

"Do not withhold good from those to whom it is due, when it is in your power to act."

Proverbs 2:27

## Greetings from Fred Arias



This is one of my favorite times of year. There is something special about the spring. There is a newness that no other season can claim. Grass turns greener, trees start showing off their new leaves and flowers begin to bloom. The start of a new baseball season has us believing that this will be our year, although no meaningful changes occurred in the offseason to support this hope. Ultimately, this season is about renewal. Some of our friends have moved on to new companies. Others have made changes in how they manage their claims and litigation. Here at Fletcher Farley, we continue to consider ourselves blessed to be part of your team through any changes or moments of renewal. We also understand that sometimes "the old way" never grows old. So, we are pleased that as a throwback to our earlier years, our Dallas-area Spring Fling on April 27th will not only continue to consist of interesting and exciting presentations, but will also be free of charge. We look forward to seeing you there!

## Medical Factoring and its Effect on a Plaintiff's Recoverable Damages



### DJ Hardy

In 2011, the Texas Supreme Court in *Haygood vs. De Escabedo* held that Section 41.0105 of the Texas Civil Practice & Remedies Code limits a claimant's recovery of medical expenses to those which "have been or

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Welcome to the latest edition of Fletcher Farley's Newsletter, which we hope you find interesting and helpful.

If you have any comments, questions or would like more information from us, please contact Doug or Joanna.

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April 27, 2018

must be paid by or for the claimant." In *Haygood*, the plaintiff was injured in a motor vehicle accident and his medical providers billed a total of \$110,069.12 for treatment. Because the plaintiff was covered by Medicare Part B, his medical providers adjusted the bills downward to \$27,739.43, the cost that Medicare determined to be reasonable. The Court concluded that plaintiff could only recover the \$27,739.43 actually paid or incurred on his behalf.

The *Haygood* decision did not address what happens when medical providers' accounts receivable are purchased by a medical factoring company. Medical factoring companies purchase the accounts receivable at a discounted rate. If a medical factoring company purchases the accounts receivable relating to a plaintiff's medical expenses, the question becomes: Is the plaintiff entitled to the full amount charged by the provider, or the amount paid by the medical factoring company?

Two recent court of appeals decisions have addressed this issue. In *Katy Springs & Mfg., Inc. v. Favalora*, the court of appeals in Houston, Texas ruled that the plaintiff was entitled to recover the full amount charged for the services. In *Katy Springs*, the plaintiff entered into contracts with several of his medical providers in which he assigned to them an interest in any proceeds that might be recovered as a result of the pending lawsuit. A medical factoring company then purchased (at a discount) the providers' accounts receivable. The court held that "[i]n a factoring case, where the record indicates that the claimant remains liable for the amounts originally billed by the medical provider, such amounts are recoverable medical expenses under section 41.0105..."

More recently, the 1st Court of Appeals addressed this issue in *Amigos Meat Distributors LP v. Julian Guzman*. In *Amigos*, plaintiff, a truck driver, injured his back while carrying a frozen animal carcass. Plaintiff's medical providers charged a total of \$287,809.94 in past medical expenses. A third-party medical factoring company purchased the accounts receivable of these providers for \$76,355.60. The defendant attempted to strike plaintiff's medical expense affidavits, contending that the third-party medical factoring company's payments to the medical providers should be the amount paid or incurred on his behalf. The court disagreed, citing *Katy Springs*, and determining that the plaintiff remained liable for the amounts originally billed and therefore evidence of the original charges was admissible. The Texas Supreme Court denied petition for review in the case this year.

The other courts of appeals have not directly discussed this issue. However, trial courts are following *Katy Springs* and *Amigos* and allowing plaintiffs to seek recovery of the amount originally billed, not the amount paid by the medical factoring company. We expect the Texas Supreme Court to clarify this issue in the future.

If you ever have any questions relating to a plaintiff's recoverable past medical expenses, please do not hesitate to contact our firm. We hope to see all of you at the Texas Law Update!

## Conflicts Resolved

### Fletcher Farley Gets a Unanimous Favorable Jury Verdict

Attorney [Scott Mayo](#) recently obtained a unanimous jury

Register now for the Texas Law Update 2018 in Dallas at the Double Tree By Hilton Dallas Near the Galleria

8:00AM - 5:00PM

To register or see more info, [CLICK HERE.](#)



### Welcome Leslie Hanna



We welcome [Leslie Hanna](#) to the firm's Dallas office. He brings to the firm experience in handling a wide variety of complex civil litigation matters. He focuses his practice on construction, insurance defense, personal injury, premises liability, transportation, and products liability.

### Community and Other Events

#### Hyer, Faster Stronger 5K Fun Run

We are a proud sponsor of the upcoming Hyer, Faster, Strong 5K Fun Run on April 21, 2018. This is inaugural event supports the Highland Park ISD's Hyer Elementary School. To learn more about this event, please [click here.](#)

#### WCCA Golf Tournament

verdict finding no negligence on our client, a restaurant. The plaintiff alleged that she suffered severe and continuing injuries and damage to her mouth, esophagus and digestive tract after consuming tea purchased from our client. It was alleged that a cleaning agent was mistakenly left in the tea urns and served to the plaintiff. The plaintiff initially alleged several theories of recovery against our client, including negligence, breach of implied warranties, strict liability, violations of the Texas Deceptive Trade Practices Act, and gross negligence.

Ultimately, the court granted a directed verdict on the issue of gross negligence and the plaintiff agreed to drop all other allegations except for negligence. At the conclusion of a three day trial, the jury returned a unanimous verdict of no negligence on the part of our client.

We are a proud sponsor of the Annual West Coast Claims Association Golf Tournament on April 20th in Odessa, FL. If you are there stop by our table to say hi to Fred Arias and DJ Hardy! To learn more, please [click here](#).

#### **MCCA Annual Conference**

Doug Fletcher will be speaking on, "How to Get More Value for Your Legal Dollar" at the 50th Annual Midwest Claim Association on April 23rd in Bettendorf, IA. To learn more, please [click here](#).

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