

Wednesday, January 15, 2014

Guilty Plea by Defendant: Automatic Win In The Subsequent Civil Lawsuit?

The Issue: the defendant burns your cheek by pushing her lit cigarette into your face, then pleads guilty to the criminal charge. Can that defendant later argue, in your civil lawsuit for damages against her, that her actions were only an 'accident' and not deliberate?

As often happens, most people simply couldn't dream up and write a fiction story as outrageous as some cases which run through our court system.

In the recent case of [Bonadeo v Woods, 2013 ONSC 7559 \(CanLII\)](#), two woman at a party got into a physical altercation on New Year's Eve. A burning cigarette was stuck into the cheek of the poor plaintiff.

The defendant plead guilty, but then wanted to fight the civil lawsuit. This was a motion to strike the Statement of Defence, to disallow the defendant from re-litigating in the civil action what she apparently admitted in her guilty plea to the criminal charge.

In the end, Justice Morgan struck some portions of the Statement of Defence, but allowed the remainder to stand as the defendant had plausibly some retort to the allegations, including a possible Counterclaim based on the theory that the plaintiff had assaulted her first and that her actions were a reflexive respond - i.e. self-defence and negligence, as opposed to deliberate action - to protect herself (as opposed to meaning to hurt the plaintiff).

It is important to note that there is likely a coverage fight going on behind the scenes between the defendant and her homeowner's insurer, as to whether a defence and coverage is provided to the defendant in this civil lawsuit. Ironically, the plaintiff would probably allege negligence in the Statement of Claim as a parallel track allegation (and prefer for the defendant's negligence assertions to remain in her defence), as this would increase the likelihood of the homeowner's policy responding to the action).



Toronto Insurance Lawyers

A downtown Toronto law firm focusing on personal injury and insurance lawsuits

Page | 2

For plaintiff's counsel, the safest route for their clients is always to have an insurance policy respond to the civil lawsuit. There is always the possibility of a defendant filing for bankruptcy before you can obtain a Judgment in the civil action and, therefore, having insurance coverage responding to the action avoids this possibility.

Gregory Chang
Toronto Personal Injury and Insurance Lawyer