SUMMARY
January 16, 2025

2025COA1

No. 23CA0914, *People v. Lockett* — Criminal Law — Sentencing — Restitution — Non-felony Conviction Under Title 42 — Loss Uncompensated by Policy of Insurance, Self-insurance, Indemnity Agreement, or Risk Management Fund

A division of the court of appeals holds that section 18-1.3-603(8)(a), C.R.S. 2024, permits the trial court to award restitution to a victim's insurance company for a non-felony conviction under title 42, but only if the prosecution proves that the insurer cannot be compensated for its loss under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund.

The special concurrence expresses doubt that the legislature intended for insurance companies to recover any restitution in non-felony convictions under title 42.

COLORADO COURT OF APPEALS **2025COA1**

Court of Appeals No. 23CA0914
City and County of Denver District Court No. 22CR1000
Honorable Karen L. Brody, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Lukas S. Lockett,

Defendant-Appellant.

ORDER AFFIRMED IN PART
AND VACATED IN PART

Division V
Opinion by JUDGE LUM
Harris, J., concurs
Brown, J., specially concurs

Announced January 16, 2025

Philip J. Weiser, Attorney General, Brock J. Swanson, Senior Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Megan A. Ring, Colorado State Public Defender, Christopher Smallwood, Deputy State Public Defender, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, Lukas S. Lockett, appeals the trial court's restitution order entered in connection with his conviction for misdemeanor driving under the influence.

¶ 2 As a matter of first impression, we conclude that section 18-1.3-603(8)(a), C.R.S. 2024, allows the court to award restitution to a victim's insurance company in non-felony traffic cases, but only if the prosecution proves that the insurer cannot be compensated for its loss under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund. Because the prosecution in this case failed to meet its burden, we vacate the award of restitution to the insurance company. But the prosecution established that Lockett proximately caused pecuniary loss to two vehicle owners, and, therefore, we affirm the award of restitution to those victims.

I. Background

¶ 3 After Lockett was involved in a car accident, the prosecution charged him with, among other offenses, driving under the influence (DUI) and careless driving. Lockett pleaded guilty to misdemeanor DUI and one other charge. In exchange, the prosecution dismissed the remaining charges, including the

careless driving counts. The plea agreement reflected a stipulation to "Open Sentencing to the Court" but did not specifically mention restitution.

¶ 4 The car accident resulted in damage to two vehicles — a food truck owned by Mohammad Alissa and a car owned by Laura Ferrufino and insured by Allstate Insurance Company (Allstate). The prosecution sought restitution for Allstate in the amount it paid to Ferrufino for the value of her car and for Ferrufino and Alissa in the amounts of the deductibles they paid to their respective insurance companies.

¶ 5 At the restitution hearing, the prosecution presented testimony from Alissa and Ferrufino (jointly, the vehicle owners). They described the collision, and Ferrufino identified Lockett as the driver of the car that hit her car, pushing it into the food truck. The vehicle owners said that they paid deductibles of $1,000 and $500, respectively, and Ferrufino testified that Allstate paid her $24,693.97 for the value of her car. No one from Allstate testified. Lockett didn't present any evidence but argued against any award of restitution to Allstate or based on dismissed charges.

¶ 6 The trial court issued a written order containing the following findings of fact:

- on the day of the incident, Lockett drove his car under the influence of alcohol and/or drugs;
- he crossed a lane line and hit the driver's side of Ferrufino's car;
- the collision pushed Ferrufino's car into the food truck; and
- both Ferrufino's car and the food truck were damaged solely because of the accident caused by Lockett's impaired driving.

¶ 7 The court concluded that Lockett's conduct proximately caused the victims' losses and ordered him to pay restitution as requested by the prosecution.

II. Restitution to Allstate

¶ 8 Lockett asserts that the trial court erred by awarding restitution to Allstate because, under section 18-1.3-603(8)(a), insurance companies are precluded from recovering for any loss suffered in connection with a non-felony traffic offense. We disagree that this provision excludes insurance companies entirely,

but we conclude that the prosecution failed to establish that Allstate was entitled to an award of restitution.

