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**Steve Leimberg's Asset Protection Planning Email Newsletter - Archive Message #131**

**Date:** 28-Jul-08  
**From:** Steve Leimberg's Asset Protection Planning Newsletter  
**Subject:** Settlement Reached in Case of Divorcee (Merry Morris) Held in Contempt After Funding Offshore, Cook Islands Trust

As previously reported in "Morris – Offshore Trust Cooks Up Bad Meal" ([LISI Asset Protection Planning Email Newsletter, Archive Message #97](#) – January 11, 2007), a strange fact pattern in an unusual divorce case led to a heap of trouble for one south Florida divorcee.

This case recently settled, and LISI Commentator Team member **Jeff Baskies** reports that different reviewers will likely reach different conclusions on whether the case shows offshore trust planning worked favorably or unfavorably.

Jeff Baskies is a Florida Bar certified expert in Wills, Trusts and Estates law, and he practices at **Katz Baskies LLC** a Boca Raton, FL boutique trusts & estates, tax & business law firm. He is a frequent LISI commentator and author in professional journals. Jeff has been named among the nation's top 100 estate planners by [Worth](#) magazine, is listed in Best Lawyers in America, and is also included in the ubiquitous "Super Lawyers".

**EXECUTIVE SUMMARY:**

Merry Morris - a divorcee - placed her assets into an offshore trust before contesting a post-nuptial agreement/divorce agreement. After she contested the agreement and lost, the court ordered her to repay the \$1.5 million she received under the agreement (ultimately a judgment of almost \$2.5 million including interest and attorneys fees). She claimed that she had no ability to repay the judgment, and thus refused to comply with the court order. As a result, she faced criminal contempt charges, she was ordered arrested, and she fled rather than pay the judgment.

Until now, she was a fugitive from a Florida arrest order. However, it was reported on July 14, 2008 that Merry Morris reached a settlement with her ex-husband, Leland ("Lee") Morris, by which she will pay \$1 million into a trust for her 2 children, instead of paying the \$2.5 million she owed Leland.

**FACTS:**

In 1998 Leland and Merry Morris entered into a postnuptial agreement which was later slightly modified in 2001, when the couple divorced.

Under the agreement, Merry Morris agreed to accept \$1.5 million in settlement from her former husband, Leland Morris, in exchange for certain concessions including giving up rights to visit her children.

Leland stipulated that a premium was paid in the settlement for "closure" and that's why the agreement also included an incontestability clause penalizing Merry if she attempted to challenge any aspect of the agreement. The penalty was Merry would have to forfeit the funds paid to her under the agreement (the \$1.5 million).

The facts are best retold by quoting from the prior **LISI** commentary:

"Two years later, in June 2003, Merry brought an action to enforce the post-nuptial and to clarify certain unresolved issues such as the custody of their children during holidays. The pleadings filed by Merry made clear that she was attempting to enforce the post-nuptial agreement, not challenging it. For some unknown reason, Merry represented herself in these proceedings.

Although the court noted that Merry had "some legitimate gripes," the court denied her claims.

It also held that her action amounted to a challenge of the post-nuptial agreement such that she forfeited the \$1.5 million paid to her from Lee.

The court also awarded Lee his attorney fees in the amount of \$264,000 plus costs, so that the total judgment, with interest, came to just over \$1.8 million.

While Merry appealed, Lee pursued collection.

He discovered that Merry had apparently transferred the bulk of her liquid assets, nearly \$3 million, to a Cook Islands asset protection trust.

When Lee went after the \$500,000 home that he had purchased for Merry in Boca Raton, Merry drew down a home equity line of credit secured by the home and sent the proceeds to her Cook Islands trust too.

In an interview with the Palm Beach Post, Merry characterized her Cook Islands trust as an uncle who cares for her and pays her bills, stating "I'm not real good with money and I'm not real smart with investments." The terms of the trust agreement apparently made Merry only a beneficiary, with no powers to demand distributions or control trust assets.

The Florida court ordered Merry to bring back to Florida the money that she had sent to her Cook Islands trust, and enjoined her from making any further asset transfers.

Rather than complying, Merry apparently fled from Florida.

Three times the Florida court ordered Merry to appear in person, and three times she failed to appear.

Finally, the court held her in criminal contempt of court, and issued three arrest warrants, each of which required a \$100,000 bond. Lee's attorney registered the criminal contempt citations with the national Sheriff's registry, so that if she is stopped anywhere in the country, she will be arrested and returned to Florida to face the charges.

