

# **INTERCOMPANY ARBITRATION**

## **I. DIFFERENT PROGRAMS**

- A. AUTOMOBILE - Rules and regulations revised as of May 2, 2005**
- B. MEDPAY**
- C. PROPERTY Rules and regulations revised as of May 2, 2005**
- D. SPECIAL ARBITRATION - Rules and regulations revised as of November 1, 2004; workers compensation claims; contribution/indemnity claims**
- E. WWW.ARBFILE.ORG - You can download forms, rules and regulations, order workbooks, etc.**

## **II. WHEN TO CONSIDER ARBITRATION**

- A. ARBITRATION BETWEEN MEMBER CARRIERS - Is supposed to be, per Arbitration Forums Rules, mandatory**
- B. PROPOSE ARBITRATION TO NON-MEMBER CARRIER OR CONSIDER IT IF YOU ARE NOT A MEMBER - If a non-member agrees to arbitrate, Arbitration Forums can hear the case; otherwise the non-member cannot be compelled**
- C. THE DAMAGES LIMITATION - \$100,000 for auto and property cases, \$250,000 for special arbitration; if intercompany arbitration is the way to go, consider reducing the amount of your claim to come within the jurisdictional amount**

## **III. CONTENTIONS**

- A. BE SPECIFIC - BE THOROUGH - Don't risk not having evidence/facts considered because they were not included in your contentions. Think of it as a motion for summary judgment.**
- B. APPLICANT HAS THE BURDEN OR PROOF - Make sure you can make your prima facie case, i.e., Negligence - duty, breach of duty, causation and damages highlight those each element in your contentions**
- C. CITE STATUTES - Arbiters are still required to follow the law in making their decision - if there are applicable statutes, you have a negligence per se scenario, a product liability case - provide those as a part of your evidence**

**D. CITE INDUSTRY STANDARDS - for property damage cases, cite any applicable building codes, plumbing codes, mechanical codes, electrical codes - these will help you establish a duty and breach of that duty**

**E. CITE JURY INSTRUCTIONS - These are instructions given to a jury that are also law, i.e., instructions on burden of proof, comparative negligence, damages, etc.**

**F. CITE CASE LAW - these also set out the law; cite the specific language of a holding that supports your case; be prepared to distinguish the cases you cite from any that respondent might cite**

**G. DAMAGES - make sure you provide support for your damages, don't just say it; submit the evidence necessary to show the damages alleged were incurred/paid; ACV vs. RCV**

#### **IV. EVIDENCE**

**A. PROVIDE COPIES OF STATUTES, CODES, JURY INSTRUCTIONS AND CASE LAW - Don't just tell them respondent violated §303(b) of the Uniform Plumbing Code, show them what the code says and how it was violated**

**B. PHYSICAL EVIDENCE - While you don't want to send the failed pipe that froze and burst, put in your contentions that you or your expert will bring it or an exemplar if that helps you show what happened**

**C. DOCUMENTARY EVIDENCE - Photographs, property/contents appraisals, repair estimates/billing, affidavits - if you don't have them, see if you or your expert can get them. Photographs can help support both your liability and damages case**

**D. YOUR EXPERT - provide his/her report and CV/qualifications; state why he is qualified to give an opinion and more qualified than respondent's expert**

#### **V. HEARINGS**

**A. PERSONAL APPEARANCE - Do it if possible; Gives you an opportunity to emphasize your strong arguments and answer any questions**

**B. BRING YOUR EXPERT - If needed, he/she can show or explain their finding, opinions and bases therefore;**

**C. INFORMAL - Time for hearings is limited; no formal presentation of witnesses and exhibits**

## **VI. OTHER TIPS**

**A. 1 PANELIST OR 3 PANELISTS - Are you really getting 3 panelists if they are all with the same carrier; dynamics of 3 panelists - not unlike a jury; New Rule 3-3 - as of Nov. 1, 2004, when you can have 1 or 3 panelists (rules revised as of Nov. 1, 2004)**

**B. CONDITION PRECEDENT - Set out in the preamble of Arbitration Forums' Rules and Regulation for all its programs; make a point of non-compliance argue it in your contentions if you are an applicant and assert it as an affirmative defense if you are respondent**

**C. TRAINING - Arbitration Forums provides training to personnel; Arbitration Forums workbooks are great resources with explanations behind the rules and case studies**

