

## **Texas Supreme Court Limits Medical Expense Evidence to Amount Actually Paid or Incurred**

The Texas Supreme Court on July 1, 2011, addressed one of the more controversial tort reform issues: the recovery and admissibility of charged medical expenses.

Since the passage of tort reform legislation in 2003, plaintiffs have been statutorily limited to recovering health care expenses that were actually paid or incurred, not the full pre-adjustment and pre-write off amount charged. The undiscounted “list price” which is “charged” to the uninsured is typically much higher than the discounted price actually paid by a health care insurer or government program, with the remainder written off by the health care provider or counted as charity.

Should the jury be provided with the full non-discounted bills, with any excess award reduced post-verdict by the judge? Or should only evidence of the actual paid and incurred amounts be presented to the jury? While the judge in either case would conform the medical expense judgment to the actual paid and incurred amount, juries often base their decisions on unliquidated soft damages (e.g., pain and suffering, loss of consortium) on the medical expenses. Higher “undiscounted” bills might prompt the jury to award higher damages for other types of injuries.

In [\*Haygood v. Escabedo\*](#), No. 09-0377, the Texas Supreme Court held that [CPRC § 41.0105](#) limits a claimant’s recovery of medical expenses to those which have been or must be paid. Section 41.0105 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.”

The Court reasoned that “actually paid or incurred” means expenses that have been or will be paid and does not include the difference between that amount and the amount the provider charges but has no right to be paid.

Texas enforces the collateral source rule so that a benefit directed towards an injured party does not become a windfall for a tortfeasor. The Court reasoned that imposing liability for medical expenses that a provider is not entitled to charge does not prevent a windfall to the tortfeasor; it creates one for the claimant. The Court held that the common-law collateral source rule does not allow recovery as damages of medical expenses which a health care provider is not entitled to charge. This portion of the Supreme Court’s decision therefore upholds the 2003 statutory law.

With respect to the amount of medical expenses admissible at trial, the Court held that only evidence of recoverable medical expenses is admissible. The Court reasoned that because a claimant is not entitled to recover medical charges that a provider is not entitled to be paid, evidence of such charges is irrelevant to the issue of damages. The Court analyzed whether the charged amount had any other probative value. The appellant argued that limiting the evidence to the amount paid provides the jury an unfairly low benchmark with which to gauge the seriousness of an injury. The Court opined that if the reimbursable rates are deemed reasonable, then there is no unfairness.

The appellant also argued that insured and uninsured plaintiffs are treated differently because uninsured patients are charged the undiscounted “list price”. An uninsured plaintiff would therefore be able to present evidence of the full undiscounted charges which might suggest his injuries were more serious than an insured patient who would be limited to presenting the evidence only of the discounted expenses actually paid. The Court decided that any theoretical relevance of the undiscounted bills would be substantially outweighed by the confusion it would generate and therefore evidence of the undiscounted bills must be excluded. Accordingly, the Court held only evidence of actual paid or incurred medical expenses is admissible at trial. This portion of the decision clarifies an area of Texas tort law that has previously been unclear and a source of varying practice from trial court to trial court.

The Court emphasized that the collateral source rule continues to apply and the jury should not be informed that any expenses were paid by insurance. The jury should also not be informed that a provider adjusted its charges because of insurance.

This decision is a significant evidentiary win for health care providers and liability insurers. Limiting the admissibility of medical expense evidence to only those amounts actually paid or incurred will help reduce inflated expense and injury claims by plaintiffs.

The full text of the *Haygood v. Escabedo* decision is available [here](#)