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## ***Insured Guilty Of Felony Not Required To Make Restitution To Insurer For Repair Costs Incurred By Insurer For Hit-And-Run Accident***

On July 20, 2010, the Fourth Appellate District filed its opinion in *The People v. Scott Busser*, 186 Cal. App. 4<sup>th</sup> 1503, holding that GEICO was not entitled to reimbursement from its insured for repair costs from an accident after which the insured pleaded guilty to hit-and-run and presenting a materially false statement to GEICO.

### ***Factual and Procedural Background***

The insured, Busser, collided with Michael Fuhr's car on the freeway and sped away. Fuhr got Busser's license number and filed a hit and run collision report with the CHP. Fuhr's insurer, 21<sup>st</sup> Century, paid \$4,500 to repair his car. Busser told GEICO his car was damaged while parked in front of his house. The insurer paid \$2,450.60 to fix Busser's car. The CHP contacted GEICO and Busser regarding the hit-and-run and GEICO referred the matter to its special investigations unit. Busser eventually admitted to GEICO that the damage to his car resulted from the collision with Fuhr. GEICO determined that Busser was at fault and reimbursed 21<sup>st</sup> Century for the amount it paid to repair Fuhr's car.

Busser pleaded guilty to a misdemeanor, hit-and-run, and a felony, presenting false or misleading information to his insurer. The trial court held a restitution hearing after the sentencing. GEICO requested reimbursement for the repair costs to both cars and the costs of investigating Busser's claim. The court awarded GEICO \$7,003.81 for the repair costs and \$1,459.80 for its investigation into Busser's fraud. Busser conceded the court properly imposed restitution for GEICO's investigative costs, but appealed the order as it related to repair costs.

### ***Judicial Holding and Analysis***

The appellate court agreed with Busser that GEICO was not entitled to restitution for the costs of repairing the damaged cars because his fraud did not cause GEICO to pay the repair costs. The California Constitution provides that persons who suffer losses as a result of criminal activity have the right to restitution from the persons convicted of crimes causing the losses they suffer. An insurance company may be entitled to restitution when it is the direct victim of a crime. A company that suffers the consequences of a crime only by reimbursing the crime-related losses of its insured is not a direct victim. Thus, GEICO is not entitled to restitution for the costs incurred to repair the cars. The insurer must be the "real and immediate object of the defendant's offenses" to warrant restitution. In this case, Fuhr was the "real and immediate" object of Busser's crime. GEICO was contractually obligated to assume the risk of the repair costs in exchange for



premiums paid by Busser. Therefore, Busser’s fraud was not the underlying event that resulted in GEICO paying the repair costs. Any money GEICO would have been obligated to pay had Busser not misrepresented the facts of the accident was not attributable to his misrepresentation and thus not a loss arising out of his criminal offense.

***Comments and Implications***

The court cited two cases in which restitution was properly ordered. In these cases, the defendants directed their fraud at the insurance companies and induced them to make payments they otherwise would not have made absent the defendants’ frauds. In one case, the court required restitution to a workers’ compensation carrier after the insurer honored the defendant’s false workers’ compensation claim and made payments to the defendant and her medical providers. In another case, the defendant was required to pay restitution to defrauded insurers because he deceived the insurers into settling false claims by fraudulently causing car accidents and submitting false claims to the motorists’ insurance companies.