

## THE INDIANA PATIENT'S COMPENSATION FUND CAN INTRODUCE EVIDENCE CONCERNING THE EXISTENCE AND COMPENSABLE NATURE OF A PLAINTIFF'S DAMAGES.

In May of 2011, the Indiana Court of Appeals rendered its opinion in *Robertson (Indiana Patient's Compensation Fund "Fund") v. B.O., et al.* 949 N.E.2d 404 (Ind. Ct. of App. 2011). The central issue in the case was whether the Fund can introduce evidence concerning the existence and compensable nature of plaintiff's damages after plaintiff settled with the health care provider in the underlying medical malpractice claim. The claim arose out of a labor and delivery and the alleged failure to adequately monitor the fetus and timely respond to fetal strips. The infant was not diagnosed with abnormalities after birth or in the first few years of life. At age four (4), Plaintiff was diagnosed with spastic diplegia, a form of cerebral palsy. In a medical malpractice complaint, plaintiff alleged medical negligence occurred during his birth.

The parties to the underlying action completed the administrative requirements of the Indiana Medical Malpractice Act ("MMA") and presented the matter to a Medical Review Panel, which determined the defendant breached the standard of care but the "conduct complained of was not a factor in resultant damages." The provider settled with the plaintiff under an agreement that permitted access to the Fund.

Following settlement, Plaintiff petitioned the Fund for access; however, the Fund sought to introduce evidence contesting the fact the Plaintiff's condition was caused by the specified negligence. The Plaintiff filed a motion for partial summary judgment seeking a preliminary determination of law that when computing compensable damages resulting from the negligence of a health care provider, the Fund was precluded from contesting or offering expert testimony establishing that plaintiff did not incur the damages or that the damages were not caused by the conduct of the health care provider.

The Fund disputed the evidence that "can be properly admitted to determine the amount of excess damages, if any, for which the Fund was statutorily liable." The plaintiff essentially sought clarification as to the evidence that would be properly admissible pursuant to I.C. 34-18-15-3. The trial Court granted plaintiff's motion for partial summary judgment, but the Court of Appeals reversed holding that the Fund was not precluded from offering expert testimony to evaluate the compensable nature of patient's damages.

The Court of Appeals determined that the admission of liability and acceptance of proximate cause by way of a settlement between the claimant and the health care provider does not obligate the Fund to compensate claimants for damages that are of a non-compensable nature. The Court reasoned that "an award of excess damages by the Fund is not automatic" and the statutory language directs the trial court to determine the "amount, if any," to be paid from the Fund. I.C. 34-18-15-3. Accordingly, the Fund cannot be precluded from introducing relevant evidence such as expert witness testimony on the compensable nature and event of a claimant's injury merely because the health care provider elected to settle the underlying medical malpractice claim and liability has been established by I.C. 34-18-15-3.

This important opinion limits efforts of Plaintiff's to seek compensation from the Fund for excess damages in medical malpractice cases for non-compensable and non-measurable damages that are unsupported by medical evidence or refuted by expert testimony. The Court's ruling establishes the Fund cannot be precluded from introducing relevant evidence on the compensable nature of plaintiff's alleged injury.

Should you have any questions, please contact your regular Hall Render attorney.