

FOR PUBLICATION
IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellant,

v.

STEWART SABURO,
Defendant/Appellee.

OPINION

Cite as: *Commonwealth v. Saburo*, 2002 MP 003

Appeal No. 2000-004/Traffic Case No. 99-0009
Argued and submitted December 12, 2000

Counsel for Appellants:
OFFICE OF THE ATTORNEY GENERAL
Elaine Paplos, Assistant Attorney General
P.O. Box 10007 CK
Civic Center Complex, Susupe
Saipan, MP 96950

Counsel for Appellee:
OFFICE OF THE PUBLIC DEFENDER
Robert T. Torres, Assistant Public Defender
Caller Box 10007
Civic Center Complex, Susupe
Saipan, MP 96950

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; and VIRGINIA SABLAN-ONERHEIM, Justice *Pro Tempore*

DEMAPAN, Chief Justice:

¶1 The Commonwealth of the Northern Mariana Islands (“the Commonwealth”) timely appeals from the Superior Court’s Decision on Third Party Restitution (“Restitution Order”), entered on December 23, 1999. We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, and 1 CMC § 3102(a). We affirm.

ISSUE PRESENTED AND STANDARD OF REVIEW

¶2 The issue is whether Article I, section 11 of the Commonwealth of the Northern Mariana Island Constitution (“Constitution”) requires a defendant who is charged with a Title 9 traffic offense to make restitution to a third party, other than the victim. This is a matter of constitutional and statutory interpretation, which we consider *de novo*. See *Commonwealth v. Kaipat*, 2 N.M.I. 322, 327-28 (1991); *In re J.C.C.*, Appeal No. 98-043 (N.M.I. Sup. Ct. April 9, 2000)(Opinion at 2).

PROCEDURAL BACKGROUND

¶3 Unless otherwise noted, the following facts are from the Restitution Order which is the subject of this original proceeding:¹

¶4 On September 23, 1999, the trial court heard the arguments of counsel on the matter of Stewart Saburo's ("Saburo" or "Appellee") restitution obligation. Order at 1. At the hearing, the trial court ordered the parties to brief the issue of third party restitution. *Id.* On October 14, 1999, Saburo submitted a Memorandum of Points and Authorities on the matter. *Id.* The Office of the Attorney General failed to file a memorandum. *Id.* The trial court rendered its written decision on December 22, 1999² holding that Saburo was not required to make restitution to a third party in a traffic offense under Article I, section 11 of the Constitution. *Id.*

FACTUAL BACKGROUND

¶5 On December 25, 1998, Saburo struck pedestrian Gui Hua Luo ("Luo") while driving his Isuzu pickup on Middle Road near the Chalan Lau Lau area as Luo crossed the road with a companion. Order at 2. On August 18, 1999, the trial court found Saburo guilty of violating 9 CMC § 7105, for driving under the influence of alcohol or drugs, and the Open Container Act, Public Law 10-54.³ *Id.* The court sentenced Saburo to 90 days imprisonment, all suspended, for

¹ See *Commonwealth v. Saburo*, Traffic Case No. 99-0009 (N.M.I. Super. Ct., December 23, 1999) (Decision On Third Party Restitution)(Order).

² The Restitution Order is dated December 22, 1999, but was entered on December 23, 1999.

³ 9 CMC § 7105 states:

Driving While Under the Influence of Alcohol or Drugs.

a period of one year and he was also ordered to pay a fine. *Id.* As part of the conditions for his suspended sentence, the trial court placed Saburo on probation for one year and ordered him to pay restitution. *Id.*

¶6 The Commonwealth submitted a claim for restitution to Ms. Luo in the amount of \$102.18 for lost wages and overtime, and a claim for \$438.81 for medical expenses. Order at 2. Luo’s employer, DIORVA Saipan Ltd. (“DIORVA”), paid the medical expenses incurred as a result of Luo’s injuries. *Id.* Saburo objected to the restitution of Luo’s employer contending that he was not required under Article I, section 11 of the Constitution to make restitution to a third party. *Id.*

¶7 As previously stated, the trial court held that Article I, section 11 of the Constitution does not require a defendant to make restitution to a third party who is not a direct victim of a crime.⁴ Order at 5. Therefore, Saburo was not required to make restitution to Luo’s employer for medical expenses paid. *Id.* The Commonwealth timely appealed the trial court’s ruling.