## **RESTITUTION IN COLORADO**

### **I. What is Restitution?**

- a. C.R.S. § 18-1.3-601, et seq

### **II. Who is entitled to Restitution?**

- a. Who is a "Victim"?
- b. felony vs. misdemeanor

### **III. How to Submit Request for Restitution?**

- a. varies from jurisdiction to jurisdiction
- b. Restitution office of the District Attorneys' Office

### **IV. How to collect on an Order of Restitution**

- a. Order of Restitution = final civil judgment, C.R.S. § 18-1.3-603(4).
- b. Commonly encountered problems

**\*40302 C.R.S.A. § 18-1.3-601**

**WEST'S COLORADO  
REVISED STATUTES  
ANNOTATED  
TITLE 18. CRIMINAL CODE  
ARTICLE 1.3. SENTENCING  
IN CRIMINAL CASES  
PART 6. RESTITUTION**

*Current through the end of the 2004  
Second Regular Session of the 64th  
General Assembly*

**§ 18-1.3-601. Legislative declaration**

(1) The general assembly finds and declares that:

(a) Crime victims endure undue suffering and hardship resulting from physical injury, emotional and psychological injury, or loss of property;

(b) Persons found guilty of causing such suffering and hardship should be under a moral and legal obligation to make full restitution to those harmed by their misconduct;

(c) The payment of restitution by criminal offenders to their victims is a mechanism for the rehabilitation of offenders;

(d) Restitution is recognized as a deterrent to future criminality;

(e) An effective criminal justice system requires timely restitution to victims of crime and to members of the immediate families of such victims in order to lessen the financial burdens inflicted upon them, to compensate them for their suffering and hardship, and to preserve the individual dignity of victims;

(f) Former procedures for restitution assessment, collection, and distribution have proven to be inadequate and inconsistent from case to case;

(g) The purposes of this part 6 are to facilitate:

(I) The establishment of programs and procedures to provide for and collect full restitution for victims of crime in the most expeditious manner; and

(II) The effective and timely assessment, collection, and distribution of restitution requires the cooperation and collaboration of all criminal justice agencies and departments.

(2) It is the intent of the general assembly that restitution be ordered, collected, and disbursed to the victims of crime and their immediate families. Such restitution will aid the offender in reintegration as a productive member of society. This part 6 shall be liberally construed to accomplish all such purposes.

**\*40303**

**CREDIT(S)**

*Relocated and amended by Laws 2002, Ch. 318, § 2, eff. Oct. 1, 2002.*

<General Materials (GM) -  
References, Annotations, or Tables>

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY  
NOTES**

**2004 Main Volume**

Laws 2002, Ch. 318, § 2, amended and relocated this article, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11,

11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18.

Laws 2002, Ch. 318, § 2, made conforming amendments, changes in style, and other changes to make the text gender-neutral.

Derivation:

Laws 2000, Ch. 232, § 1.  
C.R.S.A., § 16-18.5-101.

## REFERENCES

### LIBRARY REFERENCES

#### 2004 Main Volume

Sentencing and Punishment (&-2100-2103, 2106. Westlaw Topic No. 350H.C.J.S. Criminal Law §§ 1771 to 1786.

### ANNOTATIONS

### NOTES OF DECISIONS

#### Construction and application 2 Validity 1

##### 1. Validity

Application of Restitution Act to all delinquent orders existing on or after effective date of Act did not violate double jeopardy as applied to defendant whose sentence was imposed prior to effective date of Act, insofar as there was no increase in amount of court costs, victim compensation costs; and victim assistance surcharges defendant was ordered to pay as part of his original sentence for sexual assault. *People v. Lowe*, App. 2002, 60 P.3d 753, certiorari denied. Double Jeopardy 114.1

Application of Restitution Act to all delinquent orders existing on or after effective date of Act did not violate constitutional guarantee against ex post facto laws as applied to defendant whose sentence was imposed prior to effective date

of Act, since provision did not increase face amount of court costs, victim compensation costs or victim assistance surcharges imposed as part of defendant's original sentence for sexual assault. *People v. Lowe*, App. 2002, 60 P.3d 753, certiorari denied. Constitutional Law X203; sentencing And (key) Punishment 2110

