Chamberlain Hrdlicka
Attorneys at Law

Contact

Houston
1200 Smith Street, Suite 1400
Houston, Texas 77002-4310
Tel: 713.658.1818
Fax: 713.658.2553

Atlanta
191 Peachtree Street, N.E.,
Forty-Sixth Floor
Atlanta, Georgia 30303
Tel: 404.659.1410
Fax: 404.659.1852

Philadelphia
300 Conshohocken State Road
Suite 570
West Conshohocken, PA 19428
Tel: 610.772.2300
Fax: 610.772.2305

San Antonio
112 East Pecan Street, Suite 1450
San Antonio, Texas 78205
Tel: 210.253.8383
Fax: 210.253.8384

www.chamberlainlaw.com

Salty Medical Bills? Applying Haygood v. de Escabedo to Admiralty Cases in Texas

Josh N. Bowlin and F. Daniel Knight

Texas Lawyer
August 2011

It has been said that legal issues of an admiralty and maritime nature have a certain "saltiness" about them. At first glance, the Texas Supreme Court's July 1 decision in *Haygood v. de Escabedo* has little in the way of salty flavor, as it is an appeal of a car wreck case. Admiralty practitioners should be cognizant of this opinion, however, as it has far-reaching impact upon admiralty personal-injury cases filed in Texas state courts.

Haygood finally gives guidance on a provision of the 2003 tort reform package that has caused significant consternation and disagreement in trial and appellate courts across Texas 41.0105 of the Texas Civil Practice & Remedies Code, commonly known as the "paid vs. incurred" statute. Haygood reaffirms the plain language of 41.0105 that a claimant's recovery of medical expenses is limited to those that have been or must be paid by or for the claimant, but also resolves how 41.0105 is applied at trial.

Prior to *Haygood* , some courts allowed evidence at trial of charges billed, without adjustments or credits, ultimately resolving the issue post-verdict. Instead of resolving the issue post-verdict and supplanting the court's determination for factual issues properly in the jury's province, *Haygood* requires a practical, straightforward approach to the application of 41.0105 at trial.

According to the high court's opinion, Aaron Glenn Haygood sued Margarita Garza de Escabedo for injuries sustained during an automobile collision. Treatment to Haygood's neck and shoulder resulted in bills totaling $110,069.12. Because Haygood was covered by Medicare, his bills were adjusted by the various providers with credits of $82,329.69, leaving a total of $27,739.43. At the time of trial, $13,257.41 in medical bills already were paid, while $14,482.02 remained due. In an effort to present the $110,069.12 figure to the jury, Haygood argued that even though 41.0105 precludes recovery of expenses a provider has no right to be paid, he should, nonetheless, be able to present evidence of the total medical expenses because it is admissible.

Rejecting this argument, the Supreme Court stated, "[S]ince a claimant is not entitled to recover medical charges that a provider is not entitled to be paid, evidence of such charges is irrelevant to the issue of damages." Thus, "only evidence of recoverable medical expenses is admissible at trial."

Salty Medical Bills? Applying Haygood v. de Escabedo to Admiralty Cases in Texas,

Continued

To understand *Haygood* 's potential impact for admiralty practitioners, it is important to note two basic principles concerning admiralty cases: 1. They can be filed in federal or state court under the Saving to Suitors Clause, 28 U.S.C. 1333(1), and 2. the Texas Supreme Court has held that if an admiralty case is filed in state court, federal maritime law governs substantive issues of law while state law governs procedural issues (in Texas, the high court's primary case holding this position is *Maritime Overseas Corp. v. Ellis* (1998)).

In holding 41.0105 should be applied in evidence, the Supreme Court made it a procedural rule. Therefore, under applicable Texas precedent, 41.0105 applies in admiralty cases filed in Texas state courts.

Since only the amount actually paid or which is owed to the plaintiff's health care providers is admissible, *Haygood* will likely result in auditing of medical bills by defendants and reduce the total value of an admiralty personal-injury claim. *Haygood* could also be used to reduce non-economic damages, such as pain and suffering, which routinely use total medical expenses as a benchmark for any such award. The Supreme Court considered the probative value of presentment of total medical expenses at trial rather than those paid and/or owed, ultimately determining that the relevance of total medical expenses is substantially outweighed "by the confusion it is likely to generate, and therefore the evidence must be excluded."

For example, a Jones Act seaman routinely makes three claims in a suit against his employer for personal injuries: negligence, unseaworthiness of the vessel, and maintenance and cure. The third claim is a contractual form of compensation provided by general maritime law (GML) to a seaman who falls ill or is injured while in the service of the vessel, and does not require the seaman to establish fault. Maintenance is a daily payment equivalent to the food and lodging of the kind and quality the seaman would have received aboard the vessel. Cure is the obligation to reimburse incurred medical expenses, as well as to ensure the seaman receives the proper medical treatment.

If an employer accepts maintenance and cure obligations, it is entitled under GML to audit the medical bills. The 5th U.S. Circuit Court of Appeals has held in *Caulfield v. AC&D Marine Inc.* (1981) that if a seaman declines to see a private physician chosen by his employer and instead seeks the care of a physician of his choosing, the employer may reduce its cure obligations "to the extent that the cost of the plaintiff's treatment un-necessarily exceeded that which the employer would have incurred had the employee followed the employer's recommendation regarding a physician." Auditing of medical bills in Jones Act cases has been approved by district courts within the 5th Circuit as well. Additionally, if a claimant files 18.001 affidavits to establish the reasonableness and necessity of certain medical bills and services, the admiralty practitioner should, as a matter of course, file controverting affidavits establishing that only the amount actually paid was reasonable.

Therefore, if a Jones Act defendant accepts the maintenance and cure obligation and chooses to audit the medical bills of the plaintiff and/or controverts a 18.001 affidavit, it can and should use 41.0105 in evidence to argue only the amounts actually paid or that would be paid should it be presented at trial. A similar argument could be used in any GML or third-party longshore worker personal-injury claim as well, if reductions of medical bills have occurred.

The net effect will most likely be a reduction in the overall value of such suits. Therefore, while *Haygood* may not be inherently salty, many admiralty defense practitioners in Texas will undoubtedly add salt to the decision.