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REVIEW & OUTLOOK

Justice and Milberg

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Poor Bernie Ebbers, the former WorldCom boss now serving a 25-year prison sentence. If he'd been a class-action lawyer, the former CEO might have ended up with a fat payout from his employer despite his felony rap. At least that's one way to look at the Justice Department's recent nonprosecution agreement with the notorious Milberg law firm.

We criticized the deal last month¹ for letting the law firm pay Melvyn Weiss -- its former lead partner and now admitted felon -- a share of the firm's future lawsuit winnings. Milberg also picked up his legal fees and expenses. We've since learned that all of this was fine with prosecutors at Justice. Thom Mrozek, spokesman for the U.S. Attorney's office in the Central District of California, confirmed the contents of [last week's letter to us from five Milberg partners](#)² saying Justice had given them the green light to keep Weiss in the financial style to which he had become accustomed.

"We considered many things during our negotiations with the firm," Mr. Mrozek says, "the culpability of senior partners who have been convicted, the lack of knowledge of others, the fact that the firm appears to be a stable business entity. There were a whole host of factors." He declined to elaborate.

We have no problem with Justice letting innocent partners keep Milberg going as a business -- in fact, we questioned the firm-wide indictment from the start. It is strange, however, that Justice let Weiss off so easy for copping to a 30-year scheme to pay people to masquerade as plaintiffs in ginned-up lawsuits. Weiss is serving a 30-month sentence, paying a \$250,000 fine and forfeiting some \$9.8 million -- which looks like a sweet deal compared to the \$240 million that his lawbreaking netted the firm.

Last Wednesday, Republicans Joe Barton (Texas) and John Shimkus (Illinois) wrote to Attorney General Michael Mukasey asking how Justice arrived at the number as well as why the firm was allowed to continue sending checks to Weiss. By allowing the firm to pay off its \$75 million fine over five years, Messrs. Barton and Shimkus also note, the Department allows the firm to "use the proceeds from future class actions to pay the fine," thereby further lightening the burden.

Writing for the [Washington Legal Foundation](#), former Assistant U.S. Attorney Michael Sklaire notes that most deferred prosecution agreements in corporate fraud cases produce a stiffer set of conditions and penalties than those for Milberg. Unless Justice has a better explanation for the Congressmen, the Weiss sinecure looks like a case of prosecutors getting taken for a ride.

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