

How to Best Use Evidence from A Criminal Case in An Ensuing Personal Injury Civil Trial

Defendants who are convicted and sentenced cannot relitigate the specific facts underlying their conviction. Yet, two separate trials -- a criminal and a civil -- may result from the same fact pattern when a crime is committed and a personal injury is sustained as a result of alleged negligence, recklessness, or deliberate behavior of a party. In these circumstances, the criminal trial will usually precede the civil trial as courts are generally open to granting a stay to civil proceedings during pending parallel criminal proceedings.

In the ensuing civil trial, how best can a plaintiff and defendant make use of testimony and evidence that was presented in the criminal trial?

It is elementary that the proof of disputed facts, and in some cases their admissibility, differs. For example, if a party's criminal conviction *per se* does not have a direct connection to the particular facts at issue in the civil lawsuit, that conviction itself may not be admissible as evidence of the alleged civil wrong, but it may be admissible to demonstrate character evidence, for impeachment purposes, or to implicate that a party acted in accordance with a character trait or tendency. See [FRE Rule 609. Impeachment by Evidence of a Criminal Conviction](#).

Plaintiff's Perspective

One of the most important events from the plaintiff's perspective is the criminal trial. Many accused perpetrators pursue the strategy of waiting until the trial is imminent to reach a plea agreement. A plea agreement can involve the admission of guilt of the underlying offense. Sometimes a plea is offered that involves an admission of guilt of a lesser offense rather than the one originally charged. Some states allow "nolo contendere" pleas which means "no contest." Nolo contendere pleas do not admit guilt but allow the trial court to convict and sentence as if the accused were guilty. Nolo contendere is often limited to the criminal proceeding and is made when the perpetrator wants to admit responsibility in the criminal case but not in the civil case.

If a plea agreement is unsuccessful, the trial commences. A conviction can often be useful in the civil trial, while an acquittal may not be admissible, since the standards between criminal conviction and civil liability differ. If the accused is guilty of an intentional act, the employer of the defendant will almost certainly claim in the civil action that the conduct was outside the scope of employment or agency.

Regardless of whether there is a plea or a verdict, the lead-up to the trial will provide an abundance of information and documentation that will assist the plaintiff in the civil action. There may be police investigative materials, interrogations (sometimes on video), body-cam footage, testimony



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during the criminal proceedings, including trial as well as other useful material. Once the conviction is achieved, much of this material may be available in unredacted form by subpoena.

Defendant's Perspective

A criminal conviction can have profound and sometimes unexpected effects on the defense of an associated tort. For example, if the convicted individual's employer is sued, intentional criminal conduct or other intentional torts are ordinarily considered to be outside the scope of employment. Thus, a conviction can sometimes strengthen an employer's defense.

If there is no conviction, the case against the employer can become stronger. Intent crimes are often defended by trying to negate the element of intent by admitting that the outcome was unintentional. If the accused agrees that the conduct was negligent and not intentional, then it is possible that no crime was committed. In a subsequent civil trial alleging negligence, however, the criminal defense and testimony supporting it may operate as an admission of negligence and make the civil case much more difficult to defend.

Conclusion

Short-sighted strategies that may help a plaintiff or defendant regarding criminal proceedings may yield unnecessary liability later on in a civil trial. When representing a client in a civil matter following or occurring simultaneously with a criminal case stemming from the same events, attorneys must be nimble. Decisions and evidence in two different venues can be variously portrayed and interpreted. For this reason, an attorney who has both criminal as well as civil litigation experience can be very helpful.



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