



ADVISORY NO. 519

TOPIC: The Air Ambulance Saga Continues with a Second Ruling from the U.S. 5th Circuit Court of Appeals

When we last reported on this issue, the U.S. Supreme Court had denied the air ambulance company's petition for review of the Texas Supreme Court's decision that the Air Line Deregulation Act (ADA) does not preempt the Texas Workers' Compensation Act, and that Texas could regulate an air ambulance company's reimbursement. That case was remanded back to the lower court to address the factual issues, leaving in place the trial court's determination Texas could apply its fee guidelines. That also left unresolved another issue that had not been appealed: Whether federal law also prevents Texas from enforcing against air ambulance companies its statutory provision barring a medical provider from balance billing the claimant. The trial court ruled Texas could enforce that bar.

We also reported that another case on the preemption issue was pending in the federal courts, in the form of a request for an injunction. On August 4, 2021, the 5th Circuit Court ruled that the ADA preempts the Texas Workers' Compensation Act's reimbursement regulations as applied to air ambulance services. In so doing, the court equates the price (charge) for the services with the concept of "reimbursement".

The court also holds that the Texas regulations are not "saved" by the McCarran-Ferguson Act, the federal act that reserves to the states regulation of the "business of insurance", i.e., the relationship between an insurer and its insured. The court says regulation of the relationship between the insurer and a provider is not the "business of insurance." The court concludes the McCarran-Ferguson Act does not apply, and does not here act as a reverse preemption provision.

The 5th Circuit then affirms the federal district court's injunction preventing Texas from applying its "price caps". As the district court did not also rule on the air ambulance provider's alternative request for an injunction preventing Texas from enforcing its balance billing bar, that issue is not finally resolved. The air ambulance companies may believe the preemption ruling means the insurers must

pay their full billed charges, rendering moot the balance billing issue. We don't believe that is necessarily true, leaving what insurers must pay under their policy provisions with no final resolution.

We expect the decision of the 5th Circuit will be appealed to the U.S. Supreme Court. It also remains to be seen how the Texas courts will react to the 5th Circuit Court's limited ruling. Stay tuned.

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.