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Where's the money is \$60 million question

By Paul A. Long
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Three Central Kentucky attorneys might have to start accounting next week for more than \$60 million they are accused of stealing from their clients in the settlement of a massive lawsuit against the makers of the diet drug fen-phen.

Senior Judge William Wehr on Thursday agreed to decide by next week whether to make final his order that the trio overpaid themselves by that much. If he does, then attorney Angela Ford - who has sued the three on behalf of more than 400 former clients - will be able to start an asset determination.

That means she'll be able to ask - and get answers to - what has happened to the money in the past six years.

She said she has been unable to do so until now because of the lack of a court order.

Also next week, the three have been told to file a financial disclosure form in federal court. That would be in preparation for a hearing on whether U.S. District Judge William O. Bertelsman should reinstate their bonds.

Melbourne Mills, 76, of Versailles; and William Gallion, 56, and Shirley Cunningham Jr., 52, both of Lexington, are in the Boone County Jail after Bertelsman revoked their bonds last week. He did so after noting that the three still maintain control over the money, and have never given an accounting of where it is or how it was spent.

"The defendants have made no accounting of the proceeds of the transactions for which they are charged, which they received, whether wrongfully or not," Bertelsman wrote.

"A civil court has held that victims are entitled to recover \$42 million. ... The present indictment herein alleges that the defendants received \$46 million fraudulently."

Another \$20 million or so is held by a charitable trust fund, money that Wehr has ordered frozen.

During the hearing last week, Bertelsman asked why no accounting has been made of the money. Assistant U.S. Attorney Laura Voorhees said the government cannot demand an accounting of those assets until the men are convicted.

Ford has said she cannot demand an accounting without a final order from Wehr.

Attorneys for the men object to making any order final. They said it's based on little evidence, and the \$42 million figure is not based on any specific data.

The case involves actions in the \$200 million settlement of a civil case against the makers of fen-phen.

Already, Mills, Gallion, and Cunningham have had their law licenses suspended, and the judge overseeing the original case, former Boone Circuit Judge Jay Bamberger, chose to resign from the state senior judge program and lose a portion of his pension rather than face additional sanctions.

Wehr, who now has the case, ruled last August that the three attorneys breached their fiduciary duties to their clients.

Another claim is made against Cincinnati attorney Stan Chesley, who negotiated the settlement. Chesley took 10 percent as a fee, which Wehr ruled was too much.

A trial on how much Chesley should return is scheduled for next month, but that is likely to be delayed.

In the original lawsuit, more than 400 people claimed that the then-popular diet drug caused serious health problems. Lawsuits were filed all over the country, including one in Boone Circuit Court.

That was settled when American Home Products, which manufactured and sold the drug combination, put up \$200 million in what the three attorneys called a "walkaway" settlement. That means the company it was settling any and all cases arising from its actions in the commonwealth.

But court records also show that American Home Products, now Wyeth, paid additional claims that surfaced after the Kentucky settlement - putting into question the attorneys' claims they needed the extra money for potential future claims.

Wehr ruled the three attorneys took more than \$100 million in fees and expenses out of a \$200 million settlement. In addition, he said, they set up a \$20 million charitable fund that paid them more in income and expenses than it gave in grants to nonprofit organizations.

He ordered them to repay the excess fees, which he calculated at \$42 million, plus interest - plus the \$20 million in the charitable trust.

But Ford has argued the clients should get the entire \$200 million. She also wants Wehr to make his ruling "final and appealable" so she can start the asset determination.

If Wehr does that, the lawyers could appeal the ruling - their attorneys have said they will do just that - but could only stop the asset determination by putting up a \$45 million bond.

It's unclear what has happened to the money.

What is known is that Cunningham and Gallion got involved in horse racing, and under the company Midnight Stables, bought Curlin for \$57,000 at Keeneland's 2005 September yearling sale. Curlin won the Preakness this year, took third place in the Kentucky Derby, and was the runner-up in the Belmont Stakes.

The horse won \$1.8 million in its six starts this year, and stands to make many millions more when he goes to stud.

Cunningham and Gallion since sold an 80 percent interest in Curlin for about \$3.5 million before the Derby.

In 2001, Cunningham gave \$1 million to the law school at Florida A&M University to endow a professorship. But the donation had a catch - the school had to hire Cunningham and pay him \$100,000, plus benefits.

The school ended the deal four years later, after investigators found Cunningham never did any work and rarely was on campus.