

## ALERTS

### Indiana Supreme Court Gives Trial Courts Discretion In Choosing Whether To Award Damages Under The Crime Victims Relief Act Based On The “Heinousness” Of Defendants’ Actions

October 17, 2014 | [Atlanta](#) | [Chicago](#) | [Columbus](#) | [Delaware](#) | [Elkhart](#) | [Fort Wayne](#) | [Grand Rapids](#) | [Indianapolis](#) | [Los Angeles](#) | [Minneapolis](#) | [South Bend](#)

On Oct. 15, the Indiana Supreme Court held that even if a plaintiff proves a predicate crime under the Crime Victims Relief Act (CVRA), Ind. Code 34-24-3-1, a trial court has the discretion to not award the treble damages and attorneys’ fees allowed by that statute when (1) the complaint includes common law intentional tort claims; and (2) the trial court’s “inchoate” sense of culpability determines the conduct is not “egregious enough to warrant punishment.” This ruling will likely change the manner in which cases involving intentional torts are pleaded. Pleading only a CVRA claim may be high risk/high reward; combining a CVRA claim with common law intentional torts may allow the court to ignore the CVRA claim.

In *Wysocki v. Johnson*, the plaintiffs presented evidence establishing the predicate criminal act of deception (misrepresentations on a home sale disclosure form) and thus met the requirements for recovering treble damages and attorneys’ fees under the CVRA. The plaintiffs also pleaded and presented evidence establishing common law fraud. Despite the fact that the plaintiffs satisfied the elements of a claim under the CVRA, the trial court awarded the plaintiffs only compensatory damages and denied the plaintiffs attorney’s fees and exemplary damages under the CVRA.

On appeal, the Court of Appeals determined the plaintiffs were not entitled to an award under the CVRA because:

1. they had only established common-law fraud, which differs from the statutory elements of criminal fraud;
2. criminal fraud required proof beyond a reasonable doubt; and
3. the defendants were not charged with a crime or convicted, and in the absence of a conviction, the CVRA does not apply.

The Supreme Court granted transfer. In accord with prior Indiana law, it found the Court of Appeals erred by requiring that the criminal claim predicate to a CVRA claim be proven beyond a reasonable doubt. But, the Supreme Court affirmed the trial court’s refusal to award treble damages and attorneys’ fees under the CVRA. The court held, “just as the ‘heinousness’ of the defendant’s conduct may properly factor into the factfinder’s decision whether to award exemplary damages under the CVRA, the court’s inchoate sense of the defendants’ criminal culpability is a permissible factor in assessing whether the CVRA predicate offense has been proven.” Thus, where the pleadings give the trial court the choice between an intentional tort and quasi-criminal CVRA, that trial

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court has discretion to choose tort liability and reject CVRA liability.

After this ruling, plaintiffs now must make a choice when drafting their pleadings. They can choose to plead only the quasi-criminal CVRA offense, accepting the burden of proving criminality in exchange for the certainty of recovering attorney's fees if they succeed. Or, the plaintiffs can plead both a CRVA claim and common law intentional tort claims, recognizing the possibility that the trial court now has discretion to not award treble damages and attorneys' fees under the CVRA, depending on its "inchoate" sense of culpability.

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