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Court hears arguments in fen-phen case

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FRANKFORT, Ky. — The three lawyers accused of taking tens of millions of dollars that should have gone to plaintiffs in Kentucky's fen-phen case might have misappropriated even more if they hadn't learned they were under investigation in 2002, a Kentucky Bar Association lawyer said on Thursday.

Chief bar counsel Linda Gosnell told the Kentucky Supreme Court that the lawyers "began scrambling to give away more" money only after the bar subpoenaed their records that year, a year after the \$200 million case was settled.

The bar has asked the court to temporarily suspend the licenses of Lexington attorneys Melbourne Mills, Shirley Cunningham Jr. and William Gallion, who already have been found to have breached their duty to their clients by paying them only about \$73 million of the settlement with the diet-drug's manufacturer.

Justice Bill Graves asked Gosnell on Thursday if taking away their licenses now would not be a "drastic remedy," given that it might be years before a final decision is made on their fate.

Gosnell responded that they had committed "drastic" misconduct.

"This is a case of unbridled greed," she said.

William Johnson, the attorney for the three lawyers, repeated the argument that he has made in the courts — that the lawyers had to withhold funds from their own clients in case additional claims emerged from thousands of other Kentuckians injured by the drug, which was withdrawn from the market in 1997 after being found to cause heart damage.

In a lawsuit filed against the lawyers in 2004, the plaintiffs claim that up to \$64.4 million of the \$200 million settlement was misappropriated.

The suit is pending in Boone Circuit Court.

In March, Special Judge William Wehr, presiding in the Boone County case against the lawyers, ruled that Cunningham, Gallion and Mills breached their duty to their clients when they paid themselves and others more than half of the settlement amount and put an additional \$20 million in a charitable fund. The Lexington lawyers and Bamberger were among the fund's paid directors.

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