar conference outside the presence of the jury, the court stated it was granting defendant a standing *Corenbaum* objection to testimony about amounts to be *billed* for plaintiff's future medical care.

Plaintiff then called another damages expert he retained, Dr. Willoughby, who testified that plaintiff would have $1,823,649 in future medical damages. As with the other damage witnesses, Dr. Willoughby did not explain and could not be asked whether his calculation was based on amounts that would be paid by plaintiff's health insurer or billed by plaintiff's medical providers.

After plaintiff presented his case in chief, his counsel told the court outside the presence of the jury that he anticipated defense witnesses might discuss the "difference in the values of medical care" contrary to the court's previous rulings. The trial court warned defense counsel that if his witnesses did so, defendant ran the risk of "opening the door" for plaintiff to introduce as evidence of "what was billed the last time around, not what was paid." Accordingly, defendant reluctantly conceded that his experts would simply state their opinions regarding the cost of procedures without clarifying whether those amounts were based on what was likely to be "billed" as

opposed to be "paid." Dr. William Bowman, an orthopedic surgeon retained by defendant, then testified that in his expert opinion plaintiff's future medical care for the same procedures plaintiff's expert Dr. Cohen testified would cost $183,000, would only cost between $48,000 to $68,000. Dr. Bowman, however, could not explain to the jury the reason – *i.e.*, likely "paid" amounts versus "billed" amounts – his calculation was only one-third of Dr. Cohen's estimate.

The jury returned a verdict for plaintiff of $4,761,399, which included $1,355,598 for future medical damages, $405,801 in future loss of earnings, $800,000 for past mental suffering, and $2,200,000 for future mental suffering. Defendant moved for a new trial on the grounds, *inter alia*, that the court erred in admitting evidence on the cost of future medical care based on "billed" amounts and precluded any evidence on amounts likely to be "paid" for that care. The court denied the motion without explanation; and this appeal followed.

SUMMARY OF ARGUMENT

It is wrong as a matter of law for a trial court to allow, as happened here, expert testimony on a plaintiff's future medical expenses to be based on amounts to be billed, and not actually paid, for that care. Recent well-settled and reasoned case authority holds that a plaintiff may recover no more than the amounts *paid* by the plaintiff or his or her insurer for the medical services received. To be recoverable, a medical expense must be actually incurred, not simply billed. If, as here, the plaintiff negotiates a discount and thereby receives services for less than might reasonably be charged, the plaintiff has not suffered a pecuniary loss or other detriment in the greater, *billed* amount and therefore should not and cannot recover damages for that amount.

The California Supreme Court and appellate courts recognize that pricing for medical services is controlled by a highly complex market; and that most patients, including the plaintiff in this case, pay steeply discounted rates. As some published opinions reveal, a 5-to-l ratio between amounts billed and amounts paid is not unusual. Consequently, to allow billed amounts, as opposed to paid amounts, to determine recoverable medical damages, inflates beyond reason and fairness the costs of litigation and health care, two categorical expenses that have long outpaced the costs of other services in our economy. To avoid "Alice in Wonderland" verdicts and assure they comport with the realities of the medical marketplace, the highest judicial authorities acknowledge that the true market value of past and future medical care for a person is what is paid for that care, not what one would ideally like to be paid as reflected in a pie in the sky bill. Indeed, how a market value for the cost of medical care other than that produced by negotiation between the insurer and the provider could be identified is difficult to fathom.

Excluding evidence of billed amounts for medical care and instead relying on amounts paid or likely to be paid does not violate the collateral source rule, contrary to the trial court's rulings in this case. The plaintiff can still recover as damages the amount paid for medical expenses even if the plaintiff's insurance company made the payment. Since the plaintiff does not owe the higher billed amount medical providers charge, but never incur, that higher amount simply does not come within the collateral source rule.

Finally, evidence of the amount billed for medical care, past and future, is inadmissible to prove a plaintiff's noneconomic damages. While evidence of medical

costs is often used as an argumentative construct to assist a jury in determining a plaintiff's noneconomic damages, billed amounts are inadmissible for this purpose for the same reasons they are inadmissible to determine medical costs: they are irrelevant and prejudicial.

