



Arkansas Association of Defense Counsel

July 24, 2017

Indiana Supreme Court Clarifies Collateral Source Rule in Favor of the Defense

By Andrew L. Smith

© 2017 DRI. All right reserved

Printed with the permission of author
and the DRI

Score one for the defense! In a highly-anticipated decision, On October 21, 2016, the Indiana Supreme Court issued its written opinion in *Patchett v. Lee*, Case No. 29S94-1610-CT-549, 2016 Ind. Lexis 725, regarding the always questionable scope of the collateral source rule. The court held that evidence of payments by governmental programs is admissible as evidence of the reasonable value of a plaintiff's medical expenses.

The Origin of the Rule

Under the common law collateral source rule, a defendant was prohibited from introducing extrinsic evidence of compensation received by a 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 that the result is a double recovery for a 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 an 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 a plaintiff's medical expenses.

Indiana's Stance – the Middle Ground

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 that the defendant was 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 the Health Indiana Plan (HIP), Medicare, and Medicaid are

admissible to show the reasonable value of a plaintiff's medical expenses. In reversing the court appeals, the Indiana Supreme Court clarified that evidence of write-offs of medical bills is admissible to show the reasonable value of the bill, even concerning 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 that 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 that is relevant to assessing the reasonable value of the services provided, including payments made by governmental programs. The jury is then positioned to evaluate all evidence and make a determination regarding the proper amount of damages to award the plaintiff for his or her alleged medical expenses.

Conclusion

In *Patchett v. Lee*, the Indiana Supreme Court clarified that a defendant is permitted to introduce all relevant evidence of the reasonable value of a 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 a 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.

Andrew L. Smith is a partner in the Cincinnati, Ohio, office of Smith Rolfes & Skavdahl Company LPA, who concentrates his practice in areas of construction law, insurance defense, and bad-faith litigation defense. He is the creator of the AGC (Associated General contractors) of Ohio construction law blog. Between the Law and a Hard Hat, and the co-host of BearcatsSportsRadio.com. Mr. Smith is a member of the DRI Construction Law Committee.



We welcome your articles and thoughts for future editions.

We Are Better Together: Support The AADC