

Crime Victims Must Wait in Line for Restitution, Class Action Charges

By Mary Pat Gallagher
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It has been more than two years since Richard Cervini pleaded guilty to theft by deception and was ordered to pay \$21,200 in restitution to his victims.

Cervini has been making regular monthly payments on the obligation but his chief victim, Leonard Felicioni, who is entitled to \$16,200 of the total, has not yet received a cent.

Felicioni is now suing the New Jersey court system, claiming that it pays off one victim at a time rather than disbursing funds pro rata, thus delaying payment to some victims and running the risk that they may never be made whole.

The court system defendants, in an answer filed Feb. 13, admit no money has been disbursed to Felicioni, despite Cervini being current on his restitution payments. But they deny following a lockstep payment schedule and assert that "multiple restitution orders under a single indictment are processed on a pro rata basis pursuant to the Model Collection Process."

The Mercer County suit, *Felicioni v. Administrative Office of the Courts*, L-2901-06, is a putative class action on behalf of crime victims entitled to restitution through the New Jersey courts.

According to AOC spokeswoman Winnie Comfort, 6,970 persons convicted of crimes between July 1, 2005, and June 30, 2006, were ordered to pay restitution to one or more victims.

The complaint includes counts for violating the New Jersey Civil Rights Act, through denial of due process and equal protection, and for a prerogative writ.

It also alleges a violation of equity because claims of creditors in other contexts, including bankruptcy, are paid on a pro rata basis, as are claims paid by the Victims of Crime Compensation Board.

Named as defendants are the Administrative Office of the Courts, acting courts director Phillip Carchman and Harvey Goldstein, manager of the Intensive Supervision Program, part of the courts' Probation Services Division.

The case has been referred to mediation, and Felicioni's lawyer, Donald Doherty Jr., of West Berlin's Friedman Doherty, says he will move for class certification in April.

The restitution order against Cervini was entered on Nov. 1, 2004, by Cumberland County Superior Court Judge Michael Donio, who also sentenced him to four years in state prison.

Felicioni, a resident of Mullica, says he provided Cervini, a used car dealer, with cars for sale on consignment. Cervini allegedly conveyed bad title to buyers and failed to pay Felicioni for the vehicles.

Last summer, Felicioni wrote to the prosecutor's office asking why he had not yet received any restitution and was informed that Cervini was current on payments and that he should direct his questions to the Intensive Supervision Program. When Felicioni did so, Goldstein wrote back that the information was confidential and could only be provided under a court order. The suit was filed on Nov. 3, 2006.

Comfort identifies the Model Collection Process mentioned in the answer as a best-practices type compilation of procedures approved in 1997 by New Jersey's Conference of Probation Officers. It "does not speak specifically to proportional disbursement," she says.

Deputy Attorney General David Bender is defense counsel. The Attorney General's Office declines comment.

Richard Pompelio, director of the New Jersey Crime Victims' Law Center, a private victims' advocacy organization, separate from the Victims of Crime Compensation Board he once chaired, says he has read the pleadings and plans to inquire into whether pro rata distribution is being done, and if not, why not.