

Commentary

Paul Kamenar: SEC is missing in action on corrupt trial lawyers

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2008-06-23 07:00:00.0

Current rank: # 1,311 of 10,011

BALTIMORE -

Melvyn Weiss, the godfather of the securities class-action bar, was recently sentenced to 30 months in prison for giving millions in illegal kickbacks to his lead plaintiffs in a two-decade-old racketeering scheme that netted him and his firm, Milberg Weiss, \$250 million in attorneys' fees.

Weiss will join his famed former partner, Bill Lerach, who also pleaded guilty to the same crime and is serving a slightly shorter two-year sentence. Two weeks ago, the indicted firm entered into a non-prosecution agreement, a form of probation, and agreed to pay \$75 million in fines.

Milberg Weiss made these illegal windfall profits by filing shakedown securities class-action lawsuits, forcing its corporate targets to settle, but obtaining only a few cents on the dollar for its clients' alleged losses. And now, a new study by professor Michael Perino of St. John's University Law School reveals that the shareholder class members had a lower net recovery from the settlements in the cases covered by the indictment than did class members in other cases.

While Reps. John Boehner and Lamar Smith recently have called for congressional investigations into this massive criminal racket that affected the markets, the obvious question is, where has the Securities and Exchange Commission been in all of this? Ironically, in 1995, SEC Chairman Christopher Cox — then Rep. Cox — was responsible for enacting the Private Securities Litigation Reform Act to curb these class-action abuses. Yet the SEC's silence on these harmful criminal practices — which Lerach unapologetically admitted was "industry practice" by the class-action bar — has been deafening.

Indeed, after being lobbied by Lerach last year, the SEC tried to push the Justice Department to side with the greedy plaintiffs' bar in the U.S. Supreme Court case *Stoneridge v. Scientific-Atlanta*. A ruling favoring Lerach and his ilk would have made it much easier for them to file these questionable suits against third parties.

Thankfully, the solicitor general rebuffed the SEC, and the Supreme Court recently rejected the Lerach/SEC's "sue everybody" argument.

More troubling is the SEC's failure to confront the questionable tactics of the powerful plaintiffs' bar — including its collaboration with shortsellers — that harm investors and the markets. Consider a few examples, brought to the SEC's attention over the years by the Washington Legal Foundation, that have been all but ignored.

WLF filed a complaint in 2003 based on a Wall Street Journal article that described a class-action suit against Eckerd Drugs. The article offered "a window into the subculture of shortsellers and class-action law firms where negative reports about companies are often seized upon and circulated, to the detriment of the companies and their stocks." There was strong evidence suggesting that short sellers received and traded on inside information about the timing of the filing of the suit against Eckerd.

In yet another Journal article in 2004, a prominent plaintiffs' attorney boasted that in order to pressure the pharmaceutical company Bayer to settle his questionable \$550 million product liability lawsuit, he disseminated negative information about Bayer to the media to generate damaging stories.

Hoping to drive down the price of Bayer stock, the attorney described how he "was feeding a lot of [negative] information to European and U.S. papers. ... It was part of my strategy to affect the stock price, which I was very successful at."

And in another complaint, WLF asked the SEC to bring an enforcement action against Milberg Weiss attorneys and their lead plaintiffs in a class action against a small California tech company, Terayon Communication Systems Inc. Milberg's lead plaintiffs were shortsellers who undertook a secret "Game Plan" to drive down the price of the Terayon stock, and then

sued when the price dropped.

It's long overdue for Chairman Cox and the SEC to take on the plaintiffs' attorneys and shortsellers who manipulate the markets and harm companies, investors and the economy as a whole.

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Examiner