TORT REFORM

What does this mean for you?
Insurance Premiums

What are you seeing with your insurance rates?
Lawsuit Abuse

➢ Hard insurance market
➢ Insurance carriers cannot sustain losses
➢ Fewer and fewer willing to write insurance in Texas
Factors

- Reptile Theory
- Lawyer-Doctor Relationship
- Liberal Application of the Law
Lawyer-Doctor Relationship
Over 200 Depositions since 2015

FOR ONE LAWYER!
Medical Billing

“Who should I examine first, you or your lawyer?”
Medical Bills: Paid/Incurred Statute

Written-off amounts are not evidence

Only what has been paid or is owed is recoverable
<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Charges</th>
<th>Insurance Adjustments</th>
<th>Insurance Payments</th>
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**Continued on Next Page**
Medical Bills: Reimbursement Rates

Health insurance pays for 95% of all services

Established rates for services

Medicare rates are the measuring stick
Medical Bills: Chargemaster Rates

Arbitrary

No direct connection to costs

No direct connection to what they expect to receive
August 24, 2012

Jim Adler & Associates
12605 East Freeway Suite 400
Houston TX TX 77015

Re: Employee: Redacted
DOI: 8/4/12
DOB: Redacted
Case No. Redacted

Dear Ms, Redacted,

Mr. G Redacted was involved in a 3rd party accident and has not lost any time from work nor does he have any documented work restrictions. It is my understanding from our conversation on 8/22/12 that Mr. G Redacted does not want his employer to pay for any medical care associated with his injury and does not wish to use our workers' compensation coverage for his medical care.

Mr. G Redacted was evaluated at Nova Medical for his back strain and did receive physical therapy. We agreed if I do receive a medical bill or report from Nova, I need to forward it onto you for payment consideration and/or review.

If we pay any bill, I need to send a printout of payments made so we can be reimbursed.

Redacted

Risk Manager
Doctor gets paid $3,000 outside litigation

In litigation, doctors testify to...

- $23,000
- $49,000
- $67,000
Where hospital gets paid $15,000, hospital bills...

- $157,000
- $164,000
- $500,000
Over 200 Depositions since 2015

FOR ONE LAWYER!
Let’s Do the Math

200 depositions x
$300,000 in medical bills per case

= $60,000,000
Let’s Do the Math

60,000,000 x
3 times medical

= $180 million
With LaHood as DA, what has Henry won for his $1M?

By Brian Chasnoff | November 4, 2014 | Updated: November 4, 2014 11:14pm

In the bitter race for Bexar County district attorney, money won the day.

Flush with more than $1.2 million from a single supporter, defense attorney Nico LaHood deployed a staggering amount of cash to overcome his own criminal past, pounding incumbent Susan Reed with ads that attacked her as corrupt and soft on crime.
WHAT DO WE DO ABOUT ABUSIVE MEDICAL BILLING CLAIMS?
2017 HOUSE BILL 2300

Bills limited to the amount normally paid for similar services in a nonlitigation context,

(1) if claimant covered by insurance, the amount insurance would pay for the services; or

(2) the customary amount allowed by health insurance.
Texas Supreme Court

MONUMENTAL TEXAS SUPREME COURT VICTORY APRIL 2018.

AMOUNTS PAID BY HEALTH INSURANCE ARE RELEVANT TO DETERMINATION OF MEDICAL BILLS
In Re Travis County

Failure to Mitigate Defense pending before Texas Supreme Court

Would allow Defendants to reduce amount of medical bills to what Plaintiff’s health insurer would have paid
Factors

- Reptile Theory
- Lawyer-Doctor Relationship
- Liberal Application of the Law
$7.7 BILLION
IN REPTILE VERDICTS & SETTLEMENTS

Reptile Theory
Create fear of an immediate danger to the community

Induce the juror to protect herself and the community
Gamez v Dillon Transport

Motorcycle driver lost control and sideswiped 18-wheeler

Witnesses said truck and trailer never went in motorcycle’s lane
“trucking company knew it was 2 to 5 times more dangerous to travel on county roads”

