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The Texas Supreme Court Rules in the Air Ambulance Cases in *Texas Mutual Insurance Co., et al v. PHI Air Medical, LLC*

In the Texas workers' compensation system, reimbursement of air ambulance companies is an issue that has spiraled out of control. Generally, workers' compensation insurance carriers reimburse air ambulance companies in accordance with the rules and guidelines provided for under the Texas Workers' Compensation Act (TWCA) and Division of Workers' Compensation Rules. This reimbursement is significantly less than the fees charged by some air ambulance companies. As of January of 2019, almost \$50 million in Texas air ambulance charges were in dispute. Some air ambulance companies have asserted that the federal Airline Deregulation Act (ADA) preempts state workers' compensation laws and insurance carriers must pay the companies' billed charges, regardless of any state rules or guidelines. Not just limited to Texas, litigation regarding this issue has taken place across the United States, with many courts finding in favor of the air ambulance companies. On June 26, 2020, the Texas Supreme Court weighed in on the issue.

In, No 18-0216, the Supreme Court addressed thirty-three workers' compensation fee disputes concerning transports provided by PHI between 2010 and 2013. The carriers had reimbursed PHI an amount equal to 125% of the Medicare rate for air ambulance services. PHI sought medical dispute resolution before the Division of Workers' Compensation, which agreed with PHI that the ADA preempted the TWCA's fee schedules and reimbursement standards. The case proceeded to the State Office of Administrative Hearings (SOAH) and an Administrative Law Judge (ALJ) concluded the ADA did not preempt the TWCA and PHI was only entitled to reimbursement under the TWCA's standards. The ALJ found the Division's fee guidelines did not set a specific reimbursement rate for air ambulances and, as there was no contractual rate, a fair and reasonable rate should be applied. The ALJ determined 149% of Medicare was the fair and reasonable rate. The case then proceeded through the courts.

The trial court declared that the ADA does not preempt the TWCA's reimbursement provisions and the carriers did not owe more than 125% of the Medicare amount. The case was appealed to the court of appeals, which concluded the ADA preempted the TWCA's

reimbursement provisions, reversing the trial court's findings. The Texas Supreme Court disagreed with the court of appeal's conclusions.

The Texas Supreme Court, addressing constitutional issues, federal law and Texas law concluded the ADA did not preempt the fair and reasonable reimbursement standard under the TWCA. The Court distinguished its holding from other courts' findings the ADA preempted state fee guidelines, noting that, in those cases, the fee guideline limited the provider to a maximum fee that was less than a reasonable fee. The Court explained the TWCA provides a "fact-driven standard," which requires carriers to pay 100% of "fair and reasonable charges" and did not limit reimbursement to a less than reasonable fee.

The Supreme Court's decision is a significant victory for not only carriers, but also the integrity of the Texas workers' compensation system. PHI may still request the Texas Supreme Court rehear the case and PHI may seek review by the U.S. Supreme Court.

At the federal level, the U.S. Court of Appeals for the Fifth Circuit is considering the same issues in the case of *Air Evac EMS, Inc. v. Sullivan*, No 18-50722. This case concerns an appeal from the U.S. District Court, Western District of Texas, which held the ADA preempts the TWCA and enjoined the enforcement of the TWCA reimbursement provisions against the air ambulance company. The parties presented oral arguments at the Fifth Circuit Court of Appeals on November 5, 2019, but no decision has been issued. It will be interesting to see what impact the Texas Supreme Court's holding will have on the Fifth Circuit's Court of Appeals analysis.