

These white-collar criminals are no class act

White-collar crime just doesn't pay like it used to.

In fact, it's been a rough few weeks for lawyers and accountants accused of misfeasance.

Earlier this month, a federal judge ordered accounting giant KPMG LLP and its outside law firm to pay \$153.9 million to its former clients who got into a tad bit of trouble with the Internal Rev-



THERE OUGHT TO BE A LAW

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enue Service over some tax shelters.

And that was on top of the \$456 million in fines and restitution KPMG paid the IRS last fall when it copped a plea in what the IRS called "the largest criminal tax case ever filed."

As you might recall, the feds charged KPMG with concocting a fraudulent scheme that let about 600 wealthy clients bilk the government out of at least \$2.5 billion in evaded taxes. (I'm just guessing, but I'll bet that when KPMG marketed these shelters, it never used the words "fraudulent" or "bilk".)

To keep the firm from being indicted—and to avoid ending up on the side of a

milk carton like Arthur Andersen—KPMG cut its deal with the IRS. Nine of the firm's partners weren't so lucky: They're under federal indictment. Oh, and to date, the IRS has collected \$3.7 billion in back taxes and penalties from KPMG's former clients. Wow, talk about your tax planning gone awry.

So let's recap. Proposed tax savings: \$2.5 billion. Actual taxes and penalties paid to the IRS: \$3.7 billion. Watching your accountants do the "perp walk" instead of you: priceless.

Now these "defrauded" taxpayers aren't your typical widows and orphans losing their meager life savings. No, these

folks are very wealthy. So they did what anyone in their (expensive Italian leather) shoes would do. They hired one of the best plaintiffs' law firms in America—Milberg Weiss & Other Guys—to file a class action against KPMG.

And what did these hotshot lawyers get for their clients? Relatively speaking, not much—a \$154 million settlement that will pay, on average, a measly \$825,000 per plaintiff. Nobody hit the jackpot on this one.

Or did they? See, the Milberg Weiss firm took \$25 million of the settlement for its attorney's fees. Not a bad payout, considering the IRS had already investigated the case and threatened criminal charges against KPMG. Somehow, it just doesn't seem right, does it?

Perhaps you've had a similar experience. You get a notice in the mail saying you're entitled to a piece of a class-action settlement. The defendant is going to pay a bazillion dollars to settle your claims, but before you get too excited, you see you're only getting a coupon for \$1.25 off the purchase of your next chain saw. Yet lurking down there in the fine print, you notice the lawyers are being paid enough to buy that new house in the Caymans—as well as the island it sits on.

How can this be? Well, a federal grand jury thinks it might have one answer. Last month, it indicted Milberg Weiss for allegedly paying millions of dollars in illegal kickbacks to class-action plaintiffs, who in turn agreed to recommend big attorney's fee payments for Milberg Weiss.

To fully appreciate this, let's do Class Action 101. Class actions allow people who are "similarly situated" to bring their claims in one lawsuit against a defendant who supposedly defrauded or injured them in the same way.

When an aggrieved person files suit, and learns others are similarly situated, she can ask the court to let her be the class representative for all the other claimants against Bad Guy Inc. If the court makes her the lead plaintiff, she and her lawyers get to run the show—including negotiating the settlement of the case. If the case settles, the attorneys usually get paid out of the settlement, and the class members divvy up what's left.

So you'd like to have a lead plaintiff and law firm who really watch out for the best interests of the class. That's allegedly where Milberg Weiss was scamming the system. The indictment claims the firm used three people as lead plaintiffs in more than 150 lawsuits. These people then secretly got a percentage of the attorney's-fee awards they recommended for the firm. More money for the lawyers, more money for the lead plaintiffs, less money for everyone else.

Not surprisingly, Milberg Weiss denies all of this. But two of these former plaintiffs are cooperating with the feds, proving again that it's never a good day when your clients turn state's evidence against you.

So what's the lesson to be learned here? Repeat after me: Crime does not pay.

Unless, of course, you're the lawyers defending the bad guys. •

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