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INVESTIGATION OF MILBERG WEISS MAY GIVE RISE TO CIVIL LIABILITY

by
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A federal grand jury in Los Angeles recently indicted a California client of the Milberg Weiss law firm, Seymour Lazar, and his local attorney for conspiracy and for receiving illegal kickbacks totaling some \$2.4 million over twenty years from the firm in several dozen securities class action and shareholder derivative lawsuits for acting as plaintiff. *United States v. Lazar*, Cr. 05-587 (C.D. Cal). Although the indictment alleges that a "New York Law Firm" had a "secret and illegal kickback arrangement" with its client, Milberg Weiss and California partner William Lerach acknowledge that they are the New York Firm (which split last year into two firms in New York and San Diego, respectively). The defendants were charged with mail fraud involving "deprivation of honest services" and money laundering. The firm and its lawyers have not been indicted and deny any wrongdoing. However, two former Milberg Weiss attorneys were recently given immunity and there is speculation that the firm or several of its attorneys may be charged. John R. Wilke, *U.S. Pushes Broad Investigation into Milberg Weis Law Firm*, WALL ST. J., June 27, 2005, at A1.

The companies or shareholder class members in the various cases cited in the indictment may have various legal remedies available to them. If the payments were not lawful fee referrals to the lead plaintiff as the indictment alleges, then shareholders, either individually or as a class, may be able to sue on a variety of grounds, including breach of fiduciary duties, unjust enrichment, and fraud. In addition, the civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO) could be used because of the mail and wire fraud counts in the indictment. The damages to the class would be the amount of the kickback in each case since those payments belong to the shareholders or class. Punitive damages may also be available. Finally, the class action settlements or judgments in question may be subject to being set aside under Rule 60(b) of the Federal Rules of Civil Procedure for fraud, misrepresentation, or other misconduct of an adverse party, or fraud on the court.

The Washington Legal Foundation (WLF), as part of its INVESTOR PROTECTION PROGRAM, is examining the possibility of pursuing these and other potential civil remedies on behalf of aggrieved shareholders against the attorneys and parties referred to in the indictment. In addition, WLF hosted a Web Seminar on this subject on August 25, 2005, which is archived on WLF's website at www.wlf.org. Interested practitioners who have information about possible misconduct in other class action cases or suggestions for imposing civil liability in these cases are encouraged to contact WLF's Senior Executive Counsel Paul Kamenar at pkamenar@wlf.org.

Terry F. Lenzner is Chairman of Investigative Group International. He is a former federal prosecutor in the office of the U.S. Attorney for the Southern District of New York, and was Assistant Chief Counsel to the U.S. Senate Watergate Committee.

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For more information on the Washington Legal Foundation, please contact Daniel J. Popeo, Chairman, at (202) 588-0302.

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