

Doctor fights for wages

by Rena Warden

The Indiana Supreme Court heard oral arguments in a case that, according to attorneys on both sides, could potentially affect every wage earner in Indiana. Debate in *St. Vincent Hospital and Health Care Center, Inc. v. Robert J. Steele*, 4A02-0005-CV-294 centers around Indiana's wage payment statutes, as well as a complex series of cases that combine to set a conflicting precedent. Dr. Steele began working for St. Vincent in April 1995 as a contract physician. Under his Physician Employment Agreement, Steele was to be paid biweekly at a rate of 56 percent of his collections for the current or previous year, whichever was greatest. Under the agreement, "collections" were defined as "cash actually received during the applicable year, from standard medical office operations performed by the physician at the practice site." During the first two years of Steele's employment, his compensation included in-house treatment of cancer patients and the administration of chemotherapy treatments.

However, in 1998, the Health Care Financing Administration (HCFA) released proposed regulations interpreting legislation called Stark II, which limited a physician's ability to be compensated for referring Medicare and Medicaid patients to themselves for additional treatment, including the administering of outpatient drugs. According to the HCFA's proposed regulations, oncology drugs like chemotherapy were classified as outpatient drugs, but the regulations were never adopted. Over the three years he alleges the hospital was in violation of his compensation contract, Steele claims that he is owed \$280,000 in wages. After two lower court rulings against them, one in Howard Circuit Court and one in the Indiana Court of Appeals, St. Vincent agreed that it does indeed owe Steele that compensation. The hospital's appeal to Indiana's highest court challenges the court's awarding of triple damages, and attorneys fees to Steele. The hospital's contention is based primarily on their interpretation of Indiana Code 22-2-5-1, 2, 3. "It is our position that Chapter 5 applies solely to the frequency of payment," said Kent Smith, attorney for St. Vincent. Steele attorneys Lorie Brown and Ken Lauter disagree. They argue that Chapter 5 deals with not only the frequency of payment, but the amount as well. "Think about it," said Brown. "If Chapter 5 dealt only with the frequency of payment, then an employer could pay an employee \$1 on pay day, and the employee would have no recourse." Smith fervently disagrees. He argued before the Supreme Court that Indiana Code 22-2-9, as opposed to 22-2-5, dealt with the amount of a wage payment and would therefore be an employee's avenue of recourse. Because of this technicality, he said, St. Vincent should not be liable for the triple damages and attorneys fees -- which together would total an award of \$881,439 for Steele. In order to support his claim, Smith cites several decisions by the appellate court interpreting Chapter 5, one of which states in plain language that the law concerns only the frequency of wage payment. "If the legislature believed it had addressed the amount of wages due it would not have felt it necessary to enact Chapter 9," said Smith. In fact, in answering a question posed to him during oral arguments, Smith stated that Steele would indeed be entitled to triple damages under Chapter 9. Indiana's Supreme Court justices, though, must still be convinced of that fact.

"The statute does contain the words 'amount due,'" said Justice Frank Sullivan. "It seems to me that the plain language would cut against [that] argument." It is that interpretation of the statute that Brown and Lauter are hoping the justices will adopt. Chapter 5, Section 1 of Indiana's wage payment statute says, "Every person...doing business in Indiana shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee." The Indiana Department of Labor agrees with Steele's interpretation of Chapter 5. The department, in an amicus brief, expressed its support for Dr. Steele and its belief that the interpretation of Chapters 5 and 9 argued by Brown and Lauter is the correct one. According to Steele's attorneys, the difference between Chapter 5 and Chapter 9 is one of employee status. They believe Chapter 5 exists to protect an employee who has a wage dispute and is still employed by the firm with which he or she has a disagreement. Chapter 9, on the other hand, deals with a terminated employee's wage disputes, according to Brown and Lauter. "Dr. Steele would be entitled to treble damages under Chapter 9 just as he is under Chapter 5," said Lauter. Lauter believes that St. Vincent's claim is just "nonsensical torturing of the language." Chapter 5 and Chapter 9, both Depression-era statutes, usually deal with claims under \$6,000 made by people of lower economic means. This case is irregular primarily because of the amount of time -- three years -- St. Vincent failed to correctly compensate Steele. "Dr. Steele isn't living paycheck to paycheck," said Brown, "but every wage earner, no matter what that wage is, deserves to be compensated correctly. This ruling, whichever way it goes, is going to significantly impact wage earners in Indiana."

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