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- (a) A person shall not drive, operate or be in actual physical control of any vehicle while:
- (1) Having a Blood Alcohol Concentration (BAC) of 0.10 or more as measured by a breath or blood test; or
 - (2) Under the influence of alcohol; or
 - (3) Under the influence of any drug or combination of drugs to a degree which renders the person incapable of safely driving; or
 - (4) Under the combined influence of alcohol and any drug or drugs to a degree which renders the person incapable of safely driving.

⁴ The trial court noted that the Traffic Code contains no provision for restitution unlike the Criminal Code which contains a statutory section on restitution under 6 CMC 4109.

ANALYSIS

I. Article I, Section 11 Of The Constitution Directs That Restitution Be Made To The Victim Of A Traffic Offense, But Not To Third Parties

¶8 The Commonwealth's argument is that Article I, section 11 of the Constitution calls for restitution of third parties by traffic offenders. The question of whether Article I, section 11 directs restitution to be made to third parties in traffic offenses appears to be one of first impression.

A. *Mitchell Distinguished*

¶9 The Commonwealth has cited *Commonwealth v. Mitchell*, APP. No. 95-019 (N.M.I. Sup. Ct. Feb.1997) (Opinion), for the proposition that "someone other than the 'victim' is entitled to restitution." Appellant's Brief at 11. However, we find *Mitchell* distinguishable from the instant case. *Mitchell* involved an assault and battery criminal prosecution in which the wife of the assault and battery victim requested restitution from the defendant. *Id.* at 4. In *Mitchell*, we held that the right to restitution under Article I, section 11 of the Constitution applies only to victims of crime. *Id.* at 5. However, the distinction between *Mitchell* and the instant case is that third party restitution for criminal cases such as *Mitchell* is authorized by 6 CMC § 4109, while restitution in the instant case is based on Article I, section 11 of the Constitution. 6 CMC § 4109 extends restitution orders to any injured person caused by the acts of the defendant, pre-dates NMI Const. art. I, § 11, and applies to Title 6 criminal offenses.

¶10 Specifically, 6 CMC § 4109 states, in pertinent part:

“...if a defendant is convicted of any offense defined [in Title 6], the Court may...order restitution or compensation *to the owner or person damaged or the forfeiture of wrongfully obtained property to the Commonwealth.*” (emphasis added)

See 6 CMC § 4109. Saburo, however, was judged guilty of offenses under Title 9, which sets forth penalties for vehicle code violations. Title 9 has no provision authorizing restitution to third parties. As such, while the decision in *Mitchell* applies for restitution to third parties in criminal cases pursuant to Title 6, it is factually inapplicable to the instant case where the Commonwealth requested restitution to a third party, the victim’s employer, based on Saburo’s traffic offense using a constitution provision, Article I, Section 11 of the Constitution, as authority.

B. Plain Meaning

¶11 In this matter, we interpret the express language of Article I, section 11, and its underlying intent, to determine whether the trial court properly determined that Saburo need not make restitution to a third party, Luo’s employer, for medical expenses paid by the employer of the victim, Luo. *See Camacho v. N. M. I. Retirement Fund*, 1 N.M.I. 362, 368 (1990). Based on the following analysis, we find that the trial court properly held that Article I, section 11 of the Constitution does not extend restitution to third parties as a result of Title 9 traffic offenses.

¶12 It is a clear principle of statutory construction that the intention of the legislature is to be sought for primarily in the language used and when the language expresses an intention reasonably intelligible and plain, it must be accepted without modification by resort to construction or conjecture. *See, e.g., Gorin v. U.S., 11 F.2d 712 (9th Cir. 1940); Saipan*

Stevadore Co. Inc. v. Director, Office Of Workers' Compensation Programs, 133 F.3d 717 (9th Cir. 1998). As such, our principal responsibility in statutory construction is not judicial speculation, but to give effect to the authors' intent. *See, e.g., OAG v. Sagun*, Appeal No. 98-041 (Sup. Ct. Oct 20, 1999)(Opinion, at 4); *Faisao v. Tenorio*, 4 N.M.I. 260, 266 (1995); *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122, 163 (1991)("We are duty-bound to give effect to the intention of the framers of the NMI Constitution and the people adopting it.").

¶13 Article I, section 11 of the N.M.I. Constitution states that "[r]estitution to *the crime victim* shall be a condition of probation and parole except upon a showing of compelling interest." N.M.I. Const. art. I, § 11 (emphasis added). Our inquiry is the constitutional requirement of restitution that applies in this matter. As such, we must determine whether the phrase "the crime victim" in the Constitution includes both direct and indirect victims of crime including third parties.