Emphasis on community, small towns, and danger to the community
$25 million verdict

“65-foot long truck never should have been on this narrow, curvy, shoulder-less road when alternative multi-lane highways were available. It put everybody at risk.”
Forum Shopping

Accident Happened in San Patricio County

Lawsuit filed in Nueces County
$91 million judgment

Pickup truck lost control on I-20 outside Odessa

Crossed median

Spun into the path of a Werner truck
$91 million judgment

Werner truck never left its lane

Werner truck driving 25 miles below speed limit

Werner truck controlled vehicle to a stop
$91 million judgment

7 year old boy died
12 year old girl paraplegic with 24 hour care
Mother and other son claimed brain injury
“Werner is placing the lives of everyone who drives on U.S. roads at serious risk,” said Penn.

Werner directed student driver on expedited delivery in icy conditions.

Jury hears evidence regarding fatalities in 10 years prior to accident
PLAINTIFF THEORIES

Werner directed Ali to take the I-20 route through the icy conditions rather than a safer alternative route.

Werner did not allow its driver, to have access to an outside temperature gauge or the CB radio.

Werner did not allow its driver, to have access to an outside temperature gauge or the CB radio.
Forum Shopping

Accident Happened in West Texas

Lawsuit filed in Harris County
Demographics

Dallas

Houston

San Antonio
Jury Verdicts
$281 Million Dollar Verdict

*Aguilar v. Heckmann Water Resources Inc.* (Dimmit County, TX 2013):

- Deceased was killed when a drive shaft snapped off of a tractor-trailer.
- Verdict included $100 million dollars in punitive damages for failing to maintain equipment.
- Result of the communities’ anger over recent fracking operations.
$4.5 Million Dollar Verdict - Dallas

8/9/2017, Dallas County, Sires v. Nilsson, Quinones, and Dial Lubricants Inc.

Plaintiffs alleged truck driver negligent for wide right turn and unexpectedly turning right from the left side of the road

Claims driver falsified logs and was fatigued; negligent hiring, training, supervision, and retention against the companies

Company 65% at fault Truck driver 35% at fault
$0 Defense Verdict – Jefferson County

7/14/2017 Kirkland v. Buckley Transport Inc., Buckley Transport Logistics Inc. and Brock

Plaintiff driving SUV on feeder of Interstate 10 in Orange.

Truck driver's engine failed, and he coasted onto feeder road and came to a stop partly blocking right lane. About five minutes later, plaintiff's rear-ended Brock's trailer.

Plaintiff sued for negligence in failing to pull off the road before his engine failed and failing to turn on his hazard lights or display warning triangles.

Photos showed lights on during police investigation. Defense accident reconstruction expert testified that Mr. Kirkland would have seen the trailer if he had been paying attention.
5/3/2017, Braswell v. Brickman Group and Bermea
While training for a triathlon, bicyclist traveling about 20 mph struck rear of defendants’ trailer that was stopped next to the curb in the right lane. He sustained a fatal head injury.

Estate sued Bermea and Brickman for negligently stopping in a lane of a busy street without setting out cones or warning signs and without turning on hazard lights or taking any other action to warn others of the danger, in violation company policy.

Jury found liability on the part of Brickman, but not Bermea, and found negligence and comparative responsibility of 68% on company and 32% on bicyclist.
$0 Defense Verdict – Harris County

1/30/2017, Mata v. Santex Truck Centers, Ltd. and Herald.

Foggy and the speed limit was 65 mph.

Truck driver pulled out from a stop sign.

Motorcyclist struck the trailer and was killed on impact.

Plaintiffs’ counsel argued that Herald said in his deposition that he could see for only 100 fee and under DOT regulations, should have parked and not moved.

Witness testimony confirmed visibility was as great as 420 feet within minutes after the accident.
7/19/2016, Dallas County, Garcia v. O'Reilly Auto Parts and Shoots

6 a.m. accident on icy roads.