A. Standard of Review

¶ 9 We review questions of statutory interpretation de novo. *People v. Weeks*, 2021 CO 75, ¶ 24. In construing a statute, we aim to effectuate the General Assembly's intent. *Id.* at ¶ 25. To discern its intent, we look first to the plain language of the statute, "giving its words and phrases their plain and ordinary meaning." *Id.* (quoting *McCulley v. People*, 2020 CO 40, ¶ 10). In addition, we must "construe a statute 'as a whole,' with an eye toward giving consistent, harmonious, and sensible effect to all its parts" while avoiding constructions that "render any words or phrases superfluous or lead to illogical or absurd results." *Id.* at ¶ 26 (quoting *McCoy v. People*, 2019 CO 44, ¶ 38).

¶ 10 When the statutory language is clear and unambiguous, "we give effect to its plain and ordinary meaning." *Id.* at ¶ 27. A statute is ambiguous if its language is susceptible of more than one reasonable interpretation. *Id.* In that instance, we may resort to other tools of statutory interpretation to address the ambiguity and

"decide which reasonable interpretation to accept based on the legislature's intent." *Id.*

B. The Restitution Statute

¶ 11 Sections 18-1.3-601 through -603, C.R.S. 2024 (collectively, the restitution statute), govern the assessment of restitution in criminal cases. All judgments of conviction must include an order regarding restitution. § 18-1.3-603(1).

¶ 12 For purposes of the restitution statute, "victim" means "any person aggrieved by the conduct of an offender." § 18-1.3-602(4)(a), C.R.S. 2024. A "victim" also includes any person who has suffered losses because of a contractual relationship with a person aggrieved by the offender's conduct, such as an insurance company. § 18-1.3-602(4)(a)(III); *People v. Martinez*, 2022 COA 28, ¶ 40 (*Martinez I*) ("[A]n insurance company that indemnifies a policyholder because the policyholder was the victim of a felony, misdemeanor, or other specified offense can be a 'victim' for purposes of the restitution statutes."), *aff'd on other grounds*, 2024 CO 6M (*Martinez II*).

¶ 13 Section 18-1.3-603 contains two provisions relating to recovery for losses that may be covered or partially covered by insurance.

¶ 14 Subsection (8)(a) provides that

> [n]otwithstanding 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.

§ 18-1.3-603(8)(a). Title 42 governs vehicles and traffic. Lockett was convicted of a non-felony DUI under title 42, specifically, section 42-4-1301(1)(a), C.R.S. 2024.

¶ 15 Meanwhile, subsection (8)(c) provides as follows:

> (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.

§ 18-1.3-603(8)(c).

C. Analysis

1. Statutory Interpretation

¶ 16 Lockett doesn't dispute that insurance companies generally qualify as victims for purposes of the restitution statute. However,

he contends that subsection (8)(a) precludes an insurance company from collecting restitution in cases involving non-felony convictions under title 42. We disagree.

¶ 17 Lockett's interpretation is inconsistent with subsection (8)(a)'s plain language. According to the provision, when the defendant is convicted of a title 42 non-felony offense, the victim may recover for losses that aren't covered by an insurance policy, an indemnity agreement, self-insurance, or a risk management fund. And under section 18-1.3-602(4)(a)(III), an insurance company is a victim if it suffered a pecuniary loss because it indemnified a policyholder who was a direct victim of the crime. *Martinez I*, ¶ 40. Thus, as long as the insurance company's loss can't be compensated under an insurance policy, an indemnity agreement, self-insurance, or a risk management fund, subsection (8)(a) does not preclude an insurance company from obtaining restitution in these types of cases.

¶ 18 We aren't persuaded otherwise by Lockett's contention that this interpretation renders subsection (8)(c) redundant. First, subsection (8)(a) pertains only to title 42 non-felony offenses, whereas subsection (8)(c) pertains to all types of offenses. And while both subsections preclude a victim's double recovery,

subsection (8)(c) only prohibits double recovery under circumstances where the victim's loss can be compensated "under a policy of insurance or other indemnity agreement," while subsection (8)(a) extends the prohibition to circumstances where the victim's loss can be compensated under "self-insurance" or a "risk management fund." § 18-1.3-603(8)(a), (c). Thus, despite some overlap, the subsections aren't redundant.

