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The Implications of California's Appellate Decision in *Malak Melvin Abdul Qadir v. Ubaldo Gurrola Figueroa et al.*

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On August 11, 2021, the California Court of Appeals for the Second District extended the *Pebley v. Santa Clara Organics* ("Pebley") Court's analysis as applied to the admissibility of unpaid medical liens. Based on the Court's reading of *Howell v. Hamilton Meats*¹ ("Howell") and its progeny, the Court in *Malak Melvin Abdul Qadir v. Ubaldo Gurrola Figueroa et al.* ("Qadir") held that the evidence of medical bills, including unpaid medical liens, is relevant to prove or disprove the "paid or incurred" prong of past medical damages so long as it can be established that the bill was actually paid or incurred.² The *Qadir* Court further affirmed the ability for Plaintiff's unpaid medical bills to form the basis to prove future medical damages as an extension of *Pebley*, which previously held unpaid medical bills are relevant for proving an insured plaintiff's past and future expenses where medical treatment is sought outside of their insurance plan.³ Courts will therefore treat insured plaintiffs who choose to seek physicians outside of their insurance plan as they would the uninsured—by allowing unpaid medical bills, such as medical liens, as relevant evidence for the issue of past medical damages.

During the trial on damages, the Plaintiff in *Qadir* presented evidence of both paid and unpaid medical bills. All of which were provided on a lien basis, aside from Plaintiff's initial services received under his health insurance. The medical liens were all unpaid at the time of trial. The Court determined that for similarly situated plaintiffs like the Plaintiff in *Qadir*, the evidence of unpaid medical bills is relevant so long as plaintiffs can show the amounts were actually incurred—further affirming *Howell*, "if the full billed amount is not paid or incurred, *Howell* tells us that it is not relevant to the issue of medical damages for the simple reason that the injured plaintiff did not [and will not] suffer any economic loss in that amount."⁴

At first glance, it might appear like *Qadir* has a significant, erosive effect on *Howell*, but a closer look into *Qadir*, against the backdrop of *Howell* and its progeny does not exactly warrant sounding the alarm just yet. While the Court in *Qadir* tipped the scales slightly in favor of plaintiffs by rendering unpaid medical bills admissible, the Court didn't necessarily *settle* the court split on

¹ *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541.

² *Malak Melvin Abdul Qadir v. Ubaldo Gurrola Figueroa et al.* (Cal. 2nd Aug. 8, 2021) No.B306011 at 7.

³ *Pebley v. Santa Clara Organics LLC* (2018) 22 Cal.App.5th 1266 at p. 1277.

⁴ *Qadir* at 7.

that issue. Rather, the Court carved out a narrow circumstance for the admissibility of unpaid medical bills—where the plaintiff sought treatment from lien-physicians and can demonstrate that they actually incurred the amounts billed.

In the *Howell* decision, the California Supreme Court held an award of past medical expenses is limited to the lesser of (1) the amount paid or incurred and (2) the reasonable value of the services rendered⁵ but failed to determine whether billed amounts are inadmissible in cases involving uninsured plaintiffs. *Bermudez v. Ciolek*⁶ (“*Bermudez*”) addressed this issue and held that unlike in *Howell*, where the plaintiff’s insurance status impacted the negotiated rate differential—the difference between the providers’ full billings and the amounts they have agreed to accept from a patient’s insurer as full payment, plaintiff’s uninsured status here meant that billed amounts are relevant to the amount incurred⁷. The billed amounts are both relevant and admissible with regard to the overall reasonableness of plaintiff’s medical expenses.⁸

In a case like *Qadir*, where the insured plaintiff sought treatment outside his insurance plan and garnered medical unpaid medical liens, *Pebley* controls, and evidence of unpaid medical bills is, in fact, relevant to the issue of past medical damages.⁹ The defense contested *Pebley*’s application, arguing that *Pebley* held unpaid medical bills were only relevant and admissible if “an expert [] can competently testify that the amount incurred and billed is the reasonable value of the service rendered”¹⁰ The Court refused to observe a material distinction between *Qadir* and *Pebley*, where both plaintiffs were insured and chose to seek treatment outside of their insurance plan; “an insured plaintiff who opts to receive medical treatment from outside of his insurance plan should be considered uninsured for purposes of proving past and future medical damages. This is because the plaintiff, rather than the health insurer, is the entity who is obligated to pay.”¹¹

A bright spot for the defense is the Court’s holding on referral evidence. The Court agreed with the defense that referral evidence was relevant to the question of the reasonable value of the lien-physicians’ medical care as it may show bias or financial incentives on the part of the lien-physicians.¹² This places the onus on the defense to probe into whether the physicians whom plaintiffs sought treatment from were based on an attorney referral.

Although the Plaintiffs’ Bar may celebrate the Appellate Court’s chipping away at *Howell*, celebrations may be premature given the reasonableness of damages will still remain decided by the jury; albeit with plaintiffs being afforded unpaid medical liens as an additional piece of admissible evidence. Of course, expert retention for the determination of reasonableness of the

⁵ *Howell* at 556.

⁶ *Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311.

⁷ *Howell* at 555.

⁸ *Bermudez* at 1335.

⁹ *Qadir* at 19.

¹⁰ *Qadir* at 19 (citing *Pebley*, *supra*, 22 Cal.App.5th at 1275.).

¹¹ *Id.*

¹² *Qadir* at 27.

value of the medical treatment is more imperative now than ever. Looking ahead, the *Qaadir* decision incentivizes plaintiff's attorneys to seek out lien based treatments for their clients in an attempt to inflate the perceived damages at trial. It will be prudent for the defense to leverage that it is the lien-physicians' incentive to inflate their bills due to the nature of the liens by showing bias or financial incentives on part of the lien-physician.



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