

Structured Settlement Update

By John J. McCulloch, JD, CSSC
President, Avitas

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Man Cleared by DNA Gets Non-Qualified Structured Settlement

In March of 2005, Clarence Harrison, Douglas Echols and Samuel Scott, who spent a combined 37 years behind bars for rapes, were released when DNA evidence proved their innocence. DNA cleared them of raping and kidnapping a woman at Scott's Savannah home. The woman claimed Echols held her down while Scott raped her. A third assailant was never identified. Echols served five years before being freed on parole, while Scott was in prison for 15 years and Harrison for 17.

Harrison was 44 years old when he was released in 2004 after serving 17 years in the abduction and sexual assault of a woman waiting for a bus. Lawmakers recently approved a \$1 million payout for Harrison.

Unfortunately for Scott and Echols, Spencer Lawton, the Chatham County district attorney who had convicted them and was still in office in 2005, had sent a letter to legislators arguing that the men were never exonerated and could not be characterized as factually innocent despite what the DNA testing revealed. Lawton is the tough prosecutor made famous in John Berendt's book "Midnight in the Garden of Good and Evil" and held considerable sway with lawmakers, who didn't want to be seen as soft on crime and denied compensation for both Echols and Scott.

Echols has since sued Lawton, claiming the prosecutor violated his constitutional rights when he lobbied the lawmakers against compensation. Lawton declined to comment for this report, citing the pending lawsuit. Lawton opted not to prosecute Echols and Scott again after their convictions were thrown out. Their records weren't expunged though, so every time they apply for a job they must reveal their criminal background.

Scott has a small home in Pooler, Ga., with the woman he married after he was freed. He had a drug record before his rape conviction and has had a few brushes with the law since getting out, including a domestic violence charge. Like Echols and like most ex-cons, he's struggled to find steady work since he got out. He started a small landscaping business but has few customers these days. He had a line on a job waxing and cleaning floors that he says would have paid about \$15 an hour, but when the company discovered he had a criminal record, it was a no go. He is two months behind on his mortgage.

Harrison emerged from prison deeply suspicious of nearly everyone and everything. Finding prices far higher than they'd been when was arrested in 1986, he was convinced store clerks were trying to cheat him. Many people who had helped him in the past wanted to be paid back when the first installment in his state compensation — a \$100,000 lump sum payment — arrived some two years later.

About \$12,000 went to his ex-wife for years of child support he wasn't able to pay for their daughter. His big splurge was a Chrysler 300 for his wife, Yvonne, whom he married 18 days after leaving prison and who had supported him for years. He was encouraged to obtain credit cards to set up a credit history and quickly ran up balances. He admits he overspent.

Harrison, who lives in the Atlanta area, has been unable to hold down a job. He worked for a time stocking books in a warehouse and as a security guard at a Christian school. Fortunately for Harrison, part of his compensation is a 20 year structured settlement which pays him \$47,000 a year before taxes.

Author's Note: Given the immense difficulties exonerated prisoners have in re-entering society, a structured settlement can be an invaluable means for providing them with a level of financial stability as they rebuild their lives.

Structuring Attorney Fees

Despite the current economy, the litigation business is booming. Lawsuits and claims continue regardless of whether the stock market is up or down. Despite this, many plaintiff attorneys face difficulty with up and down financials, not having a great deal of control over when a case can settle, or when the next client will walk in the door.

For plaintiffs' lawyers, settling a big case can generate a huge tax liability for the year; when you combine that with fluctuating income, you have a recipe for a difficult year this year and in the future. Fortunately for lawyers, there is a way to average out their income while reducing their tax liability: structured attorney fees.

Through a fee structure, a plaintiff's lawyer can not only defer receipt of (and tax on) their fees until they receive them, but they can have the deferred fees invested, and have the income produced from it tax deferred as well. Traditional structured settlements have been around for decades, yet despite a favorable ruling from the 11th Circuit in *Childs v. Commissioner* (2103 T.C. 634, 94 TNT 223-15 (1994), *aff'd* without opinion 89 F.3d 856, Doc 96-19540, 96 TNT 133-7 (11th Cir. 1996), attorney fee structures are only done a small fraction of the time. Many wonder why there is such a disparity when \$5-6 billion a year in structured settlements are done for injury victims while attorney fee structures amount to a few hundred million dollars a year, despite being one of the best and most flexible deferred compensation arrangements in existence.

