

## EVIDENCE OF ACQUITTAL NOT ADMISSIBLE IN A CIVIL ACTION

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Today, the Indiana Court of Appeals issued an opinion dealing with what appears to be an issue of first impression in Indiana - can a party to a civil case present evidence that he was acquitted in a criminal case involving the same facts? In *Sigo v. Prudential Prop. & Cas. Ins. Co.*, \_\_\_ N.E.2d \_\_\_ (Ind. Ct. App. 2011), Cause No. 25A03-1008-PL-406, the Court held that such evidence was inadmissible under Rule 403.

In this case, Sigo brought an action against Prudential to recover for the fire loss of his home. Concurrent with that civil litigation, he was charged and tried for arson for the same fire that was the cause of his claim. A jury acquitted him of those charges. Prudential filed a motion in limine seeking to exclude any evidence of Sigo's acquittal and the trial court granted that motion. The trial court then certified the issue for an interlocutory appeal.

On appeal, the Court noted that no Indiana reported case had addressed the extent to which evidence of acquittal was admissible in a civil case. However, it noted that cases from other jurisdictions supported the trial court's decision. Sigo argued that evidence of his criminal trial would show bias, prejudice, or adverse interest of Prudential's witnesses. However, he failed to explain how those witnesses' prior testimony creates a substantial bias or adverse interest.

While Sigo's ability to make these uses of his criminal trial and acquittal is not central to proving his theory of the civil case, the potential prejudice to Prudential from the jury's improper use of his acquittal goes directly to the ultimate issue Prudential must prove to make its case – that Sigo intentionally set the fire. Thus, if evidence of Sigo's criminal trial and acquittal were permitted, it would create a substantial risk to Prudential of unfair prejudice in the form of the jury deciding the case based on improper inferences.

The Court's decision is not surprising. As Prudential argued, an acquittal is not a positive finding of innocence; it is a negative judgment that the State's burden of proof beyond a reasonable doubt was not met. Because the standard of proof in a civil case is much lower, a powerful case can be made that evidence of an acquittal is simply not relevant to the question of civil liability. What is interesting about this case, however, is that the Court did not base its judgment on this

rationale, leaving room for litigants to make the fact of acquittal admissible upon a showing that the evidence is sufficiently probative.

**Lessons:**

1. Evidence of a prior acquittal can be probative, but its proponent needs to demonstrate that the probative value of this evidence is not substantially outweighed by its prejudicial impact.