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MONSANTO COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEWAYNE JOHNSON,

Plaintiff,

vs.

MONSANTO COMPANY,

Defendant.

Case No. CGC-16-550128

DEFENDANT MONSANTO COMPANY'S REPLY ISO MOTION *IN LIMINE* NO. 30 TO EXCLUDE CERTAIN EVIDENCE REGARDING PLAINTIFF'S ALLEGED MEDICAL EXPENSES

Trial Date: June 18, 2018
Time: 9:30 a.m.
Department: TBD

I. INTRODUCTION

The law in California is clear: a plaintiff may recover no more than the amount of medical expenses actually paid or incurred. *See Howell v. Hamilton Meats & Provisions, Inc.,* 52 Cal. 4th 541 (2011); *see also Corenbaum v. Lampkin*, 215 Cal. App. 4th 1308 (2013). Plaintiff makes no attempt to distinguish these cases, instead arguing that "as a matter of fairness and public policy," this Court should depart from established precedent and allow Plaintiff to introduce evidence of the full amount of Plaintiff's medical bills. This would be clear error. Consistent with *Howell* and *Corenbaum,* this Court should preclude Plaintiff from presenting evidence regarding any alleged medical expenses for which he seeks damages unless he first establishes that he actually paid or incurred such medical expenses.

II. ARGUMENT

The California Supreme Court held that a personal injury plaintiff whose medical expenses are paid out-of-pocket or through 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." *Howell*, 52 Cal. 4th at 566; *see also Corenbaum*, 215 Cal. App. 4th at 1330-31, 1332-34 (extending *Howell* to exclude evidence of the full amount of a plaintiff's medical bills to prove future medical expenses and noneconomic damages).

Plaintiff devotes most of his opposition to summarizing, without contesting, the holdings from *Howell* and *Corenbaum*, apparently conceding that *Howell* and *Corenbaum* are directly on point here. Nonetheless, Plaintiff offers several arguments why "as a matter of fairness and public policy" this Court should depart from precedent established by the California Supreme Court and still admit evidence of the full amount of his medical bills. First, Plaintiff argues that the full amount of his past medical bills should be admitted "to establish the reasonable value of his future medical expenses." Pl.'s Opp'n to MIL No. 30 at 3. However, *Corenbaum* explicitly foreclosed that argument. *See Corenbaum*, 215 Cal. App. 4th at 1330 ("The argument that the full amount billed for past medical services is relevant to the reasonable value of future medical services that the plaintiff is reasonably certain to require necessarily assumes that the full amount billed for past medical services is relevant to the value of those past medical services. *In our view,* [*Howell*]

negates such an assumption and precludes this argument.") (emphasis added). Instead, plaintiffs must prove, usually through expert testimony, both that future medical treatment is reasonably certain and the estimated costs of such treatment. *See J.P. v. Carlsbad Unified School Dist.*, 232 Cal. App. 4th 323, 342 (2014) ("[What is] required to establish future disability is that from all the evidence, including the expert testimony, if there be any, it satisfactorily appears that such disability will occur with reasonable certainty."); *see also Markow v. Rosner*, 3 Cal. App. 5th 1027, 1050-51 (2016) (noting that plaintiff's expert witness estimated the total amount of future hospitalizations at $2 million). However, contrary to Plaintiff's argument and consistent with *Corenbaum*, future medical expenses should still reflect the discounted or actual amount that plaintiff's insurer pays the medical provider and not the full amount of plaintiff's bills. *See Markow*, 3 Cal. App. 5th at 1051 ("Based on her research, knowledge, and experience, [plaintiff's expert] testified that the amount actually paid is usually 50 to 75 percent of the total amount billed.").

Second, he claims that *Howell* and *Corenbaum* "fail to adequately consider that should a plaintiff change or lose his/her insurance in the future, or should his insurance company's negotiated rates differ from the negotiated rates at the time his/her medical care was initially rendered," an award based solely on the negotiated rate differential may be inadequate. Pl.'s Opp'n to MIL No. 30 at 3-4. Plaintiff fails to clarify exactly how this might result in an insufficient damage award. Indeed, the amounts "written off" from Plaintiff's bills from Stanford Health Care were established at the time he was initially billed, and there is thus no concern that this amount might somehow change over time to the Plaintiff's detriment. *See* Declaration of Kristine Grajo at ¶ 4. And regardless, Plaintiff does not claim that any of his hypotheticals are applicable in this case. Second, Plaintiff argues that excluding evidence of the full amount of a plaintiff's medical bills "may unnecessarily limit a plaintiff's choice for medical care." Pl.'s Opp'n to MIL No. 30 at 4. Plaintiff again offers no analysis to support his claim, leaving Monsanto nothing to rebut.

Finally, Plaintiff suggests that this Court allow Plaintiff to present his full medical bills to the jury and to defer any reduction of those bills to a post-trial *Hanif* motion. *See Hanif v.*

Housing Authority, 200 Cal. App. 3d 635 (1988). Plaintiff cites no authority supporting his claim that, post-*Howell*, this extra procedural step is still warranted – especially now that *Howell* has unequivocally held that a plaintiff may not recover "amounts that were included in a provider's bill but for which the plaintiff never incurred liability." *Howell*, 52 Cal. 4th at 549 ("Such sums are not damages the plaintiff would otherwise have collected from the defendant. They are neither paid to the providers on the plaintiff's behalf nor paid to the plaintiff in indemnity of his or her expenses. Because they do not represent an economic loss for the plaintiff, they are not recoverable in the first instance."). Consistent with *Howell* and *Corenbaum*, if Plaintiff cannot first establish that he actually paid or incurred such medical expenses, this Court should exclude evidence of the full amount of Plaintiff's medical bills.

III. CONCLUSION

For the foregoing reasons, the Court should exclude evidence of any amounts billed by Plaintiff's medical providers that were not actually incurred, *i.e.* paid, either by Plaintiff or his insurers.

Dated: June 12, 2018

Respectfully submitted,

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By: 

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