What I Have Learned As An Expert Witness *(cont'd.)*

(Continued from page 17)

fail' approach to teaching especially if you want the students to be successful. The day had arrived and I went to court with a lump in my throat, hands shaking, and heart pounding through my chest. I had a lot riding on this and I surely didn't want to look or sound…like a fool. Hell you would have thought I was the one on trial for my life! The client's attorney, who knew I was nervous and bless his heart, spent three days preparing me. He also walked me through the beginning stages of testimony to get me calmed down so I could gain my composure.

Once I started to relax, I quickly realized I was the expert and it started coming together. I was not there to defend myself like I did something wrong, I was there to educate the jury on where, how, and why the fire started, how it grew, how it traveled, and how it went out. Once I got my head in the game, it was truly a pleasurable experience in which I learned a lot and had fun.

When you go to court, you are there not to defend yourself but to help educate non fire people why the fire burnt the way it did. Put yourself in their shoes. Take them on a journey into your world, teach them, help them to understand how you arrived at your conclusions, and put it in terms they can understand. Part of serving your client is learning your field inside and out. Do not run to your clients profess your expertise, then back pedal when you have to go to court. If you want to be an expert, then be an expert. Your conclusion must withstand the test of a careful and serious challenge. If it cannot withstand the test then maybe you should revisit your methodology. Always be your best, bring your best, and do your best on every investigation while supporting each step with the facts.

What have I learned that I can share with others: (1) be authentic, (2) be passionate about what you do, (3) be a lifelong learner, and (4) do the job to the best of your ability. If your house is in order, what do you really have to worry about? We are human, we all make mistakes, and we all learn. If you make a mistake, then own it and move on. The more we do something, the better we become. Be a leader, be a life-long learner, and be passionate about passing your knowledge onto others!

Indiana Supreme Court Clarifies Collateral Source Rule in Favor of the Defense, *by Andrew L. Smith, Esq.,*

In a highly anticipated decision, on October 21, 2016, the Indiana Supreme Court issued its written opinion in *Patchett v. Lee*, 2016 Ind. LEXIS 725, Case No. 29S04-1610-CT-549, regarding the always questionable scope of the collateral source rule. The Court held evidence of payments by governmental programs is admissible as evidence of the reasonable value of the plaintiff's medical expenses.

The Origin of the Rule

Pursuant to the common-law collateral source rule, a defendant was prohibited from introducing extrinsic evidence of compensation received by the plaintiff regarding the value or cost of the plaintiff's medical bills and expenses. Such outside sources include adjustments, write-offs, deductions, insurance payments, and governmental aid through Medicaid and Medicare. Opponents of this archaic rule contend the result is a double recovery for the plaintiff and unfairly permits the plaintiff from recovering medical expenses in excess of the true value of the expenses incurred by the plaintiff.

As a result of modern healthcare schemes and the resulting inequity in permitting a plaintiff to be put in a better position than he or she would have been in had the accident and injuries never occurred, various states have enacted statutes to abrogate the collateral source rule's common-law requirements. *See* Ind. Code § 34-44-1-2(1). In turn, courts have issued varying rulings in jurisdictions across the country resulting in significant differences and confusion pertaining to what exactly a defendant can introduce into evidence and how such evidence must be authenticated to demonstrate the reasonable value of the plaintiff's medical expenses.

(Continued on page 19)

Indiana Supreme Court Clarifies Collateral Source Rule *(cont'd.)*

(Continued from page 18)

Indiana's Stance – The Middle Ground

By way of example, in *Stanley v. Walker*, 906 N.E.2d 852 (Ind. 2009), the Indiana Supreme Court first addressed the collateral source rule in personal injury actions. The Court held the defendant is permitted to introduce outside evidence of the "reasonable value of the services provided."

> given the current state of the health care pricing system where, to repeat, authorities suggest a medical provider's billed charges do not equate to cost, the jury may well need the amount of the payments, amounts billed by medical service providers, and other relevant and admissible evidence to be able to determine the amount of reasonable medical expenses.

Id. at 858.

Due to the broad language employed by the Court, the exact scope of *Stanley* over the course of the last seven years has remained unclear. Now the Indiana Supreme Court has offered further insight.

In *Patchett v. Lee*, the Court addressed the issue of whether write-offs for governmental payments such as HIP, Medicare, and Medicaid are admissible to show the reasonable value of the plaintiff's medical expenses. In reversing the court of appeals, the Court clarified evidence of write-offs of medical bills is admissible to show the reasonable value of the bill, even as to payments made by government entities. Indeed, according to the Court:

> We think the approach more faithful to *Stanley's* holding and rationale is that which allows the factfinder to hear evidence of the reduced amounts a provider accepts as payment in full, even when the payer is a government healthcare program.

Id. at *10.

As a result, the Indiana Supreme Court has made it crystal clear a plaintiff in a personal injury lawsuit can introduce evidence of his or her medical bills to recover damages for medical treatment. In turn, the defendants are then permitted to introduce evidence of write-offs, adjustments, insurance payments, and all other information relevant to assessing the reasonable value of services provided, including payments made by governmental programs. The jury is then positioned to evaluate all evidence and reach a determination regarding the proper amount of damages to award the plaintiff or his or her alleged medical expenses.

Conclusion

In *Patchett v. Lee*, the Indiana Supreme Court clarified a defendant is permitted to introduce all relevant evidence of the reasonable value of the plaintiff's medical bills and expenses.

This is a huge victory for the defense, and provides a concrete set of guidelines to evaluate pre-suit and pre-trial case valuation and settlement strategy for defendants. *Patchett* also offers another safeguard against insurance fraud in Indiana. Defendants now have the opportunity to demonstrate the actual amount of medical expenses incurred by the plaintiff, rather than solely allowing a plaintiff or claimant the advantage of offering evidence of the maximum amount of initial medical bills without any further assessment.

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