



**TEXAS SUPREME COURT LIMITS EVIDENCE OF MEDICAL PAYMENTS TO WHAT MEDICAL PROVIDER WAS ACTUALLY REIMBURSED FOR, NOT WHAT THEY BILLED**

On July 1, 2011 the Texas Supreme Court in *Haygood v. Escabedo*<sup>1</sup> held that “only evidence of recoverable medical expenses is admissible at trial.” Under Texas law the “recovery of medical or health care expenses is limited to the amount actually paid or incurred by or on behalf of the claimant.”<sup>2</sup> This ruling clarified that the amount of medical expenses that can be introduced into evidence is to be calculated based on what a medical provider is reimbursed for, not necessarily the amount the provider billed.

Medical expenses are billed on a two tier system. There are “list” or “full” rates, which are sometimes charged to uninsured patients, but frequently uncollected. There is also a reimbursement rate, which is a predetermined rate that the insurer has agreed to pay for a given procedure. A medical provider often bills at the full rate knowing that they will only receive the lower reimbursement rate. In fact, medical providers are encouraged to do this since often their reimbursement rate is percentage of the full rate. The Court noted that this often results “in great disparities between the amounts billed and payments received.”

The recent case of *Haygood v. Escabedo* is a good example. The plaintiff’s health care providers billed him \$110,000. However, the plaintiff was covered by Medicare Part B, which only pays a “reasonable charge” for services. The plaintiff’s health care providers adjusted their bills with credits of \$82,000, leaving a total bill \$28,000. Under this new ruling, the plaintiff could only introduce evidence of medical bills totaling \$28,000. The Court found that since no one would end up paying the \$82,000 credit, that evidence concerning it could not be used at trial.

The Court addressed what is likely to be a concern of the plaintiff’s bar, that limiting the evidence to amounts that have been or must be paid “provides the jury an unfairly low benchmark with which to gauge the seriousness of the plaintiff’s injuries...” The Court found that there would be no unfairness since the rates reimbursed were “reasonable.”

<sup>1</sup> 54 Tex. Sup. Ct. J 1377 (2011).

<sup>2</sup> Tex. Civ. Prac. & Rem. Code Ann. § 41.0105.



Conclusion

Medical expenses are recoverable, and can be a good benchmark for how serious the plaintiff's injuries are. Juries often use medical expenses to gauge damages for pain and suffering. This ruling is likely to have a major impact in personal injury cases in which the plaintiff has medical insurance. It has been common for Plaintiffs to produce only the "full" bill and attempt to recover that amount at trial, even though substantial portions of that amount were written-off by the health care provider and not paid. The purpose of tort law, however, is to compensate a Plaintiff for damages he or she has suffered – not to create a windfall. The defense bar must be proactive in making sure only evidence concerning what medical expenses were actually paid by the injured Plaintiff is admitted and not simply aggregate totals of amounts billed.

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