

## Attorney's Fees Recoverable Under Victim's Bill of Rights, but Only If Reasonably Incurred

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Attorneys fees incurred by the victim of a crime in California can be claimed under the Victims' Bill of Rights, which established the right of crime victims to receive restitution directly from the criminal. In *People v. Millard*, 09 CC.D.O.S. 7856 (June 23, 2009), the trial court ordered Millard to pay the victim's attorney's fees, based on a contingency fee agreement, of \$366,666 incurred in pursuing a civil judgment against Millard. Initially, the trial court found the contingency fees to be "unconscionable," but nevertheless believed it was obligated to enforce the contingency fee agreement and award the entire amount in restitution.

The appellate court reversed, citing Penal Code section 1202.4's requirement that restitution may include "actual and *reasonable* attorneys' fees and other costs of collection." Accordingly, the victim was certainly entitled to restitution of his attorneys' fees, but only to the extent those fees were reasonable. The appellate court felt this was an abuse of discretion and remanded the issue back to the trial court for further proceedings regarding the amount of reasonable attorney fees incurred.

The interesting question, of course, is this: "Who should pay that portion of the fees which are deemed unreasonable?" If the trial court is unable to transfer the entire contingency fee to Millard, the victim, presumably, would bear the burden of paying the unreasonable portion of the fees.