#### \*40304 2. Construction and application

The statutory requirement that restitution be determined within 90 days after an order of conviction unless good cause is shown is not a jurisdictional limit that would prevent a court from reconsidering a restitution motion that is initially denied as untimely. *People v. Harman*, App. 2004, 2004 WL 439490, certiorari denied 2004 WL 1813922. Sentencing And (key) Punishment 2193

Application of Restitution Act to all delinquencies of orders existing on or after Act's effective date was not limited to orders in noncriminal cases, in light of stated purpose of Act to compensate crime victims. *People v. Lowe*, App. 2002, 60 P.3d 753, certiorari denied. Costs (key) 285

Restitution Act applied to allow Department of Corrections to withhold money from defendant's inmate account to pay court costs, victim compensation costs, and victim assistance surcharge imposed as part of defendant's sentence for sexual assault, even though sentence was imposed prior to effective date of Act, under provision stating that Act applied to all delinquencies of orders existing on or after effective date. *People v. Lowe*, App. 2002, 60 P.3d 753, certiorari denied. Costs (key) 285

Current through the end of the 2004 Second Regular Session of the 64th General Assembly

**\*40302 C.R.S.A. § 18-1.3-601**

**WEST'S COLORADO  
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*Current through the end of the 2004  
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**§ 18-1.3-602. Definitions**

As used in this part 6, unless the context otherwise requires:

(1) "Collections investigator" means a person employed by the judicial department whose primary responsibility is to administer, enforce, and collect on court orders or judgments entered with respect to fines, fees, restitution, or any other accounts receivable of the court, judicial district, or judicial department.

(2) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court for a felony, misdemeanor, petty offense, or traffic misdemeanor offense, or adjudication for an offense that would constitute a criminal offense if committed by an adult. "Conviction" also includes having received a deferred judgment and sentence or deferred adjudication; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence or deferred adjudication.

(2.5) Repealed by Laws 2004, Ch. 255, § 27, eff. May 21, 2004.

(3)(a) "Restitution" means any pecuniary loss suffered by a victim, and includes but is not limited to all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses, rewards paid by victims, money advanced by law enforcement agencies, adjustment expenses, and other losses or injuries proximately caused by an offender's conduct and that can be reasonably calculated and recompensed in money. "Restitution" does not include damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings, or punitive damages.

(b) "Restitution" may also include extraordinary direct public and all private investigative costs.

(4)(a) "Victim" means any person aggrieved by the conduct of an offender and includes but is not limited to the following:

**\*40306**

(I) Any person against whom any felony, misdemeanor, petty, or traffic misdemeanor offense has been perpetrated or attempted;

(II) Any person harmed by an offender's criminal conduct in the course of a scheme, conspiracy, or pattern of criminal activity;

(III) Any person who has suffered losses because of a contractual relationship with, including but not limited to an insurer, or because of liability under section 14-6-110, C.R.S., for a person described in subparagraph (1) or (11) of this paragraph a);

(IV) Any victim compensation board that has paid a victim compensation claim;

(V) If any person described in subparagraph (I) or (II) of this paragraph (a) is deceased or incapacitated, the person's spouse, parent, legal guardian, natural or adopted child, child living with the victim, sibling, grandparent, significant other, as defined in section 24-4.1.302(4), C.R.S., or other lawful representative.

(b) "Victim" shall not include a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan as defined under the law of this state or of the United States.

(c) Any "victim" under the age of eighteen is considered incapacitated, unless that person is legally emancipated or the court orders otherwise.

(d) It is the intent of the general assembly that this definition of the term "victim" shall apply to this part 6 and shall not be applied to any other provision of the laws of the state of Colorado that refers to the term "victim".

### CREDIT(S)

*Relocated and amended by Laws 2002, Ch. 318, § 2, eff. Oct. 1, 2002. Amended by Laws 2003, Ch. 151, § 2, eff. Sept. 1, 2003; Laws 2004, Ch. 255, § 27, eff. May 21, 2004.*

<General Materials (GM) -  
References, Annotations, or Tables>

### HISTORICAL NOTES

### HISTORICAL AND STATUTORY

### NOTES

#### 2003 Electronic Pocket Part Update

Laws 2004, Ch. 255, § 27 repealed subsec. (2.5), which read:

"(2.5) 'PIP' means personal injury protection, as defined in section 10-4-703(11), C.R.S."