ANALYSIS

I. THE ONLY EVIDENCE ADMISSIBLE TO DETERMINE FUTURE MEDICAL CARE COSTS FOR A PLAINTIFF'S INJURIES IS THE AMOUNT REASONABLY LIKELY TO BE "PAID AND INCURRED," NOT "BILLED," FOR THEM.

Howell, *supra*, 52 Cal.4th 541 and *Corenbaum*, *supra*, 215 Cal.App.4th 1308 are the principal guideposts on what evidence is relevant for the calculation of a plaintiff's future medical care costs. *Howell* is binding precedent to be followed by all intermediate and trial courts under the doctrine of *stare decisis*. See *McGlothen v. Department of Motor Vehicles* (1977) 71 Cal.App.3d 1005, 1018; see also *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455. *Corenbaum* and other intermediate appellate opinions that are the progeny and companion authorities to *Howell* provide further instruction on how its reasoning is to be applied in similar or analogous situations to the facts giving rise to *Howell*. Taken together, these authorities make clear that the trial court here misunderstood their scope and meaning and, for that reason, made incorrect and prejudicial rulings to defendant on what constitutes admissible evidence to show the cost of plaintiff's future medical care. *People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 746 ("When a trial court's decision rests on an error of law, that decision is an abuse of discretion".).

A. *Howell* Holds that Evidence of Amounts "Billed" for a Plaintiff's Medical Care is not Relevant for Determining Plaintiff's *Past* Special Damages.

We begin with *Howell*, which like this case concerned a plaintiff, Rebecca Howell, who was seriously injured in an automobile accident negligently caused by the driver of another vehicle who was working for the defendant. At trial, the defendant, as here, conceded liability and the necessity of the plaintiff's medical treatment, only contesting the amounts of the plaintiff's economic and noneconomic damages.

Defendant moved to exclude evidence of medical bills that neither the plaintiff nor her health insurer had paid. Plaintiff's heath insurance records showed that her medical bills had been adjusted downward pursuant to an agreement between the medical providers and her health insurer, and that she could not be billed for the balance of the original bills beyond agreed upon patient co-payments. The trial court denied defendant's motion, ruling that the plaintiff could present her full bills to the jury and then seek in a post-trial motion to reduce those amounts based on what was actually paid.

Testimony presented for plaintiff showed the total amount billed for her medical care up to the time of trial was $189,978, and the jury returned a verdict awarding the same amount as damages for her past medical expenses. Defendant then made a post-trial motion to reduce past medical damages by $130,286 – the amount written off by the plaintiff's medical care providers.

Plaintiff opposed, stating, among other reasons, that she had signed agreements to pay "usual and customary charges" and any physician's fee her insurance did not pay. *Howell*, 52 Cal.4th at 550. The trial court granted the defendant's motion, reducing

past medical damages to reflect the amount medical providers accepted as payment in full. *Id.* The appellate court reversed the reduction order, holding that it violated the collateral source rule, but the state supreme court granted review and reversed the court of appeal, holding that an injured person could not recover the amount of a medical provider's bill when the provider accepted as full payment, pursuant to a preexisting contract with the injured person's health insurer, an amount less than the billed amount. *Id.* at 1146.

Thus, *Howell* holds that a plaintiff may recover as economic damages no more than the reasonable value of the medical services received as measured by actual payment. A plaintiff cannot recover more than his or her actual loss because, under California law, a medical expense has to be "incurred" to be recoverable. *Id.* at 555. In reaching this conclusion, *Howell* relied in part on Civ. Code §§ 3281[5] and 3282[6], which provide that a plaintiff cannot recover for a service that might have reasonably been charged if she negotiated a discount. *Id.* at 559, fn. 6. The court reasoned that the same rule applies when the plaintiff's health insurer has obtained a discount.

Howell noted that the Restatement rule had the same effect as the statutes it found applicable to its decision. *Id.* at 562, fn. 9. The Restatement specifies that the measure of recovery for the costs of services that a third party renders is ordinarily the reasonable value of those services; and if a person paid less than the exchange rate, then he can recover no more than the amount paid, except when the low rate was

[5] "Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages."

[6] "Detriment is a loss or harm suffered in person or property."

intended as a "gift." *Id.* at 557. And while the expenses of medical care are not specifically mentioned in § 911 of the Restatement, the court found that they were logically included in the rule articulated. *Id.* at 557-558. *Howell* also found that § 924 of the Restatement – which provides that medical and other expenses must be reasonable – did not alter the general rule that the expense must be incurred. *Id.* at 558.

