



ADVISORY NO. 514

TOPIC: Texas Supreme Court Rules for Carriers and Claimants in Air Ambulance Cases

This morning the Texas Supreme Court reversed the lower court judgment in the air ambulance litigation, a case involving a multi-million dollar dispute over workers' compensation medical benefits reimbursement.

The case pits Texas workers' compensation carriers against air ambulance companies providing services to injured workers. Air ambulance providers want no regulation on the amount owed for their services while comp carriers have



argued the providers are subject to regulation by the Texas Department of Insurance, Division of Workers' Compensation.

In [Texas Mutual Ins. Co. v. PHI Air Medical, LLC](#), a divided court sided with the carriers, holding that the Airline Deregulation Act “does not preempt Texas’s general standard of fair and reasonable reimbursement as applied to

air ambulance services, nor does it require that Texas compel private insurers to reimburse the full charges billed for those services.”

The court reversed the judgment of the court of appeals and reinstated the trial court’s judgment, which declared that Texas law is not preempted. The case is a huge victory for Texas workers' compensation carriers and their policyholders. However, the decision reaches a different result than those reached by some state and federal courts in other jurisdictions. The air ambulance providers will certainly file a motion for rehearing and may seek review from the United States Supreme

Court. Similar issues with similar parties are also pending in the federal courts of the 5th Circuit.

From opening paragraph, the court grounded its reasoning in the concept of federalism:

When joining our Union, each State retained fundamental aspects of its sovereignty. This sovereignty includes the police power to provide a compensation system for injured workers. Although the Federal Government can preempt a State's exercise of sovereignty by enacting an inconsistent federal law on a subject within its constitutionally enumerated powers, it has no power to order that State to regulate the subject in a particular way.

The court also took issue with the logic of the air ambulance providers' argument.

PHI is trying to use the ADA's preemption clause to have it both ways under state law: PHI relies on Texas law requiring that private insurers reimburse it for air ambulance services to injured workers, yet it argues that the Texas standards governing the amount of that reimbursement are preempted. The Supreme Court of the United States [has] unequivocally rejected this stratagem

The court reasoned that the Airline Deregulation Act had been passed "to deregulate the airline industry, not to upend the bargain struck in adopting a workers' compensation scheme." It concluded that there was no reason to interpret the Airline Deregulation Act to have that effect.

In December 2016 FOL published an [FOL Advisory](#) discussing the then current state of the litigation. In that case, a Texas state district judge agreed with carriers that air ambulance bills were subject to state regulation by the Texas Department of Insurance and the Division of Workers' Compensation. This is the judgment that the Supreme Court has now adopted.

Air ambulance bills are expensive. Earlier this year, the journal [Business Insider](#) observed:

In California, where no official medical fee schedule exists for air ambulance services, the state's State Compensation Insurance Fund has seen its average payment per air ambulance bill increase 77%, said Stephen

Hunckler, the fund's San Francisco-based chief claims operations officer, in an email.

The Texas Division of Workers Compensation recently reported that it had 1,626 air ambulance bill disputes as of Dec. 2, 2019, with \$48,000 being the average charge per transport in these disputes.

Although the case only concerns thirty-three transports that PHI provided between 2010 and 2013, the court notes that those cases represent only a fraction of the air ambulance fee disputes pending review at the Division. Those Texas fee disputes may total as much as \$50 million according to the opinion.

The decision also implicitly prohibits air ambulance providers from balance billing injured workers for the amounts that remain unpaid after workers' compensation carriers issue their checks.

The opinion was authored by Justice Busby and joined by Justice Guzman, Justice Lehrmann, Justice Boyd, Justice Devine, and Justice Blacklock. The appellate arguments in the case [are archived and can be viewed here](#).

Justice Bland delivered a [concurring opinion](#), in which Justice Lehrmann, Justice Boyd, and Justice Blacklock joined. Justice Green delivered a [dissenting opinion](#), in which Chief Justice Hecht joined.

Assistant Attorney General Lisa Bennett argued on behalf of the Division of Workers' Compensation. She was joined by Matt Baumgartner, who sought a similar result on behalf of Texas Mutual Insurance Company. The air ambulance providers are represented by former Texas Supreme Court Justice Craig Enoch and his colleague, Amy L. Saberian.

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