\*40307 Laws 2004, Ch. 255, § 39(1), provides:

"SECTION 39. Applicability.

"(1) This act shall apply to property and casualty claims filed on or after the effective date of this act."

### 2004 Main Volume

Laws 2002, Ch. 318, § 2, amended and relocated this article, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18.

Laws 2002, Ch. 318, § 2, made conforming amendments, changes in style, and other changes to make the text gender-neutral.

Laws 2003, Ch. 151, § 2 in subsec. (2) inserted "for a felony, misdemeanor, petty offense, or traffic misdemeanor offense," added subsec. (2.5) and in par. (3)(a) added the last sentence.

Section 4 of Laws 2003, Ch. 151 provides:

"Effective date--applicability. This act shall take effect September 1, 2003, and shall apply to offenses committed on or after said date."

Derivation:

Laws 2000, Ch. 232, § 1. C.R.S.A., § 16-18.5-102.



**REFERENCES****LIBRARY REFERENCES****2004 Main Volume**

Sentencing and Punishment (key)  
2120-2125, 2141-2159. Westlaw Topic No.  
350H.  
C.J.S. Criminal Law §§ 1771 to 1786.

**RESEARCH REFERENCES****2004 Main Volume**

ALR Library

92 ALR 5th 35, Persons or Entities  
Entitled to Restitution as "Victim" Under  
State Criminal Restitution Statute.

15 ALR 5th 391, Measure and  
Elements of Restitution to Which Victim is  
Entitled Under State Criminal Statute.

**ANNOTATIONS****NOTES OF DECISIONS**

**Record 2**  
**Replacement cost 3**  
**Value 4**  
**Victim 1**

**1. Victim**

Towing company that towed stolen  
vehicle and stored it at impound lot for 92  
days was a "victim" for purposes of  
restitution because it sustained a pecuniary  
loss as a result of defendant's criminal  
conduct. People v. Clay, App. 2003, 74  
P.3d 473, certiorari denied 2003 WL  
21958347. Sentencing And Punishment  
02121

**\*40308** Department of Corrections  
(DOC) was authorized to withhold money  
from defendant's inmate account to pay

\$230 in court costs, victim compensation  
costs, and victim assistance surcharges  
imposed as part of sentence for sexual  
assault, even though trial court identified  
these costs separately from restitution on  
defendant's mittimus, under provision in  
Restitution Act defining "victim" as any  
victim compensation board that paid a  
victim compensation claim, and crediting  
scheme indicated that payments would also  
be applied to any other fines, fees or  
surcharges. People v. Lowe, App. 2002, 60  
P.3d 753, certiorari denied. Costs (key) 320

**2. Record**

Restitution amount of a reasonable  
replacement value is appropriate when the  
victim demonstrates that he or she must or  
will replace an item that is not readily  
replaceable at a fair market value cost.  
People v. Stafford, App. 2004, 93 P.3d 572,  
certiorari denied 2004 WL 1433549.  
Sentencing And Punishment X2172

Record did not support order of  
restitution, which required defendant to  
compensate victim for cost of installing  
burglar alarm system in victim's home, in  
prosecution for second degree burglary; only  
loss victim experienced was his diminished  
feeling of security, such loss was not  
specifically mentioned in restitution statute,  
and, although court concluded that burglar  
alarm system was tantamount to need for  
counseling, court made no findings to  
support this conclusion. People v. Trujillo,  
App. 2003, 75 P.3d 1133, rehearing denied,  
certiorari denied 2003 WL 21999959.  
Sentencing And Punishment (key) 2154;  
Sentencing And Punishment (key) 02195

**3. Replacement cost**

Replacement cost of \$28,878 for  
unrecovered computers, rather than fair  
market value, was proper value to measure

restitution for defendant who stole 19 computers; victim was obliged to replace five of the computers under lease arrangement which dictated replacement cost, and evidence necessarily implied that victim would replace other computers in market where comparable used computers were not readily available. *People v. Stafford*, App. 2004, 93 P.3d 572, certiorari denied 2004 WL 1433549. Sentencing And Punishment (key) 02172

