

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
CHAIRMAN EMERITUS
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
FRANK PALLONE, Jr., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
GENE GREEN, TEXAS
DIANA DeGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
JAN SCHAKOWSKY, ILLINOIS
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA
DORIS O. MATSUI, CALIFORNIA
DONNA CHRISTENSEN, VIRGIN ISLANDS
KATHY CASTOR, FLORIDA
JOHN SARBANES, MARYLAND
CHRISTOPHER MURPHY, CONNECTICUT
ZACHARY T. SPACE, OHIO
JERRY McNERNEY, CALIFORNIA
BETTY SUTTON, OHIO
BRUCE BRALEY, IOWA
PETER WELCH, VERMONT

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
FACSIMILE (202) 225-2525
MINORITY (202) 225-3641

energycommerce.house.gov

February 24, 2009

JOE BARTON, TEXAS
RANKING MEMBER

RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
JOHN SHIMKUS, ILLINOIS
JOHN B. SHADEGG, ARIZONA
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE ROGERS, MICHIGAN
SUE WILKINS MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE SCALISE, LOUISIANA

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Holder:

We are in receipt of the Department's letter dated September 30, 2008, in response to our July 30, 2008, letter about the Case Disposition Agreement (CDA) in the Milberg matter, the plea agreement in the Weiss case, and possible investigative issues arising from the Scruggs case.

We respectfully requested written answers to three questions. First, we asked why the Department found the \$75 million in monetary penalties against Milberg to be an appropriate amount given the \$239 million in fees collected in lawsuits involving kickbacks to plaintiffs. While the Department stated the \$75 million amount reflected the "government's careful assessment" of the approximate amount of "tainted" attorneys fees "fairly allocable" to the Milberg firm, the Department did not explain how that approximate amount was calculated, and how the Department determined that the other \$164 million was not "tainted." With respect to the timing of the payment, we appreciate the details provided by the Department. However, there are other issues, while not posed directly in the first question, we expect the Department to address because they raise questions of a possible new Department approach toward criminal settlements. For example, we note that the CDA allows the firm to appeal findings of breach to the highest levels of the Department. We understand that such a provision is unusual in corporate non-prosecution agreements and is unlike other recent corporate deferred prosecution agreements. We would like the Department to address directly:

- a. Whether the Milberg agreement represents a shift in approach, as well as why the Milberg firm was permitted to continue to operate;

- b. Whether this CDA includes provisions more favorable for the Milberg firm than CDA provisions for other corporate defendants, and, if so, why;
- c. Why the Milberg firm was not required to waive its attorney-client privilege as part of its ongoing cooperation; and,
- d. Was the issue of waiver of attorney-client privilege a significant factor that precluded pre-indictment resolution of the case?

The Department needs to clear the air about whether this CDA represents a change in approach or whether the Milberg firm got a more favorable deal than other corporate defendants, and if so, why.

Second, we asked the Department why the defendant Melvin Weiss was permitted to enter a fee agreement with the Milberg law firm after he was indicted, and how the \$9.75 million judgment against Weiss was an appropriate penalty. The Department stated its belief that it was an appropriate penalty in light of the totality of Weiss's punishment which included 30 months in prison. But the Department did not answer the question at all about why Weiss was permitted to enter a fee agreement with the Milberg firm after he was indicted, which could reduce or even render meaningless the forfeiture and fines that Weiss would be required to pay.

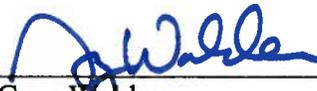
Finally, we asked about the Department's plans to review or investigate illegal or unethical practices of attorneys in class action cases. The Department cited its commitment to ensuring the integrity of legal representation in litigation and class action lawsuits and will continue to investigate matters where appropriate. It would be helpful if the Department could discuss this point further by explaining where such investigations and prosecutions fit into the Department's overall strategy, and what performance measures are used to assess the effectiveness of the Department's activities. If the Department has other information to share on this point that would not be appropriate to include in a letter, we would ask that your staff make arrangements for our staff to handle through a telephonic or in-person briefing.

We appreciate the Department's work and thank you for your attention to this matter. We would appreciate a response by no later than four weeks from the date of this letter.

Sincerely,



Joe Barton
Ranking Member
Committee on Energy and Commerce



Greg Walden
Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Eric Holder
Page 3

Attachment

Cc: The Honorable Henry A. Waxman, Chairman, Committee on Energy and Commerce
The Honorable Bart Stupak, Chairman, Subcommittee on Oversight and Investigations



U.S. Department of Justice

Office of Legislative Affairs

10-2-08
Archive - DOJ
Alan

Office of the Assistant Attorney General

Washington, D.C. 20530

September 30, 2008

The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Barton:

This responds to your letter, dated July 30, 2008, to the Attorney General expressing concerns regarding alleged unethical and illegal practices by attorneys in substantial class action litigation across the country. We are sending an identical letter to Congressman John Shimkus, who joined in your letter to us.

