

Author shines a bright light on an infamous class action lawsuit

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The headlines may have faded, but for personal injury attorney and former Akron area resident, Kip Petroff, the controversy and illnesses that resulted from the once popular diet cocktail, Fen-Phen, remain a vivid memory.

“People are still getting sick,” said Petroff & Associates Founding Partner, Petroff, who won the very first verdict in the case.

About six million overweight Americans used the drug combination in the mid 1990s. It contained two drugs, fenfluramine and phentermine; one suppressed the appetite and the other was a stimulant. While it proved very effective, fenfluramine was shown to cause potentially fatal pulmonary hypertension and heart valve problems in many patients.

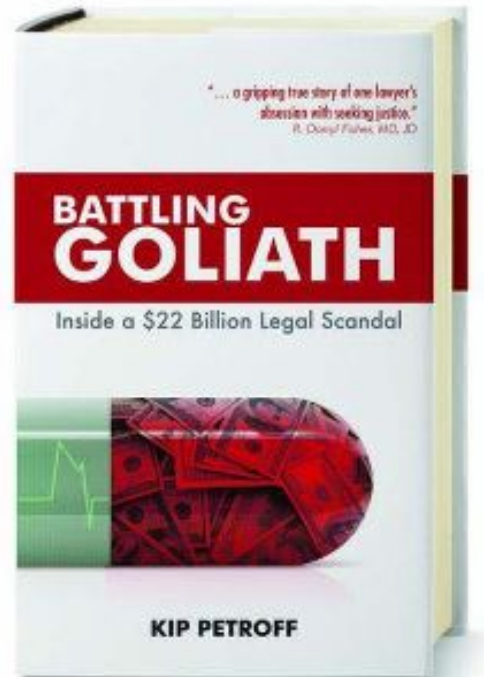
As a result, in September of 1997, the U.S. Food and Drug Administration asked the manufacturers, the Wyeth-Ayerst Laboratories division of American Home Products Corporation to voluntarily pull fenfluramine (Pondomin), and its chemical cousin, dexfenfluramine (Redux), from the market. The news spread quickly, and in 1999, less than three months after Petroff’s verdict, a group of trial lawyers negotiated a \$4.8 billion class action settlement agreement with American Home Products Corporation.

The class action that followed is now one of the largest in history, costing American Home Products \$22 billion so far. Even today the case is not completely closed as class members still have the remainder of the year to file claims.

The legal saga as well as Petroff’s personal experiences surrounding the case, are now the subject of his first book, “Battling Goliath: Inside a \$22 Billion Legal Scandal.”

“The pharmaceutical company called it a miracle drug,” said Suzi Zimmerman Petroff, who co-authored the book. She said, “the drug company knew about the side effects long before it was pulled from the market.”

Petroff said he remembers his first verdict very well. His client was Debbie Lovett, and the case was decided in a state court in Van Zandt County, Texas in August of 1999.



“A breast implant client of mine referred the client to me in 1997, and less than two years later I won a \$23 million verdict,” said Petroff, whose firm is based in Dallas.

“It was like a dream come true. My client and I were flown to New York, and appeared on Good Morning America. My partner, Robert, and I settled over a thousand cases within a year of the verdict.”

While there were dozens of class actions filed across the country once the controversy came out, Petroff said the one that ended up becoming the big one was filed in late 1999 in federal court in the United States District Court for the eastern district of Pennsylvania (Sheila Brown, et al. vs. Wyeth – formerly American Home Products Corporation).

Petroff’s partner retired in 2001, and while he had also considered retirement, Petroff said, “the class action looked too promising, too easy, and I couldn’t walk away from it.

“I chose to go into unfamiliar waters, that of the class action. It eventually became quite overwhelming,” recalled Petroff.

While he proceeded to get his on-the-job training, he said the case got more complicated as the number of claims continued to rise, and the drug makers realized how much it was going to cost.

“Things got very contentious. What should have been the easy part of the case, the settlement, became more difficult than going to trial. Many times the class counsel sided with the drug company against the claimants. This struggle is the crux of what the book is about.”

While the book covers more than ten years, Petroff managed to condense the story into 180 pages, with a few subplots as well, including his battle with alcohol.

“As many people know alcohol is rampant in the legal profession, especially among trial lawyers,” said Petroff. “As I got deeper and deeper into the case, allegations began to surface that could have ruined me, and I became dependent on alcohol to deal with the pressure.”

Ironically the day he made the decision to give up alcohol was the same day Judge Harvey Bartle III, the judge presiding over the class action, wrote his opinion, essentially ending the controversy and clearing the way for Petroff’s clients to receive damage awards and Petroff to receive his fee, and allowing him to exit the case.

“It was a huge relief, and yet that morning in January 2007, when I went to that first Alcoholics Anonymous meeting, I had no idea that would happen that afternoon.”

“Kip is a very spiritual person, but the case brought out his demons,” said Suzi. “What separated him from some of the others involved in the case is that he did not give into them.”

“There is no one else who could have written this book from the same perspective,” said Petroff. “I led the charge and got the first verdict and then I had more cases in the class action than anyone else. It contains all the makings of an exciting thriller. There is big money, human tragedy, corruption, and intense legal battles. Everything but sex.”