



News Release

For Immediate Release

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DRI Seeks California Supreme Court Review in *Pebley v. Santa Clara Organics*

Petition Involves Payment of Medical Fees When Insured Seeks Outside Medical Services

CHICAGO – (July 18, 2018)— DRI – The Voice of the Defense Bar has submitted an amicus curiae letter in support of the Petition for Review in the California Supreme Court in *Pebley v. Santa Clara Organics, Inc.* (2018). The letter was filed through DRI’s Center for Law and Public Policy.

Pebley is the latest case interpreting *Howell v. Hamilton Meats and Provisions, Inc.* (2011), in which the California Supreme Court limited medical damages in a personal injury action to the amount paid by a health insurer, rather than the amount billed by the provider. In the years following *Howell*, the Court of Appeal has grappled with various situations, including how to apply *Howell* to future medical expenses and for uninsured plaintiffs. Two lines of cases have emerged, with one line holding that the amount of unpaid bills is never relevant, and the second holding that in certain situations it may be, particularly for an uninsured plaintiff.

In *Pebley*, the injured plaintiff had health insurance but decided, apparently after consultation with his lawyer, to treat with a “lien doctor”—a doctor outside of his insurance who charged, but never collected, a rate many times higher than those generally paid by either insurance companies or uninsured individuals treating in a medical facility. Rather than receiving payment when services are provided, a lien doctor obtains a lien on any potential recovery in the personal injury action and expects payment after the case resolves. In most cases, a lien doctor will negotiate the amount of the lien down following resolution of the litigation. Use of a lien doctor, even when a personal injury plaintiff has insurance, has been a method recommended by the plaintiffs’ bar to try to evade the damages limitation ruling set forth in *Howell*.

Over the defense’s objection, the plaintiff in *Pebley* was permitted to present evidence of his full unpaid bills from the lien doctor, which were significantly higher than they would have been had he treated through his insurer. At the same time, the defense was precluded from presenting any evidence that the plaintiff failed to mitigate his damages, of expert testimony of the market rate for medical services which relied upon what an insurer would pay, and that the plaintiff had insurance in the first instance. The Court of Appeal upheld the rulings of the trial court. *Pebley* seeks review of those issues, including how

to apply *Howell* for an insured plaintiff who nonetheless chooses to treat outside his insurance at a significantly higher rate.

Amicus letter author Adam Koss of the Koss Firm of San Francisco is available for interview or expert comment through the above contact information. The complete text of the DRI brief can be found [here](#).

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About DRI – The Voice of the Defense Bar

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