



The Weekly Update of Texas Insurance News

TEXAS INSURANCE LAW NEWSBRIEF



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EVIDENCE OF AMOUNT “BILLED” FOR MEDICAL SERVICES LEGALLY INSUFFICIENT TO SUPPORT AMOUNTS “PAID OR INCURRED”

Last Wednesday, the Tyler Court of Appeals analyzed the legal sufficiency of medical bills without reduction for amounts actually paid to the providers and held that they “are irrelevant and should be excluded at trial.” In *Garza de Escabedo v. Haygood*, 2009 WL 387153 (Tex.App. – Tyler, February 18, 2009), the trial court granted the plaintiff’s motion to exclude evidence of offsets and collateral sources involving expenses for medical care received. At trial, the plaintiff was allowed to present evidence to the jury that his medical providers billed him \$110,069.12 even though \$82,294.69 had been written off as Medicare adjustments. The jury awarded plaintiff the full amount billed for past medical expenses and the trial court entered judgment for that amount. This appeal followed.

The court analyzed the impact of Texas Civil Practices and Remedies Code Section 41.105 “Evidence Related to Amount of Economic Damages” which limits recovery of medical and health care expenses to “the amount actually paid or incurred” by the claimant. And the court determined that as suggested by the title of 41.105 it “not only limits the amount of damages recoverable, but also affects the relevance of evidence offered to prove damages.” It was undisputed that “there were no admitted medical bills reflecting any actual payments” and as such, the evidence admitted was legally insufficient to support the damages. But rather than reversing and remanding the decision to the trial court for a new trial, the court suggested a remittitur in the amount of \$82,294.69 and gave 15 days to file it before the case would be reversed and remanded for a new trial.

U.S. DISTRICT COURT SEGREGATES RECOVERABLE AND NON-RECOVERABLE ATTORNEY FEES

In a well reasoned and insightful decision, the U.S. District Court for the Northern District of Texas, Dallas Division analyzed the appropriate method and means to award attorney fees in a first party breach of contract and bad faith insurance lawsuit. In *Great American Insurance Company v. AFS/IBEX Financial Services, Inc.*, CA No. 3:07-CV-924-O (N.D.Tex., February 13, 2009), Great American filed a declaratory judgment action to address an insurance coverage dispute. The insured counterclaimed for breach of contract and asserted bad faith and other extra-contractual causes of action. The court ruled in the insured’s favor on summary judgment, finding coverage under the policy but determined fact issues existed on the extra-contractual claims. After a two day jury trial, the court ruled that the insured was not entitled to jury instruction on the bad faith and extra-contractual claims because they failed to plead and prove injuries separate from those arising from the breach of contract. But the jury did find that

the attorney fees and expenses were reasonably incurred. The insured then submitted a motion for attorney fees.

The court analyzed the appropriate method and means to award attorney fees in cases where plaintiffs prevail on some claims but not others. And, the court observed that under Texas law, a claimant must segregate recoverable from unrecoverable attorney fees. The court noted that “intertwined facts do not make recoverable fees recoverable per se; it is only when discrete legal services advance both recoverable and unrecoverable claims that they are so intertwined that they need not be segregated.”

Plaintiff’s sought \$319,097 in attorney fees in pursuing its contractual and extra-contractual claims. The court closely examined: the number of hours worked, depositions of insurance company employees, written discovery, time and charges by bad faith experts, motions filed and responded to, a motion to compel seeking discovery in relation to the bad faith claims, pretrial and trial matters, paralegal fees, hourly rates charged and related factors. The court segregated the recoverable and non-recoverable attorney fees and determined that reasonable attorney fees incurred in pursuing the recoverable claims totaled \$146,440 and then entered an award for that amount.

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