

# Paid or Incurred Update

Chapter 18, *In re Allstate*,  
*K & L Auto Crushers*, & more



UT Law CLE: Car Crash Seminar  
August 27, 2021

**Morgan McPheeters**  
McPheeters Law, PLLC  
morgan@mcpheeterslaw.com  
(469) 862-8233

1

## Scope

- Paid or Incurred, reasonableness, and Chapter 18 recap
- *In re Allstate* (Tex. 2021) and 18.001
- 18.001 in federal court?
- *In re North Cypress*, *In re K & L Auto Crushers*, & nonparty medical provider discovery
- Is the collateral source rule dead?
- Mitigation of damages defense for medical expense claims

2

## “Paid or Incurred” 101

- Tex. Civ. Prac. & Rem. Code § 41.0105
- Governs recovery of medical expenses & admissibility of evidence to prove those expenses
- Provides: “In addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.”

3

## “Paid or Incurred” 101

- *Haygood v. Escabedo*, 356 S.W.3d 390 (Tex. 2011)
- Interpreted the paid or incurred statute and interaction with collateral source rule
- Collateral source rule precludes a reduction in tortfeasor’s liability because of benefits received by the plaintiff from someone else AND does not allow a plaintiff to recover medical expenses that a health care provider is not entitled to charge
- Held: 41.0105 limits evidence & recovery of medical expenses to only those “that have been or will be paid” by or on behalf of plaintiff

4

# Medical expenses must also be reasonable

- In addition to proving amount of expenses that have been or will be paid or incurred:
- “Under Texas law, a party seeking to recover its past medical expenses must [also] prove that the amounts paid or incurred are reasonable.”
  - *In re Allstate Indemnity Co.*, 622 S.W.3d 870, 876 (Tex. 2021) (orig. proceeding).

## Chapter 18 Recap (see other presentations in this program for additional detail)

- Method by which plaintiff may prove reasonableness & necessity of expenses incurred
- Enacted in 1979 as a time- and cost-saving mechanism
- Designed to prevent claimants from having to call expert medical providers to trial where medical expenses are uncontroverted

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Paid vs. Incurred Update: Chapter 18, In re Allstate, K & L Auto Crushers, & more

Also available as part of the eCourse

[2021 The Car Crash eConference](#)

First appeared as part of the conference materials for the  
2021 The Car Crash Seminar session

"Paid vs. Incurred Update"