

IOLTA GRANT REVIEW UPDATE

The IOLTA (Interest On Lawyers' Trust Accounts) program was established by the Tennessee Supreme Court in 1984, and the responsibility for its administration was assigned to the Tennessee Bar Foundation. The purpose of the program is to raise funds to be distributed, in the form of grants, to organizations in Tennessee that provide direct legal services to the indigent and to organizations that seek to improve the administration of justice. IOLTA has granted over **\$20,390,060** to providers of these services in the state.

TDLA selects one of its members to serve on the Tennessee Bar Foundation's Grant Review Committee, which assesses the merits of various grant applications for awards. The Committee members are assigned individual responsibility for investigating and vetting up to three applications. Each Member reports to the full Committee at its annual meeting each November. The Committee then recommends awards to the Foundation's Board of Trustees for final decision.

For 2015, the Committee proposed awards totaling \$465,825 to providers of direct legal services such as The Legal Aid Society of Middle Tennessee and the Cumberland, and Memphis Area Legal Services. In addition, grants were also made to organizations that seek to improve the administration of justice, such as domestic violence prevention organizations and Tennessee CASA Association. The TBF Board of Trustees adopted the committee's recommendations as proposed.



We resume our work in October, vetting applications for calendar year 2016. This process is time well spent working with top lawyers and judges from across the state. I appreciate the opportunity to serve TDLA in this role.

BRUCE WILLIAMS is an attorney with *Shuttleworth Williams, PLLC*, located in their Memphis office. His practice focuses on *Workers' Compensation*. He is an *AV* rated attorney with *Martindale Hubbell*. You can contact him at bwilliams@shuttleworthwilliams.com

TORT LAW, *continued*

filed directly against the alleged tortfeasor? The petitioner and respondent in that litigation have submitted their briefs to the Tennessee Supreme, and each side was joined by amicus curiae. Personal injury practitioners should keep a watchful eye for our Supreme Court's opinion in this matter.

However, on June 12, 2015, a different federal judge in the same District applied West to a tort case involving a personal injury claim against the United States government when determining what could be considered "reasonable" medical expense charges as damages. See *Keltner v. United States*, No. 2:13-cv-2840-STA-dkv, 2015 WL 3688461, at *4-5 (W. D. Tenn. June 12, 2015). In that case, the trial judge held that "non-discounted charges [are] not reasonable

because they [do] not reflect the rate for services in the actual marketplace." Id. at *4. The Keltner memorandum opinion applied the West analysis in its determination of what charges were "reasonable" and concluded that "the negotiated rate is a fair assessment of [the plaintiff's] true damages." Id. at *5. The district judge found that, because the plaintiff's medical providers accepted payment of a negotiated, discounted rate for medical services as payment in full, the non-discounted rate was not an "expense" because it was never "expended" or "incurred" by the plaintiff. Id. In fact, the district court found that the medical provider never demanded payment of the full, non-discounted rate from the plaintiff or even his insurer. Id. Accordingly, the court found, the full, unadjusted rate was inapplicable to the plaintiff and allowing him to put forth ev-

idence of the full charges would create a windfall for the plaintiff by allowing him to recover medical expenses that were never incurred by anyone. Id.

CONCLUSION

Since West, the dispute over what a plaintiff can claim as actual economic damages has become a common issue in deposition and motion practice in personal injury cases. The Tennessee Supreme Court's response to this certified question should provide personal injury practitioners in Tennessee guidance as to what medical expenses are "reasonable" and, as such, can be claimed as actual economic damages in tort lawsuits. Until then, the author recommends attorneys advise clients of these differing views and opinions on the subject. ■