



FOR *the* DEFENSE

May 2018

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

Proverbs 2:27

Greetings from Doug Fletcher



Well, spring is in full swing, the end of the school year is on the horizon and things are starting to heat up. It looks like it is going to be a long season for the Texas Rangers, so things are quite normal in the State of Texas. Our recent Texas Law Update program was a success and a large number of our clients in the North Texas area enjoyed great hospitality and great topics on the present state of the law. For those of you who were not able to attend, please keep in mind that we are always available to present an on-site Lunch & Learn program for your company. These programs normally take about three hours and provide for 2 to 3 hours of continuing education credit as well as a delicious lunch. If you are interested, please call our Marketing Director, Dwanna Gassaway, or myself and we will be glad to come to your hometown. We are also able to present webinars and we are certainly willing to present a webinar for your company, using any of the over 100 available continuing education topics. As always, Fletcher Farley stands ready to serve you and take care of your needs in the State of Texas. Have a great summer and we look forward to seeing you soon.

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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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Case Law Update: Reasonable Medical Expenses

Alex Bell



In the case of *In re N. Cypress Med. Ctr. Operating Co., Ltd.*, the Texas Supreme Court finally provided some long-awaited clarity on what is relevant to determining reasonable medical expenses. In a lawsuit between a plaintiff and a hospital over a hospital lien for her emergency medical care, the Court ruled that the amounts accepted by the hospital for insured patients receiving the same kind of care were relevant to determining whether her ER bill was reasonable.

In this case, Crystal Roberts was not insured and was billed the 'chargemaster' prices for emergency room care after a car accident. The hospital filed a lien to protect its interest in the bill. Ms. Roberts' attorney settled her case for around \$17,000 and sought a reduction of the \$11,000 lien for the ER bill. After some negotiation, the hospital refused to accept any reduction. Ms. Roberts' attorney filed suit challenging the reasonableness of the charges underlying the lien. The hospital lien statute, much like the paid/incurred statute, only allows recovery of reasonable medical expenses.

In the course of the lawsuit, Ms. Roberts' attorney sought discovery on the hospital's reimbursement rates from health insurance providers and other third party payors, including the federal government. The hospital resisted, arguing that such charges were not relevant because Ms. Roberts wasn't covered by any of those kinds of arrangements. Ms. Roberts argued that the information would show that the hospital regularly accepts payments much less than what her bill reflects. The trial judge ordered production and the hospital asked an appellate court, and ultimately the Texas Supreme Court, to rule on the issue.

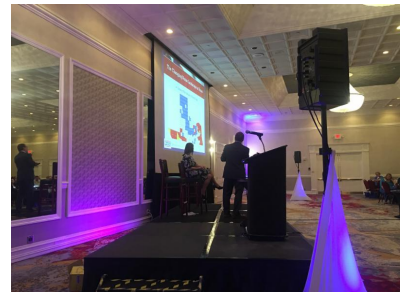
The Texas Supreme Court agreed with the trial court that the reimbursement rates were relevant and discoverable on the issue of whether Ms. Roberts' bill was reasonable. In the Court's opinion, the question was not whether Ms. Roberts could take advantage of insured rates, but instead what a reasonable and regular rate would be, since hospitals can only recover charges at a reasonable and regular rate. To quote the opinion, "it defies logic to conclude that those payments have nothing to do with the reasonableness of charge to the small number of patients who pay directly." While the charges for insured patients are not dispositive of what is reasonable, they are at least relevant and



Thank you for making the Texas Law Update a success!



It was a packed house and the audience looks attentive!



Doug Fletcher and Joanna Salinas going over The Changing Venue Landscapes in Texas.



Alex Bell describing Damages in Personal Injury Claims.



Ed Velez models this year's hot item - the TLU t-shirt!

discoverable.

As defense lawyers, we have tried repeatedly to get this information about how healthcare pricing works in front of a jury through medical billing experts and healthcare industry experts, with only limited success. It is not yet clear if this will throw open the doors to this kind of evidence at trial. While the opinion says that third party payor pricing is relevant, it stopped short of saying it would be admissible. Trial courts may still find other reasons not to admit the testimony or evidence, but it won't be because they're not relevant.

Conflicts Resolved

Fletcher Farley Gets a No-Evidence Summary Judgment

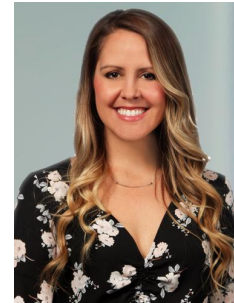
Scott Mayo and David Colley obtained a no-evidence summary judgment for one of the firm's restaurant clients in a premises liability lawsuit that arose from a slip-and-fall incident. The plaintiff allegedly slipped and fell in a puddle of tracked-in rain water on the floor of the foyer of the restaurant as she was exiting the premises. Our client moved for no-evidence summary judgment on, among other grounds, the notice element of the plaintiff's claim because the evidence established that neither the restaurant nor any of its employees or agents had actual or constructive knowledge of the water puddle on the floor of the premises prior to the plaintiff's alleged slip and fall. The constructive notice prong of the plaintiff's claim under Texas' "time-notice" rule was negated by plaintiff's admission that she had no idea how long the water puddle was on the floor prior to the incident. The trial court agreed and granted the no-evidence summary judgment motion from the bench following the hearing.

Welcome Ashley MacNamara



We welcome Ashley MacNamara to the firm's Dallas office. She focuses her practice on insurance defense, including personal injury, premise liability, commercial trucking, and general tort liability.

Welcome Robin Miserlian



We welcome Robin Miserlian to the firm's Austin Office. She focuses her practice on civil litigation, commercial litigation, and personal injury defense.

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