At the outset, we assure you that the Department of Justice takes allegations of unlawful conduct by attorneys very seriously. Your letter mentions two specific criminal matters handled by the Department of Justice. The first was the investigation of illegal activities involving seven senior partners at the law firm of Milberg LLP (formerly known as Milberg Weiss LLP, Milberg Weiss & Bershad LLP, Milberg Weiss Bershad & Schulman LLP, Milberg Weiss Bershad Hynes & Lerach LLP, and Milberg Weiss Bershad Specthrie & Lerach) ("the Milberg firm"). That investigation, which was handled by the United States Attorney's Office for the Central District of California, spanned eight years and brought to light a long-running scheme to conceal from courts overseeing class action litigation kickbacks paid by these senior partners to plaintiffs who served as representatives of plaintiffs' classes. As a result of the investigation, four of the senior partners involved in the scheme (Melvin I. Weiss, William S. Lerach, David J. Bershad, and Steven G. Schulman) entered guilty pleas, and two have been sentenced to significant prison terms (30 months for Weiss and 24 months for Lerach). Bershad and Schulman are scheduled to be sentenced later this year. None of the responsible senior partners remain associated with the Milberg firm.

As you know, the Milberg firm entered into a Case Disposition Agreement ("CDA") under which it agreed to pay \$75 million in monetary penalties and to put in effect a compliance system that will ensure that the Milberg firm does not engage in similar conduct in the future. The Department strongly believes that the dispositions of the prosecutions in the Milberg matter (a total of 11 individuals have pled guilty) and the CDA are appropriate, as they have sent to prison those most responsible for the criminal conduct, have put in place a compliance program that will serve

as a model for courts and regulators seeking to prevent similar conduct in the future, and they require substantial monetary penalties (a total financial recovery of over \$105 million in fines and forfeitures) from both individuals and the Milberg firm. Moreover, the \$75 million in monetary penalties required under the CDA – which reflects the government’s careful assessment of the approximate amount of “tainted” attorneys fees that remained fairly allocable to the Milberg firm at the time the CDA was executed – impose a very significant punishment on the relatively few partners who remain at the Milberg firm, none of whom were alleged to be involved in the criminal conspiracy, and who will have to pay the entire \$75 million using after-tax net income of the Milberg firm. As for the timing of the payment, although the Milberg firm could not afford to pay the \$75 million demanded by the government immediately, the CDA requires Milberg to pay interest on all deferred payments, thereby preserving the present value of the \$75 million penalty, and includes clauses accelerating payment of the \$75 million if the Milberg firm’s revenues exceed defined thresholds. Finally, the Department strongly believes that the \$10 million in forfeiture and fines that Weiss was required to pay as part of his plea agreement (and which was negotiated separately from the CDA) is an appropriate monetary penalty in light of the totality of Weiss’s punishment, which also included 30 months in prison.

Your letter also mentions the prosecution of attorneys associated with the Scruggs Law Firm in Oxford, Mississippi. In November 2007, following an investigation by the United States Attorney’s Office for the Northern District of Mississippi, a federal grand jury returned a six-count indictment charging Richard F. Scruggs, his son and law partner David Z. (“Zach”) Scruggs, his law partner Sidney A. Backstrom, Mississippi attorney Timothy R. Balducci, and Steven A. Patterson with, among other things, conspiracy to bribe the Honorable Henry L. Lackey, a Mississippi state court judge presiding over a civil lawsuit regarding attorneys fees to which Richard Scruggs was a party. Shortly after the indictment was returned, Balducci and Patterson each pleaded guilty to one count of conspiracy to bribe a state official and agreed to cooperate with the government. They are awaiting sentencing. In March 2008, Richard Scruggs and Backstrom pleaded guilty to one count each of conspiracy to bribe a state official, and Zach Scruggs pleaded guilty to one count of misprision of a felony. Richard Scruggs was sentenced to five years, Backstrom was sentenced to 28 months, and Zach Scruggs was sentenced to 14 months imprisonment. Moreover, in January 2008, Joseph C. Langston, an attorney who had represented Richard Scruggs in another, earlier attorney fee dispute before a different state court judge, pleaded guilty to one count of conspiracy to bribe a state official and agreed to cooperate with the government. As part of the factual basis for the plea, Langston admitted that he conspired to offer Scruggs’s support for the presiding judge’s candidacy for a federal judgeship in return for a favorable outcome in the case. Langston is also awaiting sentencing.

As the Milberg and Scruggs prosecutions clearly demonstrate, the Department is committed to ensuring the integrity of legal representation in litigation and class action lawsuits. Therefore, we will continue to investigate matters where appropriate and pursue cases aggressively where there is evidence of criminal activity.

The Honorable Joe Barton
Page Three

We hope that this information is helpful to you. Please do not hesitate to contact this office if you would like further assistance with regard to this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith B. Nelson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Keith B. Nelson
Principal Deputy Assistant Attorney General

cc: The Honorable John D. Dingell
Chairman



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 30, 2008

The Honorable John Shimkus
Ranking Minority Member
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Shimkus:

This responds to your letter, dated July 30, 2008, to the Attorney General expressing concerns regarding alleged unethical and illegal practices by attorneys in substantial class action litigation across the country. We are sending an identical letter to Congressman Joe Barton, who joined in your letter to us.

