

Commentary

Daniel Popeo: A growing gallery of rogue lawyers

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WASHINGTON -

We've all heard about class-action lawyers who buy yachts, Learjets and thoroughbred racehorses with their litigation largesse. That's why the criminal investigation of class-action law firm Milberg Weiss and the recent resignation of Bill Lerach from his California-based law firm is so captivating.

If, as reported, Lerach is pondering a guilty plea, many of his business targets, and even competitors in the plaintiffs' bar, are no doubt anxious to see him on the receiving end the law.

The indictment of Milberg Weiss and the pursuit of its partners for allegedly making illegal kickbacks to "clients" in class-action suits is a welcome, but extremely overdue, action by our government.

"Litigation Inc." — the sprawling network of famous and infamous plaintiff lawyers who abuse class-action lawsuits to enrich themselves and their friends in the judicial and political systems — is one of the most underregulated industries in America.

The money, power and fame now available through class-action lawsuits create enormous incentives for lawyers to put their interests ahead of those of their clients and above the law. That is why the misdeeds of Milberg Weiss are really just the tip of the iceberg.

Thankfully, a growing number of prosecutors, judges and even former clients are taking action to hold trial lawyers accountable for their abusive and illegal acts.

One of Lerach's most successful peers, Mississippi lawyer Dick Scruggs, is also facing criminal scrutiny. Made rich and famous in the 1990s through asbestos and tobacco litigation, Scruggs' latest crusade is demanding that judges rewrite insurance contracts and obtain coverage for hurricane-related flood damage.

In support of the class action, Scruggs received documents secretly copied by two former employees of a State Farm claims adjuster (they now work for Scruggs as "consultants" with six-figure salaries). The adjuster sued the former employees and a federal judge ordered that the documents be returned.

When Scruggs refused, Judge William Acker blasted his defiance in an opinion, writing, "His brazen disregard of the court's preliminary injunction is precisely the type of conduct that criminal contempt sanctions were designed to address."

Judge Acker urged federal prosecutors to take action against Scruggs. When they declined his request, Acker invoked a rarely used federal rule and appointed his own special prosecutors. Those prosecutors recently filed an indictment of Scruggs and his firm and are seeking a summons against them.

Joining Lerach and Scruggs in the rogue's gallery of class-action lawyers are attorneys who made millions from fen-phen diet drug litigation. Three Kentucky lawyers, who have been jailed pending their trial because a federal judge considers them a flight risk, are accused of fraudulently withholding clients'

settlement funds.

One former client told The New York Times his lawyers threatened that if he complained about his less-than-expected share, he would be “fined, go to jail and be sued.” During their hearing, the judge stated, “Not only these three gentlemen are on trial, the whole legal profession is on trial.”

Lawyers specializing in mass asbestos and silica litigation have also felt the wrath of judges and former clients in recent years. In 2005, federal Judge Janis Graham Jack blew the whistle on rampant manufacturing of silica claims, ordering thousands of suits to be dismissed and inspiring congressional and federal criminal investigations of silica and asbestos litigation.

More than 2,500 blue-collar workers, who were part of several asbestos lawyers’ “inventory” of plaintiffs, are suing their former lawyers in a Pittsburgh federal court, accusing them of fraud and breach of fiduciary duty.

Recent legal reforms have reduced some of the pervasive incentives that encourage abusive, lawyer-driven litigation. But suing, after all, is Litigation Inc.’s business, and faced with such reforms, more attorneys may resort to unethical or unlawful behavior to keep the money rolling in.

For instance, federal reforms to curtail frivolous securities class actions put more power in the hands of the “lead counsel.” To win that coveted spot, Milberg Weiss lawyers are accused of illegally procuring professional plaintiffs in scores of cases.

It is critical, therefore, that both federal and state judges proactively protect the integrity of the legal system. Victimized clients should keep fighting back, as those in fen-phen and asbestos cases have. State bar authorities must take firmer action to hold lawyers accountable for their unethical conduct. Such proceedings should be made more publicly transparent.

And finally, criminal prosecutors need to pursue cases of lawyer fraud with the same vigor they direct at free enterprise activities. Hopefully, they will investigate the conduct of other firms like Milberg Weiss and continue to pull the threads of Bill Lerach’s million-dollar coattails. One can only imagine what else they might find.

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