¶14 Ordinarily, the language must be given its plain meaning. *See, e.g., Francis v. Welly*, Appeal No. 98-034 (Sup. Ct. Dec 28, 1999)(Opinion, at 3); *Faisao*, 4 N.M.I. at 265; *Camacho*, 1 N.M.I. at 368. Where the language is ambiguous, we may take instruction from the legislative history. *See, e.g., Triple J. Saipan v. Rasiang*, Appeal No. 97-032 (Sup. Ct. March 17, 1999)(Opinion, at 5).

¶15 The plain meaning of "crime victim" is one who is the immediate and direct object of a crime. *See People v. Birkett*, 980 P.2d 912, 916 (Ca. 1999)(citing BLACK'S LAW DICTIONARY); *People v. Woodward*, 11 P.3d 1090, 1092 (Co. 2000)("victim" refers to "the party immediately and directly aggrieved by the criminal act, and not to others who suffer loss because of some relationship, contractual or otherwise, to the directly aggrieved party"). As such, Article

I, section 11 pertains only to the person or entity against whom a crime was committed - - the direct target of the criminal activity.

¶16 The specific wording of Article I, section 11 further dictates this construction by preceding the term “crime victim” with the restrictive article “the.” “It is a rule of law well established that the definite article ‘the’ particularizes the subject which it precedes.” *American Bus Ass’n v. Slater*, 231 F.3d 1, 4-5 (D.C. Cir. 2000)(citing *Brooks v. Zabka*, 450 P.2d 653, 655 (1969)). We are mindful that, “in construing [a] statute, [the] definite article “the” . . . is [a] word of limitation as opposed to [the] indefinite or generalizing force [of] ‘a’ or ‘an.’” BLACK’S LAW DICTIONARY 1477 (6th ed. 1990).

C. *Legislative Intent*

¶17 While the language in unambiguous, our interpretation of Article I, section 11 is reinforced by its legislative history. As Appellee points out, restitution under the CNMI Constitution concerns direct victims and not third parties in traffic offenses. Title 9 of the Commonwealth Code relates to traffic offenses. No statutory provision under Title 9 specifies restitution for victims, direct or indirect, from those individuals who plead guilty to traffic offenses. In contrast, Title 6, which encompasses criminal offenses, contains a comprehensive restitution statute. *See Commonwealth v. Mitchell*, Criminal Case No. 95-019, (Feb. 18, 1997)

As previously stated *infra*, 6 CMC § 4109 reads, in pertinent part:

“...if a defendant is convicted of any offense defined [in Title 6], the Court may...order restitution or compensation *to the owner or person damaged or the forfeiture of wrongfully obtained property to the Commonwealth.*” (emphasis added)

¶18 Title 9's Traffic Code has no analogous statutory language mandating restitution.

Therefore, there is clear evidence by the language of 6 CMC § 4109 of the legislative intent to provide an inclusive right to restitution for victims, direct or indirect, in criminal cases.

However, no such legislative intent is evident in Title 9. Absent any statutory provision, the sole source of authority for a court to order restitution in a traffic case is contained in Article I, section 11 of the CNMI Constitution.

¶19 The history of N.M.I. Const. art. I, § 11 indicates that the framers contemplated restitution under the Constitution only to direct victims for costs they have incurred or paid as a result of a crime. Specifically, the clause emerged from the Second Northern Marianas Constitutional Convention, and its drafters do not appear to have contemplated restitution to indirect victims. Instead, both the responsible Committee on Personal Rights and Natural Resources (the "Committee") and the Convention delegates as a whole focused their attention on immediate victims of crime. *See Report to the Second Northern Marianas Constitutional Convention by the Committee on Personal Rights & Natural Resources re. Committee Recommendation No. 8* (the "Report"); *Transcript of the Committee of the Whole, Second Northern Marianas Constitutional Convention*, 30th day, July 17, 1985. There was little, if any, talk of restitution to third parties. *See id.* Significantly, despite consideration of a comprehensive 1985 Michigan statute on restitution the proposed amendment by the Convention was a narrow, not a comprehensive, constitutional right to restitution. *Id., see, Mich. Comp. Laws Ann. section 780.766* (West 1999).⁵

⁵ We decline to explore Michigan law since it is unclear whether the model legislation considered by the Committee was the same as the Michigan statute adopted in 1985. *People v. Grant*, 565 N.W.2d 389, 394 (1997). Nevertheless, the current Michigan statute states, in pertinent part, that "when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate." Mich. Comp. Laws Ann. section 780.766.16(2) (West

