

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
)	
v.)	Cr. ID. No. 1401000955
)	
)	
CAROL R. MORRIS,)	
)	
Defendant.)	

Submitted: June 11, 2015
Decided: August 11, 2015
(Corrected September 11, 2015)

**COMMISSIONER’S REPORT AND RECOMMENDATION
ON STATE’S REQUEST FOR RESTITUTION**

Jenna Milecki, Esquire, Delaware Department of Justice, 820 N. French St. 7th Floor,
Department of Justice, Wilmington, Delaware, 19801, Attorney for the State.

Patrick J. Collins, Esquire, 8 East 13th Street, Wilmington, Delaware 19801,
Attorney for Defendant.

MANNING, Commissioner

This 11th day of August, 2015, upon consideration of defendant Carol R. Morris' objection to the State's request for an award of restitution, the Court finds the following:

FACTS AND PROCEDURAL HISTORY

Morris pled guilty to one count of Theft greater than \$1,500 and was sentenced on September 5th 2014. Morris had worked for Appoquinimink Education Association ("Association") as Treasurer. Over a four year period Morris used her position as Treasurer to steal \$45,999.59 in Association funds. Once the theft was discovered, Morris was fired and the Association filed a claim with their insurance carrier, National Union Fire Insurance Company. Ultimately, National Union Fire Insurance Company covered the full amount of the loss suffered by the Association. At the time of sentencing, the Judge ordered an award of restitution but did not determine an amount or who it should be paid to, giving the State 60 days to submit a written memorandum to the Court with that information.

On November 26, 2014, the State submitted a letter to the Court requesting restitution in the amount of \$21,999.59, with the expectation that an additional \$24,000.00, held by defense counsel in escrow, would also be paid to the victim.¹ On December 10, 2014, the Court issued a Modified Sentence Order, ordering that Morris pay \$21,999.59 to National Union Fire Insurance Company as restitution. On March 2, 2015, defense counsel for Morris wrote to the Court advising that he had never received the State's November 26, 2014, letter. Defense counsel objected to the award of restitution to National Union Fire Insurance Company and requested that the Court vacate the Modified Order. Defense counsel indicated that he became aware of the State's

¹ At the June 10, 2015, hearing on Defendant's motion, the State candidly conceded that it missed the 60 day deadline and had not requested an extension of the deadline.

request when the prosecutor e-mailed him asking about payment of the \$24,000.00 that was being held in escrow. The State submitted a letter to the Court on April 29, 2015, objecting to defense counsel's request that the restitution order be vacated. The matter was then referred to a Commissioner for resolution and a hearing before the parties was held on June 10, 2015.²

ANALYSIS

In general, the awarding of restitution in a criminal case is governed by Title 11 *Del. C.* § 4106. More germane to this case, however, is the Delaware Supreme Court's decision in *Moore v. State*.³ In *Moore*, the Delaware Supreme Court expressed its disfavor of the awarding of restitution to third-party insurance carriers. Specifically, in the last two sentences of footnote 14, the Supreme Court stated:

To allow insurance companies with a civil remedy to use the criminal justice system to recover would circumvent otherwise applicable statutes of limitations or at the very least make Delaware taxpayers and the State act as their collection agency. We do not believe the General Assembly contemplates the criminal justice system acting as a collection agency for insurance carriers.⁴

While the facts of the *Moore* case are distinguishable, the applicable legal principle concerning restitution is certainly applicable. Thus, absent some unique circumstance, or agreement between the parties otherwise, the Court will not award restitution to an insurance carrier that has paid a claim to cover a victim's loss. Insurance carriers are in the *business* of providing loss coverage and have civil remedies, including the right of subrogation, to recover against tortfeasors.

² A transcript was requested by the Court but not completed until August 10, 2015.

³ 15 A.3d 1240 (Del. 2011).

⁴ *Id.* at 1245.

It is undisputed that the full amount of restitution requested by the State in this case was to reimburse the victim's insurance carrier, National Union Fire Insurance Company. At the hearing on June 10, 2015, the State candidly admitted that the terms of the plea agreement were not predicated upon any specific restitution payment by Morris.⁵ The plea agreement only indicated that the restitution was "TBD" (to be determined) within 60 days. Additionally, the State also conceded, after conferring with a representative from the insurance carrier in the gallery, that the insurance carrier could pursue civil remedies against Morris to recover the money paid. The criminal court system does not have the time, money or resources to act as a collection agency for a for profit enterprise that paid a claim to cover a loss.

CONCLUSION

For all of the foregoing reasons, Defendant's Motion should be GRANTED and the Court's award of restitution to National Union Fire Insurance Company should be VACATED.⁶

IT IS SO RECOMMENDED.

/s/ Bradley V. Manning
BRADLEY V. MANNING,
Commissioner

oc: Prothonotary
cc: Defendant

⁵ June 10, 2015 Tr. at 16 - 18.

⁶ In light of the Court's ruling, the issue of the State's tardy Restitution Memo does not need to be addressed.