IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY

TRIAL DIVISION—CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
	:	
v.	:	**No. CP-**
	:	
	:	
John Doe	:	
	:	
	:	

MOTION TO MODIFY RESTITUTION

Defendant John Doe, through counsel, hereby moves this Honorable Court to alter or amend the order of restitution in this matter pursuant to 18 Pa.C.S. § 1106(c)(3) because of decisions by the Pennsylvania Supreme Court and Superior Court confirming that a defendant cannot be required to pay restitution to governmental or corporate entities under the restitution statute in effect at the time of the offense. In support thereof, Mr. Doe avers as follows:

1. [Background on the case, the defendant, the restitution owed, etc.]

2. Restitution may only be imposed if it is authorized by statute. *See Commonwealth v. Barger*, 956 A.2d 458, 464-65 (Pa. Super. Ct. 2008) (en banc). In this case, The Court imposed restitution under 18 Pa.C.S. § 1106. However, as the Pennsylvania Supreme Court and Superior Court have subsequently ruled, the version of Section 1106 in effect through 2018 did not authorize restitution for any cases in which the victim was a governmental or corporate entity. In *Commonwealth v. Veon*, 150 A.3d 435, 472 (Pa. 2016), the Supreme Court ruled that the definition of "victim" under Section 1106 "unequivocally describes a human being, not a government agency." The Superior Court then ruled in *Commonwealth v. Hunt*, 220 A.3d 582, 591 (Pa. Super. Ct. 2019), that the

definition of victim "does not include corporate entities." Instead, consistent with *Veon*'s reasoning, restitution was only permitted for cases in which the victim was a human being.[1]

3. In Act 145 of 2018, the legislature amended Section 1106 to expand the scope of cases in which restitution could be imposed; for the first time, it permitted restitution for governmental and corporate victims. That amendment is not retroactive and has no impact on the case at bar. *See Hunt*, 220 A.3d at 586 (holding that the 2018 amendments to Section 1106 are not retroactive).

4. The result is that Mr. Doe cannot be compelled to pay restitution to these governmental and corporate entities. This Court can and should alter the restitution order accordingly because it has ongoing jurisdiction to make such alterations or amendments. The Supreme Court has been clear that Section 1106(c)(3) "provides a sentencing court may modify restitution orders at *any time* if the court states its reasons as a matter of record." *Commonwealth v. Dietrich*, 970 A.2d 1131, 1135 (Pa. 2009). That provision provides:

> (3) **The court may, at any time** or upon the recommendation of the district attorney that is based on information received from the victim and the probation section of the county or other agent designated by the county commissioners of the county with the approval of the president judge to collect restitution, **alter or amend any order of restitution made pursuant to paragraph (2), provided, however, that the court states its reasons and conclusions as a matter of record for any change or amendment to any previous order.**

18 Pa.C.S. § 1106(c)(3) (emphasis added). The Supreme Court has referred to this

[1] While restitution to reimburse an insurance company has long been authorized by Section 1106, such restitution is only lawful if the insurance company "has compensated the victim." *Commonwealth v. Solomon*, 25 A.3d 380, 390 (Pa. Super. Ct. 2011). Here, the victim reimbursed by the insurance company was a private corporation, which at the time did not fall under the statutory definition of victim. As such, the insurance company did not reimburse a statutory victim and thus cannot receive restitution under Section 1106. *See Veon*, 150 A.3d at 472-73 (explaining that in analogous circumstances, a government entity could receive restitution for reimbursement to a victim only if the victim fell within the statutory definition).

provision as indicating "a legislative intent that courts have jurisdiction to modify restitution orders at any time without regard to when information should have been present for consideration." *Dietrich*, 970 A.2d at 1135. *See also Commonwealth v. Solomon*, 25 A.3d 380, 389-90 (Pa. Super. Ct. 2011) (reiterating that courts may alter a restitution order at any time "provided that it states its reasons for any modification on the record").

5. That there is no time bar on asking a court to act under Section 1106(c)(3) has long been recognized by the Superior Court, which held that a defendant:

> "is entitled to seek a modification or amendment of the restitution Order at any time directly from the trial court . . . Since the statute provides that a trial court may amend or alter a restitution order at any time, [the defendant] would not be time-barred from filing an appropriate motion with the trial court to seek the relief that he is requesting."

Commonwealth v. Mitsdarfer, 837 A.2d 1203, 1205 (Pa. Super. Ct. 2003). *See also Commonwealth v. Stradley*, 50 A.3d 769, 772 (Pa. Super. Ct. 2012) (Mundy, J.) (relying on *Mitsdarfer* and concluding that "the trial court erred in finding Appellant's motion to vacate restitution waived on the ground of untimeliness").

6. The Superior Court has repeatedly reaffirmed that that trial courts have jurisdiction under Section 1106(c)(3) to correct restitution orders that imposed an unlawful form of restitution. *See Clark v. Peugh*, 257 A.3d 1260, 1269 (Pa. Super. Ct. 2021) ("Significantly, Section 1106 provides that a motion to modify the restitution order may be filed in the sentencing court 'at any time,' and the motion therefore may be filed after the expiration of the period for a direct appeal."). In *Commonwealth v. Fetterolf*, 349 MDA 2021, 2021 WL 5756401 (Pa. Super. Ct. Dec. 3, 2021) (unpublished), the court noted that although the defendant did not petition the court to remove illegal restitution

until two years after sentencing, "we conclude that Section 1106(c)(3) clearly provides the trial court with jurisdiction to review Appellant's motion" and remanded for the court to consider whether restitution order should be altered. *Id.* at *3.

7. The result from all of this is that Mr. Doe is compelled to pay restitution that, under binding Supreme Court and Superior Court precedent, he cannot be required to pay. The legislature has expressly and intentionally left this Court with ongoing jurisdiction to alter or amend the restitution order. This Court should exercise that jurisdiction and ensure that the restitution order is lawful by removing the requirement that Mr. Doe pay restitution to these entities.

WHEREFORE Mr. Doe respectfully requests that this Court alter or amend the order of restitution and remove the requirement that he pay restitution to the governmental and corporate entities.

BY THE COURT:

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Judge, Court of Common Pleas