18-wheeler, transporting HAZMAT hit a guardrail and jackknifed. Trailer came to rest with lights out and blocking lane. Decedent collided with unlit trailer and was killed.

Suit alleged Shoots' driving was unsafe and O'Reilly should have taken Shoots off the road months before the crash due to unsafe driving record. Plaintiffs' counsel argued that Shoots was involved in prior unsafe-driving incidents during several years of employment with O'Reilly, which disqualified him from driving.

Although O'Reilly had internal driver review points system intended to keep unsafe drivers off road, O'Reilly failed to enforce policies.

Jury found negligence and gross negligence on Defendants but no negligence on decedent. Jury attributed 60% liability to O'Reilly and 40% to Shoots.
$1.4 Million Verdict – Bexar County

2/17/2015 Turner v. JBS Carriers Inc. and James Landry

Decedent who had history of mental illness and drug abuse erratically crossed the street.

Truck driver went to make a turn. Struck and killed her.

Trial court would not allow the defendants to bring up her psychiatric issues and drug use.

Texas Supreme Court overturned.

The jury found the driver (Landry) 50% liable, his employer (JBS) 30% liable, and Turner 20% liable.
RURAL COUNTIES
1/18/2017, Bowie County, Culberson v. Byram and RB Transport Inc.

Culberson was driving on Highway 7 outside Nacogdoches, approaching the crest of a hill. He was going about 80 mph, and the speed limit was 75 mph. There was a single WB lane, and the road curved to the right. Byram was driving a tractor-trailer, in the course and scope of his employment with RB Transport Inc. east on the other side of the hill. EB lane split into two lanes going up the hill, and Byram was preparing to move from the left to the right lane. He was traveling under the speed limit.

Lozano was in a Ford Explorer in the left lane and attempted a left turn in front of Culberson into a private drive, and Culberson swerved across the center line. Culberson and Byram collided, and Culberson was killed instantly.

Culberson's parents sued Byram and RB Transport for negligently failing to keep a proper lookout, failing to take timely and proper evasive action and driving while impaired by a medical condition. Byram had diabetes, and the plaintiffs alleged the type and frequency of treatment he was receiving did not constitute adequate medical supervision under federal motor carrier safety regulations. Plaintiffs' endocrinology expert testified that Byram's reaction times were slow as a result of his condition. Plaintiffs' counsel argued that Byram had six seconds to react to Culberson crossing the center line and avoid hitting him.

Plaintiffs argued Byram was an irresponsible driver who had been in a previous fatality accident and who at other times had taken pictures while driving and posted them on Facebook. The defense denied Byram was negligent. Defense accident reconstruction expert said even if Culberson crossed the center line six seconds before impact, Byram could not reasonably perceive that Culberson had done so until three seconds before the impact due to the curve and crest of the road. Byram had no more than three seconds to react.

Defense argued that Culberson's decision to swerve into oncoming lane was the proximate cause of the accident. Parents sought a total of $4 million, for past and future loss of companionship and society, mental anguish and pecuniary loss. There was no evidence that Culberson would have supported his parents financially. Jury found only Culberson negligent.

$0 Defense Verdict – Bowie County
Decedent, Dina Gonzalez, was a passenger in a vehicle driven by boyfriend Jon Michael Edwards, traveling south on Highway 183 in Austin when they were in a multi-vehicle collision that involved Vela who was towing a trailer boom lift. Owner of vehicle was Dynamic Industries Inc. Gonzalez died at the scene.

Plaintiff’s estate sued Edwards for negligent operation, Vela for negligent operation and Dynamic for vicarious liability. Decedent’s family claimed Vela was driving behind Edwards when Vela began to brake hard and steer to the right, rear-ending Edwards. The impact caused Edwards to be pushed into the highway’s NB lanes where it was struck on the passenger side. The family claimed that Vela failed to keep a proper lookout; failed to control his speed; failed to reasonably take action to avoid the rear end collision; followed too closely; and was distracted due to being on his cell phone at the time of the accident. Family alleged Dynamic was vicariously liable for Vela and it was negligent for failure to train him; failure to monitor him; failure to implement policies regarding the hauling of heavy machinery; and failure to have an adequate cell phone use policy for drivers.

