

Ten Steps to Help Insurers Preserve Their Right to Restitution Under Federal Victims' Rights Statutes

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The [Crime Victims' Rights Act](#) and the [Mandatory Victims' Restitution Act](#) provide a wide range of circumstances under which those convicted of federal economic crimes must pay court ordered restitution to their victims. Unlike civil state court remedies, these statutes offer tools for the federal government to pursue financial recovery on behalf of victims. Moreover, when the victim is entitled to receive compensation from insurance, the court may order that restitution be paid to the insurer. A federal restitution order is particularly valuable because it allows for the collection of assets that are normally off-limits to creditors, such as retirement accounts and homestead property. The order is treated like a federal tax lien, and victims are entitled to have the federal government, through the local U.S. Attorney's Office, work to collect the restitution for them. The availability of these collection efforts renders assets deemed "judgment proof" in other proceedings potentially available to victims or their insurers as a means to recoup losses. Under federal law, a victim is also entitled to participate in plea discussions and sentencing. This participation may include filing papers and speaking, and gives the victim a voice in determining the amount of a restitution order and the timing of payment. Victims' rights to restitution and the rights under the federal law are assignable to the insurer. **A Ten-Step Checklist for Insurers**

To help ensure preservation of its rights to restitution, an insurer should consider taking these steps:

1. When reviewing the claim of loss, assess whether the insured has performed an investigation and can make a criminal referral
2. Review whether the insured has properly secured evidence that can be used by law enforcement agencies to prosecute
3. Review whether the insured has made a presentation to the Government outlining the crime and identifying the relevant evidence

4. Determine whether the insured is cooperating with the Government investigation
5. Consider monitoring the case if it is federally indicted
6. Ensure that the insured and/or the insurer is part of any plea negotiations, as those negotiations may affect the right and amount of restitution
7. Ensure that the insured and/or the insurer is part of any sentencing hearing for purposes of showing evidence of the loss, and demand that the court order restitution be paid
8. Perform an asset search on the criminal defendant
9. Ensure that the Government promptly records the restitution award as you would a state court judgment to ensure priority over competing claims
10. Ensure that the insured demands updates, and demands that the U.S. Attorney's office promptly work toward collecting full restitution from any available resources, whether in the hands of the defendant or others

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