

## HOWELL LESSONS AND OPPORTUNITIES

Trial Lawyers tell the truth.  
by J. Jude Basile  
trial counsel in Howell Case

The now noteworthy, Howell case, was about past medical bills, PERIOD. There has been much intellectual discussion of this issue of whether the defendants should be responsible for the amount billed or the amount paid of the past medical bills.

The main argument, as I understood it, was the court should not mess with the collateral source rule. The truth was many lawyers and insurance adjusters used the amount of past medical expenses to be the cornerstone of evaluating all the damages in a case. How often we would hear as the first question anytime : “How much are the meds?” It was an easy way. It was the insurance way. It became the basis for some settlement mills to exist and operate. The human experience and the resulting human condition that resulted from another’s wrongful conduct was seldom looked at with any real detail or empathy.

I wanted to remind all of us that this is a wake up call to what cases are really about : the people we represent. Medical bills, health insurance companies, hospitals, liens, and other “economic” stuff, are but a small part of what cases are about. They are about people and their lives. They are about the life that has been brought on them by some other person or corporation doing wrong.

I have been a lawyer since 1982. I have spent most of my career representing people. Since 1985 I have been in private practice representing individuals and families. I have tried many cases. Cases are about people.

I was the trial lawyer in the Howell case.

The day I was asked to take the case, I knew Becky Howell was someone special. She was an extraordinary athlete. She attended Stanford on an athletic scholarship. She was a world class surfer. She surfed most days of her life. She was married, to a musician, poet, song writer, entertainer and a first class lawyer for people. Her husband asked me to take the case.

Becky was driving along the Coast Highway in Encinitas, when Hamilton Meats delivery truck slammed into the side of her Explorer. She was shook up went to a Doctor, after months of needle like pain, numbness and unable to move her arm in full motion she ended up with 2 neck surgeries. The second surgery to scrape out the material between her neck bones and drill screws and metal bars into her neck to hold the bones in her neck together. ( note I am not describing this as a herniated disc at C- 5-6 with

radiculopathy requiring internal fixation, that is doctor/ lawyer / adjuster talk, not human talk)

Being Becky, ( the Bethany Hamilton of her day see the movie Soul Surfer) she dedicated herself to all she could possibly do to reach a full recovery.

Being a determined competitor her entire life Becky worked hard in her recovery and managing pain. She has done remarkably well in spite such an injury due to her guts and determination. She is the kind of person we all admire and hope to emulate.

Her medical bills were 150k but insurance settled these for about 40k. The judge let the 150k go to the jury but reduced it to 40k post trial.

The defense did a subrosa video, spying on Becky surfing and other things. They refused to show us the entire video so the trial judge excluded all of it. I suspect there were some pretty nasty things they did not want us to have.

After the trial, I received a motion to reduce the medical bills per the Hanif case. I contacted John Rice, an expert in this, to help. He helped, did a great job and the case was off to appeal after the trial court granted the defense motion to reduce the medical bills to what Becky's insurance company paid. I was not very knowledgeable in this area so appellate counsel was hired ( Gary Simms) and CAOC helped with Scott Sumner's office leading.

The judgment by the Supreme Court is consistent with the pro business attitude of most of the judicial branch of government. It will create a quagmire in trying cases, IF we continue to focus on the past medical bills as the basis for evaluating a case. This is a wake up call. We must become more understanding and empathetic not only with the people we represent but with the jury.

Our system of justice requires tremendous TRUST. We trust that people will do what is right. We trust people will follow the law. We trust in the golden rule, to do unto others as you would have them do unto you. We trust each other in basic daily activities. We trust others to follow the rules of the road, not speed, stop at stop signs, not to use drugs or alcohol and drive, to be attentive not on a cell phone etc. We trust businesses to be honest. We trust trucking companies that operate vehicles much larger, more dangerous and capable of causing much more damage than most other vehicles to be extra careful, to properly train and supervise. TRUST is the basis of how we live.

Sometimes this trust is broken. It is broken sometimes by not paying attention, other times for greed and profit. There are motivations for breaking this trust. The motivations must be explored in every case. The more dangerous the instrumentality or activity the more we must trust those in control of it.

When the trust is broken, there is often harm, sometimes great harm. Medical bills are but a small part of the broken trust. Medical bills are the given. If you break it you should pay to fix it as best it can be fixed. But humans are not things. Car fenders do not feel. Cars do not need oxygen when being fixed. Cars do not need diapers on them as they lay in the repair shop. Cars do not feel. Yet so much of case evaluation is placed on the cost of repair, with little or no concern for the human experience.

Have you ever tried to actually experience what the people whom we represent go through. Have you laid in a hospital bed and tried to use a bed pan? Have you laid there and tried to eat with one hand? Have you spent a night at their home? Gotten up with them at night? Gone to the Doctor's with them and sat in the examining room wondering what the doctor is about to tell them about the need for another surgery ? or there is nothing else we can do ?

In Becky's case I spent lots of time with her. I went back and met with her High School teachers. I went with her to her favorite surf spots. I stayed at her house and saw her morning routine. She told me how the ring and little finger on one hand felt constant numbness and pressure 24/7 so I tightly wrapped my ring and little finger with rubber bands for a 24 hour period to try to feel like she was. I learned very private stories of her life and relationships with her parents and siblings. I came to love and respect her, her husband and her family more than I even imagined.

There is nothing more important than understanding who the people are and how they must live.

I am sure there will be ongoing seminars and discussions of how to deal with HOWELL. There will probably be Howell motions. A whole cottage industry of experts will most likely be created to deal with the medical billings.

Becky Howell stood up and took this case about medical bills to the California Supreme Court, but Becky was not about medical bills and insurance companies and lawyers that look at mainly just numbers. She is a human being of unbelievable courage and stature. She is quiet and unassuming and probably wishes I was not writing this about her. She is about being human and fulfilling her human potential. We as lawyers can take the ultimate lesson from the Howell case : Cases are about PEOPLE, get to know and understand them and we just might start by looking at and understanding ourselves. Why do we do what we do ? Is it for our own self enrichment financially by looking at numbers ? Or can we truly look at ourselves and the People we represent with human empathy and caring in order to hold the Betrayers or our trust responsible.

More on the jury and jury empathy .....later.

