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**CLASS-ACTION SETTLEMENT**

## **Fen-phen fund may go to plaintiffs**

**Judge orders shift of \$20 million**

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Nearly \$20 million that had been placed in a controversial fund controlled by three Lexington lawyers should instead be held for 400 of the lawyers' former clients, a judge has ordered.

On Friday, Special Judge William Wehr ordered that money from the Kentucky Fund for Healthy Living, which was set up using money from a \$200 million fen-phen lawsuit settlement in Boone Circuit Court, be placed in a trust for the lawsuits' plaintiffs, all of whom said they suffered medical problems because they took the diet drug.

Those plaintiffs are now suing their former attorneys: Lexington lawyers William Gallion, Melbourne Mills and Shirley Cunningham Jr. and Cincinnati lawyer Stanley Chesley. The 400 former clients say that their lawyers took more money from the settlement than what they agreed to give them in attorney fees.

The lawyers had sued American Home Products, maker of the diet drug fen-phen, and won the \$200 million settlement in 2001.

Earlier this year, Wehr ruled that Gallion, Mills and Cunningham violated their fiduciary duty to their clients by taking more than half the proceeds from the settlement. The lawyers and others involved in the case received about \$105 million. The clients received \$74 million.

Some of the \$200 million was placed in the Kentucky Fund for Healthy Living, a non-profit. Gallion, Cunningham and Mills each earned more than \$60,000 a year as directors of the non-profit. The Kentucky Fund for Healthy Living gave about \$1.5 million to hospitals and other non-profits for various health-care related projects. But much of that money was given after questions were raised about the legitimacy of the fund, court records show.

Lexington lawyer Angela Ford, who is representing the former fen-phen clients, said the money will not be disbursed to the clients until all claims against the lawyers are settled. Ford sued the lawyers on behalf of their former clients in 2004. Ford has argued that the lawyers took about \$64 million more from their clients than they should have received. Wehr has not ordered that the lawyers' other assets -- bank accounts and other investments -- be frozen.

In August, the state Supreme Court temporarily suspended the law licenses of Mills, Cunningham and Gallion until the Kentucky Bar Association could complete an investigation into possible misconduct in the case.

Former Boone Circuit Court Judge Jay Bamberger, who presided over the original fen-phen settlement in 2001, resigned after being publicly reprimanded by the state judicial conduct commission for his role in approving the lawyer's fees and for receiving payment as a board member of the Kentucky Fund for Healthy Living.

Wehr has also not ruled on whether Chesley, who has argued in court documents that he had no contracts with individual clients and was not a board member of the fund, committed any wrongdoing in the handling of the case.

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