TEXAS LAWYER
Page printed from:
https://www.law.com/texaslawyer/2018/05/24/lien-on-me-reimbursement-rates-ruling-seen-as-game-changer-for-medical-billing-litigation/

Lien On Me: Reimbursement Rates Ruling Seen as Game-Changer For Medical Billing Litigation

A recent Texas Supreme Court decision that forces a Houston hospital to disclose reimbursement rates charged to insured patients versus uninsured patients will almost certainly be felt in so-called hospital lien cases, some Texas attorneys believe the decision could be applied to a range of other civil cases in which the reasonableness of a party's charges is at issue.

By John Council | May 24, 2018

James Amaro of the Amaro Law firm

In a dispute involving only $11,000, a recent Texas Supreme Court decision that forces a Houston hospital to disclose reimbursement rates charged to insured patients versus uninsured patients has put Texas civil litigators on high alert—it gives their clients a powerful way to confront out-of-control medical bills, they say. But while the evidentiary ruling will certainly be felt in so-called hospital lien cases, in which medical James Amaro of the Amaro Law Firm. providers recover their costs won by plaintiffs in civil litigation, some Texas attorneys believe the decision could be applied to a range of other civil cases in which the reasonableness of a party's charges is at issue.

The decision late last year, *In Re North Cypress Medical Center,* involved Chrystal Roberts, a woman taken by ambulance to North Cypress, where she was released after staff performed a series of x-rays, CT scans and other emergency services.

According to the court, because Roberts was uninsured, North Cypress billed her for the full "chargemaster" price, which totaled $11,037. North Cypress then filed a hospital lien against Roberts under Chapter 55 of the Texas Property Code, which allows hospitals to assert liens against causes of action filed by people who receive emergency care for injuries caused by another's negligence.

The liability insurer of the driver at fault offered to settle Roberts' claim for $17,380, attributing $9,404 to past medical expenses. Roberts sought a reduction of North Cypress's bill, and the parties negotiated but could not reach an agreement on the bill's amount, the court noted.

Roberts then sued North Cypress, seeking a declaratory judgment that the hospital's charges were unreasonable and its lien invalid to the extent that it exceeds a "reasonable and regular rate" as required by the hospital lien statute.

During discovery, Roberts requested that North Cypress produce documents indicating the reduced rates for services it provided to patients covered by numerous insurance companies, including Aetna and Blue Cross Blue Shield. But North Cypress objected to the discovery requests and moved for a protective order, asserting that Roberts' request was seeking irrelevant information and overly broad.
The trial court later ordered North Cypress to produce the information—an order the hospital unsuccessfully fought via petition for writ of mandamus with Houston's 14th Court of Appeals.

The hospital then took the case to the Supreme Court, drawing the interest of six amici groups, many of them representing medical providers who believed the rates they charge insured patients is "proprietary" information that should not be released during litigation. Others, including insurance claims professionals, argued that the hospital's ability to avoid discovery on their rates resulted in a windfall for some medical providers, forcing accident victims to pay more than four to five times the market value of their services.

In a 6-3 decision on Nov. 9, 2017, the Supreme Court denied (http://www.txcourts.gov/media/1441470/160851.pdf) the hospital's writ of mandamus, ruling that North Cypress had to disclose its insured patient reimbursement rates to Roberts.

"The reimbursement rates sought, taken together, reflect the amounts the hospital is willing to accept from the vast majority of its patients as payment in full for such services," wrote Justice Debra Lehrmann in the majority decision. "While not dispositive, such amounts are at least relevant to what constitutes a reasonable charge."

"As noted, considered together, reimbursements from insurers and government payers comprise the bulk of a hospital's income for services rendered," Lehrmann continued. "It defies logic to conclude that those payments have nothing to do with the reasonableness of charges to the small number of patients to pay directly."

Chief Justice Nathan Hecht dissented

(http://www.txcourts.gov/media/1441471/160851d.pdf). writing that he would have granted the mandamus petition while noting the amicis' concerns—that when hospitals are faced with this kind of litigation, they will simply cave in to the demands of uninsured patients and attempt to shift the costs to insured patients.

lames Amaro (https://amarolawfirm.com/attorneys/r-james-amaro-founder/). a Houston attorney representing Roberts in the case, said the Supreme Court's decision will finally give patients a way to dispute in court hospital liens that are excessive or fraudulent.

"Hospitals have just abused their privilege under the hospital lien statute because there was no mechanism to dispute their bills," Amaro said. "It's been a problem with the rising cost of health care in hospitals. It's my belief that uninsured patients got caught in the crossfire between hospitals and insurance companies."