¶ 19 And we can't adopt Lockett's construction in any event because it would require us to add language to subsection (8)(a) restricting the definition of "victim." *Turbyne v. People*, 151 P.3d 563, 567 (Colo. 2007) ("We do not add words to the statute . . . ."). The current version of section 18-1.3-602(4)(a)(III) — defining "victim" to include insurance companies — was enacted in 2000. *See* Ch. 232, sec. 1, § 16-18.5-102(4)(a)(III), 2000 Colo. Sess. Laws 1031-32; *see also* Ch. 318, sec. 2, § 18-1.3-602, 2002 Colo. Sess. Laws 1420 (relocating the restitution statutes from title 16 to title 18); *Martinez I*, ¶¶ 42-49 (describing the legislative history of the restitution statute). We must therefore assume that the legislature was aware of that definition when it enacted subsection (8)(a) three years later. Ch. 151, sec. 1, § 18-1.3-603(8)(a), 2003 Sess. Laws

1048-49; *Jenkins v. Pan. Canal Ry. Co.*, 208 P.3d 238, 242 (Colo. 2009) ("[W]e assume the General Assembly is aware of its enactments . . . ."). While the legislature could have chosen to limit which types of victims are entitled to recover under subsection (8)(a), it didn't. We won't read such a limitation into the statute where none exists. *See Dubois v. Abrahamson*, 214 P.3d 586, 588 (Colo. App. 2009).

¶ 20 The statutory history of subsections (8)(a) and (8)(c) further supports our interpretation. *See Colo. Oil & Gas Conservation Comm'n v. Martinez*, 2019 CO 3, ¶ 30 n.2 (noting that statutory history can be considered without first deeming a statute ambiguous). Subsections (8)(a) and (8)(c) were enacted at the same time. Ch. 151, sec. 1, § 18-1.3-603(8)(a), (c), 2003 Sess. Laws 1048-49. When originally enacted, subsection (8)(c)(I) contained nearly identical language to the current version, except that it specifically precluded recovery for pecuniary losses for which a victim was entitled to receive personal injury protection (PIP) benefits. § 18-1.3-603(8)(c)(I), C.R.S. 2003. Significantly, subsection (8)(c)(II) also originally provided that "[a] victim, *as defined in section 18-1.3-602(4)(a)(III)*, 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." § 18-1.3-603(8)(c)(II)(B), C.R.S. 2003 (emphasis added). Though this restriction has since been removed, Ch. 255, sec. 28, § 18-1.3-603(8)(c), 2004 Colo. Sess. Laws 904, its original inclusion demonstrates that the legislature clearly contemplated that insurance companies — victims "as defined in section 18-1.3-602(4)(a)(III)" — may be entitled to restitution for their pecuniary losses, and it knew how to limit that entitlement where it saw fit. But beyond the general prohibition against "double-dipping" when the loss is otherwise compensable "under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund," § 18-1.3-603(8)(a), C.R.S. 2024, the legislature didn't further limit insurance company recovery under subsection (8)(a).

¶ 21 For these reasons, we conclude that subsection (8)(a) does not preclude insurance companies from obtaining restitution in non-felony title 42 cases, provided that all other statutory requirements are met.

2. Burden of Proof and Application

¶ 22 At the restitution hearing, the prosecution presented evidence that Allstate paid Ferrufino $24,693.97 for the loss of her vehicle. However, no evidence addressed whether Allstate could be partially or wholly compensated for its loss "under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund." § 18-1.3-603(8)(a). Whether Allstate can recover depends on which party bears the burden to prove whether the loss was compensable.

¶ 23 In general, the prosecution "bears the burden of proving the amount of restitution owed by a preponderance of the evidence." *People v. Gregory*, 2019 COA 184, ¶ 25. However, when invoking certain statutory provisions entitling the defendant to a restitution decrease or setoff under certain circumstances, the defendant bears the burden of proving the amount of the setoff or decrease. *People v. Lassek*, 122 P.3d 1029, 1034 (Colo. App. 2005), *overruled on other grounds by Sullivan v. People*, 2020 CO 58; *see* § 18-1.3-603(3)(b)(II), (6).