Some commentators suggest that while plaintiff attorneys routinely place their clients into structured settlements via specialized settlement consultants, they typically plan the disposition of their fees with a financial planner, who routinely helps the firm with income tax planning, financial planning, succession planning and estate planning, but generally does not have access to the unique income defer tool of an attorney fee structure. Others suggest that it is the simple disparity of a few hundred structured settlement planners being unable to market and access the several hundred thousand attorneys spread out across the country that keeps attorney fee structures from greater utilization.

Attorney fee structures are simple and straightforward. Prior to settling a case, the attorney must include language in the settlement agreement stating that he or she is taking fees in periodic payments, and that a structured attorney fee is being contemplated. A settlement consultant completes the process, which includes specialized assignment documents and the purchase of a funding vehicle, such as an annuity or Treasury obligation.

Attorney fee structures are a unique and under-utilized income deferral tool that can accomplish many tax and financial goals, but only if advisors and planners can carry the message of a planning tool whose time has come.

Noteworthy Cases

In each newsletter, we make mention of some of the notable cases of the week, many of which would be suitable candidates for a structured settlement. These cases can make a great point of entry for a new client, or show additional value for an existing one:

Suit Filed over Fatal Wreck Involving Police Officer

A Utah family has filed a lawsuit against the state highway patrol over a fatal accident involving an officer and two of their family members. In March, two women were driving to a Relief Society meeting when they turned into the path of a police car en route to another accident. The officer's car struck the women's vehicle, killing them both. The trooper was put on administrative leave after the accident but has since returned to work. Source: The Salt Lake Tribune 11/06/2010

E. Coli Outbreak at Costco

Federal officials have announced that Bravo Farms Dutch Style Raw Milk Gouda Cheese sold at Costco stores has been linked to an E. coli outbreak that has sickened 25 people. The cheese was sold in stores in Arizona, Colorado, New Mexico, Nevada and in the San Diego area of California. Costco has pulled the cheese from its shelves in all its stores. Source: Seattle PI 11/05/2010

Noteworthy Cases (can't)

Tennessee Hospital Agrees to \$6 Million Settlement

An Army hospital in Tennessee has agreed to a \$6 million settlement in a lawsuit filed by a local woman whose daughter developed cerebral palsy shortly after birth. The suit claims a contract doctor at Blanchfield Army Community Hospital at Fort Campbell failed to "perform a cesarean section in a timely manner to prevent oxygen loss to the brain" of the child. The child developed breathing problems shortly after birth and was placed on an incubator for more than a month. Source: The Tennessean 11/09/2010

Wrongful Death Suit Filed Against Virginia Surgeon

A wrongful death lawsuit has been filed against a Virginia surgeon for the death of a woman as a result of a surgery performed by him. The suit claims the doctor cut into the woman's abdomen, severing the intestines and multiple blood vessels, but "did not record those perforations properly in the patient chart," the suit states. The woman was on heavy anti-coagulant therapy and died from massive blood loss shortly after the surgery. The lawsuit is seeking \$4.35 million in damages. Source: The Daily press 11/08/2010

Abuse Suit Filed Against Houston Archdiocese

A Texas woman has filed a lawsuit against the Archdiocese of Galveston-Houston, claiming she was sexually abused by one of their priests in the 1960s. The plaintiff claims she was abused as a child while attending Our Lady of St. John Catholic Church in Houston. The priest accused of the charges, Father Lawrence Peguero, died ten years ago and was a target of four similar claims earlier this summer. Source: KHOU-TV 11/10/2010

Suit Filed Against Basketball Coach for Abuse

Three high school basketball players in Mississippi have filed a lawsuit against their coach, claiming he physically and verbally abused them. The Murrah High students claim in the suit their coach whipped them and intentionally caused them emotional distress. The lawsuit is seeking unspecified damages. Source: The Jackson Clarion-Ledger 11/09/2010

