

Storage Fees For Impounded Vehicles

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Has this ever happened to your Special Investigation Unit? Two years ago your carrier paid an auto-theft claim and took salvage title. One year ago the state police raided your insured's residence, looking for a meth lab. They found the "stolen" vehicle on your insured's property, and arranged for a private garage to store the vehicle as evidence while the criminal charges are pending against the insured.

Last week, your insured took a plea and the criminal case closed. You contact the garage owner to recover the vehicle. The garage owner advises that you are welcome to have your vehicle back after paying \$7,000 in storage fees. The garage owner does business on a regular basis with the state police and the prosecutor's office, so he is not going to try to collect the storage fees from them, even though they were the ones who incurred the fees. Can he collect them from the title holder of the vehicle?

A garage may collect storage fees in Indiana under either a possessory lien under Ind. Code 9-22-5-15 or a non-possessory lien under Ind. Code 32-33-10-5 (formerly Ind. Code 32-8-31-1). Both statutes require the vehicle owner's consent to the storage. However, consent can be implied when the owner does not make a demand for the return of his vehicle but instead agrees to the charges and allows the continued storage. *Jones v. Harner*, 684 N.E.2d 560 (Ind.App. 1997).

The Indiana Court of Appeals recently considered again the issue of the owner's implied consent to impounded storage in *Northwest Towing & Recovery v. State of Indiana*, 919 N.E.2d 601 (Ind.App. 2010). Steven Brinkley caused a fatal traffic accident while driving a vehicle owned by his mother, Frances Brinkley. The Muncie Police Department stored the vehicle as evidence with Northwest Towing while the criminal charges were pending against Steven.

Pending his criminal trial, Steven requested the preservation of the vehicle at Northwest Towing for defense inspection. When Steven was convicted and sentenced on August 27, 2007 in relation to the traffic fatality, he did not request release of the vehicle from storage while he appealed his conviction.

On September 15, 2008, after the conclusion of Steven's appeal, for the first time, Frances requested release of the vehicle from storage. On October 28, 2008, the court ordered Northwest Towing to release the vehicle to Frances, but later ordered Frances to pay \$1500 (the statutory maximum under Ind. Code 32-33-10-5) to Northwest in storage fees.

The Court of Appeals affirmed Frances' obligation to pay storage fees from the date of Steven's conviction. The Court reasoned that Frances knew where her vehicle was being stored, and after the trial she "acquiesced in and permitted the continued storage of the vehicle" from the date of sentencing to the date the trial court ordered Northwest to return the vehicle to her, which was a total of fourteen months at \$20/day, up to the \$1500 statutory maximum.

The lesson from *Northwest Towing & Recovery* is that if the authorities impound as evidence any vehicle your company owns, it is imperative that, as promptly as possible after you learn of the recovery and storage of the vehicle, you notify the authorities (police agency and prosecutor, as appropriate) in writing, with copy to the storage facility, that you object to their continued withholding of the vehicle and demand the return of the vehicle immediately. Make sure you can prove delivery of the written notice, for example by certified mail with return receipt. Once the proceedings reach the point at which the authorities no longer need the vehicle, your counsel should promptly petition the court for release of the vehicle, making the argument that because the owner has not acquiesced in the storage, it should not be liable for any of the storage costs.

Finally, what if you are involved in the original litigation and you need to preserve the vehicle in storage? In *Northwest Towing & Recovery*, the Court of Appeals commented in dictum that Northwest Towing could also pursue Steven for the storage fees because he had requested the preservation of the vehicle. If you need to continue secure storage of a vehicle or other evidence, you should attempt to work out a fee arrangement with the opposing party and the storage facility, or at least try to reach an agreement to put the evidence in the least expensive storage arrangement you can find. Then, as soon as you no longer need to preserve the evidence, provide written notice to the opposing party and the storage facility that the evidence can be released to its owner.