It got worse for Merry. Because she was a fugitive, the Florida Court of Appeals dismissed her appeals, though the court did give her 15 days to voluntarily appear before dismissing her appeal.

The Florida Supreme Court refused to hear Merry's Writ of Mandamus."

After the appeal failed at the Florida Supreme Court, Merry apparently "wised up" and reached a settlement with Leland. It was reported in the Daily Business Review, Vol. 54, No. 195, page A12 (July 14, 2008) that Merry confirmed her Cook Islands Trustee would never release funds to Leland, but the Trustee would release funds to Merry's children.

Thus, the parties settled this "messy divorce" by Merry's Cook Island Trust paying \$1 million into a trust for the children and Leland foregoing the balance of the judgment in exchange for further assurances of repayment if Merry ever challenges the agreement again.

### COMMENT:

In the end, it is unclear if Merry Morris' use of an offshore trust was a success or not.

Some reviewers will look at the decision in terms of dollars and sense only. And in that light, it appears Merry's offshore planning provided what most planners suggest offshore trusts are good for: it helped her reach a favorable economic settlement.

Perhaps it coerced Leland to accept far less than he would have taken had Merry left her assets in the United States exposed to his judgment. After all, in settlement, Merry paid \$1 million to a trust for her children instead of \$2.5 million to her ex-husband, Leland. And she never wound up in prison. Thus, from a purely economic perspective, that appears to be a victory.

And as **Duncan Osborne** noted in his "counterpoint" in the prior Jay Adkisson LISI commentary:

*One view – not mine – is that this line of cases proves that "offshore asset protection trusts never work".*

*But the absence of a published opinion showing that they do work does not mean that they do not.*

*First, there are sources of results other than published case law. A number of lawyers who work in this area have seen offshore trusts work in a wide variety of compromise and settlement cases.*

*Second, if the settlement into the trust was not a fraudulent transfer and the trustee operated the trust in a wholly professional and responsible manner, a creditor would arguably have very little incentive to bring a law suit to attack it – and little likelihood of success if he did.*

In that light, maybe Merry Morris' case is a reported settlement supporting the economic efficacy of offshore trusts.

On the other hand, other commentators will likely see the resolution of the Merry Morris case as further vindication for the argument that offshore trusts

do more harm than good. In the prior **LISI** commentary, **Jay Adkisson** argued that in the area of offshore trusts "the emperor has no clothes"...He asserted that Merry Morris' case is one in a long line showing that offshore trusts fail to achieve their stated objectives of protecting those who create them.

Pointing to Stephen Lawrence (who spent 6 years in jail for contempt), and other cases, Jay wrote:

"This case (Merry Morris' case) is particularly egregious, since not only did Merry's use of the Cook Islands trust force her into hiding to avoid jail, but it also cost her the ability make what may well have been a successful appeal on the issue of whether her action to enforce and interpret the post-nuptial agreement was a challenge that rightfully caused her to forfeit the \$1.5 million payment from her ex-husband.

Furthermore, as a fugitive, Merry has not seen her children for several years, and is unlikely to see them again soon. So, now she has lost her right to appeal, she has lost custody of her children, and she remains on the lam.

In other words, not only did Merry's Cook Islands trust fail to serve its purposes, but it actually put her in a much worse position than if she had done nothing at all."

While we have to recognize that Merry did preserve \$2.5 million of the \$3.5 million she had in her offshore trust (an apparent economic gain of \$1.5 million for her), we cannot ignore the argument that as a result of her running from judgment she lost her chance to argue an appeal which might have preserved the entire \$3.5 million.

On this point, Jay's arguments cannot be ignored as his points are well taken. It appears evident that the existence of this offshore trust actually cost Merry the chance to have the merits of her underlying case heard by the Florida Supreme Court and thus might ultimately have cost her \$1 million that she would not have lost.

While I am not an expert on marital law issues, I think she had a reasonably strong argument that the underlying trial court decision was potentially a "miscarriage of justice." According to the Daily Business Review article, Florida Supreme Court Justice Harry Anstead questioned whether parents should be allowed to "barter away the best interest(s) of their children" by preventing review of child custody arrangements in their agreements.

Unfortunately, as a fugitive, the Supreme Court held Merry lacked standing to argue her case; therefore, we will never know if she ultimately might have been vindicated.

Perhaps that is where the irony lies. Merry's use of the offshore trust apparently saved her money, but it cost her a chance at visiting her children. One can't easily conclude how she valued saving her money compared with losing her appeal of the visitation, but it is hard to argue in the end that Merry wound up a winner.

**HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!**

# *Jeff Baskies*

**Technical Editors – Duncan & Mark Osborne**

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