Court Properly Awards Contingency Attorney Fees as Restitution

November 2, 2011 by David J. McMahon

In *People v. Taylor*, the California Court of Appeal for the Third Appellate District decided a unique case involving a claim for victim restitution under Penal Code Section 1202.4(f)(3)(H). The case was unique in that the restitution claim also included a contingent attorney fee component. The trial court approved the restitution claim, including the fee component.

On July 29, 2007, the defendant improperly crossed a double yellow line while driving his vehicle. He caused a head-on collision with another vehicle and immediately fled the scene. The victim suffered serious personal injuries and property damage. After he was apprehended, the defendant pled nolo contendere to hit and run driving causing injury. The trial court sentenced him to six years in prison.

The court then ordered $44,554.83 in victim restitution, including $8,333.33 in attorney fees under the Penal Code section noted above. In response, the defendant argued that the award of victim restitution for attorney fees was improper because it was for a contingency fee paid by the victim without a prior determination as to whether the fee was "**reasonable**."

The Court of Appeal affirmed the decision, noting that under Penal Code Section 1202.4(f)(3)(H), restitution is authorized for "**actual and reasonable attorney's fees**" which the victim incurred due to the defendant's criminal conduct.

The Court of Appeal noted that the traditional lodestar method is a fee shifting mechanism applied in many civil litigation contexts. The court noted that the policy reasons underlying victim restitution presents different interests. This court determined that when uncontradicted evidence exists that a victim incurred attorney fees due to the defendant's actions, it did not constitute an abuse of discretion to award restitution for the fee without application of the traditional lodestar approach.