Chad Ruback, a Dallas attorney representing North Cypress before the Supreme Court, said his client will file for a rehearing in the case, but declined to discuss the specifics of the decision or its implications.

Amaro believes the ruling can be applied only to hospital lien actions. "The hospitals wanted to protect their right to gouge patients and

abuse the hospital lien statute. And some of the defense groups out there wanted the court to make a more expansive analysis over medical bills in general, but the Supreme Court declined to do so and kept it narrow to the issue before it."

But several lawyers who've been watching the case have a broader view of its potential impact, including Austin attorney Dan Christensen, a board-certified personal injury attorney who analyzed the case for a May 17 meeting of the Texas Trial Lawyers Association.

'The opinion has the potential to have far-reaching implications, not just for hospital lien disputes, but also for any contract or tort case where there is a debate about what are the reasonable medical expenses," Christensen said. 'The effects will not just be felt in the courtroom. Unfortunately, because medical providers will not want to endure the hassle of this invasive discovery, they will be even less likely to accept personal injury patients than they are. So, in the end, the ultimate effect will be less access to quality medical care for injury victims, which is unfortunate."

Chris White (http://lewisbrisbois.com/attorneys/white-christopher-c) —managing partner of the Dallas office of Lewis Brisbois (https://www.law.com/law-firm-profile/?id=183&name=Lewis-Brisbois) who represents defendants and insureds in civil litigation—explained that because the high court in *North Cypress* addressed the relevance of the disputed information under the Texas Rules of Evidence, it should open the door for hospital reimbursement rates to be admitted in all sorts of other civil cases.

White sees the decision being particularly helpful for defendants in cases involving "letters of protection"—voluntary agreements that plaintiff attorneys strike with medical providers to pay their clients' medical bills from the settlement proceeds of personal injury cases. "As someone who defends personal injury cases, I'm going to use it in every one of my cases," White said. "In all of those cases [involving letters of protection], the plaintiffs need to pump up their medical expenses and they know how to do this."

'The reason the medical community is all up in arms about this case is, they are always getting squeezed by Medicare and health insurers, so they make up where they can," White said. "They are looking for ways to make revenues, and it's consistent with what the plaintiffs' bar wants, too."

George A. Nation III, a professor at Lehigh University who has written several law review articles critical of hospital billing practices—including "Hospital Chargemaster Insanity: Heeling the Healers"—and whose work was mentioned in the *North Cypress* decision, notes that the ruling cuts two different ways for plaintiffs.

"There are two sides to this coin. One was, if you were a plaintiff in a case, you wanted the chargemaster rate because it increases the amount you could recover. But when the hospitals ask for that money, you want that rate lower," Nation said.

Nation, who also submitted an amicus brief in the case on behalf of the Alliance of Claims Assistance Professionals, was pleased by the decision, which he noted makes Texas one of only a few states that allow plaintiffs to discover the reimbursement rates hospitals charge insurers.

"I think the opinion is really significant. But it did not say that uninsured people should pay the same amount. It's saying [insurance reimbursement rates] are relevant," Nation said.

Nation believes other state courts may follow the Texas Supreme Court's reasoning in *North Cypress* and could apply it to other types of billing disputes.

'This concept is a great gateway to drug pricing. That's where you might see a court saying, '$180 per dose—how much do you really get paid a dose?'" Nation said. "Not much else is similar to hospital pricing, but I could see it in drug pricing cases, and it should be looked at."

Kurt Kuhn, an Austin appellate attorney who closely watches the Texas Supreme Court, believes it could be years before the true impact of the decision is felt in trial courts. But he notes that the decision is another example of the high court's permissive stance on common evidence questions that trial courts face.

Earlier this year, for example, in Diamond Offshore Services v. Williams (https://www.law.com/texaslawyer/2018/03/08/appellate-lawyer-of-the-week-houston-lawyer-secures-reversal-of-10m-award-arguing-jury-should-have-seen-video-evidence/), the Texas Supreme Court found that a jury should have been allowed to see defense surveillance video of a plaintiff who allegedly exaggerated the extent of his injuries.

"I think it definitely signals that this court believes, when it comes to evidence, more is better than less, particularly when it comes to damages," Kuhn said. "If there is evidence that's directly relevant, you have a right to see it."

Since winning the ruling in *North Cypress*, Amaro said he's already beginning to see a change in the way hospitals pursue liens against his clients.

"Since this opinion has come out, we have been able to resolve some claims that were headed into litigation because of excessive hospital bills. Now the hospitals are becoming more reasonable," Amaro said. 'They are becoming more reasonable under their authority under the hospital lien statute."