¶20 The amendment establishing Article I, section 11 addressed a concern that “[t]oo often a society allows the rights of a victim to be subjugated by the rights of the criminal.” *Report, supra*, at 1. The Committee’s explicit intent was to “secure the rights of victims of crime, while allowing the Legislature to arrive at comprehensive legislation.” *Report, supra*, at 2. Thus, as ratified by the electorate in November 1985, Article I, section 11 simply constitutes a broad recognition of victims’ rights and conditions probation and parole upon restitution to the direct victim of crime. A more expansive application can exist only at the discretion of the legislature, not through speculative conjecture by the judicial branch⁶

¶21 We also note that a civil defendant has certain due process rights not available to the accused criminal, including defenses such as contributory and third-party negligence. *See Grey v. Allstate Ins. Co.*, 769 A.2d 891, 904 (Md. Ct. App. 2001).⁷ “Restitution is a *criminal sanction*, not a civil remedy It does not, and cannot, establish civil liability for anything beyond the matter it concludes.” *Id.* at 895 (tracing history and purpose of restitution). For this reason, disposing of civil claims “cannot be a function of restitution in a criminal case.” *People v. O’Rourke*, 165 Cal. Rptr. 92, 95 (1980); *see also People v. Birkett, supra*, 980 P.2d at 917, 925 (complicated civil liability issues are better resolved in other arenas).

¶22 While some jurisdictions allow third-parties who have absorbed loss or injury to stand in the place of direct victims, “[a]lmost invariably . . . such results are driven by the

1999).

⁶ The legislature has established the Victims’ Rights Act (the “VRA”) “to assist crime victims by recognizing and implementing [their] fundamental rights.” PL 10-81, §§ 1 and 2. In doing so, it defined “victim” as “a person . . . who has suffered *direct* physical or emotional harm as the result of the commission of a crime.” 6 CMC § 9101 (emphasis added). We do not cite this as binding authority because the VRA does not effectuate the restitutionary aspect of section 11. Still, it is worth notice as evidence of the legislature’s inclination.

⁷ CNMI is a comparative negligence jurisdiction.

language of the act involved.” *State v. Hill*, 714 A.2d 311, (N.J. 1998); *see, e.g. People v. Hove*, 76 Cal. App. 4th 1266, ___ (1999); *State v. Martin*, 747 N.E.2d 318, 327 (Ohio Ct. App. 2000) (statute provides for restitution to third parties who have paid victims for their losses); *Grey v. Allstate*, 769 A.2d at 902 (statute authorizes restitution to third-party payors who have compensated victim); *State v. Dominguez*, 992 P.2d 995, 998 (Ut. Ct. App. 1999)(“victim” defined as “any person whom the court determines has suffered pecuniary damages as a result of the defendant’s criminal activities”); *U.S. v. Malpeso*, 943 F.Supp. 254, 257 (E.D.N.Y. 1996) (federal statute interpreted broadly where says “any victim” (18 U.S.C. § 3663(a)(1))(emphasis added)). Absent any legislative intent to the contrary, we conclude that only direct victims are entitled to restitution under Article I, section 11 as a result of traffic offenses. Such a result does not preclude third parties, such as DIORVA, the freedom to seek a remedy by civil tort action.

CONCLUSION

¶23 For the foregoing reasons, the Restitution Order is hereby AFFIRMED.

SO ORDERED this 19th day of February 2002.

/s/
MIGUEL S. DEMAPAN, Chief Justice

/s/
VIRGINIA SABLON-ONERHEIM, Justice *Pro Tempore*

CASTRO, Associate Justice, dissenting:

¶24 I respectfully dissent from the majority’s reasoning, and from its decision to affirm the lower court’s narrow interpretation of the term “crime victim” under Article I, Section 11 of the N.M.I. Constitution.⁸

¶25 The plain meaning of the term “victim” is broader than the definition provided by the majority. It may also signify any individual or entity “who has suffered pecuniary damages” as a result of criminal activity. *See* BLACK’S LAW DICTIONARY (6th ed. 1990) p. 1567, col. 2. Inasmuch as this description is exhaustive and unambiguous, we have neither reason nor right to look beyond the language of Section 11. *See Bank of Saipan v. Carlsmith*, Original Action No. 99-004 (Sup. Ct. Oct. 20, 1999)(Opinion on Certified Question of Law at 3)(“A basic principle of statutory construction is that the language *must* be given its plain meaning.” (emphasis added)); *State v. LaTray*, 11 P.3d 116, 118 (Mont. 2000)(“Where the statutory language is ‘plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe.’”)

