



## ADVISORY NO. 518

### TOPIC: US Supreme Court Rejects Air Ambulance Providers' Appeal

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This week the United States Supreme Court denied certiorari in one part of the long running air ambulance litigation. The result handed Texas workers' compensation carriers a win in the multi-million dollar litigation over the proper reimbursement rate for air ambulance transport of workers' compensation claimants.

Air ambulance providers want no regulation placed on the amount owed for their services while comp carriers have argued the providers' fees are subject to limits imposed by the Texas Department of Insurance, Division of Workers' Compensation.



Last year in [Texas Mutual Ins. Co. v. PHI Air Medical, LLC](#), a divided Texas Supreme Court sided with the insurance carriers, holding that the federal Airline Deregulation Act “does not preempt Texas’ 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 ruling concluded that providers of air ambulance services were entitled to reimbursement from Texas workers' compensation carriers, but only in amounts calculated under the Texas Workers' Compensation Act.

The air ambulance providers appealed the judgment to the US Supreme Court late last year. On April 26, 2021, the high court [declined to hear the appeal](#).

This week's ruling means the appeal returns to a state appellate court, the Third Court of Appeals, for further proceedings. Those proceedings will likely include addressing the proper reimbursement rate for 33 medical fee disputes filed at the Division by the air ambulance providers.

But the Third Court may decide to wait for another opinion in a pending federal court proceeding. That appeal currently sits in the United States Court of Appeals for the Fifth Circuit. The case, *Air Evac EMS, Inc. v. Sullivan, et al.*, concerns an appeal from a U.S. District Court, [which held](#) the ADA did preempt the state Workers' Compensation Act. Accordingly, the federal court enjoined the enforcement of the Act's reimbursement provisions against an air ambulance company.

The parties in *Air Evac EMS* appealed the federal court's ruling and argued the case at the Fifth Circuit on November 5, 2019. No decision has been issued in that case, presumably because the Fifth Circuit has been waiting on the final result of the case argued at the Texas Supreme Court.

We anticipate that the litigation will now focus on the Fifth Circuit and that the Third Court's docket may remain abated. For now, we continue to advise clients to pay air ambulance bills pursuant to the Division's scheduled amount: 125% of the Medicare reimbursement rate.

If you should have any questions you would like to discuss with our firm concerning this Advisory, please contact James Sheffield, Steve Tipton or Bobby Stokes.