Counsel's Advisory

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INFLATED FEN-PHEN FEES: PLAINTIFFS' LAWYERS FACE FEDERAL CRIMINAL PROBE

by
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Milberg Weiss, the noted securities class action law firm, and two of its former partners under indictment in California for providing millions in kickbacks to select clients, are not the only plaintiffs' lawyers in serious trouble. They may soon have the company of others involved in the fen-phen litigation for doing the opposite: short-changing their clients millions of dollars in settlement funds the plaintiffs claim were due them.

A federal grand jury in Covington, Kentucky is investigating a major scandal of how a $200 million settlement reached in 2001 against the maker of the diet drug fen-phen was plundered by plaintiffs' attorneys. The trial judge, who approved the settlement, resigned from the bench after it was discovered that he, along with three of the plaintiffs' attorneys, were each being paid $60,000 a year from a charity funded by settlement proceeds.

A few weeks ago, Special Judge William Wehr of Kentucky indicated that approximately 400 plaintiffs will receive additional compensation following a 2005 ruling that three plaintiffs' lawyers, Melbourne Mills, William Gallian, and Shirley Cunningham, Jr., had breached their fiduciary duties by paying themselves more than $105 million in fees, which was $62 million *more* than what they contracted for with their 400 clients who received an aggregate of only $74 million. Another $20 million was allocated to a non-profit which paid the settlement judge and the three attorneys an additional $60,000 a year for simply serving as board members. According to news accounts, the three attorneys were temporarily suspended from the practice of law while the criminal and civil probes continues.

Meanwhile, New York State Supreme Court Justice Charles Ramos recently ordered the law firm of Napoli Bern Ripka to stand trial to determine whether it violated ethical rules in dividing settlement proceeds from the fen-phen settlement it reached on behalf of 5,000 fen-phen users. A *New York Law Journal* article estimated the settlement to be $1 billion. A former lawyer with the firm, Stephen Murakami, submitted an affidavit claiming that his firm lied to its clients regarding the distribution of their respective shares of the settlement. At issue in that case is the common practice of splitting contingency fees with attorneys from around the country who simply refer clients to the lead firm. According to Murakami, the law firm negotiated inflated settlements for their own clients so that they could reap a larger percentage of the fees rather than pay more to the referring attorneys for their clients.

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