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## \$1.25B settlement a feat of logistics as well as law

Durham lawyer James Scott Farrin answered a call about seven years ago from a two-person law firm in Virginia that was looking to build a class action suit against the government. Soon, he was propelled to the front of one of the largest civil rights cases in the country's history.

Farrin, backed by colleagues at his eponymous practice and a team of attorneys from two-dozen other firms, spent thousands of hours and millions of dollars helping about 18,000 farmers negotiate a \$1.25 billion settlement with the government.

The farmers went after the U.S. Department of Agriculture for discriminating against them by denying or delaying their loan applications, which prevented them from planting crops and, in some cases, cost them their land.

They could have benefitted from the government's \$1 billion settlement in the late 1990s with a class of about 13,000 black farmers who'd brought a similar suit against the USDA, but ended up receiving nothing because they missed a filing deadline.

Farrin, who received an award recently from the National Black Farmers Association, talked with Lawyers Weekly reporter Phillip Bantz about what it took to give tens of thousands of farmers a second chance at justice.

**LW:** How was this second group of farmers able to overcome the fact that they had missed the filing deadline in the first case?



**Durham lawyer James Scott Farrin.**

**JSF:** At the time there was no existing remedy and we had to sort of take a chance on Congress passing legislation to enable this group of people to have a second time around. ... Sen. Obama had proposed legislation remedying this, and that ended up passing in the 2008 farm bill.

**LW:** Fortunate then that Obama became president.

**JSF:** We were certainly helped by that fact. Interestingly, though, he was not as supportive as president as we would have hoped. But he came around.

**LW:** What do you mean?

**JSF:** Obama wins the election and litigation begins, but we have to reach a settlement with the government and get funding from the government for the settlement. Initially, Congress had included a \$100 million settlement in the farm bill, but that was just a placeholder. We had argued for the \$2 to \$3 billion range and in the end [Obama] agreed to \$1.25 billion. But before we got there, there was a period of time where it appeared that in no way was this a priority of his. The government's lawyers were saying you got \$100 million. Settle for \$100 million. It was a difficult time for us. The president had sponsored this legislation but appeared to have other priorities during his time in office.

**LW:** How'd you get Obama to come around?

**JSF:** There were a series of public events. Our firm organized a demonstration. We became very involved in legislative activism, just doing things to motivate Congress and the White House. We had a barnstorming session throughout the South, where many of these farmers are located. We'd get thousands of people to show up at rallies. We had to keep the cause alive. It culminated at an event in D.C. with John Boyd [president of the National Black Farmers Association] driving a tractor around Washington.

**LW:** Can you tell me more about the lobbying effort and negotiations with the government?

**JSF:** We spent months negotiating with the government. But all we had was \$100 million and a piece of paper. Congress still had to appropriate the money. That proved to be one of the greatest challenges of our professional lives, getting that \$1.15 billion from Congress in 2010. It went before Congress seven times. We were living in congressional deadlock and it seemed like nothing would get done. It was only in November 2010 that Congress, in a lame duck session, approved the money. Picture time running out on the clock and if you don't score the game's over. If Congress had gone home there'd be a new Congress coming back and we'd be starting all over again.

**LW:** Of the \$1.25 billion, how much will each claimant get?

**JSF:** The agreement calls for a liquidated damages award of \$50,000 plus a \$12,500 tax credit paid for by the government for each claimant. Most will get full shares. But some have family members who share, so there could be multiple claimants who divided up a claim.

**LW:** What were your legal fees?

**JSF:** The settlement agreement called for attorneys' fees in the range of 4.1 to 7.4 percent out of the fee base, which wasn't quite \$1.25 billion. The net of it was between \$50 million and \$90 million in total for all of the attorneys in the case. The judge, who has a reputation of being really strict with attorneys and not so generous with awards, decided to hold off on ruling on attorneys' fees until the conclusion of the claims pro-

cess. He ruled on fees last summer and awarded the maximum amount allowable: \$90 million in fees total amongst all the firms in the case.

**LW:** How many firms were involved?

**JSF:** About 25. We probably had the largest role because we had gotten involved so early and were one of the drivers of the case. ... We got the largest share because we had taken the greatest risk. Basically, we financed this litigation. We paid for a lot of the lobbying activity in this case. We were the financial backers.

**LW:** What was your firm's cut of the \$90 million?

**JSF:** I don't want to give you the exact amount, but we did all right.

**LW:** I imagine you did. But it sounds like you worked pretty hard for those fees.

**JSF:** The amount of work just on processing the claims was kind of incredible. These farmers were spread throughout the U.S., though predominantly in the South. You couldn't just mail them claim forms to fill out because a lot of these people are elderly and some are illiterate and have little means. So we had to meet with them personally and help them with the forms. We had a group flying around to a different city in 24 states and the District of Columbia every day. We had 384 community meetings in 180 days. We had to hire contract attorneys and paralegals to live in the field for six months touring and providing assistance. We ended up meeting with 24,000 individuals. To me, it was an amazing logistics

feat. We had 23,000 attorney hours in the case and 93,000 staff hours. That's not including the lawyers in Washington we hired to work on this case. It was just a massive undertaking. I don't know of anybody who's done anything like this.

**LW:** You weren't involved in the first suit, but did you take any lessons from that case to make sure no one fell through the cracks again?

**JSF:** I think we learned to carefully plot out where these claimants lived and do a latitudinal and longitudinal study of where they resided so we could hold the claims processing meetings right near them and make sure we had enough attorneys there to assist them.

**LW:** Do you think this kind of discrimination still goes on today at the USDA?

**JSF:** I hope not. I think the government has committed to not only rectifying past mistakes but to make sure that this doesn't occur on an ongoing basis. The USDA had a nickname for a very long time as being the "last plantation." It's sad when you think of the nation's history of discrimination and you see that happening through our own government. It's a really compelling and poignant story.

**LW:** Has anyone contacted you about optioning the movie rights?

**JSF:** My wife and I talk about that a lot actually. It reminds me of "Erin Brockovich" meets "A Civil Action." I think there's a story to be told.

*Follow Phillip Bantz on Twitter @NCLWBantz*