B. *Corenbaum* Holds that Evidence of Amounts "Billed" for a Plaintiff's Medical Costs is Inadmissible because it is Irrelevant to the Reasonable Value of Plaintiff's Future Special or General (Noneconomic) Damages.

Corenbaum, *supra*, 215 Cal.App.4th 1308 picked up where *Howell* left off, concluding that evidence of the full amount billed for the plaintiff's medical care was irrelevant to not just the amount of damages for *past* medical services, but also damages for *future* medical care and noneconomic damages. *Id.* at 1331. In *Corenbaum*, plaintiffs were injured from a motor vehicle accident while they were passengers in a taxicab. Before trial, they filed a motion in limine to exclude any evidence of the payment of plaintiffs' medical bills by a collateral source. The defendant requested a post-verdict hearing in the event that the jury verdict included damages for past medical expenses in an amount exceeding the amount paid for those medical services.

In accordance with the trial court's ruling on the motion in limine, the jury heard evidence of the full amount billed for the plaintiffs' medical care and heard no evidence of the lesser amounts accepted by their medical providers as full payment pursuant to prior agreement with the plaintiffs' private insurers. *Id.* at 1332. The jury awarded plaintiffs past and future economic damages and noneconomic damages. *Id.* at 1319. Defendant then moved for a new trial on the compensatory damage issues and for

judgment notwithstanding the verdict on punitive damages, both of which were denied. The very next day, *Howell* was handed down and defendant promptly moved to reduce the compensatory damage award on its authority, which the court denied on the ground it lacked jurisdiction because it had already denied defendant's motion for a new trial.

On appeal defendant argued the trial court erred by admitting evidence of the full amount billed for plaintiffs' medical care when the amounts accepted by their medical providers as full payment were less than the amounts billed. Based on *Howell*, the appellate court held that evidence of the full amount billed for a plaintiff's medical care is not relevant to the determination of a plaintiff's damages for past medical expenses and is therefore inadmissible for that purpose if the plaintiffs' medical providers, by prior agreement, had contracted to accept a lesser amount as full payment for the services provided.

Corenbaum rejected the argument that a plaintiff seeking damages for past medical expenses should be able to present evidence of not only the amount accepted as full payment for past medical services provided, but also the reasonable value of those services. *Id.* at 1326. Instead, *Corenbaum* makes clear that a plaintiff can recover as damages no more than the amount incurred and paid or to be paid for past medical services; therefore, evidence of the reasonable value of said services that exceed the amount paid is irrelevant and inadmissible. *Id.* at 1327. *Corenbaum* bolsters its conclusion in this regard by explaining that such evidence would likely confuse the jury, suggest the existence of a collateral source of payment, and lead to a showing that the lesser amount was negotiated and paid by the plaintiff's health insurers. *Id.* at 1329.

Thus, *Corenbaum* holds that the full amount "billed" for past medical services is not relevant to the amount of *future* medical expenses and thus inadmissible for that purpose. *Id.* at 1331. Quoting approvingly from *Howell*, *Corenbaum* underscores its holding that the full amount billed is not an accurate measure of the value of medical services: "a medical provider's billed price for particular services is not necessarily representative of either the cost of providing those services or their market value." *Id.* at 1330. Further, *Corenbaum* explains that any expert who testified on remand with respect to the reasonable value of future medical services the plaintiffs are reasonably likely to require may not rely on the full amounts billed for the plaintiffs' past medical expenses because the "billed" amount is not relevant to the value of those services and that expert opinion based on speculation or conjecture is inadmissible. *Id.* at 1331-1332. Expert testimony based on the full amount billed would lead to the introduction of evidence concerning the lower negotiated price, violating the evidentiary aspect of the collateral source rule. *Id.* at 1332.

Corenbaum also holds that evidence of the full amount "billed" is not relevant to the amount of noneconomic damages. *Id.* Recognizing that the determination of noneconomic damages is subjective and committed to the discretion of the trier of fact, *Corenbaum* observes what everyone knows: lawyers commonly use the amount of economic damages as a point of reference in their arguments to juries as a means to help determine the amount of noneconomic damages. *Id.* at 1333. This, the opinion states, is reason enough to bar admission of evidence on "billed" amounts for medical care as irrelevant and inadmissible. Accordingly, the *Corenbaum* court concluded

evidence of the full amount billed is inadmissible for purposes of proving noneconomic damages.