#### **4. Value**

The value of property for purposes of restitution is determined by the victim's actual, pecuniary loss or the amount of money that will fulfill the statutory purpose of simply making the victim whole to the extent practicable. *People v. Stafford*, App. 2004, 93 P.3d 572, certiorari denied 2004 WL 1433549. Sentencing And Punishment (key) 2167; Sentencing And Punishment (key) 2172

Current through the end of the 2004  
Second Regular Session of the 64th  
General Assembly

**\*40309 C.R.S.A. § 18-1.3-603**

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*Current through the end of the 2004  
 Second Regular Session of the 64th  
 General Assembly*

(1) Every order of conviction of a felony, misdemeanor, petty, or traffic misdemeanor offense, except any order of conviction for a state traffic misdemeanor offense issued by a municipal or county court in which the prosecuting attorney is acting as a special deputy district attorney pursuant to an agreement with the district attorney's office, shall include consideration of restitution. Each such order shall include one or more of the following:

(a) An order of a specific amount of restitution be paid by the defendant;

(b) An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within the ninety days immediately following the order of conviction, unless good cause is shown for extending the time period by which the restitution amount shall be determined;

(c) An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of any victim of the crime; or

(d) Contain a specific finding that no victim of the crime suffered a

pecuniary loss and therefore no order for the payment of restitution is being entered.

(2) The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims. Further, the prosecuting attorney shall present this information to the court prior to the order of conviction or within ninety days, if it is not available prior to the order of conviction. The court may extend this date if it finds that there are extenuating circumstances affecting the prosecuting attorney's ability to determine restitution.

**\*40310**

(3) Any order for restitution may be:

(a) Increased if additional victims or additional losses not known to the judge or the prosecutor at the time the order of restitution was entered are later discovered and the final amount of restitution due has not been set by the court; or

(b) Decreased:

(I) With the consent of the prosecuting attorney and the victim or victims to whom the restitution is owed; or

(II) If the defendant has otherwise compensated the victim or victims for the pecuniary losses suffered.

(4) (a) Any order for restitution entered pursuant to this section shall be a final civil judgment in favor of the state and any victim. Notwithstanding any other civil or criminal statute or rule, any

such judgment shall remain in force until the restitution is paid in full.

(b) Any order for restitution made pursuant to this section shall also be deemed to order that:

(I) The defendant owes interest from the date of the entry of the order at the rate of twelve percent per annum; and

(II) The defendant owes all reasonable and necessary attorney fees and costs incurred in collecting such order due to the defendant's certificate of self-insurance as required by the nonpayment.

(c) The entry of an order for restitution under this section creates a lien by operation of law against the defendant's personal property and any interest that the defendant may have in any personal property.

(d) Any order of restitution imposed shall be considered a debt for "willful and malicious" injury for purposes of exceptions to discharge in bankruptcy as provided in 11 U.S.C. sec. 523.

(5) If more than one defendant owes restitution to the same victim for the same pecuniary loss, the orders for restitution shall be joint and several obligations of the defendants.

(6) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in any federal or state civil proceeding.

**\*40311**

(7) When a person's means of identification or financial information was used without that person's authorization in connection with a conviction for any crime

in violation of part 2, 3, or 4 of article 4, part 1, 2, 3, or 7 of article 5, or article 5.5 of title 18, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from any violation of such laws.

(8) (a) Notwithstanding the provisions of subsection (1) of this section, for a non-felony conviction under title 42, C.R.S., the court shall order restitution concerning only the portion of the victim's pecuniary loss for which the victim cannot be compensated under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund.

(b) The court, in determining the restitution amount, shall consider whether the defendant or the vehicle driven by the defendant at the time of the offense was covered by:

(I) A complying policy of insurance or

(II) Self-insurance including but not limited to insurance coverage pursuant to the provisions of part 15 of article 30 of title 24, C.R.S.; or

(III) Any other insurance or indemnity agreement that would indemnify the defendant for any damages sustained by the victim.

(c) (I) Except as otherwise provided in this paragraph (c), a court may not award restitution to a victim concerning a pecuniary loss for which the victim has received or is entitled to receive benefits or reimbursement under a policy of insurance or other indemnity agreement.

(II) (A) A court may award a victim restitution for a deductible amount under his or her policy of insurance.

(B) Deleted by Laws 2004, Ch. 255, § 28, eff. May 21, 2004.

