



# Iowa General Assembly

## 2004 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### RESTITUTION - CREDIT FOR ARBITRATION PAYMENT

Filed by the Iowa Supreme Court  
January 22, 2004

State v. Paxton, No. 165/02-1589

<http://www.judicial.state.ia.us/supreme/opinions/20040122/02-1589.asp?printable=True>

**Factual and Procedural Background.** In May of 1995, Robert and Marilyn Clauss loaned Charles Paxton, a stockbroker for Everen Securities, Inc., \$300,000 for the purchase of convertible notes in Diacrin, Inc. Paxton was to receive 15% of the profits from any stock purchased from the convertible notes. Paxton subsequently used \$270,000 to purchase the convertible notes and used the remaining \$30,000 for personal expenses. He converted the notes into 108,000 shares of Diacrin stock, which he later sold for \$1,147,500, for a net profit of \$877,500. Paxton paid the Clausses only \$134,000 instead of the original loan amount of \$300,000 plus 15 percent of the profits (\$131,625). Paxton used the balance of the sale proceeds for his own personal use.

Paxton was charged with first degree theft for his actions. Upon conviction, the district court sentenced Paxton to an indeterminate two-year prison term and placed him on probation. The court also ordered Paxton to pay \$165,000 to the Clausses in victim restitution (the loan amount minus the sum Paxton had already repaid the Clausses).

Paxton subsequently requested a modification of the restitution order, claiming credits for monies received from Paxton's bankruptcy estate as well as monies received from an arbitration award paid by Everen Securities to the Clausses (\$40,000). Upon hearing, the district court found that the Clausses were entitled to restitution for the profits on the stock sale (\$131,625) and that the restitution amount should be reduced by the amount the Clausses received from Paxton's bankruptcy estate. The court refused to credit Paxton for the arbitration payment made by Everen Securities. Paxton appealed the restitution order. The court of appeals affirmed the district court's restitution order. Paxton's application for further review of this issue was granted by the Supreme Court.

**Issue on Appeal.** Whether a defendant's restitution obligation can be reduced by payments from third parties vicariously liable for the defendant's conduct.

**Analysis.** Iowa Code section 910.2, the restitution statute, states that in all criminal cases in which a defendant is found guilty or pleads guilty, the sentencing court shall order restitution. Iowa Code section 910.1(4) defines restitution to include the payment of pecuniary damages to a victim. Pecuniary damages are further defined in Iowa Code section 910.1(3) as "all damages to the extent not paid by an insurer, which a victim could recover against an offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium."

The Court's analysis focused on the interplay between the restitution statute and the amount potentially recoverable by the Clausses in a civil suit, and involved statutory interpretation of the legislature's definition of pecuniary damages under the restitution statute. The Court opined that the "pro tanto credit rule" applied in civil cases, which allows a dollar-for-dollar credit for payments made in settlement from other tortfeasors and is designed to prevent the unjust enrichment of a double recovery by the injured person, and is applicable in this case because Everen Securities was vicariously liable for Paxton's conduct. The Court further noted that Everen Securities and Paxton would be treated as a single party under Iowa's comparative fault statute and both would be jointly liable in any civil action brought by the Clausses against Paxton.

The Court noted that this interpretation of the restitution statute was consistent with the legislative goal of rehabilitation and a defendant's "ultimate accountability for the damages caused by... [the defendant's] criminal conduct."

**Conclusion.** The Court found that the arbitration payment made by Everen Securities was based on its vicarious liability for Paxton's actions, and the reduction for the arbitration payment should be applied in calculating the Clausses' pecuniary damages under the restitution statute. The Court vacated the decision of the Court of Appeals and remanded the case to the district court with instructions for entry of a proper order.

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