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## Damages Pt. 7 – Indiana Crime Victim’s Relief Act

In this week’s installment in our series on damages, the attorneys at Pavlack Law discuss damages available to a victim of a criminal offense. While it is true that in many, if not most, cases in which a person has committed a crime against another there is a corresponding common law tort claim that can be brought against the criminal. For example, where a person commits a criminal battery – the knowing or intentional touching of another person in a rude, insolent, or angry manner – that person also commits a civil battery – an intentional harmful or offensive contact with another person. This is something that most all of us remember from the O.J. Simpson trials – where despite having been found not guilty of the criminal charges he was later found liable to the Goldman family for the death of their son. However, in addition to the common law tort claims against a criminal, the victim may also have a statutory claim against the criminal.

Under the Indiana Crime Victim’s Relief Act a victim of certain crimes may bring a separate civil action to recover for his or her injuries as a result of the criminal conduct. The Crime Victim’s Relief Act is a very powerful tool under Indiana law. The act permits a successful plaintiff to recover damages in an amount not to exceed three times the total actual damages. Typically when a statute allows for such recovery it is referred to as *treble damages*. Additionally, the Act permits recovery for the costs of bringing the action – the filing fee which is

typically around \$137 – the actual travel expenses incurred, a reasonable amount to compensate the victim for his or her time spent on the case, and reasonable attorneys fees. In order to understand the importance of allowing such additional recovery it is important to understand that, as a general rule, American courts apply what is called the American Rule.

Under the American Rule, absent a statute allowing it, attorney fees are not recoverable. This means that in the typical case even where the other person is clearly in the wrong a plaintiff must still bear the costs of hiring an attorney and those costs will not be compensated. For example, in a breach of contract case: if a person breaches a contract and fails to pay another person \$10,000 that is owed, the person to whom the money is owed may bring a suit to recover that money. However, the person bringing the suit may well incur more than \$1,000 in costs to bring the claim. This means that the plaintiff may well be awarded \$10,000 but on balance will have only recovered \$9,000 after paying his attorney. Which means that even though the plaintiff is successful and the defendant is still out \$10,000, the plaintiff is still in a worse position than had the defendant paid the money when it was due.

However, under the Crime Victim's Relief Act – a statute – a successful plaintiff can recover attorney fees. This is very important because it provides a huge incentive for defendants to settle cases prior to trial so as to limit a plaintiff's attorney fees and it incentivizes attorneys to represent clients who may otherwise have a case with relatively small damages. It is not uncommon for the attorney fees in a case to surpass the actual damages. In such a case, where a crime victim would have been unable to pursue a civil claim without ultimately losing money, that victim is, by virtue of the Act, able to seek recovery to help make him or her whole again.

An interesting dynamic to the Crime Victim's Relief Act is its interplay with the Comparative Fault Act. Recall from Pt. 5 in the series of damages that a plaintiff in a civil suit who is partially at fault for his or her own injuries will see a reduction in damages by a percentage comparable to that person's apportioned liability. However, there was one unique quirk to the Comparative Fault Act which is that where a person has been convicted of a criminal offense the plaintiff seeking to recover for his or her injuries from that criminal act may recover 100% of his or her damages regardless of that person's own fault.

An additional wrinkle in the Crime Victim's Relief Act, which may well surprise you, is that it is not essential for the defendant to have even been charged with a crime for a plaintiff to bring and succeed on a claim under the Act. In order to understand why this is the case, let us return to the O.J. Simpson trials. Recall

that the jury at his criminal trial acquitted O.J. Simpson but he was later found liable to the Goldman family in a subsequent civil trial. The reason that this could occur upon the same set of facts is that the standard for civil liability and for criminal conviction are quite different. As many of you know, the standard for a criminal conviction is that the state must prove beyond a reasonable doubt to the jury that the person who stands charged committed the crime. While it is impossible to place an exact percentage of certainty upon the beyond a reasonable doubt standard – as every criminal attorney is well aware – it is certainly something far north of 51%. However, in the civil context the burden is upon the plaintiff to prove the defendant's liability by a preponderance of the evidence or sometimes referred to as the greater weight of the evidence. This is often said to be 51% and up. However, on a hyper-technical note, it does not even require 51% certainty just the most tiny iota above 50% – such as 50.00000000000001%. Anything above 50% and the jury can find for the plaintiff. A side note, at 50% the evidence is determined to be in equipoise and a plaintiff cannot recover which is different than the comparative fault standard where a plaintiff can recover despite having been 50% at fault.