(d) (I) Deleted by Laws 2004, Ch. 255, § 28, eff. May 21, 2004.

(II) Nothing in this paragraph (d) shall prohibit a nonowner driver or passenger in the vehicle from being awarded restitution if the driver or passenger was not covered by his or her own medical payments coverage policy.

(e) (I) Notwithstanding any provision of law to the contrary, an insurance company, risk management fund, or public entity shall not be obligated to defend a defendant in a hearing concerning restitution. No court shall interpret an indemnity or insurance contract so as to obligate an insurance company, risk management fund, or public entity to defend a defendant at a restitution hearing absent a specific agreement.

**\*40312**

(II) Notwithstanding any provision of law, indemnity contract, or insurance contract to the contrary, an insurance company, risk management fund, or public entity shall not be obligated to pay or otherwise satisfy a civil judgment entered pursuant to this part 6, or to indemnify a defendant for an amount awarded in a restitution order.

(f) Nothing in this article shall be construed to limit or abrogate the rights and immunities set forth in the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(g) The provisions of this subsection (8) shall not preclude the court, pursuant to article 4.1 of title 24, C.R.S., from ordering restitution to reimburse an

expenditure made by a victim compensation fund.

**CREDIT(S)**

*Relocated and amended by Laws 2002, Ch. 318, § 2, eff. Oct. 1, 2002. Amended by Laws 2003, Ch. 151, § 1, eff. Sept. 1, 2003; Laws 2004, Ch. 255, § 28, eff. May 21, 2004.*

<General Materials (GM) -  
References, Annotations, or Tables>

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY**

**NOTES**

**2003 Electronic Pocket Part Update**

Laws 2004, Ch. 255, § 28, in subpar. (8)(c)(I), deleted "including but not limited to PIP benefits" following "agreement"; deleted sub-subpar. (8)(c)(II)(B) and subpar. (8)(d)(1); and in subpar. (8)(d)(II), substituted "nonowner" for "non-owner" and substituted "medical payments coverage" for "complying PIP". Former sub-subpar. (8)(c)(II)(13) and subpar. (8)(d)(1) read:

"(B) A victim, as defined in section 18-1.3-602(4)(a)(IM), may be awarded restitution for PIP benefits or equivalent benefits paid to another only if the court finds that the defendant on the date of the offense did not meet state compulsory insurance requirements."

"(d)(1) If, at the time of an offense for which a victim seeks restitution, the victim owned and operated a vehicle involved in the offense, or knowingly permitted the operation of a vehicle involved in the offense that was not covered by a complying insurance policy, the court's restitution order shall not include damages that would have been covered under a

complying policy containing PIP or PIP-equivalent benefits except upon the specific request of the prosecuting attorney and with the approval of the court."

"(d)(1) If, at the time of an offense for which a victim seeks restitution, the victim owned and operated a vehicle involved in the offense, or knowingly permitted the operation of a vehicle involved in the offense that was not covered by a complying insurance policy, the court's restitution order shall not include damages that would have been covered under a complying policy containing PIP or PIP-equivalent benefits except upon the specific request of the prosecuting attorney and with the approval of the, court."

\***40313** Laws 2004, Ch. 255, § 39(1), provides:

"SECTION 39. Applicability.

"(1) This act shall apply to property and casualty claims filed on or after the effective date of this act."

#### **2004 Main Volume**

Laws 2002, Ch. 318, § 2, amended and relocated this article, effective October 1, 2002, from provisions formerly located in Articles 7, 8, 9, 11, 11.5, 13, and 18.5 of Title 16, Articles 26, 27, 27.8, and 27.9 of Title 17, and Articles 1 and 4 of Title 18.

Laws 2003, Ch. 151, § 1 added subsec. (8). Section 4 of Laws 2003, Ch. 151 provides:

"Effective date--applicability. This act shall take effect September 1, 2003, and shall apply to offenses committed on or after said date."

Derivation:  
Laws 2000, Ch. 232, § 1.

Laws 2002, Ch. 143, § 4.  
C.R.S.A., § 16-18.5-103.

## **REFERENCES**

### **CROSS REFERENCES**

Consumer report information block, see § 12-14.3-106.5. Restitution, lottery winnings offset, procedures, see § 16-18.5-106.5.  
State income tax refund offsets, restitution, see § 16-18.5-106.8.

