



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

Proverbs 3:27

Greetings from Jeff Smith

We hope everybody had a wonderful Thanksgiving and enjoyed time with family and friends. Hopefully, you're not still working on finishing any Thanksgiving leftovers. It was great over the last month to see many of you in person at our Texas Law Updates in Dallas and Chicago. We enjoyed getting to gather and catch up in person, as opposed to over a screen. We hope to see even more of you next year, which is just around the corner. It is hard to believe it is already December. There is a chill in the air, snow on the ground... Never mind. We live in Texas. The sun is shining and its 70 degrees. Regardless of the temperature, this truly is one of my favorite times of year. I love the holiday spirit – decorated houses, delicious holiday treats, and most importantly, a focus on giving to others. As 2021 comes to a close, we wish all of you a blessed holiday season and look forward to continuing to serve your needs in 2022.



Continued Expansion of Discoverable Information Regarding Billing Rates

by **Matthew Skidmore**

In the past several years, there has been a flurry of Texas Supreme Court decisions regarding the discoverability of the rates charged by medical providers. The Texas Supreme Court held in 2018 that the negotiated rates a medical provider charged to patients' private insurers and public-entity payors were relevant and discoverable on the issue of the reasonableness of the "full" rates the provider charged to an uninsured patient for the same services. In 2021, the Texas Supreme Court explicitly extended the scope of the *In Re North Cypress* case to include personal injury claims in *In re K&L Auto Crushers*.



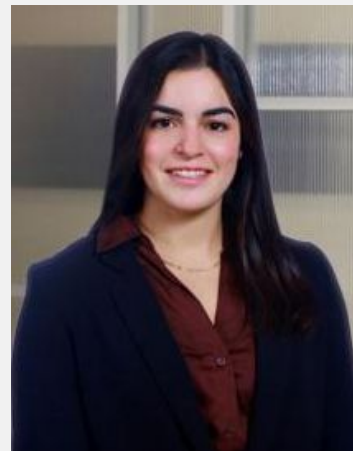
We Have Added Two Lawyers

Welcome Claire Kimutis



We welcome Claire Kimutis as an associate to the firm's Dallas office.

Welcome Clarissa Perez



We welcome Clarissa Perez as an associate to the firm's Dallas office.

Behind the Scenes

In November 2021, the Texas Supreme Court issued an additional opinion supporting the *In Re North Cypress* and *K&L Auto* cases that will strengthen our efforts to discover this information, which is often important in proving that providers' have overbilled plaintiffs. In *In re Exxon Mobile*, sixty plaintiffs sued ExxonMobil, seeking, in part, millions of dollars in reimbursement for past medical expenses. ExxonMobil obtained through discovery billing codes for the specific services the plaintiffs received, and it used this information to formulate discovery requests for the amounts and rates these providers have accepted from the majority of their patients for the same procedures performed around the same time. ExxonMobil filed a motion to enforce its subpoenas, and the providers filed a motion for protection, arguing that the requests sought irrelevant information, were unduly burdensome, and sought trade secrets and confidential information. Following a Fourteenth Court of Appeals' ruling holding that a request for documents related to a medical provider's rates for services not received by plaintiff is impermissibly overbroad, ExxonMobil supplemented its motion to narrow the requests to the same services the plaintiffs received and the same time period during which those services were provided.

ExxonMobil sought mandamus relief from the Texas Supreme Court. The Court held that as reasonableness is a well-settled common-law limitation on recoverable expenses, evidence of the providers' rates was relevant to determine whether they were reasonable, and thus, recoverable. The Court further held that the requests were not unduly burdensome, as they were narrowly tailored to seek information on rates for the same services at the same times, and that the providers had a financial interest in the resolution of the claims which offsets their nonparty status when balancing the burdens and benefits of discovery. Finally, the Court held that the providers' argument that the requests sought confidential information or protected trade-secret information failed as a protective order could easily shield the information from unnecessary disclosure. The Court found that the trial court abused its discretion by denying ExxonMobil's discovery requests, and that ExxonMobil was entitled to mandamus relief as it would have no appellate remedy, as the discovery ExxonMobil could not obtain was from third parties, and thus could not be included in the appellate record. The Court, in striking language, stated that "the denied discovery was necessary to develop a defense that goes to the heart of ExxonMobil's case—that the providers' rates were unreasonable."

Following the *K&L Auto* decision, we have seen providers attempting to dodge or refuse to answer our requests for these rates. The decision in *In Re Exxon Mobile* should further limit plaintiffs' and providers' attempts to argue that narrowly tailored requests are overly broad, unduly burdensome, or irrelevant. Additionally, the decision allows for more immediate relief of an erroneous ruling when necessary.

Conflicts Resolved



We want to thank Anne Meadows for greeting us and clients at the front for 19 years. What an accomplishment!

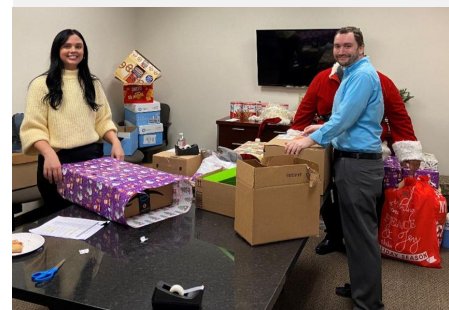
Supporting our Community

Senior Source Christmas Party

We are getting the gifts ready to visit a local nursing home facility in person. We are excited to bring the cheer.



Santa stopped by to help Debbie Stick, to the left, and Leslie Jaeger, to the right, with sorting the presents.



Leslie Jaeger and Walker Agathon getting some wrapping tips from Santa.

Texas Law Update in Chicago

Thank you to everyone who came out to our TLU in

Fletcher Farley Obtains a Defense Verdict in Commercial Trucking Case

[Joanna Salinas](#), [Derreck Brown](#) and [Richard Harwell](#) obtained a defense verdict for a commercial trucking client following a 5-day jury trial in Zavala County where the plaintiff asked the jury for over \$3.5 million in damages and his lowest demand was about the same. Thomas J. Henry's Office represented the claimant.

The plaintiff alleged that the truck driver and his employer were negligent and that he sustained injuries to his neck, low back and left shoulder. Plaintiff had already had a neck fusion surgery by the time of trial and claimed the need for a back fusion surgery and a rotator cuff surgery. The team argued the collision was the plaintiff's fault and that he was not injured. After two hours of deliberation, the jury found that the truck driver was not negligent and that plaintiff was negligent.

Fletcher Farley Obtains Complete Dismissal in Motor Vehicle Accident Claim

[Jeffrey Smith](#) and [Matthew Skidmore](#) were successful in obtaining a complete dismissal of their client in a motor vehicle accident claim. The suit involved a rear-end motor vehicle accident in which our client was operating the middle vehicle that had come to a complete stop before being struck and pushed into the rear of plaintiff's vehicle. Plaintiff alleged our client was negligent, which contributed to the accidents. However, in deposition, Matt Skidmore got Plaintiff to admit that our client did nothing wrong. The at fault driver likewise admitted that she caused the accident and was not aware of anything our client did that caused or contributed to the accident. In light of this testimony, we filed a motion for summary judgment. Faced with responding to the motion, the plaintiff dismissed her claims against our client.

Chicago on Thursday, November 18th. It was nice to see everyone in person.

Below is a peek at the materials, Doug and then Kristi speaking and finally the great view from our room at the Swissotel.



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