Set-off Rule

Under Indiana law, a defendant is no longer entitled to a credit for amount paid to plaintiff by other parties. This dramatic departure from traditional rules of compensation announced in *R.L. McCoy Inc. v. Jack*, 772 N.E.2d 987 (Ind. 2002), will significantly increase the likelihood of multi-defendant actions going to trial and will undoubtedly result in plaintiffs being overcompensated for their injuries.

Traditionally, Indiana has followed the "one satisfaction" rule that when the actions of multiple defendants cause a single injury to a plaintiff, any defendant against whom the judgment is rendered at trial is entitled to a credit against the assessed damages in the amount of any funds paid by plaintiff settling joint tortfeasors by the plaintiff. *Riehle v. Moore*, 601 N.E.2d (Ind. Ct. App. 1992). This credit was allowed in order to prevent a plaintiff from recovering twice for the same injury and, therefore, Indiana trial courts have traditionally been empowered to reduce jury verdicts by amounts received in settlement to insure that plaintiff will not receive more than a full recovery. *Id.*

However, passage of Indiana's non-party statute complicated the "one satisfaction" principle. Under Indiana's comparative fault act, if a plaintiff fails to name a party who may be liable for a plaintiff's damages, the named defendant may then assert a "non-party defense" by identifying the party in an answer and seeking to attribute fault to the non-party. *I.C. 34-51-2-14*. If plaintiff fails to amend the complaint to add the identified non-party, then the defendant must carry the burden of proving that the identified non-party caused plaintiff's damages. *I.C. 34-51-2-15*. Thus, a jury is permitted to apportion a percentage of plaintiff's damages to the non-party in accordance with the evidence presented by the named defendant. *Id.* The issue of how to reconcile the traditional "one satisfaction" defense with a non-party defense has been the subject of considerable debate in Indiana.

Since enactment of Indiana's comparative fault act, defense counsel have asserted both defenses in order to avoid a double recover. For example, if a settling defendant pays an amount equal to the total amount of damages awarded by a jury at trial, but the jury apportions only a small percentage of total fault to the settling party as an identified non-party, then a set-off would still be appropriate under the "one satisfaction" rule to prevent plaintiff from recovering more than the amount determined by the jury to constitute full compensation. Generally, most judges agreed to this approach, but some did force defendants to choose between naming a settling defendant as a non-party or receiving a credit against the judgment for the amount paid by the settling party.

In *Mendenhall v. Skinner*, 728 N.E.2d 140 (Ind. 2000), the Indiana Supreme Court addressed the issue of whether the "one satisfaction" principle survived enactment of Indiana's non-party statute. There, plaintiff argued that under Indiana's comparative fault scheme, a defendant's only option is to name the settling party as a non-party and receive a reduction in accordance with the apportion of fault assessed to the non-party. The Skinner Court ruled that a defendant can not obtain any reduction of plaintiff's damages unless the settling party is identified as a non-party. The Skinner Court,

however, left open the question of whether a defendant is only entitled to a fault credit through a reduction for non-party fault or may still obtain a money set-off in those cases where the percentage of fault assessed to an identified non-party does not result in a reduction of plaintiff's recovery equal to the amount paid by the non-party to settle plaintiff's claims.

In R.L. McCoy, the Indiana Supreme Court squarely addressed this issue and abolished the "one satisfaction" rule in Indiana by holding that defendants are no longer entitled to set-offs from amounts paid by settling defendants. Thus, now when one defendant settles, the remaining defendants' only recourse is to identify the settling defendant as a non-party and carry the burden of allocating fault to the non-party.

This decision will greatly benefit plaintiffs in cases involving multiple defendants and will significantly increase the likelihood of such cases going to trial. For example, in asbestos cases in which between thirty to fifty companies are typically named, in the past an accumulation of numerous nuisance value settlements from companies with no real exposure often made it economically unfeasible for plaintiffs to go to trial against a handful of target defendants, as the large set-off credit created by nuisance settlements would severely diminish, or even eliminate, any award of damages won after a long and expensive trial. However, the R.L. McCoy decision now allows plaintiffs in such cases to "have their cake and eat it too," by allowing them to keep both large amounts accumulated through nuisance value settlements and the full amount of any damages awarded by a jury.

Furthermore, even in cases involving only two defendants, plaintiffs will often be over compensated in Indiana. For example, under the "one satisfaction rule", in a personal injury case where the carrier for a drunk driver paid its policy limits of $100,000, the plaintiff had no incentive to bring a Dram Shop Act against a bar owner if the policy limit settlement was about equal to any damages which a jury would likely award, as the bar would begin trial with a $100,000 credit in its pocket. After R.L. McCoy, the bar's only remedy is to carry the burden of assigning fault to the drunk driver. Thus, now if a jury returns a verdict for $100,000 and assigns seventy percent of the fault to the drunk driver, the bar will still have to pay the remaining $25,000 difference, without resort to credit, with the net result being that plaintiff will receive a total of $125,000, even though a jury determined that plaintiff's damages to be $100,000.