

Witness in Fen-Phen Case says Rules Required Secrecy

JUDGE, NOT LAWYERS, WOULD REVEAL SETTLEMENT

Three lawyers accused of taking more than \$65 million from their former clients could not give their clients details about a 2001 diet drug settlement because it would have violated a confidentiality clause, an expert in class-action litigation testified Monday.

Richard Robbins, an Atlanta attorney who has more than 27 years of experience in class-action law, testified on behalf of William Gallion, Shirley Cunningham Jr. and Melbourne Mills Jr. in federal court in Covington on Monday. Robbins said the three lawyers were bound by the settlement agreement with fen-phen manufacturer American Home Products not to discuss details of the settlement. If details of the settlement had become public, the three lawyers could have been fined, Robbins said.

The three men, who have been on trial since the middle of May on charges of conspiracy to commit wire fraud, are accused of conspiring to keep the bulk of a \$200 million settlement from more than 440 former clients who sued diet-drug maker American Home Products alleging the diet drug ruined their hearts and lungs.

Prosecutors allege that as part of the fraud, the three failed to tell clients how much the total settlement was for, threatened many with a fine if they told their family members about the settlement and also failed to tell many that some of the settlement money was going into a non-profit.

The three also failed to notify clients that there was a settlement until after the settlement had been finalized. The three Lexington-area lawyers deposited millions of the settlement money into their own accounts after the settlement was reached in 2001 and then later moved some of that money back into the settlement account after the Kentucky Bar Association issued a subpoena asking about the details of the settlement, the indictment alleges.

Robbins testified Monday that the judge decides if and when clients are notified in a class action. "It is the judge's responsibility to decide when notice should be given and what that notice should consist of," Robbins said.

Three lawyers for American Home Products had testified earlier in the trial that the \$200 million settlement was for only 440 people and was not meant to settle future claims brought by people who had taken fen-phen but were not part of the 2001 Boone Circuit Court lawsuit. The three lawyers have argued that some money from the settlement had to be set aside in case other people who took fen-phen came forward with other lawsuits.

When no one came forward, the lawyers put some of the money in a non-profit and the rest went to legal fees and expenses. The lawyers on the case received approximately \$105 million, their clients received \$74 million and the remaining money went into a non-profit.

But Robbins, after reviewing transcripts, depositions and court documents related to the 2001 case, said he doesn't understand how American Home Products could say the \$200 million settlement was strictly for the 440 clients. Documents indicate that American Home Products said the 440 people who took the drug were entitled to \$30 million to \$50 million.

Instead, the pharmaceutical company paid \$200 million. Why would the company pay an additional \$150 million, if it was not to pay for future claims?

"They were buying peace in Kentucky," Robbins said. Robbins will continue his testimony Tuesday. Gallion, who took the stand on Friday, is expected to return to the stand later this week.