

Court Ordered Restitution: Are You Missing Something?

What happens after a court of law orders an ex-employee or a shoplifter to pay restitution to a retailer? Are retailers recovering as many dollars from this avenue of recovery as they could? In this article we will look at the purpose of restitution, how the process works, and why many retailers have made the decision to outsource the management of this aspect of their civil recovery.

What Is Restitution?

Restitution is the act of paying back for a loss that has occurred. The main purpose of restitution is to make the company who has suffered a loss whole again. In a civil setting, this payment could be made by a theft offender to the retailer at any point after being caught in the act of theft or after making an admission for the act. It is often pursuant to a written promissory note or demand letter generated from the retailer or our law firm, Palmer, Reifler & Associates, P.A. (PRA).

How Does the Process Work?

If the theft offender is prosecuted criminally, the criminal court will often award a judgment of restitution against the perpetrator for the benefit of the victim retailer. Under various

state laws, this could include more than the value of the merchandise or asset loss in theft cases. For example, it could extend to investigative time and expenses used to process and document the incident. However, most criminal courts tend to award restitution amounts that would equate to only the loss sustained and that can be proven "beyond a reasonable doubt."

For example, suppose an alleged shoplifter is caught on video stealing a certain amount of merchandise and/or cash and, while being interviewed, admits to that act as well as additional thefts on other occasions. In this case, the court would most likely only award restitution for the dollar amount of the theft that was caught on video tape.

In other situations, the amount ordered is arrived at as a result of a negotiated compromise between the various parties. It is important to note that just because the criminal court does not order the additional admitted losses to be repaid in the criminal matter does not mean the retailer can not attempt to recover from the theft offender civilly. In our experience, PRA has had success in pursuing these additional restitution claims for retailer clients.

While the tendency is to believe that the restitution process through the courts is automatic, there are distinct benefits



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Natt Reifler, a law partner, has been working as an attorney, collecting civil demands and restitution claims and counseling retailers within this field since 1997.

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to staying closely involved. For example, as a part of our restitution program, our law firm communicates regularly with the courts and provides them with victim statements for the entire admitted loss. In certain instances, this has increased the court ordered restitution amount. At times, we are asked to follow up and get involved with the negotiation process when courts or the prosecutor looks for input in ordering restitution for retailers.

Restitution payments are made either directly from the perpetrator or indirectly through a court clerk. The process of identifying and accounting for these incoming payments is another source of missing dollars. Some ex-employees and courts send payments directly to the retailer. These payments may be received by departments other than loss prevention and the dollars recovered may not get properly allocated.

The restitution process can be lengthy. If the restitution payment is sent directly to the store where the incident occurred, the store personnel may receive it not realizing it is a payment from a theft incident long past. Sometimes, the recipient does not know the correct protocol regarding these

types of payments and may allocate the money to the wrong account. Often, theft offenders simply stop paying and it goes unnoticed by the retailer, and no follow-up occurs.

Who Should Manage the Process?

Retailers are becoming increasingly aware of the missing dollars in their restitution programs and are doing something about it. Many retailers have made the decision to have this process managed for them.

PRA, for example, has a restitution program in place for our retailer clients. In addition to providing valuable procedural legal assistance, our restitution team consists of recovery specialists who help track payments made by either the ex-employee or through the criminal court process, and works with the courts on behalf of the retailer to ensure payments are continuously made.

Since its inception, PRA restitution programs have helped retailers boost recoveries by working closely with the retailer and the courts, providing a central repository, and ensuring that restitution payments are properly received and accounted for, exactly as the retailer had intended.

Applying the Law to Civil Recovery Collections

By Jeff Welch

The law offices of Palmer, Reifler & Associates, P.A. have been representing retailers for over seventeen years in the civil recovery field. Our approach follows the law, but also utilizes the best practices and technology of the collection industry.

Over 100,000 letters are generated every month directly from our home office. To impress urgency on the opposing parties and to comply with various state laws, thirty-one "of counsel" attorneys are utilized in the most populace states. The letters will have their return address, but initial contact is centralized to our main office.

Our staff of twenty-seven collectors is attorney supervised. Many are bi-lingual. This group utilizes automated outbound calling including predictive dialing technology. The office is staffed weekday from seven in the morning until eleven in the evening to accommodate the four time zones. There are also shifts kept on Saturday and Sunday to respond to all potential collection opportunities.

Cases can be accepted through a variety of electronic methods including most of the case management providers. We have a data-entry team that can accept mailed or faxed cases in a very timely manner. Most cases received in our offices during the week go out before the end of the next business day. Every address is verified before it is mailed. Every bad address with sufficient information is skip-traced. Unless a client wishes for less contact, opposing parties continue to receive letters or calls until some level of resolution is reached.

Palmer, Reifler & Associates, P.A. has been very deliberate in our quest to develop the best practices in civil recovery law. The fruits of our labor have been to the benefit of our clients, who are a testimonial to our superior levels of recovery. Our business model has been the correct and successful choice and will likely be emulated by the future providers of outside civil recovery.

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