



## Medical Charges Adjusted as a Result of Insurance are Not Recoverable or Admissible

As a Result of Recent Texas Supreme Court Opinion

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In a significant win for defendants in cases involving insured medical expenses, the Texas Supreme Court has decided that medical expenses not required to be paid by or on behalf of the claimant are neither recoverable nor admissible at trial. *Haygood v. Escobedo*, \_\_\_ S.W.3d \_\_\_\_, Cause No. 09-0377 (Tex. June 30, 2011).

In 2003, as part of a larger tort-reform measure, the Texas Legislature enacted Section 41.0105 of the Texas Civil Practice & Remedies Code. That section states:

In addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.

Texas trial courts, and even the intermediate appellate courts, were split on the effect of Section 41.0105 in light of the collateral source rule, and how to implement it at trial. Noting the conflict in the courts of appeals, the Supreme Court granted a petition for review in *Haygood*.

*Haygood* was injured in a motor vehicle accident with defendant Escobedo. Finding the facts of *Haygood* "entirely typical" in the current age of significant adjustments to health care bills, the Court noted that while *Haygood* had been billed for \$110,069.12 in medical charges, as a result of his participation in Medicare, and following adjustments of \$82,329.69, the treating physicians and hospitals were only entitled to be paid \$27,739.43 for their services. Slip op. at 2-3.

Over the defendant's objections, the trial court applied the collateral source rule to allow into evidence only the unadjusted billings of \$110,069.12, and precluded evidence of the adjustments. The collateral source rule is a long-standing common law rule that precludes reduction in a defendant's liability because of benefits received by the plaintiff from another source. The jury found for *Haygood* and awarded him the full \$110,069.12 in past medical expenses, along with \$7,000 in future medical expenses and \$27,500 in past and future mental anguish.

In reversing the trial court's judgment, the Texas Supreme Court found that the collateral source rule does not allow a plaintiff to recover medical expenses that a health care provider is not



entitled to charge.<sup>1</sup> Slip op. at 9. Specifically, the Court noted that “[t]he benefit of insurance to the insured is the payment of charges owed to the health care provider. An adjustment in the amount of those charges to arrive at the amount owed is a benefit to the insurer, one it obtains from the provider for itself, not for the insured.” *Id.* at 8. To allow otherwise would provide a windfall to the plaintiff, in that it would allow the plaintiff to recover expenses that were never paid. *Id.* at 9.

Having resolved the issue of the recoverability of unpaid medical expenses, the Court then turned to the question of the admissibility of unadjusted medical bills at trial and held that, because the plaintiff cannot recover the amounts that were contractually adjusted from the bills, such evidence is not relevant at trial and therefore not admissible. Thus, the only proper evidence at trial is the lesser, adjusted amount. As applied specifically to *Haygood*, on re-trial, only the \$27,739.43 should be allowed into evidence. Because the amount of medical expenses can drive up both non-economic and punitive damages, having only the lesser amount presented to the jury is a significant development for defendants.

We expect that more and more plaintiffs’ counsel will, when possible, try to block adjustments of existing medical bills. In a situation where it is likely that a jury will find liability, but the measure of damages remains open and an insured medical bill remains unpaid, a defendant might consider negotiating the lien directly with the provider. This would shift arguments in the trial court to whether the payment was made “on behalf of the claimant,” and is therefore admissible. Even if the trial court concluded that the payment was made on behalf of the claimant, the jury would consider only the lower, adjusted amount, thereby limiting the defendant’s exposure for both economic and non-economic damages.

#### Endnotes

<sup>1</sup> The Court noted that while Idaho, Indiana and Kansas have reached similar conclusions, California, Illinois, Louisiana, South Carolina, Virginia and Wisconsin have, to date, disagreed. Slip op. at 9, fn. 40.

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