

A restitution order, which mandates a payment of over \$500,000 coupled with a life sentence, is exactly the type or order found improper by the Supreme Court in Hughey v. United States, 495 U.S. 411 (1990) when the Court stated that “Congress plainly did not intend that...a defendant’s dependants to be forced to bear the burden of the restitution order...” Id. At 417.

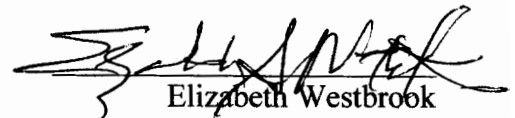
Under § 3663, though, a sentencing court’s imposition of a restitution order is discretionary. In order to impose such a sentence order of restitution, a court must first examine certain statutory factors. The court, the statute outlines, shall consider:

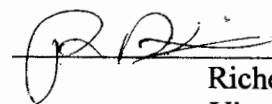
- (I) the amount of the loss...and
- (II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant’s dependents, such other factors as the court deems appropriate. 18 U.S.C. § 3663(B)(i).

The case law support for the requirement of an affirmative review of these statutory factors crosses all circuits, as the prevailing view is that a sentencing court is obligated to at least consider these factors prior to imposing restitution as a part of a sentence. See United States v. Siegel, 153 F.3d 1256 (11th Cir. 1998)(district court erred in ordering restitution even though the court had “considered” the meager financial condition of the defendant as reflected in the pre-sentence investigative report.) United States v. Conahaim, 160 F.3d 893 (2nd Cir. 1998), United States v. Sanders, 95 F.3d 449 (6th Cir. 1996);

The United States Government has seized over \$1 million dollars in assets by the defendant. To continue in prosecuting this case in an effort to obtain real property is malicious prosecution, which is an effort to further punish the defendant and his dependants.

In the restitution order the Court stated that the defendant could pay this amount of restitution on the basis that over \$400,000.00 had been seized from the defendants properties, thus the Courts decision to order restitution was developed from the basis of § 3663 and to settle the amount of restitution pending the defendants appeal should be satisfied from the \$400,000.00 seized and the surplus funds in the amount of \$237,770.99, claimed from civil action 1:04-CV-0434, which totals \$637,770.99, well over the amount of restitution. Therefore this action should be dismissed against the defendants on the basis of the laws cited above.


Elizabeth Westbrook
President


Richelle Davis
Vice President
Registered Agent

Certificate of Service

I hereby certify that I have this day served a copy of the foregoing Memorandum of Law to Support Dismissal of Plaintiff's Complaint upon the following individuals via certified mail.

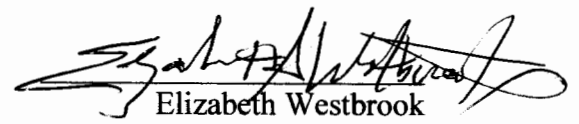
This 30th day of November 2004

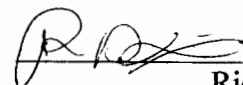
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