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Sender's E-Mail Address:  
nmartens@fleeson.com

Thomas D. Kitch  
J. Eric Engstrom  
Stephen E. Robison  
Ron Campbell  
Gregory J. Stucky  
Charles E. Millsap  
Edward J. Healy  
Linda K. Constable  
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T. Chet Compton  
Nathaniel T. Martens  
Brian E. Vanorsby

Kansas Court of Appeals  
Kansas Judicial Center  
301 SW 10th Ave.  
Topeka, KS 66612

Re: EagleMed, LLC v. Travelers, Appeal No. 17-117903-A (Consolidated  
with Appeal Nos. 17-117904-A, 17-117905-A & 17-117906-A)

Members of the Court:

Appellant Travelers Insurance submits this response to EagleMed's letter of additional authority citing to the Texas Court of Appeals decision, *PHI Air Med, LLC v. Texas Mutual Ins. Co.*, 03-17-00081-CV (January 31, 2018). Although *PHI* involved a fee dispute between an air ambulance and an insurance carrier, the Texas court was presented with issues not involved here.

Mike Cannady  
Samuel R. Foreman  
Special Counsel

Willard B. Thompson  
Retired

Howard T. Fleeson  
(1895-1957)  
Homer V. Goosing  
(1894-1986)  
Wayne Coulson  
(1910-1985)  
Paul R. Kitch  
(1911-1987)  
Donald R. Newkirk  
(1919-1997)  
Dale M. Stucky  
(1919-2002)  
Phillip Mellor  
(1925-2005)  
Gerrit H. Wormhoudt  
(1926-2009)

The two issues decided by the court in *PHI* were whether the ADA preempted the applicable state fee "guideline" or schedule and, if so, whether principles of reverse preemption under the McCarran-Ferguson Act (MFA) allowed the Texas fee schedule to stand. Clearly, the reverse preemption issue has no relevance to this appeal; neither party asserts that MFA reverse preemption applies. Thus, pages 8-15 of the *PHI* opinion may be ignored entirely.

While this Court must have an eye toward ADA preemption in drawing its line for permissible state review, the Texas court's holding on the preemption issue in *PHI* provides no relevant assistance to this Court's analysis.

Contrary to EagleMed's letter, *PHI* provides no support for its position that the ADA preempts the "fair, reasonable, necessary" standards found in K.S.A. 44-510i, which are also embodied in federal law. Although the Texas Labor Code also contains "reasonableness" language, it is found within an entirely different statutory directive. In Texas, the Commissioner of Workers Compensation is directed to create *reasonable guidelines* for medical billing. Tex.Lab.Code §413.011(d). Those "guidelines" come in the form of a fee schedule. §413.011(a), (b). Here, however,

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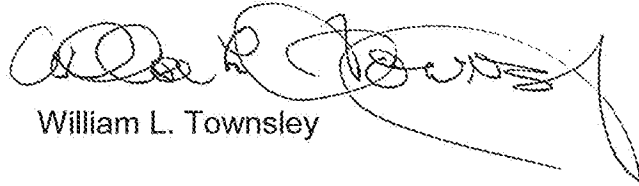
the KWCA requires the creation of a fee schedule which is backed by a *separate* mandate that all fees charged for services provided under the KWCA be fair, reasonable, and necessary. This mandate is enforced through Division review of charges. K.S.A. 44-510i(c)(2); 44-510j.

There is no valid comparison between ADA preemption of the Texas fee schedule – which actually sets rates -- and the standards of the KWCA – which simply provide for a review for reasonableness before enforcement. *PHI* is only persuasive as to ADA preemption of a state fee schedule which prospectively sets air ambulance rates. That issue is not presented in this appeal.

Very truly yours,

FLEESON, GOOING, COULSON & KITCH, L.L.C.

By

A handwritten signature in black ink, appearing to read 'William L. Townsley', is written over a horizontal line. The signature is cursive and somewhat stylized.

William L. Townsley

cc: J. Phillip Gragson (via email: [jpgragson@hensonlawoffice.com](mailto:jpgragson@hensonlawoffice.com))