# Follow-Up to Article on Settling Suits With Charitable Payments

To the Editor:

I recently wrote an article entitled ''Resolving Litigation by Payments to Charity.''[1] The article discusses the tax effect when a plaintiff demands that a settlement payment be made directly to a charity, and not to the plaintiff. I used Larry Ellison's proposed $100 million charitable payment to settle a shareholder derivative suit as the springboard for the article. Ellison's payment was to be made in the name of Oracle, the company in which he is a major shareholder, board member, and chief executive officer.

Last month, the court appeared ready to approve the $100 million settlement, but Ellison's attempt to stick Oracle with the $22 million in legal fees was an obstacle. Ellison has now agreed to pay the legal fees on top of the $100 million charitable payment, and with that final impediment removed, the court approved this unusual settlement on November 22, 2005.[2]

The settlement documents are private as far as I know, making it difficult to assess Ellison's ability to claim a deduction for the $122 million payment. However, particularly in light of Congress's latest assault on the deductibility of damage payments, it is quite interesting to consider how and when (and as what — charitable contribution or business expense) those payments are deductible.

Very truly yours,

Rob Wood
November 28, 2005

[1]*Tax Notes*, Oct. 31, 2005, p. 633.

[2]*See* ''Ellison to Pay Fees in Settlement,'' *The Wall Street Journal*, Nov. 23, 2005, p. B2.