II. ADMISSION OF EVIDENCE ABOUT AMOUNTS LIKELY TO BE "PAID" FOR FUTURE MEDICAL SERVICES, AS OPPOSED TO "BILLED"FOR SAME, DOES NOT VIOLATE THE COLLATERAL SOURCE RULE.

Plaintiff argues in support of the trial court's orders that neither *Corenbaum* nor *Howell* "overruled, rejected, or altered the collateral source rule." Respondent's Brief, pp. 53-54. This is a misreading of both opinions.

Two issues identified and addressed by *Howell* discuss the applicability of the collateral source rule in the context of evidence of past amounts "paid" for medical care as the proper measurement of the costs of that care:

> (1) Does limiting the plaintiff's recovery to the amounts paid and owed on his or her behalf confer a windfall on the tortfeasor, defeating the policy goals of the *collateral source rule*? (2) Is the difference between the providers' full billings and the amounts they have agreed to accept from a patient's insurer as full payment – what the appellate court below called the "negotiated rate differential" – a benefit the patient receives from his or her health insurance policy subject to the *collateral source rule*?

Howell, 52 Cal.4th at 555; emphasis added.

Howell answers "no" to both questions, explaining that a tortfeasor does not obtain a "windfall" because the injured party's health insurer negotiated a favorable rate of payment with the medical provider. *Id.* at 562. The rationale behind not allowing a tortfeasor to deduct from damages the benefits received from a collateral source or gift is that a tortfeasor would not be paying the full cost of her negligence or

wrongdoing, which would distort the deterrence function of tort law. *Howell* found this rationale inapplicable to a plaintiff only paying the discounted price negotiated by a health insurer because of the "complexities of pricing" and "reimbursement patterns" for medical providers. *Id.* at 560.

This is, as discussed previously, consistent with statutory law, which provides that "damages are awarded to compensate for detriment suffered" and "detriment is a loss or harm to person or property." *Howell*, 52 Cal.4th at 548, citing Civ. Code §§ 3281 and 3283. It also conforms to reality: "Because so many patients, insured, uninsured, and recipients under government health care programs, pay discounted rates, hospital bills have been called "insincere, in the sense that they would yield truly enormous profits if those prices were actually paid." *Howell*, 52 Cal.4th at 561 (quoting Uwe E. Reinhardt, *The Pricing of U.S. Hospital Services: Chaos Behind a Veil of Secrecy* (2006) 25 *HEALTH AFFAIRS* 57, 63. Indeed, "[l]abeling hospital charges as 'regular, 'full,' or 'list,' [is] misleading, because in fact they are actually paid by less than five percent of patients nationally." George A. Nation III, *Obscene Contracts: The Doctrine of Unconscionability and Hospital Billing of the Uninsured* (2005) 94 *KY. L.J.* 101, 104.

Howell explains why this "negotiated rate differential" is not a benefit accruing to the plaintiff under her policy for which she paid premiums.

> Having never incurred the full bill, plaintiff could not recover it in damages for economic loss. For this reason alone, *the collateral source rule would be inapplicable*. The rule provides that "if 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.*" [*Helfend v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 1, 6; emphasis original.] The rule does not speak to losses or liabilities the plaintiff did not incur and would not otherwise be entitled to recover.

Id. at 564; emphasis added.

Howell noted that health insurers and medical providers negotiate rates in pursuit of their own business interests and that the benefits of the bargains made accrue directly to them, with the primary benefit going to the medical insurer. The negotiated rate differential does not necessarily reflect the commercial advantage medical providers obtain in exchange for accepting a discounted payment in a particular case. *Id.* at 563. In other words, the global value of the negotiated rate to the medical provider cannot be equated to the plaintiff's individual case.

Thus, *Howell* provides that where a medical care provider accepts as full payment a sum less than the provider's full bill, it is evidence of the amount paid that is relevant at trial to prove the plaintiff's damages. Evidence that medical bills were paid by an insurer remain inadmissible under the collateral source rule. *Id.* at 567.

