



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

LESSONS FROM LOSSES: CIVIL RIGHTS VIOLATION AND PLAINTIFF LEGAL COSTS

The only mistake in life is the lesson not learned.

—Albert Einstein

DESCRIPTION

A group of teenagers were walking through a city neighborhood and engaged in mischievous acts such as smashing pumpkins and ding-dong ditch. One of the pranked homes belonged to a law enforcement officer who chased the plaintiff. The officer threatened to shoot and beat the plaintiff. The plaintiff stopped and asked to discuss the problem, but the officer beat him until he curled into a fetal position. The plaintiff asked why he was being beaten so badly, and the plaintiff responded that he should not have messed with a cop.

The officer picked the plaintiff up and took him to a nearby residence. The defendant officer pounded on the door and stated that he was an off-duty police officer and told the residents to call 911. The EMS arrived and treated the plaintiff for injuries. A fellow officer arrived, and the two officers returned to the station to file charges against the plaintiff for loitering, criminal mischief, harassment, and criminal conspiracy. The juvenile was exonerated of all charges in a juvenile criminal proceeding.

The plaintiff proceeded with a complaint against the officers and the police department alleging that the officer was acting under the color of law when he used excessive force and violated his civil rights.

THE RESULT

The claims against the fellow officer and the police department were dismissed on motion for summary judgment. The defense made no offers to resolve the case and elected to go to trial. A jury unanimously found the off-duty officer violated the teenager's civil rights by using excessive force. The jury awarded the plaintiff \$75,000.

After the verdict, the plaintiff's attorney pursued \$200,000 in fees and costs. The defense challenged the legal fees, and the judge reduced the award by \$30,000.

THE PROBLEM

The court found that because the off-duty officer identified himself as an officer, ordered homeowners to call 911, and kept the plaintiff in his custody until paramedics and the police arrived, his actions were consistent with those generally undertaken by a police officer and were intended to preserve the peace, protect property, and arrest the plaintiff as a violator of the law. The judge ruled that the plaintiff could proceed with his claim against the officer for violation of rights due to the officer acting under the color of law, and the case proceeded to trial.

Civil rights claims allow the plaintiff's attorney to seek reasonable fees once the plaintiff prevails. The fee applicant bears the burden of showing the fees are reasonable: a specific objection is required to reduce the reward. In this



case, the defense objected to all costs the plaintiff incurred related to the actions that were dismissed, and the court allowed a reduction.

In Federal Court, a defending party may make an offer of judgment at any time, but no later than 14 days before the trial date. An unaccepted offer is considered withdrawn. If the final judgment is not more favorable than the offer, then the offeree must pay the costs incurred after the offer was made. A reasonable offer of judgment may have helped the defendant further mitigate plaintiff's fees for costs incurred after the offer was made.

LESSONS LEARNED

Off-duty officers may be considered working under the color of law when their actions support law enforcement. Police departments are encouraged to provide training and create a policy regarding the behavior of off-duty officers. Additionally, defendants of civil rights claims should be mindful that an unsuccessful defense at trial exposes the entity to additional financial exposure for the plaintiff's legal costs.

Risk and claim managers are reminded that adverse decisions may give rise to additional financial exposure beyond indemnity for plaintiff's attorney fees. It is recommended that claims be evaluated based on the merits of the case, including injury severity and likelihood of a successful defense. Public entities are wise to carefully consider all financial exposure in the analysis of whether to take a case to trial or settle. In this case, the fees awarded were more than double the value of the indemnity awarded by the jury. Where questions of fact may be left to a jury, consider early negotiations or mediation and file a reasonable offer of judgement to mitigate a potential award for plaintiff's costs and fees.

If an adverse decision is rendered and fees are pursued, the opposing party may challenge the reasonableness of the costs demanded. In this case, the defendant successfully argued that all fees and expert costs related to the pursuit of the police department and fellow officer were not justifiable because those actions were dismissed. The court agreed and reduced the fees related to unsuccessful actions. Additionally, the court concurred that clerical tasks were not compensable. When a lawyer spends time on tasks that are delegable to nonprofessional assistance, legal service rates are not applicable; therefore, the court deducted fees for administrative tasks from the award.

Note: Although the statements above are based on an actual loss, some of the facts may have been altered for the purpose of illustration and education.



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