

ENTERED
BOONE CIRCUIT/DISTRICT COURT
JUL 10 2005
BY PAT GUTZEIT CLERK
DC

COMMONWEALTH OF KENTUCKY
BOONE COUNTY CIRCUIT COURT
54th JUDICIAL DISTRICT
CASE NO. 05-CI-00436

MILDRED ABBOT, et al
Plaintiffs

-vs-

STANLEY M. CHESLEY, et al
Defendants

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ORDER

CASE NO. 05-CI-00356

KENTUCKY FUND FOR HEALTHY
LIVING, INC.

Plaintiff

-vs-

MILDRED ABBOTT, et al

Defendants

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This matter is before the Court on motion of the Plaintiffs for entry of judgment dismissing The Kentucky Fund for Healthy Living's counterclaim and ordering said Fund to pay its own attorney fees in the future.

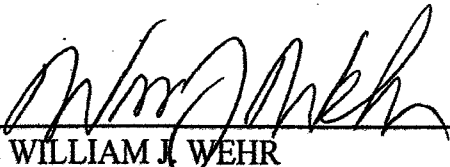
Previously, the Court found that Plaintiff's claims against the Fund were dependent upon the outcome of the claims against the individual defendants. Since they were found to have violated their fiduciary duties as a matter of law a partial summary judgment has been issued as to the three individual defendants who also made themselves directors of the Fund. Accordingly, the

partial summary judgment as to them also effectively sustains Plaintiffs' request for a declaratory judgment as to the Fund, and does require dismissal of its counterclaim against the Plaintiffs.

The Fund argues that there is uncited "persuasive authority" from other state and federal courts holding that no notice is required to class members of a *cy pres* disposition of excess settlement funds, but this action was not concluded as a class action. Notice was required herein. The Fund's only continued involvement in this case is in the damage phase as to disposition of the funds presently being held. It argues that due process should allow it to continue participating in this litigation since it is a separate legal entity. While correct, due process does not require payment of more attorney fees from the assets of the Fund, which now are subject to constructive trust. The same directors who paid themselves thousands of dollars in directors' fees can pay any future attorneys fees.

Accordingly, Plaintiffs' Motions to Dismiss The Fund's Counterclaim and From Paying Further Attorney Fees from funds subject to the constructive trust are SUSTAINED.

DATED this 6 day of July, 2006.



JUDGE WILLIAM J. WEHR
Special Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order was mailed by regular U.S. Mail, postage prepaid, on this the _____ day of July, 2006, to ALL COUNSEL OF RECORD INCLUDING ANY NEWLY ADDED COUNSEL, including the Hon. Angela M. Ford, Attorney for Plaintiffs, Hon. William E. Johnson/Hon. Frank B. Benton, IV, Counsel for Individual Defendants, Hon. Robert E. Sanders, Counsel for The Kentucky Fund for Health Living, Inc., Hon. James E. Shuffett; Hon. Mary E. Meade-McKenzie; Hon. Calvin Fulkerson; Hon. Gilbert L. Busby; and Hon. William J. Wehr, Special Judge.