

# TEXAS INSURANCE LAW NEWSBRIEF

FEB 11, 2020

## LACK OF EXPERT TESTIMONY RESULTS IN REVERSAL OF DAMAGES AWARD

Recently, the Texas Fourteenth District Court of Appeals in Houston reversed a trial court's judgment awarding \$145,460 in past medical expenses based on a failure to establish causation of injuries from an automobile accident by expert medical testimony. In *Hills v. Donis*, No. 14-18-00566-CV, 2020 WL 206187, at \*1 (Tex. App.—Houston [14th Dist.] Jan. 14, 2020, no pet. h.), Defendant Hills challenged the trial court's judgment on grounds that various Plaintiffs (the "Donis Parties") presented no expert medical testimony demonstrating that the medical expenses awarded were incurred to treat injuries suffered in the automobile accident. The court of appeals focused on two key issues: (1) whether lay testimony was sufficient to prove soft tissue injuries were caused by the automobile accident; and (2) whether medical records and billing affidavits provided sufficient causation evidence absent expert testimony.

In handling the first issue, the court noted that the Donis Parties suffered no overt injuries in the automobile accident and focused upon whether soft tissue injuries such as cervical radiculitis and lumbar IVD displacement fell within the common knowledge of laypersons. The court concluded that such injuries did not fall within the common knowledge of laypersons and, therefore, held that "[t]he Donis Parties needed expert testimony to establish a causal connection between the accident and their claimed injuries."

The court then considered whether Section 18.001 affidavits and other medical records were sufficient, on their own, to establish that the Donis Parties medical expenses were incurred to treat injuries suffered in the accident. The court noted that Section 18.001 affidavits are appropriate to streamline the reasonableness and necessity of medical expenses but that 18.001 affidavits cannot establish causation between an occurrence and an injury. The court further held that various letters written by the Donis Parties' physician, which stated that the accident caused all injuries for which the Donis Parties were treated, were incompetent, conclusory statements because the physician did not explain with facts and data how and why the accident caused the injuries. The Court held that, even considering the medical records, expert medical testimony was required to "establish a nexus between the accident and the Donis Parties' claimed injuries, and none was provided." As a result, the court of appeals reversed the trial court's judgment and rendered a judgment that the Donis Parties take nothing on their claims.

**Editor's Note:** MDJW congratulates its law partner Shane Osborn and his team in zealously defending Ms. Hills, MDJW appellate partner Robert T. Owen, for securing a reversal of the trial court's judgment on appeal and, State Farm Mutual Automobile Insurance Company for allowing MDJW the privilege of representing its insured.