At the outset, we assure you that the Department of Justice takes allegations of unlawful conduct by attorneys very seriously. Your letter mentions two specific criminal matters handled by the Department of Justice. The first was the investigation of illegal activities involving seven senior partners at the law firm of Milberg LLP (formerly known as Milberg Weiss LLP, Milberg Weiss & Bershad LLP, Milberg Weiss Bershad & Schulman LLP, Milberg Weiss Bershad Hynes & Lerach LLP, and Milberg Weiss Bershad Specthrie & Lerach) ("the Milberg firm"). That investigation, which was handled by the United States Attorney's Office for the Central District of California, spanned eight years and brought to light a long-running scheme to conceal from courts overseeing class action litigation kickbacks paid by these senior partners to plaintiffs who served as representatives of plaintiffs' classes. As a result of the investigation, four of the senior partners involved in the scheme (Melvin I. Weiss, William S. Lerach, David J. Bershad, and Steven G. Schulman) entered guilty pleas, and two have been sentenced to significant prison terms (30 months for Weiss and 24 months for Lerach). Bershad and Schulman are scheduled to be sentenced later this year. None of the responsible senior partners remain associated with the Milberg firm.

As you know, the Milberg firm entered into a Case Disposition Agreement ("CDA") under which it agreed to pay \$75 million in monetary penalties and to put in effect a compliance system that will ensure that the Milberg firm does not engage in similar conduct in the future. The Department strongly believes that the dispositions of the prosecutions in the Milberg matter (a total of 11 individuals have pled guilty) and the CDA are appropriate, as they have sent to prison those most responsible for the criminal conduct, have put in place a compliance program that will serve

as a model for courts and regulators seeking to prevent similar conduct in the future, and they require substantial monetary penalties (a total financial recovery of over \$105 million in fines and forfeitures) from both individuals and the Milberg firm. Moreover, the \$75 million in monetary penalties required under the CDA – which reflects the government’s careful assessment of the approximate amount of “tainted” attorneys fees that remained fairly allocable to the Milberg firm at the time the CDA was executed – impose a very significant punishment on the relatively few partners who remain at the Milberg firm, none of whom were alleged to be involved in the criminal conspiracy, and who will have to pay the entire \$75 million using after-tax net income of the Milberg firm. As for the timing of the payment, although the Milberg firm could not afford to pay the \$75 million demanded by the government immediately, the CDA requires Milberg to pay interest on all deferred payments, thereby preserving the present value of the \$75 million penalty, and includes clauses accelerating payment of the \$75 million if the Milberg firm’s revenues exceed defined thresholds. Finally, the Department strongly believes that the \$10 million in forfeiture and fines that Weiss was required to pay as part of his plea agreement (and which was negotiated separately from the CDA) is an appropriate monetary penalty in light of the totality of Weiss’s punishment, which also included 30 months in prison.

Your letter also mentions the prosecution of attorneys associated with the Scruggs Law Firm in Oxford, Mississippi. In November 2007, following an investigation by the United States Attorney’s Office for the Northern District of Mississippi, a federal grand jury returned a six-count indictment charging Richard F. Scruggs, his son and law partner David Z. (“Zach”) Scruggs, his law partner Sidney A. Backstrom, Mississippi attorney Timothy R. Balducci, and Steven A. Patterson with, among other things, conspiracy to bribe the Honorable Henry L. Lackey, a Mississippi state court judge presiding over a civil lawsuit regarding attorneys fees to which Richard Scruggs was a party. Shortly after the indictment was returned, Balducci and Patterson each pleaded guilty to one count of conspiracy to bribe a state official and agreed to cooperate with the government. They are awaiting sentencing. In March 2008, Richard Scruggs and Backstrom pleaded guilty to one count each of conspiracy to bribe a state official, and Zach Scruggs pleaded guilty to one count of misprision of a felony. Richard Scruggs was sentenced to five years, Backstrom was sentenced to 28 months, and Zach Scruggs was sentenced to 14 months imprisonment. Moreover, in January 2008, Joseph C. Langston, an attorney who had represented Richard Scruggs in another, earlier attorney fee dispute before a different state court judge, pleaded guilty to one count of conspiracy to bribe a state official and agreed to cooperate with the government. As part of the factual basis for the plea, Langston admitted that he conspired to offer Scruggs’s support for the presiding judge’s candidacy for a federal judgeship in return for a favorable outcome in the case. Langston is also awaiting sentencing.

As the Milberg and Scruggs prosecutions clearly demonstrate, the Department is committed to ensuring the integrity of legal representation in litigation and class action lawsuits. Therefore, we will continue to investigate matters where appropriate and pursue cases aggressively where there is evidence of criminal activity.

The Honorable John Shimkus
Page Three

We hope that this information is helpful to you. Please do not hesitate to contact this office if you would like further assistance with regard to this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith", with a stylized flourish extending to the right.

Keith B. Nelson
Principal Deputy Assistant Attorney General

cc: The Honorable Bart Stupak
Chairman