

A newsletter by **Taheri & Todoro, P.C.**, devoted to *Driving While Intoxicated* law in New York State
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The Impact of a DWI Conviction on a Civil Suit

When an alcohol-related automobile accident results in injury or death, the driver will almost certainly be sued civilly in addition to any criminal charges. As a result, both prosecutors and defense attorneys should be aware of how the results of the criminal case may impact upon the civil case. We spoke with Michael A. Ponterio, Esq., a partner at Lipsitz & Ponterio, LLC, 135 Delaware Avenue, Suite 210, Buffalo, New York 14202-2410, (716) 849-0701, who drew upon his experiences in representing plaintiffs in such civil suits to answer the following questions.

1. What is the legal significance of a conviction for Driving While Intoxicated (an unclassified misdemeanor) in a civil suit? Does it establish negligence per se? If not, what else may be required?

A DWI conviction constitutes *per se* negligence. Of course, the plaintiff must still prove that the defendant's negligence was the proximate cause of the accident in order to recover damages.

2. Is a conviction for Driving While Intoxicated different from a conviction for Driving While Ability Impaired by Alcohol (a traffic infraction) in terms of its potential impact on a civil suit?

If an individual is convicted of Driving While Intoxicated, the plaintiff in a civil suit arising from that action can use that conviction to prove that the defendant was intoxicated under the doctrine of collateral estoppel. Because the defendant does not have a strong motive to defend against traffic infractions, and because the proceedings are not conducted with the same care and deliberation as criminal trials, a conviction for a traffic infraction does not prove negligence in a civil trial.

3. Is there a difference between a plea of guilty in the criminal case vs. a conviction after trial in terms of its impact on the civil case?

In the case of a conviction for misdemeanor DWI, there is no difference. Both facts are equally admissible, and both prove negligence. Keep in mind, however, that traffic infractions are not considered to be criminal cases. As a result, there is a difference if a driver is convicted of the traffic infraction of Driving While Ability Impaired by Alcohol. If a driver *pleads guilty* to Driving While Ability Impaired by Alcohol, while the conviction itself is not admissible, the plea colloquy *is* admissible in the civil case as an admission by the defendant. If a driver is convicted of Driving While Ability Impaired by Alcohol *after trial*, the conviction is not admissible and there is no plea colloquy in which the defendant admits guilt. As a result, from the defendant's point of view, it is better to go to trial and be convicted of a traffic conviction than to plead guilty to such a charge.

4. How could a DWI conviction be proven at a civil trial (certificate of disposition, transcript or some other method)?

NY CLS CPL § 60.60 ("Rules of evidence; certificates concerning judgments of conviction and fingerprints") holds that "A certificate issued by a criminal court, or the clerk thereof, certifying that a judgment of conviction against a designated defendant has been entered in such court, constitutes presumptive evidence of the facts stated in such certificate." The certificate may not be sufficient to establish conviction if it misidentifies the defendant's date of birth.

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5. What if the defendant in the criminal case was granted “youthful offender adjudication” and the record was sealed? Can the “admission” by the defendant be used in civil court?

If the defendant in the criminal case had been granted youthful offender adjudication pursuant to NY Criminal Procedure Law §§ 720.10 and 720.20, the record would have been sealed, and, generally, would have been inadmissible in the subsequent civil action.

Criminal Procedure Law § 720.35 provides that records may be unsealed upon “the specific authorization of the Court.” The term “Court” is not defined, but it has been interpreted to refer to the court which rendered the juvenile offender adjudication, rather than the court hearing a subsequent civil action. *See Royal Globe Ins. Co. v. Mottola*, 89 A.D.2d 907 (2nd Dept, 1982).

Whether defendant’s admission could be used against him in civil court would depend on the circumstances of that admission. A defendant’s adjudication as a youthful offender does not prevent the defendant from being questioned about the specific illegal and immoral acts underlying that adjudication, however it does prevent the defendant from being questioned about the fact that he or she has been adjudicated a youthful offender, or about any of the details of his or her arrest, arraignment, trial or plea.

6. What if the defendant was acquitted of any alcohol-related offense in the criminal case? Can the acquittal be presented by the defense in the civil suit?

A judgment of acquittal in a criminal prosecution is not admissible in a civil action.

7. What if the defendant had refused a breath test? Would a civil finding by an Administrative Law Judge from the Department of motor vehicles be admissible regardless of the outcome of the criminal case?

A defendant’s refusal to submit to a breath test is admissible in subsequent civil and criminal actions because it demonstrates “consciousness of guilt.” *See Bazza v. Banscher*, 143 A.D.2d 715 (3rd Dept., 1997).

It is not certain whether the findings of an Administrative Law Judge would be admissible regardless of the outcome of the criminal case. It’s possible such a finding might be excluded under the same logic that excludes traffic infractions, but there is, as yet, no case law establishing this principle.

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If readers have any additional questions regarding this or other insurance topics, they are invited to contact Mr. Ponterio at the law firm of Lipsitz & Ponterio, LLC. 135 Delaware Avenue, Suite 210, Buffalo, New York 14202-2410, (716) 849-0701, for further information. We would like to thank Dennis Harlow, a law clerk with the law firm of Lipsitz & Ponterio, LLC, for his research and assistance in preparing this article.

This newsletter does not offer specific legal advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. If you have any questions or would like a specific topic covered in the newsletter, please contact Michael S. Taheri, Esq., or Peter J. Todoro, Esq., at Taheri & Todoro, PC, 388 Evans Street, Williamsville, NY 14221, telephone no. (716) 633-0374, e-mail: lawyers@taheriantodoro.com.

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