

## THE PATIENT PROTECTION AND AFFORDABLE CARE ACT MAY BE PLAINTIFFS' FOE IN PERSONAL INJURY ACTIONS

Historically, plaintiffs and defendants in personal injury actions have agreed that the value of the plaintiff's claim is largely driven by the value of the medical expenses incurred by the plaintiff as a result of the defendant's alleged negligence, with higher costs resulting in higher values for the plaintiff's claim and vice versa. As a result, plaintiffs and defendants have routinely squared off in court over what value should be assigned to the medical services received by the plaintiff. For many years, the plaintiff had the upper hand in this battle because applicable law precluded the defendant from presenting the jury with evidence of negotiated discounts and write-offs that occurred after the plaintiff was initially billed for the medical services.

In 2009, the Indiana Supreme Court leveled the playing field by issuing its landmark decision in *Stanley v. Walker*, 906 N.E.2d 852 (Ind. 2009), holding that Indiana's collateral source statute does not bar evidence of discounted amounts to determine reasonable value of medical services provided to a plaintiff in a personal injury action and that, to the extent adjustments or accepted charges for medical services may be introduced into evidence without referencing insurance, they are allowed. In *Stanley*, this rule was applied to reduce the amount of damages awarded to the plaintiff for past medical expenses. The plaintiff did not seek damages for future medical expenses in that case. However, the Indiana Supreme Court did not limit its holding only to situations involving claims for past medical expenses, thereby affording defendants the opportunity to level the playing field even more by invoking the rule to reduce damages for anticipated future medical expenses, as well.

Application of the rule of law in cases involving claims for future medical expenses is particularly important for the defense when the plaintiff's injuries are catastrophic and the plaintiff is a minor or young adult. In those circumstances, the plaintiff's attorney is likely to submit into evidence, through expert testimony, a life care plan that will set forth substantial medical expenses expected to be incurred over the course of the plaintiff's lifetime, without taking into consideration the extent to which the future medical expenses may be subject to discounts or write-offs by insurance providers. This unduly inflates the value of the plaintiff's claim and misleads the jury as to the future financial burden that may be associated with the plaintiff's injuries. This is particularly true in light of the impact the enactment of the Patient Protection and Affordable Care Act (the "Act") will have on the medical landscape.

Due to the enactment of the Act, all Americans will be required to have health insurance by 2014. Furthermore, as of September 2010, health insurance providers cannot limit or deny benefits or deny coverage for a pre-existing condition for children under the age of 19. This portion of the Act will be phased in for adults age 19 or older beginning on January 1, 2014. As such, the parties to the litigation know with reasonable certainty that all future medical expenses will be subject to discounts and write-offs and that the plaintiff ultimately will not pay the amount initially billed for any future medical services. If the plaintiff is permitted to present evidence to the jury that the plaintiff may have to pay the "full price" of future medical care, without reference to negotiated discounts or write-offs, the jury will ultimately be rendering a verdict based on fiction and the plaintiff will once again unfairly have the upper hand in litigating the reasonable value of the medical services at issue.

Accordingly, defense counsel should seek a motion in limine precluding the plaintiff, the plaintiff's attorneys, experts, and lay witnesses from introducing any evidence of the "full price" of future medical expenses on the grounds that the evidence is irrelevant and inadmissible under Indiana Rules of Evidence 401 and 402 or, although allegedly relevant, inadmissible because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury under Rule 403. If the motion is denied, then the next course of action is to present evidence regarding the anticipated amount of any future discounts or write-offs to the jury through the testimony of a qualified expert pursuant to the Indiana Supreme Court's ruling in *Stanley v. Walker*. Compilation and use of this evidence during the course of the litigation and at trial can reap substantial benefits for the defense in the form of lower verdict amounts and added leverage in settlement negotiations prior thereto, while not unfairly prejudicing the plaintiffs as the settlement or verdict that results will fairly and accurately represent the true value of the claim and create a level playing field for all.

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