The jury found Vela 80% negligent, Dynamic 20% negligent, and Edwards not negligent.
2016 Nzirubusa v. Bobby Joe Raymond and Dee King. 
Kabagwira (Decedent) was making a left turn onto SB Farm to Market Road 1912. Traffic exiting the parking lot had a stop sign, and highway had two lanes in each direction and a center turn lane. Raymond was in an 18-wheeler in the left NB lane. He was going 55 mph, which was the speed limit. Kabagwira pulled out from the parking lot to make her left turn. Raymond braked and steered to the left, but broadsided her. Kabagwira was killed.
Raymond was operating the truck for Dee King Trucking L.P. The plaintiffs sued Raymond and Dee King Trucking. They claimed that he negligently failed to keep a proper lookout, drove while fatigued, failed to control his speed, drove too fast for the circumstances and took faulty evasive action.
Plaintiffs also alleged negligent training, supervision, monitoring and entrustment against Dee King. According to plaintiffs’ counsel, on the day of the accident and in the weeks leading up to it, Raymond kept inaccurate logs and exceeded the hours of service and driving time allowed under federal regulations. The court would not allow plaintiffs’ counsel to introduce Raymond’s driving logs. The plaintiffs’ accident reconstruction expert opined that Raymond was driving too fast for the circumstances and that he could have avoided the collision by turning slightly to the right and could have avoided a fatal collision by continuing straight. He said that Kabagwira had almost completely cleared the left lane when Raymond turned to the left and hit her.
The defense denied negligence and argued that there was no evidence that he exceeded the allowed hours of service or driving time. The defense accident reconstruction expert opined that Raymond could not have avoided the accident. The defense argued that Kabagwira failed to yield the right of way and failed to keep a proper lookout. The only contributing factor in the police report was against Kabagwira, for failing to yield the right of way at the stop sign, and the officer testified in agreement with his report. The jury found negligence on the part of Kabagwira only.

Martin (Decedent) was driving at night on an unlit road in San Patricio County. Rucker, in an 18-wheeler, was stopped in a crossover lane, waiting for oncoming traffic to clear. Cargo was oversized steel plate that hung 9 feet over the back of the trailer and partly blocked Martin’s lane. Martin's vehicle struck the plate, and Martin was killed instantly. Bryant hired Rucker a couple of weeks before the accident and this trip was Rucker's first for Bryant. The plate was loaded onto the tractor-trailer by R Warehousing & Port Services. **Rucker did not obtain a permit for the oversize load. Such a permit would have prohibited transporting the load at night.**

The jury found negligence and comparative responsibility of 40% on Bryant, 40% on Rucker, and 20% on R. Warehousing and awarded plaintiffs $2.4 million.
Valuation Take-aways

• Urban county verdicts tend to be higher than rural county verdicts.
  – Harris and Dallas counties previously conservative are increasingly liberal
• Jury places higher expectations on the company and tends to award more money where the company has significant safety violations relevant to accident
• Likeability and relatability of plaintiff is a key factor
• In absence of safety violations of company, jury more willing to place fault on plaintiff, where appropriate
What can you do?

Paperwork
Driver Applications
Policies and Procedures
Road test
Employment Verifications
What can you do?

As we reflect on 40 years in our old building, we would ask you to consider a donation to our core mission via TruckPAC—in the amount of $40, $400 or $4000. Contributions can be paid online via our website here or they can be mailed with this contribution form to the address at the bottom of this letter. Your generous September contribution will count towards your 2018-2019 calendar commitment to become a Bronze, Silver, Gold or Platinum member of our TXTA TruckPAC committee. A reminder that we start fresh once again every year on October 1.
Doctor-lawyer relationship

Inflated-medical bills

Reptile theory

Forum shopping

Out of control jury awards