So, how does the difference in standards between criminal convictions and civil liability make it so that a plaintiff can bring a claim under the Crime Victim's Relief Act when the defendant has not so much as been talked to by the police? Well the answer is simple; due to the extremely high standard to prove that a person committed a crime a criminal charge may never be brought, as there is no reasonable chance of success. However, with the civil claim, it is a recognition that the defendant may have committed a crime but that it just cannot be proven beyond a reasonable doubt. It is also very important to note that due to the dramatic difference in standards an acquittal in a criminal trial has no impact on a subsequent civil case. But on the flipside, a criminal conviction has a dramatic impact on a subsequent civil case. If a person is convicted of a crime then that issue is decided and the defendant's liability need not be put before a jury in a subsequent civil trial. The reason for this is that at the highest possible standard the evidence proved that the defendant committed the crime whereas on acquittal the only thing determined by the trial is that there was not enough evidence to prove guilt by the highest standard.

To draw an analogy on this to a common life occurrence: I am 5'10" with an unimpressive vertical. I can easily dunk a basketball on my 6-year-old niece's basketball hoop, as it isn't even 5 feet off the ground. However, there is no chance whatsoever of me dunking on a regulation hoop. On the other hand, LeBron James can easily dunk on a regulation hoop. As such, without him ever seeing my 6-year-old niece's hoop, it is safe to say that he can dunk on it as well. Tying this back to

burdens of proof: the me in this scenario is like the acquittal in a criminal trial. I may not be able to dunk on an NBA hoop but I still am able to dunk on the 6-year-old's hoop. My inability to dunk on the NBA hoop tells you absolutely nothing about my ability to dunk on my niece's hoop. However, LeBron, who is the criminal conviction in this scenario, can easily dunk on the NBA hoop and as such can unquestionably dunk on the lower hoop as well. This is why a criminal conviction can have *res judicatory* effect on a subsequent civil case while an acquittal cannot.

One last point to be made about the Crime Victim's Relief Act is that the statute of limitations may not work the way you expect. The statute of limitations for the criminal act – the time in which the charges must be filed – may be several years longer than the limitation on bringing a claim under the Crime Victim's Relief Act. Because the civil claim is considered to be “a forfeiture of penalty given by statute,” the statute of limitations for the Act is only 2 years as provided by Indiana Code section 34-11-2-4. In the case of battery, as discussed above, if it is a D felony battery then the statute of limitations provided by the Indiana Code is 5 years but the civil claim would need to be brought within 2 years of the offense regardless of if and when the person is charged with the crime.

As always, due to the complexity in this area of law and the importance of navigating the minefield that is deadlines in the legal field it is of the utmost importance to utilize the services of an attorney who understands Indiana law, is experienced in protecting the rights of injured persons, and can zealously advocate on behalf of his clients.

Join us again next week for the next installment in our series on damages.

- Pt. 1 – Introduction to Damages and Loss of Consortium
- Pt. 2 – Duty to Mitigate Damages
- Pt. 3 – Diminished Value of Vehicle Due to Traffic Accident
- Pt. 4 – Damages for Negligently Inflicted Emotional Distress
- Pt. 5 – Assessing Damages When Injured Person is Partially at Fault
- Pt. 6 – Availability of Prejudgment Interest
- Pt. 8 – Ability to Recover by Piercing the Corporate Veil
- Pt. 9 – Damages for the Loss of Chance of Survival from Medical Malpractice
- Pt. 10 – Punitive Damages Under Indiana Law
- Pt. 11 – Wrongful Death
- Pt. 12 – Contract Damages

## Sources

- Indiana Crime Victim's Relief Act, codified at Ind. Code § 34-24-3-1.
- Indiana Comparative Fault Act, codified at Ind. Code § 34-51-2-1, *et seq.*
- Indiana Criminal Battery, codified at Ind. Code § 35-42-2-1.
- Indiana Specific Civil Statutes of Limitations, codified at Ind. Code § 34-11-2-1, *et seq.*
- Indiana Criminal Statutes of Limitations, codified at Ind. Code § 35-41-4-2.

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