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Determining Economic Damages: Paid v. Incurred after *Haygood*

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One of the most critical decisions the Plaintiff's attorney will make when preparing his case for trial is determining the damages he will request from the jury. The uncertainty is most often acknowledged in the context of noneconomic damages, largely because of their almost entirely subjective nature, but also because the determination of noneconomic damages is the focus of any meaningful *voir dire* examination and frequently the point of contention between the carrier's calculation of damages and the premium the plaintiff has placed on his or her experience.

While certainly more objective, the determination of economic damages is not without its occasional snag, particularly when payments are outlaid by a collateral source, as is routinely the case when private or governmental health insurance is involved. What follows is a review and discussion of the preeminent case on the admissibility of economic damages paid or incurred by a plaintiff in a personal injury suit in Texas, as well as an overview of potential factors and adjacent considerations.

I. THE CASE: *Haygood v. Escabedo*[1]

Following a motor vehicle collision that occurred in Angelina County, Texas, Plaintiff Aaron Glenn Haygood brought suit against Defendant Margarita Garza DeEscabedo for injuries and concomitant damages sustained as a result of Defendant's negligence when she failed to yield the right of way while exiting a grocery store parking lot. Subsequent to the collision, Plaintiff Haygood, who was covered by Medicare at the time of the incident, underwent multiple surgeries and incurred damages in excess of $110,000.00. Subject to Medicare's assessment of the reasonable and customary charges for his treatment, Haygood's healthcare providers ultimately adjusted their bills to just under $28,000.00. [2]

At trial, evidence of Plaintiff's incurred (or fully billed) charges was allowed pursuant to the collateral source doctrine, and evidence was presented to the jury that the charges billed were reasonable and the services necessary. At the close of evidence, the jury returned a verdict of $144,569.12, which was comprised of the total amount of past billed medical charges, along with smaller allocations for future anticipated medical bills, as well as past and future noneconomic damages. [3]

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[1] *Haygood v. Escabedo*, 365 S.W.3d 390 (Tex. 2012).

[2] According to the Court's accounting, at the time of trial, billed charges were $110,069.12, of which $82,329.69 was adjusted or credited, $13,257.41 was paid by Medicare, and $14,482.02 remained outstanding.

[3] The jury first found that Escabedo's negligence caused the accident and consequently, that Haygood's compensable damages were $110,069.12 for past medical expenses, $7,000 for future medical expenses, $24,500 for past pain and mental anguish, and $3,000 for future pain and mental anguish.

On review, the Court of Appeals reversed the trial court's ruling, holding that the Texas Civil Practice & Remedies Code precluded recovery for expenses that Plaintiff had not actually paid and for which he would never ultimately be liable. The Supreme Court of Texas, considering the conflicting lower court decisions, held that C.P.R.C. §41.0105, an evidence provision limiting recovery of medical or health care expenses to the amount 'actually paid or incurred by or on behalf of the claimant,' limits recovery and consequently, evidence at trial, to expenses that the provider has a legal right to be paid.[4] [5]

In a reasoned and detailed discussion, the *Haygood* Court arrived at its holding by reconciling the common law Collateral Source Rule, and grappling with the intent of the legislature in drafting the statutory text of §41.0105.

A. Application of the Collateral Source Rule as Contemplated by *Haygood*

The collateral source rule is a common law evidentiary doctrine that prohibits the admission of evidence that a plaintiff has received compensation or benefits from any source other than the damages sought against the defendant. The rule effectively precludes any reduction, credit, or offset to a tortfeasor's liability when the plaintiff has procured or is privy to receipt of collateral benefits. The rule further "reflects the position of the law that a benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor."[6]

The doctrine dates back to the early years of Texas statehood and was substantially developed by the Supreme Court of Texas in *Mid-Century Ins. Co. of Tex. v. Kidd,*[7] *Brown v. Am Transfer & Storage Co.*,[8] and *Tex. & Pac. Ry. Co. v. Levi & Bro*.[9] The *Levi* Court, whilst contemplating public policy considerations in support of the rule reasoned that, "the insurer and the defendant are not joint tortfeasors or joint debtors so as to make the payment or satisfaction by the former operate to the benefit of the latter…the policy of insurance is collateral to the remedy against the defendant, and was procured solely by the plaintiff at his expense, and to the procurement of which the defendant was in no way contributory."[10]

Simply applied, under the collateral source rule, insurance payments to or for the benefit of a plaintiff are not credited toward damages awarded against the defendant. Accordingly, in reaching its opinion in *Haygood*, the Court was tasked with reconciling

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[4] *Id*. at 391.
[5] Tex. C.P.R.C. §41.0105
[6] *Haygood* citing the Restatement Second of Torts, §920A(2) ("payments made to or conferred on the injured party from other sources are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor is liable.")
[7] *Mid-Century Ins. Co. of Tex. v. Kidd*, 997 S.W.2d. 265 (Tex. 1999).
[8] *Brown v. Am. Transfer & Storage Co.*, 601 S.W.2d 931 (Tex. 1980).
[9] *Tex. & Pac. Ry. Co. v. Levi & Bro*., 59 Tex. 674 (1883).
[10] *Id*. at 676.

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