### **LIBRARY REFERENCES**

#### **2004 Main Volume**

Sentencing and Punishment (key) 2120-2179.  
Westlaw Topic No. 350H.C.J.S.  
Criminal Law §§ 1771 to 1786.

### **RESEARCH REFERENCES**

#### **2004 Main Volume**

ALR Library

15 ALR 5th 391, Measure and Elements of Restitution to Which Victim is Entitled Under State Criminal Statute.

### **ANNOTATIONS**

#### **NOTES OF DECISIONS**

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#### **1. Construction with federal laws**

Colorado legislature could not preempt federal bankruptcy law and declare

all restitutionary obligations to be nondischargeable, as being in nature of debts for debtor's "willful and malicious injury." In re McNabb, 2003, 287 B.R. 820. Bankruptcy (key) 3359

## **2. Construction and application**

Statutory restitution in sentencing a defendant may be denied only after a finding that the victim has not suffered a pecuniary loss. People v. Stovall, App. 2003, 75 P.3d 1165. Sentencing And Punishment (key) 2148

## **3. Notice**

Before sentence of restitution is imposed, defendant is entitled to adequate notice of claimed amount of damages and amount of restitution which court is asked to impose. People v. Valdez, App. 1996, 928 P.2d 1387. Sentencing And Punishment (8--2181

## **4. Opportunity to dispute damages**

Because restitution is a part of the criminal sentence, once a legal sentence is imposed and a defendant has begun serving it, an increase in the amount of restitution ordered violates the constitutional prohibition against double jeopardy; however, at the sentencing hearing, the trial court may, without violating double jeopardy principles, defer to a later hearing the determination of the amount of restitution to be imposed. U.S.C.A. Const. Amend. 5; West's C.R.S.A Const. Art. People v. Harman, App. 2004, 2004 WL 439490, certiorari denied 2004 WL 1813922. Double Jeopardy (key) 112.1

Trial court's imposition of restitution after reconsidering its ruling denying motion

for restitution filed one day late as untimely did not subject defendant to double jeopardy; the court had jurisdiction to reconsider the motion for restitution, and restitution was not set until defendant had an opportunity to contest it at a hearing. U.S.C.A. Const. Amend. 5; West's C.R.S.A. Const. Art. People v. Harman, App. 2004, 2004 WL 439490, certiorari denied 2004 WL 1813922. Double Jeopardy (key) 112.1

**\*40315** At sentencing hearing at which restitution is imposed, defendant must be given opportunity to controvert victim's claimed monetary damages. People v. Valdez, App. 1996, 928 P.2d 1387. Sentencing And Punishment (key) 02191

Defendant was entitled to opportunity to controvert victim's claimed monetary damages before amount of restitution was determined, and absent such opportunity trial court's order of restitution could not stand. People v. Walters, App. 1990, 796 P.2d 13, certiorari denied. Sentencing And Punishment (key) 02192

## **5. Setoff against civil damages**

While restitution is not intended as substitute for civil damage action, funds recovered by victim in civil proceeding prior to or following award of restitution must be offset. People v. Hoisington, App. 1995, 902 P.2d 887, rehearing denied, certiorari denied. Sentencing And Punishment (key) 2175

## **6. Notes**

Requiring defendant, ordered to pay restitution to victim, to execute note and second deed of trust on residence did not exceed trial court's authority to assure compliance with lawful order. People v. Neptune, App. 1993, 866 P.2d 176. Sentencing And Punishment (key) 02207

## **7. Ex post facto**

Imposition of a 12 percent interest rate on defendant's restitution judgment was not an impermissible ex post facto application of the law, even though defendant committed her offenses prior to the enactment of the statute which provided for the 12 percent interest rate; statute expressly provided that the 12 percent interest rate was to be calculated for every order of conviction, the enabling legislation for the statute provided that the statute applied to "orders for convictions entered on or after the applicable effective date of the act," and defendant's order of conviction was entered after the effective date of the statute. *People v. Garcia*, App. 2002, 55 P.3d 243, certiorari denied. Constitutional Law 0203; Sentencing And Punishment (key) 02110

## **8. Interest**

Rule of lenity did not entitle defendant to an eight percent interest rate on her restitution judgment, as opposed to a 12 percent interest rate; statutes governing interest rates were

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