¶ 24 The People contend that Allstate's entitlement to compensation for its losses is similar to a setoff, and, therefore, the defendant bears the burden to prove it. We disagree. The two statutory

provisions analyzed in *Lassek* involve a "decrease" to a restitution order "[i]f the defendant has otherwise compensated the victim . . . for the pecuniary losses suffered," § 18-1.3-603(3)(b)(II), and a "set[]off against" the amount of restitution if the victim has recovered "compensatory damages . . . in any . . . civil proceeding," § 18-1.3-603(6). Under those provisions, the court first determines the initial amount of restitution owed — the prosecution's burden — and then the defendant has the burden to prove any applicable deduction. § 18-1.3-603(3)(b)(II) ("Any order for restitution may be . . . [d]ecreased . . . [i]f the defendant has otherwise compensated the victim . . . ."); *Lassek*, 122 P.3d at 1034-35 (holding that, when a civil claim precedes the restitution hearing, the court first determines the "total amount of the victim's pecuniary damages subject to restitution" and then subtracts "any proceeds attributable" to the civil claim damages (quoting *People v. Acosta*, 860 P.2d 1376, 1382 (Colo. App. 1993))).

¶ 25 In contrast, the plain language of subsection (8)(a) does not refer to any "decrease" to or "setoff" against the amount of restitution owed. Instead, subsection (8)(a) makes clear that, as an initial matter, the court may only order restitution for the portion of

the pecuniary loss that is not otherwise compensable under one of the arrangements set forth in that subsection. Thus, proving that the loss (or a portion of it) is not compensable under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund is a statutory prerequisite to computing the "amount of restitution owed" and is therefore the prosecution's burden.[1] *Gregory*, ¶ 25.

¶ 26 Nonetheless, the People contend that, once they showed that Allstate paid Ferrufino, they established that it was "more likely than not" that Allstate suffered the claimed loss. Thus, they argue, it would be inappropriate for the trial court to speculate that any portion of Allstate's payment to Ferrufino was compensable. But accepting that argument would effectively establish a presumption that an insurance company's payout to an insured is *not* compensable by one of the arrangements set forth in subsection (8)(a), which would shift the burden to the defendant. In the absence of any statutory language supporting such a presumption, we decline to impose one.

---

[1] It isn't clear to us, and we needn't decide, whether an insurance company can satisfy this prerequisite.

¶ 27 Because there wasn't any evidence demonstrating that Allstate's payment to Ferrufino "cannot be compensated under a policy of insurance, self-insurance, an indemnity agreement, or a risk management fund," § 18-1.3-603(8)(a), the trial court erred by ordering Lockett to pay restitution to Allstate.

III. Restitution to the Vehicle Owners

¶ 28 Lockett argues that the trial court erred by ordering him to pay restitution to the vehicle owners because their losses weren't caused by conduct essential to his DUI conviction but instead stemmed from the dismissed careless driving charges. We disagree.

A. Standard of Review and Applicable Law

¶ 29 Whether a trial court had the authority to impose restitution presents a legal question that we review de novo. *People v. Roddy*, 2021 CO 74, ¶ 23.

¶ 30 Restitution means "any pecuniary loss suffered by a victim . . . [that was] proximately caused by an offender's conduct and that can be reasonably calculated and recompensed in money." § 18-1.3-602(3)(a). Proximate cause in the context of restitution is "any 'cause which in natural and probable sequence produced the claimed injury.'" *Martinez II*, ¶ 13 (quoting *People v. Stewart*, 55

P.3d 107, 116 (Colo. 2002)). The prosecution must prove by a preponderance of the evidence that the defendant's conduct was the proximate cause of the victim's losses. *People v. Stone*, 2020 COA 24, ¶ 6.

¶ 31 As a general matter, a trial court may not award restitution for damages arising from criminal conduct that underlies a dismissed charge. *People v. Moss*, 2022 COA 92, ¶ 13. Thus, absent a plea agreement to the contrary, the court may not order a defendant to pay restitution for any loss beyond that directly and necessarily caused by "the conduct essential to the charges to which [the defendant] pleads guilty." *Roddy*, ¶ 32.