¶26 The majority would have us read Section 11 to say that restitution must be paid “to *direct* victims of crime.” This is impermissible. We cannot add language any more than we may ignore what is written. “It is not our role to insert [words] in a statute that is otherwise plain on its face.” *State v. LaTray*, 11 P.3d 116, 118-19 (Mont. 2000); *see also State v. Enstone*, 974 P.2d 828, 830-31 (Wash. 1999)(court cannot read into statute that which it believes was omitted, whether omission was intentional or inadvertent).

⁸ Article I, Section 11 was established by the 1985 Constitutional Convention, Amendment 2.

¶27

I maintain that Article I, Section 11 of the N.M.I. Constitution is clear on its face.

Nevertheless, accepting *arguendo* that the constitutional provision gives rise to more than one reasonable interpretation, “our duty is to find that interpretation which can most fairly be said to be imbedded in the [Constitution], in the sense of being most harmonious with its scheme and the general purposes that the [drafters] manifested.” *Nakatsukasa v. Superior Court*, Original Action No. 99-006 (Sup. Ct Dec. 28, 1999)(Opinion pg 3)(internal citations omitted). That scheme and general purpose is one of universality. It demands that we secure the rights of all crime victims equally. Constitutional Convention participants may not have focused on third parties effected by crime, but there is nothing in the record to suggest that they intended to exclude such victims. Perhaps there is room for reasonable minds to differ but, if we are to err at all, it must be on the side of inclusion.

¶28

Restitution under Section 11 is not a criminal penalty against the defendant but a right of the victim. This is manifest from its appearance in Article 1 of the N.M.I. Constitution, entitled Personal Rights, and from the text itself. Section 11 embodies the traditional restorative goals of restitution. *See* BLACK’S LAW DICTIONARY (6th ed. 1990) p. 1313, col. 2 (restitution is an “equitable remedy”); *Kelly v. Robinson*, 479 U.S. 36, 53 (1986)(critical distinction is whether focus is on rehabilitation and punishment or compensation for victim); *U.S. v. Christopher*, 273 F.3d 294, 298 & 299 (3rd Cir. 2001)(historically an equitable remedy; where designed for benefit of victim restitution is compensatory, versus fine or criminal forfeiture which is penal in nature); *People v. Harvest*, 101 Cal.Rptr.2d 135, 138-140 (2000)(the purpose of victim restitution is compensation, and “compensation is the defining feature of civil law); *U.S. v. Behrman*, 235 F.3d 1049, 1054 (7th Cir. 2000)(inclusion in criminal judgment to ease recovery by victim does not turn a civil remedy into a criminal penalty); *U.S. v.*

Grundhoefer, 916 F.2d 788, 793 (S.D.N.Y. 1990)(restitution criminal penalty where “primarily a means of punishing and rehabilitating defendants; compensation to the victim is incidental”).

¶29 As long as the causal nexus between the injury or loss and the criminal activity is not too attenuated, requiring restitution to third-party victims in no way diminishes a defendant’s due process rights. *See, e.g., U.S. v. Gamma Tech Industries, Inc.*, 265 F.3d 917, 928 (9th Cir. 2001)(“The causal chain may not extend so far, in terms of the facts or the time span, as to become unreasonable.”); *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa App. 1995)(restitution must rest on causal connection).

¶30 Section 11 restitution serves to let victims know that their rights are respected in the criminal justice system, and to make aggrieved parties whole without forcing them to pursue burdensome civil action. In addition, restitution serves the Commonwealth’s interests in rehabilitation and punishment, and promotes the efficient use of judicial resources. There is no reason to undermine these benefits where a portion of the costs have been borne by someone other than the direct target. To the contrary, we should reward good Samaritans by allocating restitutionary awards to whomever has incurred economic loss as a result of criminal acts. To hold otherwise is to needlessly constrict the application of Section 11 even where restitution is clearly warranted; for example, in the case of the financially responsible spouse of a direct crime victim.

¶31 In sum, the plain meaning of the word “victim” includes any person or party determined by the court to have suffered pecuniary damages. In this case, defendant Saburo struck pedestrian Gui Hua Luo while driving under the influence of alcohol. Ms. Luo’s resulting injuries required medical treatment. The costs for the medical treatment were borne by Ms. Luo’s employer, DIORVA. Clearly, there is a causal nexus between the injury and loss and the

criminal activity. The link is not remote. Hence, DIORVA is a crime victim within the meaning of Article 1, Section 11 of the N.M.I. Constitution and must be compensated.

/s/
ALEXANDRO C. CASTRO, Associate Justice