



## Vidaurri, Lyde, Rodriguez & Haynes, LLP

A South Texas Law Firm  
Edinburg • San Antonio

# Newsletter

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## In This Issue: Paid and Incurred – An Answer to Assessing Medical Damages

### OUR FIRM

Vidaurri, Lyde, Rodriguez & Haynes, LLP, is a full service insurance defense law firm representing insured individuals, professionals and companies across a broad spectrum of industries, including healthcare, transportation, retailing, and manufacturing.

### KEY POINTS

“Paid and incurred” means actually paid and actually incurred.

A plaintiff cannot recover medical expenses that were adjusted and for which the plaintiff is not obligated to pay.

### NEWS

Our summer clerk, Nick Denzer, has had a busy summer with the addition of a baby to his growing family, clerking for VLRH, and preparing for his return to school for his second year of law school. From everyone at VLRH, good luck, Nick! We look forward to seeing you back next year!

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At our last luncheon seminar we promised to keep you all informed about a case pending before the Texas Supreme Court dealing with whether a plaintiff’s recovery of medical expenses was limited to paid and actually incurred or only incurred. Well, this month the Court handed down *Haygood v. Margarita Garza de Escabedo*, and it answered the question for all of us.

The issue in *Haygood* was how Section 41.0105 of the Texas Civil Practices and Remedies Code, which provides that “recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant,” applies in light of adjustments that a hospital makes pursuant to a claimant’s health insurance policy or Medicare.

In this case, the plaintiff, Haygood, sued the defendant, De Escabedo, for personal injuries from an automobile accident in a grocery store parking lot. Twelve healthcare providers billed Haygood approximately \$110,000. Haygood was covered by Medicare, and the providers’ bills were adjusted with credits of approximately \$82,000, leaving a total of \$27,739.43 outstanding.

De Escabedo moved to limit testimony regarding damages that would show what Haygood was billed. Haygood responded by moving to exclude any evidence of adjustments under the collateral source rule. The trial court denied De Escabedo’s motion and granted Haygood’s motion.

The jury returned a verdict for the full amount of medicals bills that Haygood was billed.

De Escabedo appealed on the evidentiary issue, and the court of appeals held that section 41.0105 restricts not only recoverable damages but also relevant evidence to prove damages.

The Texas Supreme Court affirmed the court of appeals’ holding. It held that section 41.0105 limits a claimant’s medical-expenses recovery to those expenses that have been or must be paid by or for the claimant and limits evidence only to recoverable medical expenses. According to the Court, “actually paid and incurred” means expenses that have been or will be paid, and excludes the difference between such amount and charges the service provider bills but has no right to be paid. Because 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.

Despite the holding that only evidence of recoverable medical expenses is admissible at trial, the Court reaffirmed that the collateral-source rule continues to apply to such expenses. The Court noted that the jury should not be told that medical expenses will be covered in whole or in part by insurance. Nor should the jury be told that a health-care provider adjusted its charges because of insurance.