B. Analysis

¶ 32 Lockett first contends that the act of driving a car isn't essential to his DUI conviction because the crime of DUI can be committed by sitting in a stationary vehicle while under the influence. *See People v. Valdez*, 2014 COA 125, ¶ 12 (noting that the term "drive" doesn't require "either actual physical movement of a vehicle or that the vehicle travel any particular distance"). Lockett also argues there is no proof that he committed DUI by physically driving his vehicle because (1) the plea agreement doesn't specify

exactly how Lockett committed the crime, and (2) Lockett waived the factual basis at the providency hearing. We disagree.

¶ 33 We reject Lockett's contention that the act of physically driving a vehicle isn't "essential" to the charge of DUI simply because DUI can be committed without the vehicle's movement. Whether driving a vehicle is essential to Lockett's DUI charge depends on how he committed DUI in this particular case.

¶ 34 Moreover, Lockett's argument wrongly presumes that the court could only determine the underlying facts of his offense from information presented in the plea agreement or at the providency hearing. Lockett ignores the trial court's ability to find, after the restitution hearing, that he committed the crime in a particular way that proximately caused the victims' losses. Indeed, that is precisely what the court did: it found, with ample record support, that Lockett drove his vehicle while under the influence and, as a result, crashed it into Ferrufino's car, knocking her car into the food truck and damaging both vehicles.

¶ 35 Finally, we reject Lockett's argument that the court erred because the vehicle owners' losses were caused by conduct underlying the dismissed careless driving charges. Lockett

analogizes the facts of this case to those in *Roddy* and in *People v. Sosa*, 2019 COA 182. But his reliance is misplaced. In those cases, the impermissible restitution was based on losses proximately caused by conduct related *exclusively* to a dismissed charge or an uncharged offense. *See Roddy*, ¶¶ 30-33; *Sosa*, ¶ 37. In contrast, Lockett's DUI charge and the dismissed careless driving charges all originated from the same conduct: Lockett driving his car while under the influence.

¶ 36 For all these reasons, we conclude that the court didn't err by ordering Lockett to pay restitution to the vehicle owners because their losses were proximately caused by conduct essential to Lockett's DUI charge.

IV. Disposition

¶ 37 That part of the order awarding restitution to the vehicle owners is affirmed; the portion of the order awarding restitution to Allstate is vacated.

JUDGE HARRIS concurs.

JUDGE BROWN specially concurs.

JUDGE BROWN, specially concurring.

¶ 38 I find the majority's interpretation of section 18-1.3-603(8)(a), C.R.S. 2024, entirely reasonable, but I am nonetheless left with doubt that the legislature intended to allow insurance companies to recover any restitution in non-felony title 42 traffic cases. Thus, I write separately for two reasons.

¶ 39 First, certain features of the statute suggest an alternative reasonable interpretation. *See People v. Weeks*, 2021 CO 75, ¶ 27 (if the statutory language is susceptible of more than one reasonable interpretation, it is ambiguous). Specifically, for title 42 misdemeanor traffic convictions, the legislature authorized an order of 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." § 18-1.3-603(8)(a) (emphasis added). In contrast, for all other convictions, the legislature prohibited an award of 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." § 18-1.3-603(8)(c) (emphasis added).

¶ 40 In my view, the legislature's use of "the victim" in subsection (8)(a) may indicate its intent to limit recovery under subsection (8)(a) to direct victims while its use of "a victim" in subsection (8)(c) may indicate its intent to allow any victim to recover restitution under subsection (8)(c). *See Coffey v. Colo. Sch. of Mines*, 870 P.2d 608, 610 (Colo. App. 1993) (use of the definite article "the" particularizes the subject it precedes (citing *City of Ouray v. Olin*, 761 P.2d 784, 787 (Colo. 1988))); *Brooks v. Zabka*, 450 P.2d 653, 655 (Colo. 1969) (The definite article "the" "is a word of limitation as opposed to the indefinite or generalizing force of 'a' or 'an.'"); *see also Robinson v. Colo. State Lottery Div.*, 179 P.3d 998, 1010 (Colo. 2008) ("In interpreting statutory language, we presume that the legislature did not use language idly. Rather, the use of different terms signals an intent on the part of the General Assembly to afford those terms different meanings.") (citation omitted).

