

RESTITUTION CASE STUDIES

These scenarios are designed to illustrate common principles in restitution cases. They were derived from actual cases, though the facts were changed in some instances to more clearly illustrate the relevant issues.

1. Defendant was convicted of possessing and brandishing a firearm in relation to a crime of violence. He and three others robbed a hotel and casino of \$85,291 dollars. The court ordered restitution for all defendants, to be jointly and severally liable for the full amount, pursuant to the MVRA, 18 U.S.C. § 3663A. The court did not sentence defendant to pay a fine. At the time, defendant had no assets, no credit history, and a weekly income of \$150. Due to the defendant's financial situation, the court announced at sentencing "[r]estitution payments will be made after completion of sentence, and if necessary, a payment plan may be agreed to with either the probation office or the Government. All other terms and conditions will be set in the judgement."

Was the court's ruling regarding restitution correct? Why or why not?

2. Same defendant as above. One year into his prison sentence, defendant began cooperating. The government used the information he provided to arrest a fourth co-defendant. When defendant returned for resentencing, the government recommended a one-third reduction of his prison sentence. Noting that the defendant's cooperation had been more "extraordinary" than the government represented, the court announced, "there is going to be another reduction or reward... to remove from the original sentence the order that the restitution is to be joint and several." When asked by the government to clarify the ruling, the court stated, "defendant is to be totally free from any further commitment on the restitution order. I'm giving him an award for his cooperation."

Was the court's ruling correct or incorrect? Why or why not?

RESTITUTION CASE STUDIES

3. Defendant was convicted of Clean Air Act violations. Defendant and several co-defendants formed a salvage company and bought the rights to salvage a former industrial site. Permits allowed the company to tear down existing buildings and obtain salvageable material such as metals and fixtures. However, the site also contained large amounts of asbestos, which the defendant knowingly failed to dispose of properly. Eventually, the EPA intervened and cleaned up the site, which was comprised of 300 acres of privately held property, at a cost of \$16 million dollars. Defendant was sentenced to 60 months' custody, and all defendants were held jointly and severally liable for \$10,000,000 restitution, as requested by the government. Defendant objected to the restitution order, claiming that the government had no possessory interest in the privately held property. The court overruled the objection and ordered restitution.

Was the court's restitution ruling correct or incorrect? Why or why not?

4. Defendant was convicted of conspiracy to commit wire fraud for his role in a "skimming" operation. He and several co-defendants hatched a plan to obtain debit card information by installing a skimming apparatus at convenience store gas pumps. They then used the account information to make cash withdrawals from ATMs in three different states. Originally charged with one count conspiracy to commit wire fraud and two counts of aggravated identity theft, defendant pled guilty to the conspiracy count. Count 1 charged that from on or about February 3, 2012 until on or about March 4, 2013, defendant and others did knowingly transmit or cause to be transmitted funds from Arvest Bank, First United Bank, First Texoma National Bank, Landmark Bank, and Shamrock Bank, by means of a wire in interstate commerce. At his plea to Count 1, defendant admitted to driving the van around the various gas stations so his co-defendants could install the devices. He also withdrew money from ATMs.

The PSR noted evidence that the defendant had withdrawn money from a total of 12 banks as part of the conspiracy. Defendant was sentenced to 63 months' imprisonment, and 3 years' supervised release. The court ordered that defendant pay \$240,682.27 in restitution, which represented the loss to the 12 banks from which the probation officer concluded the defendant had taken money.

Was the court's restitution order correct or incorrect? Why or why not?

RESTITUTION CASE STUDIES

5. Same defendant as above. The total amount stolen from the five banks listed in the indictment was \$109,248.40. In the PSR, the probation officer calculated this amount based on police reports noting that suspicious withdrawals started occurring with greater than usual frequency around Thanksgiving of 2011, ending some time in Spring 2013. Defendant objected to the restitution order, claiming that he withdrew from the conspiracy in January, 2013, after his mother-in-law became suspicious of his unexplained source of income. He quit withdrawing money because he feared his mother-in-law would turn him in. Defendant said he told his co-defendants that he would not drive the van or withdraw any more money because he feared his mother-in-law. He said his co-defendants laughed at him and continued to give him debit card access information, but he did not use it. The court rejected defendant's argument and included in the restitution order amounts withdrawn from Christmas 2011 through March 4, 2013.

Was the court's restitution order correct or incorrect? Why or why not?

6. Defendant was a CPA convicted of 25 counts of aiding and assisting in the filing of a false tax return. He prepared dozens of returns that claimed unreimbursed employee expenses for clients who never told him they had incurred such expenses and never asked him to include such claims on their tax returns. Defendant promised his clients hefty returns and provided his clients with upfront cash in anticipation of the inflated tax refund. IRS became suspicious and initiated an investigation, which revealed that defendant had falsified dozens of returns. At sentencing the IRS provided a spreadsheet detailing all of the falsified returns involved in defendant's criminal scheme, including a number for which defendant was not convicted. The resulting loss amount was \$262,966. The court ordered restitution in the same amount.

Was the court's restitution order correct or incorrect? Why or why not?

RESTITUTION CASE STUDIES

7. Defendant pled guilty to distribution and possession of child pornography. The court concluded that one victim, Cindy, had been sexually abused 11 years prior to defendant's possession/distribution offense. The losses included future lost earnings, medical expenses, vocational rehabilitation, and the cost of an economic report. The court ordered defendant to pay restitution in the amount of 1.3 million dollars, adopting the recommendation of the restitution amount contained in an expert report. The expert based her restitution recommendation on an estimate of the cost of repairing harm done to Cindy by her abuser and by all those who subsequently possessed and distributed the images of the abuse. Defendant objected to the restitution order. The court overruled the objection.

Was the court's restitution order correct or incorrect? Why or why not?

8. Defendant was a city mayor, convicted of bribery, extortion, mail and wire fraud, RICO conspiracy, and tax evasion. The court ordered defendant to pay \$4,548,423 in restitution to the Water and Sewage Department, and to the IRS. The restitution amount represented the defendant's profits from illegal contracts underlying the RICO and extortion counts of conviction. This amount, the government claimed, represented an overall 10% profit margin for the contracts at issue in the counts of conviction, and represented a reasoned approximation of the amount of money the city was unknowingly forced to spend for contracts obtained through fraud and deceit." The court adopted the government's explanation, stating "I don't think there is any way to parse out what the actual loss was as opposed to the improper gain. The law does not require that these numbers be determined with exactness and specificity because it is impossible to do that in hindsight."

Was the court's restitution order correct or incorrect? Why or why not?