Similarly, *Corenbaum*, building on *Howell's* reasoning, concluded that "evidence of the amount accepted by medical providers as full payment *does not violate the collateral source rule* and is admissible provided that the source of the payment is not disclosed to the jury and the evidence satisfies the other rules of evidence." 215 Cal.App.4th at 1328; emphasis added. In contrast, amounts "billed" for past medical care are not relevant for determining the cost of future medical care or noneconomic damages. *Id.* at 1331. *Corenbaum* notes that "given [these] limitations on the presentation of an expert's opinion . . . any issues . . . regarding such presentation should be resolved by

the trial court in a hearing held outide the presence of the jury." *Id.* at 1332, fn. 14.

There is no reason to confine *Howell* and *Corenbaum* to situations where private insurance is involved, allowing plaintiffs without insurance,[7] unlike those with it, to introduce evidence of billed amounts.[8] The principles underlying *Howell* and *Corenbaum* apply to plaintiffs with coverage under Medicare[9] and workers' compensation. *Sanchez v. Brooke* (2012) 204 Cal.App.4th 126, 131. As one appellate court explains, any attempt to limit *Howell* to its facts "does not account for the fact that, whatever the *source* of the payments . . . the end result is the same: [the plaintiff] has no liability for past medical services in excess of those payments, so he is not entitled to recover anything more than the payment amount." *Luttrell*, *supra*, 215 Cal.App.4th at 206; emphasis added. As *Romine v. Johnson Controls, Inc.* (2014) 224 Cal.App.4th 990 observed, "evidence of the full amount billed for a plaintiff's medical care is not relevant to damages for future medical care or noneconomic damages and its admission is error." *Id.* at 1014. *Romine*

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[7] The problem of the "uninsured" plaintiff has been greatly ameliorated, perhaps eliminated, by enactment of the Patient Protection and Affordable Care Act (PPACA), which mandates that everyone obtain and maintain health insurance. 26 U.S.C. §5000A(a) (2012). The PPACA requires that health insurance policies be offered on a guaranteed issue and renewal basis.

[8] *Howell*, *Corenbaum* and their progeny, in recognizing the widespread availability and impact of health insurance, are prescient in their modification of the collateral source rule's literal, as opposed to literate, application. "As the number of uninsured residents in the United States declines, and as payment for health care services becomes almost exclusively the territory of health insurers, and not patients, a number of traditional and more recent tort rules are likely to be, and should be, impacted. More specifically, the collateral source rule, which disallows a tortfeasor from reducing his damages liability when the injured party's medical expenses are covered by insurance or another collateral source, may become almost a mere truism because virtually everyone will be covered." Benjamin A. Geslison & Kevin T. Jacobs, *The Collateral Source Rule and Medical Expenses: Anticipated Effects of the Affordable Care Act and Recent State Case Law on Damages in Personal Injury Lawsuits* (2013) *80 COUNS. J.* 239, 240.

[9] *Luttrell v. Island Pac. Supermarkets, Inc.* (2013) 215 Cal.App.4th 196, 198.

applied this rule without regard to the source of the payments, noting only that the jury's award of past medical damages was properly reduced to "the amount that plaintiff's medical care providers accepted." *Romine* recognizes that the legal principles animating *Howell* and *Corenbaum* apply regardless of the payer's identity.

CONCLUSION

For all the foregoing reasons, the judgment should be reversed and the case remanded for a new trial on the issue of damages.

Dated: December 15, 2014

Respectfully submitted,

/s/

Fred J. Hiestand
Counsel for *Amicus Curiae*
Civil Justice Association of California

CERTIFICATE OF WORD COUNT

I certify that the WordPerfect® software program used to compose and print this document contains, exclusive of the caption, tables, certificate and proof of service, approximately 5,150 words.

Date: December 15, 2014

Respectfully submitted,

/s/

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PROOF OF SERVICE

I, David Cooper, am employed in the city of Sacramento, Sacramento County, State of California. I am over the age of 18 years and not a party to the within action. My business address is 3418 Third Street, Suite 1, Sacramento, CA 95817.

On December 15, 2014, I served the foregoing document(s) described as: *Amicus Curiae* Brief of the Civil Justice Association of California in Support of Defendant and Appellant in *Varela, et al. v. Birdi, et al.*, D064315 on all interested parties in this action by mail (except where indicated) to the following:

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

Executed this 15th day of December 2014 at Sacramento, California.

/s/
David Cooper