¶ 41 Interpreted this way, even if an insurance company generally may be "a victim" for restitution purposes, *see* § 18-1.3-602(4)(a)(III), C.R.S. 2024; *People v. Martinez*, 2022 COA 28, ¶ 40, *aff'd on other grounds*, 2024 CO 6M, it (1) cannot be "the victim" entitled to recover restitution in non-felony title 42 cases and

(2) cannot recover restitution for what it paid or is obligated to pay "the victim" because that amount necessarily would be a loss for which "the victim" can "be compensated under a policy of insurance." § 18-1.3-603(8)(a).

¶ 42 This interpretation also aligns with the legislative history of section 18-1.3-603(8). *See Weeks*, ¶ 27 (If the statutory language is ambiguous, "we may resort to extrinsic aids of construction to address the ambiguity and decide which reasonable interpretation to accept based on the legislature's intent."). H.B. 03-1212 was introduced in committee as a "compromise effort" resulting from a year-long negotiation among stakeholders in response to an indefinitely postponed bill from the previous session that would have eliminated restitution altogether in non-felony traffic offense cases. Hearings on H.B. 1212 before the S. Judiciary Comm., 64th Gen. Assemb., 1st Reg. Sess. (Mar. 5, 2003) (statement of Ann Terry, Colorado District Attorneys Council). It was designed to address "unintended consequences" resulting from the interplay between restitution orders in non-felony traffic cases and civil automobile accident litigation, including that restitution orders were being enforced against insurance companies that had no

obligation or opportunity to participate in the criminal case, civil damages such as pain and suffering were being awarded as restitution, and victims were "double-dipping" by recovering the same losses through restitution and in civil litigation. Hearings on H.B. 1212 before the H. Judiciary Comm., 64th Gen. Assemb., 1st Reg. Sess. (Feb. 11, 2003) (statements of bill sponsor Rep. Jennifer Veiga and Joe Babcock, insurance company representative). One of the drafters testified that the bill reflected a preference that losses caused by misdemeanor traffic offenses be taken out of the restitution context and litigated in civil court. Hearings on H.B. 1212 before the S. Judiciary Comm., 64th Gen. Assemb., 1st Reg. Sess. (Mar. 5, 2003) (statement of drafter Jeffrey Rueble, Colorado Defense Lawyers Association).[1] Precluding restitution to insurance

[1] The committee members considering the bill reviewed a chart designed to demonstrate how the law would operate in different scenarios. The only scenario reflected in the chart under which an insurance company could recover restitution for property damage was if it paid the victim's losses *and* the defendant was uninsured — making it less likely the insurance company would be able to recover in civil litigation. Hearings on H.B. 1212 before the H. Judiciary Comm., 64th Gen. Assemb., 1st Reg. Sess. (Feb. 11, 2003) (statements of stakeholder Joe Babcock). Although I do not see this limitation in the plain language of the statute, it reinforces my view that the legislature intended that insurance companies litigate their liability in civil court.

companies in misdemeanor traffic cases is consistent with the desire to have losses caused by such offenses determined in civil court.[2]

¶ 43 Second, even if an insurance company can be "the victim" under section 18-1.3-603(8)(a), it is unclear to me whether it can satisfy the statutory prerequisite to recover restitution under that subsection. If the insurance company is "self-insured," or if the amount the insurance company is obligated to pay the direct victim will be reimbursed by its own insurance policy (i.e., reinsurance) or through an indemnity agreement or risk management fund, it cannot be compensated. § 18-1.3-603(8)(a). To be sure, I do not delve into the intricacies of insurance company risk management or purport to answer this question. Instead, I flag the issue because while the majority holds that subsection (8)(a) does not preclude insurance companies from obtaining restitution in non-felony title 42 cases as a matter of law, I question whether it does as a matter of fact.

---

[2] This interpretation does not offend the majority's view of the statutory history as discussed in paragraph 20 because I agree that an insurance company can be "a victim" under section 18-1.3-603(8)(c), C.R.S. 2024.

¶ 44 All that said, if the legislature had intended to preclude insurance companies from recovering restitution at all in non-felony title 42 traffic offense cases, it could have made that intent much clearer. And in the end, I agree with the majority that Allstate Insurance Company is not entitled to recover restitution in this case.