

## Fen-phen victims seek a fair share

By Paul A. Long  
Post staff reporter

Attorneys and others who took \$126 million in fees and expenses out of a \$200 million settlement in a lawsuit over the diet drug fen-phen should give all of the money back, a special judge reviewing the case was told Monday.

"Because the facts are so egregious, equity demands complete forfeiture," attorney Angela Ford said during a hearing in Boone Circuit Court. "They have no intelligent defense for their actions."

She said central Kentucky attorneys Shirley Cunningham Jr. and William Gallion of Lexington and Melbourne Mills Jr. of Versailles took part in a "willful misappropriation of funds." She reminded Senior Judge William Wehr that he already has determined the three attorneys broke their fiduciary duty to their 400-plus clients.

She also wants Wehr to include Cincinnati attorney Stan Chesley - who received a \$20 million fee in the case - in that group.

But Chesley and his lawyers said the nationally known attorney wasn't responsible to the multiple clients in the case - only to the three attorneys who hired him to negotiate a settlement in the massive class-action case, for which he would be paid 21 percent of their fees.

The case was secretly settled, and the files sealed, in 2001. But some of the original clients started asking questions and hired Ford, who sued the attorneys involved.

Already, Wehr has ordered that the \$20 million put in a charitable fund be turned over to the clients; the state Judicial Conduct Commission has reprimanded former Boone Circuit Judge Jay Bamberger for his behavior overseeing the case, and the state Supreme Court has suspended the three central Kentucky attorneys involved for what the Kentucky Bar Association called "absolute, unbridled greed."

The three attorneys have admitted in depositions that they met secretly to decide how to split the money and tore up or burned notes showing how much they paid themselves and their clients.

Wehr has not yet ruled on Chesley's role, but he listened to arguments during the hearing Monday.

One of Chesley's attorneys, Frank "Bucky" Benton, said Chesley did not represent the original clients and had no responsibility to them.

"He was not paid by any of them," Benton said. "He was paid by the lawyers. ... He had no clients other than the attorneys in this case."

Chesley was not in court Monday. But during a deposition he gave over two days in Lexington in late November, he echoed Benton's contention. Chesley also backed up the three attorneys' position that they were entitled to a larger than normal fee because they were risking millions in the settlement.

He said American Home Products, which manufactured and sold the drug combination that injured thousands of people, put up \$200 million in what is called a "walkaway" settlement. That means it was settling any and all cases arising from its actions.

At the time, the company was settling cases across the country - one was a massive federal case in Philadelphia - and it wanted to have no more liability in Kentucky, Chesley said in his deposition. The company was willing to put up extra money if the attorneys would assume liability not just for their clients, but for any other potential cases in the state.

"They wanted it wrapped up," Chesley said of Home Products' argument. "They did not look at it as Gallion, Mills and Cunningham's cases. They looked at it as the Kentucky problem.

"... The one thing that was crystal clear for me from the beginning was the only way to maximize recovery is if they had assurance that someone was going to take a risk, the risk that there were not other issues in Kentucky. And I presented that to the Gallion group and said, 'Are you guys - you can get real money if you're prepared - but are you guys willing to take the risk for whatever else is out there in Kentucky?'" They said they were, Chesley said.

Chesley added that he did not want to assume any of the risk.

---