



**OBLIC**

Ohio Bar Liability  
Insurance Company

# MALPRACTICE ALERT!

March 2004 • 1650 Lake Shore Drive • Columbus, OH 43216-2708 • 614/488-7924 • 800/227-4111

## **CIVIL PRACTICE ALERT: CRIMINAL RESTITUTION AWARDS FOR ECONOMIC LOSS**

In 2002 the Ohio General Assembly passed HB 490 to implement the recommendations of the Ohio Criminal Sentencing Commission pertaining to misdemeanor sentencing and make other changes in the criminal laws. Included in the 342 page bill is a provision which gives municipal courts the authority to order restitution in misdemeanor and minor misdemeanor cases to the victim or the victim's survivor for economic losses sustained as a result of the offender's crime. The law makes such restitution awards enforceable as civil judgments. This law became effective on January 1, 2004 and is codified in ORC Section 2929.28

This change in Ohio law will impact attorneys representing clients in personal injury or property damage cases in which one of the parties is or was the subject of a criminal misdemeanor prosecution in connection with the activity giving rise to the case. The most common example would be automobile personal injury cases.

Under the new law, the victim in a traffic accident may apply to the court for an order requiring the offender to pay the victim's economic loss. The court must conduct a hearing if the offender or the victim dispute the amount of restitution. The restitution order then becomes a civil judgment in favor of the victim against the offender. All restitution payments shall be credited against any recovery of economic loss in a subsequent case brought by the victim.

It will probably take some time for the courts to get acquainted with this new law. But persons involved in auto accidents may soon find themselves

being asked to pay restitution in traffic court within a short time of their accidents. If restitution is ordered, they may turn to their insurers for reimbursement, who may be confronted with unfounded or excessive economic loss claims without having had the opportunity to be heard.

It is unclear how the kind of information normally required to support an award of damages for economic loss in a civil action will be gathered in these types of criminal proceedings so that an appropriate award may be granted. Typically, criminal discovery is limited, and the defendant is protected by the U.S. Constitution's 5th Amendment right against self-incrimination. If the damage award is limited to the actual cost of repairing a car, this may not be a problem. But the more complex the damages, the more problematic this will become. This new law will also raise issues regarding the extent of an insurer's duty to defend and indemnify an insured in a restitution proceeding under the new law.

Monetary jurisdiction may also be an issue since it is not clear whether the \$15,000 limit on civil judgments in the municipal and county courts which will hear these misdemeanor and minor misdemeanor cases will also apply to the restitution awards made by these courts in these criminal proceedings.

Those wishing to read the Ohio Criminal Sentencing Commission's explanation of the new law may access the Commission's primer on the new law on the Ohio Supreme Court's web site at: [http://www.sconet.state.oh.us/Sentencing\\_Commission/publications/HB490\\_summary.pdf](http://www.sconet.state.oh.us/Sentencing_Commission/publications/HB490_summary.pdf)

**Special Note:** As we go to press with this article, we understand that an amendment to this statute is in the works. It is anticipated that the statute will be amended and any such amendment signed on an emergency basis (no waiting period to be effective)

by the Governor to change the current law. However, the proposed amendment has yet to go to hearing. Until the statute is amended, the confusion created by its passage in the municipal courts is likely to continue.

OBLIC thanks Scott Gilliam, Government Affairs Chair of the Ohio Association of Civil Trial Attorneys, for giving his permission to reprint this article. Mr. Gilliam is Vice President of Government Relations for the Cincinnati Insurance Companies.

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## **OSBA CONVENTION SEMINAR: PROFESSIONAL PRESENCE**

Nationally known speaker **Corinne Cooper** will headline the OBLIC annual loss prevention seminar at the OSBA Convention at the Renaissance Hotel in Cleveland on Thursday, May 13, 2004 from 2:00 P.M. to 5:15 P.M.

The convention seminar will again be co-sponsored by the OSBA Solo, Small Firm & General Practice Section Board of Governors and the OSBA Lawyers' Assistance Committee. CLE credit is requested for professionalism, ethics and substance abuse.

Professor Cooper was recommended as a speaker by members of the Solo, Small Firm & General Practice Section who had heard her speak at the American Bar Association meeting for their section. Her topic, **Professional Presence**, is a unique multimedia presentation that teaches how to use the elements of professional communication to enhance your impact. Those who have attended report that it is "A dynamite program!"

Disciplinary Counsel **Jonathan Coughlan** will present an **Ethics Update** and OLAP Executive Director **Scott Mote** will cover the topic of **Substance Abuse** to complete the seminar. Mark your calendar now and plan to attend! See you in Cleveland!

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