

Corporate & Financial Weekly Digest

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Unnamed Class Member Could Not Bring Separate Suit for Disgorgement of Attorneys' Fees

Nine months after the U.S. District Court for the Southern District of Texas approved a fee application in the *In re Enron* class action litigation, plaintiff Michael Brown, an unnamed member of the class, brought a new action in the same court, asserting claims of fraud and breach of fiduciary duty against Thomas Bilek and his law firm, seeking disgorgement of the \$16 million in attorneys' fees awarded Mr. Bilek for his work in the litigation. In the Enron litigation, pursuant to the Private Securities Litigation and Reform Act (PSLRA), the court had appointed the Regents of the University of California as lead plaintiff. The Regents selected Milberg Weiss Bershad Hynes & Lerach LLP as lead counsel for the class, and the district court approved that selection. Milberg Weiss, whose California office was handling the matter, chose Mr. Bilek and his law firm to serve as local counsel in the Southern District of Texas.

Mr. Brown filed his complaint on behalf of the putative class of shareholders of Enron Corporation who participated in and received monies as a result of the settlement of the class action. Mr. Brown's complaint alleged that in connection with the fee application in the Enron litigation, Mr. Bilek had provided false and exaggerated information regarding his work on behalf of the class. Mr. Brown asserted that these fraudulent misrepresentations resulted in Mr. Bilek being awarded attorneys' fees in the inflated amount of more than \$16 million, which ultimately reduced the recovery to the class members. Mr. Brown sought disgorgement of the attorneys' fees Mr. Bilek received.

The district court dismissed Mr. Brown's complaint and the Fifth Circuit affirmed, ruling that Mr. Brown's claims were "inextricably woven" into the Enron litigation and could only have been brought by lead plaintiff in that litigation. The court held that "an unnamed class member may not circumvent a PSLRA lead plaintiff's authority by filing an independent tort lawsuit on behalf of members of the class complaining of acts and omissions that occurred in the context of the PSLRA-governed litigation." The court went on to note that, assuming the allegations were worth pursuing and the facts on which the claims were based were not known at the time the fees were approved, the claims should have been made by the lead plaintiff in a Rule 60(b) motion to set aside the judgment. (*Brown v. Bilek*, No. 09-20654 (5th Cir. Nov. 12, 2010))

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