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U.S. House of Representatives
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July 30, 2008

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AND CHIEF COUNSEL

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

Dear Attorney General Mukasey:

We are writing with regard to Department of Justice's (DOJ) investigations and prosecutions of attorneys who specialized in bringing class action lawsuits in state and federal courts across the country, specifically, the attorneys of Milberg Weiss Bershad Specthrie & Lerach (Milberg) and Richard F. "Dickie" Scruggs of the Scruggs Law Firm. As the Committee on Energy and Commerce has jurisdiction over consumer protection issues, we are concerned that the unethical and illegal practices of these parties may have compromised the rights of litigants involved in these lawsuits.

These prosecutions brought to light the schemes of certain attorneys and, in the Milberg case, a law firm to subvert our country's judicial processes. With respect to the Milberg case, prosecutors showed that over a 25-year period, the law firm routinely paid kickbacks to plaintiffs who were representatives of various plaintiffs' classes in class action cases. The managing partners of Milberg went as far as to create a secret fund located in a partner's office from which they paid these plaintiffs. In return for the government dismissing its case against Milberg, on June 16, 2008, the Milberg firm agreed to accept responsibility for its role in the kickback scheme, pay the United States over a five-year-period \$75 million plus interest, and implement a "best practices" program at the firm. In addition to being permitted to pay the penalty over a five-year-period, which will allow Milberg to use the proceeds from future class action settlements to pay the fine, the agreement contained other provisions that are unusual in corporate non-prosecution agreements. For example, despite the ethical and legal misconduct by the firm's managing partners, the firm continues to operate. The statement of facts in the non-prosecution agreement states that the managing partners concealed their illegal activities from other firm partners, seemingly insulating those partners from ethical charges. In the event that the Department of Justice finds that Milberg is in breach of the agreement, the agreement allows

the firm to appeal that finding to the highest levels of the department. Again, it is our understanding that this provision is unusual in corporate non-prosecution agreements.

Individual Milberg attorneys were also charged by the Justice Department, including one of the firm's founders, Melvin Weiss. According to papers filed by the government, Weiss "possessed substantial control over the management and conduct of Milberg Weiss's business affairs," and that he was one of the "partners who agreed . . . to secretly pay certain named plaintiffs . . ." Despite the fact that Weiss pleaded guilty to one count of racketeering conspiracy, was sentenced to three months in prison, and ordered to forfeit \$9.75 million to the United States, Weiss signed an agreement with Milberg that will allow him to be paid 15 percent of the firm's fee for his services in certain Milberg cases. Incredibly, Weiss's agreement with the Milberg firm was signed *after* he was indicted by the United States. Considering that Weiss's share of Milberg's fees could be millions of dollars, his agreement for fees seems to do an end-run around the penalty he must pay to the government, making it potentially meaningless.

Scruggs and his firm, the Scruggs Law Firm, practiced in Mississippi. Over the last thirty years, Scruggs has been involved in several class action law suits, including cases against asbestos companies, tobacco companies, and insurance companies involved in Hurricane Katrina. Scruggs's firm's fee in the tobacco cases alone has been reported to be about \$1 billion dollars. A recent investigation by the United States Attorney for the Northern District of Mississippi showed that Scruggs attempted to bribe a Mississippi state court judge in a dispute over Scruggs's fees in the Hurricane Katrina insurance cases. Ultimately, Scruggs pleaded guilty to a federal bribery charge. At the sentencing hearing for Scruggs, U.S. District Judge Neal Biggers Jr., after reviewing the evidence that included secretly recorded conversations, noted that "it made me think perhaps this was not the first time you did this because you did it so easily. And there is evidence before the court that you have done it before." We note that, according to reports, the Department of Justice is investigating Scruggs's involvement in a second bribery case. In that case, Scruggs's own attorney, Joey Langston, has already pleaded guilty and stipulated that he received \$1 million from Scruggs for his assistance in obtaining a favorable ruling from a judge in another dispute relating to Scruggs's fees. However, it is not clear whether the Department is investigating other instances of bribery referenced by Judge Biggers beyond the Langston matter.

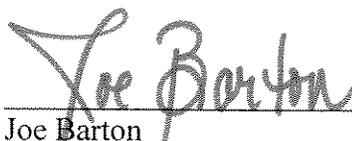
The facts in both the Milberg and Scruggs cases are disturbing, not only for the breadth of the legal and ethical misconduct on the part of the attorneys, but also because the misconduct took place in large, class action cases. While an attorney's breach of his or her ethical duties to the client and the court is unacceptable in any event, Milberg's and Scruggs's illegal conduct took place in cases where there were hundreds, if not thousands, of plaintiffs, the damages amounts were high, and, therefore, the potential effect of a judgment against the defendants risked the financial stability of their companies and their shareholders' interests. While Scruggs and Milberg have been indicted criminally, their cases raise larger questions about the activities of lawyers in high-stakes class action cases generally, with impacts on consumer protection and interstate commerce. Given the potential for a large payout in class actions, we are concerned that their practices — paying class representatives for their testimony, kickbacks, and bribery of court officials — are the norm and not the exception in these types of cases.

For this reason, we respectfully request that you provide written answers to the following questions no later than August 15, 2008:

1. Please explain why the Department of Justice found that a \$75 million judgment against Milberg was an appropriate criminal money penalty, given the \$239 million dollars in fees that Milberg collected in lawsuits involving kickbacks to plaintiffs. In contrast to most deferred corporate non-prosecution agreements, why did the Department of Justice agree to allow Milberg to use proceeds from future class action settlements over a five-year period to pay the fine instead of insisting that Milberg pay 100 percent of its ill-gotten gains immediately?
2. Please explain why Weiss was permitted to enter a fee agreement with the Milberg law firm after he was indicted. In light of this agreement, please explain how the \$9.75 million judgment against Weiss is an appropriate penalty.
3. Please explain whether the Department of Justice plans to review or investigate illegal or unethical practices of attorneys in class action cases, including but not limited to recruiting plaintiffs; paying plaintiffs' class representatives; paying kickbacks to class representatives or to parties who refer plaintiffs to law firms once a successful judgment is obtained; and paying expert witnesses on a contingency fee basis.

Thank you for your attention to this matter. Please do not hesitate to contact Alan Slobodin or Karen Christian, Minority Committee staff counsel, at 202-225-3641 if you have any questions.

Sincerely,



Joe Barton
Ranking Member
Committee on Energy
and Commerce



John Shimkus
Ranking Member
Subcommittee on Oversight
and Investigations

cc: The Honorable John D. Dingell, Chairman
The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and
Investigations